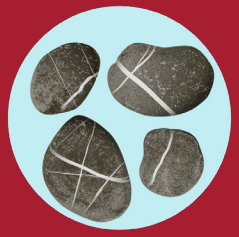
Step into the River:

Section Eight

- Appendices



Appendices

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Appendix A: Key Terms

Aboriginal – the three groups of original inhabitants of the lands known today as Canada. These groups are defined as First Nations, Inuit, and Métis in the Constitution Act of 1982.

Aboriginal Economic Development Corporation (AEDC) Or Economic Development Corporation (EDC) – the economic and business development arm of an Indigenous government. The community-owned corporations invest in, own and/or manage subsidiary businesses with the goal of benefiting the Indigenous citizens they represent.

Aboriginal Financing Institution (AFI) – An Indigenous community-based organization that provides business financing, including business loans and non-repayable contributions, and resources to First Nations, Métis and Inuit-owned businesses.

Additions to Reserves (ATR) – refer to the process of converting Crown / fee-simple lands to reserve status.

Ally – someone from a privileged group who is aware of how oppression works and struggles alongside members of an oppressed group to take action to end oppression.

Band Council – the administrative/political organization of a First Nations community overseen by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC).

Band Councilor – — an elected council member of a First Nations band under Section 74 of the Indian Act. Band Councilors administrate all aspects of the community.

Chief

An **Elected Chief** is the political leader of a Band Council of a First Nation under the Indian Act electoral system. Some First Nations have Elected and/or Hereditary Chiefs, while some self-governing First Nations use the term Executive Director or President.

A **Hereditary Chief** is not an elected official under Section 74 of the Indian Act. A Hereditary Chief is the traditional leadership system of First Nations communities, with title passed down within family bloodlines generally following either a matriarchal or patriarchal line.

Constitution Act, 1982 (formerly the British North America Act, 1867)

Section 91(24) of the British North America Act, 1867 states that legislative authority for Section 35 of the repatriated Constitution Act, 1982 states the following:

1. The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
2. In this Act, "Aboriginal Peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
3. For greater certainty, in subsection (1) "Treaty Rights" includes rights that now exist by way of land claims agreements or may be so acquired.
4. Notwithstanding any other provision of this Act, the Aboriginal and Treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Colonization - occurs when a new group of people migrates into a territory and then takes over and begins to control the Indigenous Peoples of those territories. The settlers impose their own cultural values, religions, and laws, seizing/stealing land and controlling access to resources and trade, forcing the Indigenous People to become dependent on the settler systems and institutions.

Cultural Appropriation - using intellectual property, traditional knowledge, cultural expressions, or artifacts from someone's culture without permission. It is most likely to be harmful when the source culture is a group that has been oppressed or exploited in other ways (as with Indigenous Peoples), or when the object of appropriation is particularly sensitive or sacred.

Cultural Oppression - shared societal values and norms that allow people to see oppression as normal or right.

Cultural Humility - a lifelong process of self-reflection and self-critique whereby the individual not only learns about another's culture, but one starts with an examination of her/his own beliefs and cultural identities.

Cultural Safety - the recognition that one needs to be aware of and challenge unequal power relations at the level of individual, family, community, and society. In a culturally safe environment, each person feels that their unique cultural background is respected, and they are free to be themselves without being judged, put on the spot, or asked to speak for all members of their group.

Decolonization - the process of deconstructing colonial ideologies of the superiority and privilege of Western thought and approaches. Decolonization involves valuing and revitalizing Indigenous knowledge and approaches, and rethinking Western biases or assumptions that have impacted Indigenous ways of being.

Doctrine of Discovery - includes all doctrines, policies and practices based on advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences. The Doctrine of Discovery has an enduring impact on Indigenous peoples and the right to redress (article 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples).

Duty to consult and accommodate - essentially means that when the Crown contemplates conduct that could have a prejudicial effect on a potential Indigenous Rights or Title, it must consult with the relevant Indigenous groups and reasonably take into account their interests.

Elder - Elders are recognized because they have earned the respect of their community through wisdom, age and balance of their actions in their teachings.

Enfranchisement (Indian Act) - Enfranchisement is a legal process for terminating a person's Indian status and conferring full Canadian citizenship. Enfranchisement was a key feature of the Canadian federal government's assimilation policies regarding Indigenous peoples. The Indian Act made enfranchisement legally compulsory. Under the Indian Act from 1876 until 1961, Status Indians would lose their legal and ancestral identities (or Indian Status) for a variety of reasons, such as serving in the Canadian armed forces, gaining a university education, for leaving reserves for long periods (e.g. employment) and specifically for Indigenous women, if they married non-Indian men or if their Indian husbands died or abandoned them.

First Nation - First Nation people have inhabited the lands of Canada for thousands of years and were the first Indigenous identity group to be recognized under the Indian Act. Today, there are more than 634 First Nations communities made up of roughly 50 broader nations. 'First Nation' is a term used to identify Canadian Indigenous Peoples who are neither Métis nor Inuit. This term came into common usage in the 1970s to replace the term "Indian" and "Indian Band".

Indian - A term commonly used to describe the hundreds of distinct nations of Indigenous Peoples throughout North, Central and South America and the Caribbean. It can be traced back to Christopher Columbus in the fifteenth and sixteenth centuries during his expeditions to find Asia. Widely used by explorers and missionaries, the term was later adopted by the Government of Canada and incorporated into the Indian Act, 1876. It is often used in the context of historical government departments, documents, policies and laws. Indians are one of three recognized Indigenous Peoples in Canada—Indian (First Nation), Inuit

and Métis—according to Section 35(2) of the Constitution Act, 1982.

Under the Indian Act, **Indian** means "a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian." In the Act there are three classifications of Indian:

> **Status Indian:** A person entitled to have his or her name included on the Indian Register, an official list maintained by the federal government. Certain criteria determines who can be registered as a Status Indian. Only Status Indians are recognized as Indians under the Indian Act, which defines an Indian as "a person who, pursuant to this Act, is registered as an Indian or is entitled to be registered as an Indian." Status Indians are entitled to certain rights and benefits under the law.
>
> **Non-Status Indian:** An Indian person who is not registered as an Indian under the Indian Act, who lost their status or whose ancestors were never registered, or lost their status under former or current provisions of the Indian Act.
>
> **Treaty Indian:** A Status Indian who belongs to a First Nation that signed a treaty with the Crown and as a result are entitled to Treaty rights.

Indian Act, 1876 - The Canadian legislation, first passed in 1876, which defines an Indian in relation to the federal government's fiduciary responsibility as it applies to "Indians" living on-reserve. The Act sets out certain federal obligations and regulates the management of Indian reserve lands, Indian monies and other resources, as well as approves or disallows First Nation bylaws. It has been amended several times, most recently in 1985 with Bill C-31 and again in 2011 with Bill C-3 pertaining to identity.

Indian Band - The Indian Act's definition is as follows: "band" means a body of Indians:

> (a) for whose use and benefit in common, lands, the legal title to which is vested in Her Majesty, have been set apart before, on or after September 4, 1951,
> (b) for whose use and benefit in common, moneys are held by Her Majesty, or
> (c) declared by the Governor in Council to be a band for the purposes of this Act

Inuit - The Inuit are Indigenous Peoples of Arctic Canada. Inuit communities are located in regions based on modern land claims known as the Inuvialuit Settlement Region (the Northwest Territories), Nunavut, the Northern Québec region of Nunavik, and the Northern Labrador region of Nunatsiavut.

Holism/Holistic learning - engaging the four knowledge domains that interweave all aspects of learning: emotional (heart), spiritual (spirit), cognitive (mind) and physical (body).

Indigenization - the process of naturalizing Indigenous knowledge systems and making them evident to transform spaces, places, and hearts. In the context of education, this involves bringing Indigenous knowledge and approaches together with Western knowledge systems. It is a deliberate coming together of these two ways of being.

Indigenous Epistemologies - theory of knowledge that is based on Indigenous perspectives, such as relationality, the interconnection of sacred and secular, and holism. The emotional, spiritual, cognitive, and physical dimensions of knowledge are common in Indigenous epistemologies.

Indigenous Knowledge/knowing - unique Indigenous knowledge (based in Nations & Communities) are conveyed formally and informally amongst kinship ties throughout many communities in social encounters, language, song, storytelling, ceremony, land based activities, etc.

Indigenous Peoples - Historically it refers to the original inhabitants of a territory. For this purpose, the term refers to people classified as Indigenous under international law in such documents as the United Nations Declaration on the Rights of Indigenous Peoples.

Indigenous Traditional Knowledge - can be defined as a network of Indigenous based knowledges, beliefs, and traditions intended to preserve, communicate, and contextualize Indigenous relationships with culture, land, resources, place, etc. over time.

Indigenous Ways of Knowing - a useful term that recognizes the complexity and diversity of Indigenous ways of learning and teaching. Many people continue to generalize Indigenous experience and lived realities. The intent of the phrases “Indigenous Ways of Knowing” or “Indigenous Knowing” is to help educate people about the vast variety of unique knowledge that exists across diverse Indigenous communities throughout Canada.

Indigenous Sovereignty - The term “sovereignty” has been used in many different ways in Canada. It is understood as the right of self-government, which Canadian Indigenous Peoples neither surrendered nor lost by way of settlement, colonization, and the like.

Intergenerational trauma - where the effects of traumatic experiences are passed on to the next generations.

Land acknowledgment - an honest and historically accurate way to recognize the First Nations, Métis and/or Inuit territories of a place. They can be presented verbally or visually.

Inspired by the 94 recommended calls to action contained in the Truth and Reconciliation Commission of Canada (now known as the National Centre for Truth and Reconciliation, or NCTR), land acknowledgments are a necessary first step toward honouring the original occupants of a place. They also help Canadians recognize and respect Indigenous peoples’ inherent kinship beliefs when it comes to the land,

especially since those beliefs were restricted for so long.

Land Claims

Specific claims deal with First Nation grievances against the Crown and arise where Canada is deemed to have failed to meet its obligations under Treaties or other agreements, or in how it has managed First Nation funds or assets.

Comprehensive land claims arise when First Nation rights and title have not been dealt with by treaty or through other legal means. In areas where this has occurred, comprehensive land claim and self-government agreements can be jointly negotiated between a First Nation and Canada and, where applicable, provincial and territorial governments.

Métis - Métis are the descendants of European settlers and the First Nations people of Canada, particularly the Cree and Anishinaabe. These unions resulted in a distinct collective culture and nationhood along the central and prairie regions of Canada. Today, there is a wide array of Métis communities across Canada, with Manitoba, Saskatchewan and Alberta having the highest density of Métis people.

Protocols - ways of interacting with Indigenous people in a manner that respects traditional ways of being. Protocols are unique to each Indigenous culture and are a representation of a culture's deeply held ethical system.

Reconciliation - addressing past wrongs done to Indigenous Peoples, making amends, and improving relationships between Indigenous and non-Indigenous people to create a better future for all.

Reserve (Reserve Lands) – land set aside under the Indian Act and treaty agreements for the exclusive use of an Indian band. Band members possess the right to live on reserve lands, and band administrative and political structures are frequently located there. Reserve lands are not "owned" by bands but are held in trust for them by the Crown.

On-Reserve:
A term used to describe First Nations living on a reserve for which the Crown has jurisdiction over and a fiduciary responsibility.

Off-Reserve:
A term used to describe First Nations who live away from their original home, territory or reserve. It may also refer to services or objects that are not part of the reserve or territory but relate to First Nations.

Self-determination - A term introduced to gradually replace the term, "self-government." The Department of Indian Affairs and Northern Development's Community-Based Self-Government Policy of 1984 was perceived as more of a municipal government model and did not fully recognize the authoritative powers to the extent envisioned and asserted by many Indigenous peoples.

Self-government - A term originally conceived and used by Indigenous peoples in the late 1970s to describe their right to govern their own affairs. Indigenous and Northern Affairs Canada adopted the term and applied it to the Community-Based Self-Government Policy of 1984. Such a government is designed, established and administered by Indigenous peoples under the Canadian Constitution through a process of negotiation with Canada and, where applicable, the provincial government.

Structural (or systemic) oppression - the manifestation of oppression in societal institutions, such as governments, religions, education systems, health care, law, and the media. For example, the fact that Indigenous people are overrepresented in the criminal justice system and child welfare systems is a form of structural oppression.

Terra Nullius - "nobody's land" – unexplored landscapes drawn by European map-makers as blank spaces representing empty land waiting to be settled, rather than territories occupied by Indigenous Peoples for thousands of years. Canada still stands on this notion still.

Traditional territory - the geographic area identified by a First Nation as the land they and/or their ancestors traditionally occupied and used.

Treaty - A formal, ratified agreement or contract usually made between two nations, such as those between Indigenous peoples and governments.

Historic treaties - treaties signed by First Nations and the British and Canadian governments between 1701 and 1923.

Modern treaties - treaties being negotiated today in B.C. through tri-partite negotiations with three levels of government: the First Nation, the Government of Canada, and the Province of British Columbia. The first modern treaty in B.C. was completed in 1999 with the Nisga'a First Nation. Some First Nations in B.C. do not agree with the treaty process.

Numbered Treaties - 11 treaties signed by the First Nations peoples and the reigning monarchs of Canada between 1871 and 1921, providing the settler government with large tracts of land in exchange for promises that varied by treaty.

Peace and Friendship Treaties - treaties signed in the Maritimes between 1725 and 1779 intended to end hostilities and encourage cooperation between the British and Mi'kmaq and Maliseet First Nations.

Treaty Rights - The specific rights of the Indigenous peoples embodied in the treaties they entered into with the Crown, initially Great Britain and after Confederation, Canada. They often address matters such as the creation of reserves and the rights of Indigenous communities to hunt, fish and trap on Crown lands. Treaty rights are protected by section 35(1) of the Constitution Act, 1982.

Turtle Island - refers to the vast traditional lands of the Indigenous or 'First' peoples of Canada. For most Indigenous Peoples, the term is inclusive of the lands encompassing the continent of North America and all that live and have lived within these lands. Turtle Island comes from Indigenous oral traditions with differing variations among Indigenous Peoples, notably, between Algonquian, Iroquoian and Anishinaabe or Ojibwe. This traditional story represents the turtle as an icon of life and creation.

Two-eyed seeing (Etuaptmumk) - the guiding principle of seeing the strengths of multiple perspectives in an interconnected and respectful way rather than as binaries or opposites. Shared by Mi'kmaq Elder, Albert Marshall, the word Etuaptmumk is a way to see the strengths of Indigenous knowledge and perspectives with one eye and to see the strengths of Western knowledge and perspectives with the other eye; then you learn how to see with both eyes together to benefit all peoples.

Unceded - means that First Nations people never ceded or legally signed away their lands to the Crown or to Canada. A traditional territory is the geographic area identified by a First Nation as the land they and/or their ancestors traditionally occupied and used. Ninety-five percent of British Columbia is on unceded traditional First Nations territory.

UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) - an international instrument adopted by the United Nations on September 13, 2007, to enshrine (according to Article 43) the rights that "constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." UNDRIP protects collective rights that may not be addressed in other human rights charters that emphasize individual rights, and it also safeguards the individual rights of Indigenous people.

Terminology Resources:

- Terminology Guide: Research on Aboriginal Heritage
- Indigenous Peoples: A Guide to Terminology – the entire guide can be found here
- UBC Foundations-So what term do I use?
- Background Information: NWC First Nations of B.C.
- Pulling Together: A Guide For Curriculum Developers
- What are land acknowledgments and why do they matter?

Appendix B: Awareness and Understandings of Economic Reconciliation

A few Indigenous-led entities tackle the breadth and depth of what economic reconciliation means to their organizations and how that influences the work they do. We have shared some of these understandings here:

Indigenomics Institute
Indigenomics is the conscious claim to and the creation of space for the emerging advancement of the Indigenous economy and the evolving body of knowledge, and increased economic activities. It is a statement of claim, of Indigenous space in modern existence. It is a call out or invitation into an Indigenous worldview and its application in development and progress.

BC Assembly of First Nation (BCAFN)
Through Sustainable Economic Development & Fiscal Relations - Regional Sessions on Sustainable Economic Development in 2016, the BCAFN published the BCAFN Economic Reconciliation Definition Paper. It defines 4 key pillars of Economic Reconciliation: Equity, Community and Citizens, Title and Rights, and Relationships as well as four (4) integral Indicators of Economic Reconciliation which include Economy, Inclusion, Culture, Ownership and Empowerment.

National Indigenous Economic Development Board
Reconciliation: Growing Canada's Economy by $27.7 Billion
"...Our report concludes that the continued economic marginalization of Canada's Indigenous peoples is costing our economy $27.7 billion each year. In other words, action to achieve economic reconciliation – equal access to financial services, capital and other business supports, adequate community infrastructure and housing, and connectivity for Indigenous communities, as well as equal access to quality education and training – can increase Canada's Gross Domestic Product by 1.5%. This is greater than the Government's own estimates on the impact of its infrastructure investments."

National Aboriginal Capital Corporation Association
Indigenous economic development is the key to reconciliation. Indigenous businesses and entrepreneurs are the key drivers in economic development, contributing to both employment and wealth creation, which are necessary for the independence and sustainability of Indigenous communities.

Reconciliation Canada
Economic reconciliation aims to create meaningful partnerships and mutually beneficial opportunities based on a holistic, values-driven approach to attaining community economic prosperity. This shared prosperity approach draws on the values of the community to inform

the structures, processes, and environments to stimulate action towards community resilience.

Traditional economic development tends to emphasize individual material wealth, often at the expense of community relationships or the health of the physical environment. This contradicts notions of oneness as expressed by Indigenous peoples through the concept of 'Namwayut – We Are All One. As a community-led and community defined process, economic reconciliation in any particular community will reflect the values of that community. Reconciliation Canada is piloting a process in which it serves as a facilitator, partnering with communities to coordinate various threads supporting economic reconciliation.
Reconciliation Canada Economic Reconciliation

Raven Capital Partners
...Economic reconciliation is a non-starter, as Indigenous entrepreneurs are rarely able to scale their businesses, even if they have strong ideas and product offerings. Raven Indigenous Capital Partners was founded as a solution to this oft-seen problem. We use existing structures - impact investing and strong relationships in the Indigenous community - to breathe life into a re-emerging Indigenous economy.

Canadian Council for Aboriginal Business (CCAB)
While all Canadians have a role to play in reconciliation, the term will have differing meanings across Indigenous Peoples, Indigenous communities and all Canadians. Recognizing that reconciliation is the duty of all Canadians gives all economic actors a role in supporting the participation and meaningful engagement of Indigenous Peoples in economic opportunities. A commitment to business reconciliation provides opportunities for new partnerships and business and investment opportunities. CCAB Business in Reconciliation in Canada Guidebook.

Through the 2019 Forward Summit - A Five Point Foundation was created and outlines the following for Economic Reconciliation:

> #1. Truly, the first step towards Economic Reconciliation is recognition. Recognizing our country's past and the injustices that occurred (which are unpleasant to discuss or acknowledge), is vital for someone to really understand what economic reconciliation is.
>
> #2. Opportunity is another pillar in our quest for Economic Reconciliation. This is why CCAB remains focused on increasing Aboriginal Business involvement throughout supply chains across Canada. There are over 40,000 Aboriginal Businesses in Canada, and our entrepreneurs are hungry for the chance to succeed in Canada's economy. Procurement has been targeted as a clear path towards increased participation and cooperation between Aboriginal and non-Aboriginal businesses.

#3. Acknowledging and understanding the difference between a hand-up and a hand-out is important. We are not asking for an endless stream of money from the government, nor are we asking for preferential treatment from corporate Canada. What we want to achieve is equality; a chance for Aboriginal Businesses to operate and manoeuvre on the same level as the rest of corporate Canada. And given geographical differences, our shared history, infrastructure, human capital, and other factors, this fair chance which we seek comes with a responsibility to include these factors in the designing and decision-making process as we move forward. To ignore these factors is a symptom of our past failures as a country to progress.

#4. On the other side of the spectrum, it is likewise important for CCAB and Aboriginal Businesses to acknowledge the instances where corporate Canada is succeeding in facilitating economic reconciliation. We must give credit where credit is due, and I am extremely encouraged by the recent outpouring of support, especially for our Procurement Champions initiative, in which we have already secured 34 Procurement Champions for our Aboriginal Marketplace.

#5. Creating and fostering an Aboriginal Procurement Marketplace is another key step towards Economic Reconciliation, which is why CCAB has partnered with tealbook in order to develop and maintain an online procurement marketplace for Aboriginal Businesses to utilize when on the hunt for contracts. This marketplace should be operational by Fall 2019, and the CCAB is excited for what the future holds.
https://forwardsummit.ca/economic-reconciliation-a-five-point-foundation/

Conference Board of Canada
...industry nevertheless has a real opportunity to be a leader in contributing to reconciliation. MPAs represent one pathway to seize this opportunity. The work of the Conference Board of Canada's Council on Corporate Aboriginal Relations, as well as recent research projects (Finding the Win-Win in Major Project Agreements: Lessons From Indigenous Groups and Industry Proponents and Working Together: Indigenous Recruitment and Retention in Remote Canada), demonstrate that when Indigenous groups and industry meaningfully and genuinely work together, certainty for all parties can be enhanced, business and job opportunities increased, community capacity strengthened, and objectives around self-determination and nation-building furthered.

National Consortium for Indigenous Economic Development
Indigenous Economic Reconciliation
Brave New Paths: The Road to Indigenous Economic Reconciliation. The animated video summarizes the UVic Ideafest event that the NCIED hosted in Victoria in March 2017. The event took place at Alix Goolden Hall with Miles Richardson, moderator, and distinguished panelists, Ovide

Mercredi, Guujaaw, Arthur Mercer and Dr. David Suzuki.

Reconciliation Education

Economic Reconciliation- Final Documentary

Produced on heels of the Truth and Reconciliation Commission's (TRC) final report, Economic Reconciliation is the first film on this topic in Canada. While the TRC's Call to Action #92 invites Corporate Canada to adopt the principles of reconciliation; Indigenous leaders pave the way forward towards concrete solutions that can help fuel economic growth and benefit the entire country. The short film features Indigenous and non-Indigenous leaders, sharing their insights and a hopeful glimpse at a respectful and prosperous future. The film demonstrates that reconciliation is key to economic certainty & prosperity in Canada.

The Canadian Bar Association

Economic Reconciliation - Working In A Colonial Framework

Economic reconciliation involves reconnecting Indigenous communities -- whose economies colonialism worked to segregate and destroy -- with local, provincial and national economies. Reconciliation Canada defines economic reconciliation as creating "meaningful partnerships and mutually beneficial opportunities based on a holistic, values-driven approach to attaining community economic prosperity."

Appendix C: Canada's History

The Economic History of Indigenous Peoples in Canada

Prior to contact in Canada, Indigenous Peoples were organized into complex, sovereign, self-determined and self-governing territorial Nations throughout Turtle Island (Canada). They had thriving economic systems interconnected with their traditional governance, with the resources available to them pre-and early post-contact with newly arriving Europeans. Every First Nation practices sustainability by ensuring that they leave enough behind for future generations. Trade relations among Indigenous nations and peoples have changed over the colonial history of Turtle Island.

History of Commerce and Trading Networks

Since time immemorial (or long before Eurpoeans arrived), Indigenous communities had robust trading networks with both neighbouring and distant peoples, solidifying economic, political, social, and kinship relationships. When the non-Indigenous people arrived, Indigenous Peoples adapted to the Euro-centric economy in a timely manner, which was the cornerstone of the fur trade (15-1800's). Indigenous Peoples participated as trappers, traders, suppliers, and labourers until engagement tapered off after World War II (1945).

The first European explorers relied on the Indigenous Peoples' immense knowledge and skills to navigate and survive in this new landscape. Agreements and actions were forged on a nation-to-nation basis, creating economic, military and political alliances that benefited both Indigenous and non-Indigenous parties. This changed in the mid-1700s with the Seven Years War (Conquest) and Britain claiming sovereignty over Indigenous Peoples with the Royal Proclamation of 1763.[54] The Indian Act of 1876 then created laws to further control and assimilate Indigenous Peoples, which will be discussed in detail below.

Foundation of Colonization in Canada

The relationship between Indigenous Peoples and the Crown has been recognized in many ways over a few centuries. The Crown has inconsistently or not fulfilled its many promises, agreements and treaties with Indigenous Peoples in Canada. It is important to understand the legal agreements and obligations between different levels of government and Indigenous Peoples, and what that means for non-Indigenous governments, businesses and entities

54 Hall, Anthony J. and Albers, Gretchen, "Treaties with Indigenous People in Canada," The Canadian Encyclopedia, Sepetember 11, 2017, www.thecanadianencyclopedia.ca/en/article/aboriginal-treaties.

and Canadian citizens operating on treaty land and/or unceded First Nation territories.

The Doctrine of Discovery and Terra Nullius

There was a disastrous change in the Title and Rights of Canada's Indigenous Peoples when the Crown assumed sovereignty in Canada. The sovereign rights of Indigenous Peoples were appropriated and replaced by Crown rights, with no regard for them in any way. This was done through the Doctrine of Discovery and the Doctrine of Terra Nullius. The Doctrine of Discovery allowed the Crown to claim sovereignty over Indigenous Peoples and their land by holding that Indigenous Peoples cannot claim ownership of land. In short, The Doctrine of Discovery established a spiritual, political, and legal justification for colonization and seizure of land not inhabited by Christians. It does concede a restricted title (an 'Aboriginal Title') to rights of occupation and land use, which has to be proven. The Doctrine of Terra Nullius is where land that is legally deemed to be unoccupied or uninhabited, allows for the Crown to grant land to its colonial interests, including a majority (70-80%) of Canada's Indigenous lands to the Hudson Bay Company. In other words, the Crown considered lands that were actually owned, occupied, and being actively utilized by Indigenous people to be "vacant" and available for discovery claims, if they were not being "properly used", again in a Christian way, according to European law and culture.

The Doctrine of Discovery finds its root in the 1455 papal bull Romanus Pontifex of the Roman Catholic Church. Pope Nicholas V authorized the conquest and enslavement of non-Christian Peoples for the purposes of land acquisition and to profit from the natural resources of their territory. Terra Nullius finds its legal root in eighteenth century European law, and the concept was used to justify the right to colonize so-called "discovered" Indigenous lands throughout the sixteenth to twentieth centuries around the world. **Both of these Doctrines are still used today in Canada, they have never been renounced, and are used against Indigenous Communities and Peoples throughout the legal system everyday.**

Covenant Chain 1613

The Two-Row Wampum (Kaswentha) establishes the Covenant Chain. The Covenant Chain of Silver was a series of agreements and treaties in addition to the Great Law of Peace[55] between Indigenous Peoples of Western Canada—the Haudenosaunee and the Anishinaabe—and the Crown (later to be acknowledged as the Government of Canada). It represented diplomacy, goodwill and friendship and ensured sovereignty, independence and continued trading relations for Indigenous Peoples. The chain is represented in various wampum belts, with the white shell beads symbolizing the sacredness and purity of

55 The Great Law of Peace and story of the Great Peacemaker are the traditional principles of governance of the Haudenosaunee Confederacy and sets precedence for governance by Indigenous nations today.

treatyagreements.[56] They agree to work toward peace as well as economic, political, and cultural sovereignty; gift exchanges honour promises and renew alliances.

Royal Proclamation 1763

The Royal Proclamation is a document that set out guidelines for European settlement of Aboriginal territories in what is now North America. The Royal Proclamation was initially issued by King George III in 1763 to officially claim British territory in North America after Britain won the Seven Years War. In the Royal Proclamation, ownership over North America is issued to King George. However, the Royal Proclamation explicitly states that Aboriginal title has existed and continues to exist, and that all land would be considered Aboriginal land until ceded by treaty. The Proclamation forbade settlers from claiming land from the Aboriginal occupants, unless it had been first bought by the Crown and then sold to the settlers. The Royal Proclamation further sets out that only the Crown can buy land from First Nations.[57]

The Indian Act - 1876 (Our Past and Present)

"The Indian Act has been amended over the years, but it still remains an oppressive, racist piece of legislation that continues to inflict irreparable damage upon our peoples," said Ontario Regional Chief Isadore Day. Quote from CBC Article

Unless a First Nation has negotiated a self-government agreement (there are about 5 in BC and a total of 25 in Canada), the majority of First Nations are currently governed by the *Indian Act.* The Indian Act **IS STILL** the primary legislation used by the Government of Canada to administer everything from 'Indian' status, membership laws, elections and power of council, lands management, lands taken for public purposes, wills, enfranchisement, etc.

The Royal Proclamation of 1763 laid down the basis for how colonial administration would interact with First Nations peoples; guaranteeing certain rights and protections and establishing the process of eminent domain by the Crown. Other laws such as the Gradual Civilization Act of 1857 and the Gradual Enfranchisement Act of 1869 aimed at removing any rights of First Nations peoples in order to assimilate them into the larger settler population.

10 years later, the Canadian Constitution Act assigned legislative jurisdiction to Parliament over "Indians, and Lands reserved for the Indians". In another 10 years, the Gradual Civilization Act and the Gradual Enfranchisement Act became part of the Indian Act. The Indian Act aimed to generalize the First People and assimilate them into non-Indigenous society.

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56 Assembly of First Nations. The Silver Covenant Chain of Peace and Friendship Belt (Ottawa: Assembly of First Nations, 2019), www.afn.ca/uploads/files/cfng/sccpfb.pdf

57 https://indigenousfoundations.arts.ubc.ca/royal_proclamation_1763/

Over the years, the following rules were implemented:

- Forbidding First Nations peoples from expressing their identities through governance and culture.
- Replacing traditional structures of governance with band council elections. Hereditary chiefs representing different houses or clans and acquiring power through descent were not recognized by the Indian Act. Today, through this Act, First Nations membership elect chiefs and councils make decisions on their behalf and pass laws and policies to govern the administration of their community, unless they have a custom election code.
- The potlatch and any 'Indian festival, dance, or other ceremony', which would include powwows (social meeting) and the sundance (pray for healing, etc.), were also banned.
- In 1914, the act outlawed dancing off-reserve, and in 1925, dancing was outlawed entirely.
- They were not allowed to hire lawyers to protect their inherent rights, title, etc. or bring about land claims against the government without the government's consent.
- First Nations children were required to attend residential schools for assimilation.
- Enfranchisement – A first nation person lost status if he/she graduated university, married a non-status person or became a Christian minister, doctor, or lawyer.

Oppressed by many restrictions, First Nations representatives demanded amendments to the Indian Act. Bans on ceremonies like the potlatch and sundance were removed. Communities were also able to bring about land claims against the government. However, a person's First Nations heritage became deficient to qualify for "Indian Status" unless they were registered.

By the 1960s, the Canadian Bill of Rights was implemented, giving the Indigenous Peoples the equal right to vote as Canadian citizens. During this time, indigenous women began to fight for their rights regarding their status. They declared that a woman's status depending on her husband's was a form of discrimination against women. In 1985, in response to the growing national and international concern over the lack of equality in the Indian Act, the government passed Bill C-31. It removed all enfranchisement provisions. Further, some of those who had lost status through marriage were reinstated as Status Indians and as band members. Their children also gained status, but would gain band membership only after two years.

Indigenous and non-indigenous peoples called for the abolition of the Act with the hope for self-government and reconciliation, contributing to a change in government-indigenous relations. Yet, despite controversy, the Indian Act is still significant for Indigenous peoples as it acknowledges and affirms their unique historical and constitutional relationship with Canada.

First Nations have been living under the *Indian Act* for 145 years. Significant issues aligned with the Indian Act over the centuries, include:

The "Potlatch Law" & Section 141

One of the most famous examples of this oppression and subsequent resistance and adaptation is known as the "Potlatch Law." In 1884, the federal government banned potlatches under the Indian Act, with other ceremonies such as the sun dance to follow in the coming years. The potlatch was one of the most important ceremonies for coastal First Nations in the west, and marked important occasions as well as served a crucial role in distribution of wealth. The ban lasted for 67 years until removed in the 1951 amendment.

1951 Amendment

The more oppressive sections of the Indian Act were amended and taken out. It was no longer illegal for Indians to practice their customs and culture such as the potlatch. They were now allowed to enter pool halls and to gamble—although restrictions on alcohol were reinforced. Indians were also now allowed to appear off-reserve in ceremonial dress without permission of the Indian Agent, to organize and hire legal counsel, and Indian women were now allowed to vote in band councils.

The federal government's general purpose for the amendments at that time was to move away from casting Indians as wards of the state and instead facilitate their becoming contributing citizens of Canada, in their eyes. The Royal Commission of Aboriginal Peoples (RCAP) points out, however, that by taking away some of the more oppressive, and ultimately unsuccessful, amendments, the government simply rendered the Indian Act more similar to the original act of 1876.[58]

The White Paper

In 1969, Prime Minister Perrier Elliott Trudeau proposed a "white paper" policy with the aim of achieving greater equality for Indians. To do this, he proposed to abolish the Indian Act and dismantle the Department of Indian Affairs. Indians would essentially become like other Canadian citizens. Although it was widely agreed that the Department of Indian Affairs and the Indian Act were hugely problematic, this "white paper" policy was overwhelmingly rejected by Aboriginal peoples across Canada who felt that assimilating into mainstream Canadian society was not the means to achieve equality as the First Peoples of this land. They wanted to maintain a legal distinction as Indigenous Peoples within their traditional territories. In response, Cree Chief Harold Cardinal writes the Red Paper, calling for recognition of Indigenous peoples as "Citizens Plus." Due to this widespread resistance against the white paper, the policy was eventually abandoned by the federal government and sparked a new era of Indigenous political organizing in Canada.

1985 Amendment

Bill C-31, or a Bill to Amend the Indian Act, passed into law in April 1985 to bring the Indian Act into line with

58 RCAP, Report on the Royal Commission of Aboriginal Peoples, Volume 1: Looking Forward, Looking Back, 1996. 310-1.

gender equality under the Canadian Charter of Rights and Freedoms. It proposed modifications to various sections of the Indian Act, including significant changes to Indian status and band membership, with three major goals: to address gender discrimination of the Indian Act, to restore Indian status to those who had been forcibly enfranchised due to previous discriminatory provisions, and to allow bands to control their own band membership as a step towards self-government.

As you can see, this legislation provides no self-determination for any First Nation, as it only limits and creates barriers for communities to start on an equal footing.

Royal Canadian Mounted Police

Canada's first prime minister, Sir John A. Macdonald, got the idea for the 'Mounties' from the Royal Irish Constabulary, a paramilitary police force the British created to keep the Irish under control. At the time, there was no coast-to-coast railway yet, and Canada's purchase of Western Canada from the Hudson's Bay Company was still very fresh on paper, which was an acquisition that paved the way for western settlement in the newly built Canada. Steve Hewitt, a senior history lecturer at the University of Birmingham shares that Macdonald envisioned his own Royal Irish Constabulary, except they would control the Indigenous people already living on their own land. The North-West Police did not become the RCMP officially until it absorbed the Dominion Police in 1920.

In short, the job of the RCMP was to effectively clear the plains, the Prairies, of Indigenous people and ultimately, they were there to displace Indigenous people from their own territories/lands and move them onto reserves whether they were willing to go or not. So that the Dominion of Canada could sell the land to the onslaught of settlers coming to this new land. History books, commissions, inquiries and public apologies reveal what happened next: Indigenous people who resisted were starved onto reserves and where they are still enslaved under and controlled by the Indian Act. Plus reserve lands aren't even owned by these First Nations, they are still crown land. The federal government brought in the Indian Act and used Mounties to forcibly remove Indigenous children from their homes, placing them in residential schools rife with abuse. Even to today, when Indigenous people resist, it is the Mounties called into action. Nor do they protect Indigenous women, girls, but actually abuse and kill through racist actions, discrimination and aggression towards many Indigenous Peoples in Canada.

Residential Schools, Indian Day Schools, 60s Scoop

Residential Schools (early 1800's to 1986)
The term residential schools refers to an extensive school system set up by the Canadian government and

administered by churches, who had the nominal objective of educating Indigenous children. However, little formal education may have been provided as the more damaging and equally explicit objectives of indoctrinating them into Euro-Canadian and Christian ways of living and assimilating them into mainstream Canadian society was the goal of these schools. The residential school system can be traced back as early as 1830, but formerly operated from the 1880s with the last one closing in 1986. As the Truth and Reconciliation Commission lays out, many Indigenous children lost their lives in these schools, became very ill, were abused emotionally, culturally, mentally, physically, spiritually and sexualy. Although the Government of Canada made a formal apology in 2008, after the Truth and Reconciliation Commission report and the 94 Calls to Actions, the intergenerational and compound trauma inflicted on the many generations of children who attended these schools have and will affect the generations to come.

Indian Day Schools

In addition to residential schools, the Canadian government and churches also ran Indian day schools. Close to 700 Indian day schools operated across Canada in every province and territory except Newfoundland. That's five times more than the number of residential schools that operated across the country. The first Indian day schools opened in the early 1860s, while many closed or transferred to the community's control in the 1970s, '80s, and '90s. The last school on the books to transfer was Oka Country school in Kanesatake, Que., on Sept. 1, 2000.

Day schools were schools where First Nations, Métis and Inuit children were sent during the day, but lived with their parents and remained in their communities. Again, like residential schools, these day schools aimed to assimilate Indigenous children while eradicating their language, traditional knowledge and culture. These schools were not included in the Truth and Reconciliation Commission, nor were they included in the Indian Residential School Settlement Agreement of 2006. There is currently a class action suit being settled with Indian Day School students as we write this document. Students at Indian day schools, like residential schools, were places where students experienced many types of abuses and caused just as much trauma to these children.

60's Scoop

The term Sixties Scoop was coined by Patrick Johnston, author of the 1983 report, Native Children and the Child Welfare System. It refers to the mass removal of Aboriginal children from their families into the child welfare system, in most cases without the consent of their families or bands. The Sixties Scoop refers to a particular phase of a larger history, and not to an explicit government policy. Although the practice of removing Indigenous children from their families and placing them into crown care existed well before the 1960s. The drastic over-representation of Indigenous children in Canada's child welfare system accelerated in the 1960s, when Indigenous children were seized and taken from their homes and placed, in most cases, into middle-class non-Indigenous families. **This**

overrepresentation absolutely continues today, with more Indigenous children in care than at the height of children in Residential Schools.

Land Rights and Treaties

For many Aboriginal cultures, land means more than property ownership, it encompasses language, culture, knowledge, rights, stories, relationships, ecosystems, social systems, spirituality, and governance. For First Nations, land means the earth, the water, the air, and all that live within these ecosystems. Indigenous Rights and Title are not granted from an external source but are a result of Indigenous Peoples' own occupation of and relationship with their traditional territories as well as their ongoing social structures and political, legal and governance systems. As such, Indigenous Title and Rights are separate from rights afforded to non-Indigenous Canadian citizens under Canadian common law. As stated in the framework, Indigenous Peoples have won over 300[59] court cases concerning Title and Rights and there have been several court cases that provide direction for governments, industry and businesses (details of which can be found in Appendix D)

Section 35 of the Constitution Act, 1982 recognizes rights of Indigenous and treaty Peoples. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), a comprehensive international legal instrument to protect and fulfill the individual and collective rights of Indigenous Peoples, further affirms these rights. UNDRIP outlines minimum standards for the survival, dignity and well-being of Indigenous Peoples and defends rights and principles that may not be addressed by other human rights charters.[60]

Section 35 of the Constitution Act, 1982 defines Indigenous and treaty rights of as constitutional rights, and states:

1. The existing aboriginal and treaty rights of the aboriginal people of Canada are hereby recognized and affirmed.
2. In this Act, "Aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
3. For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.
4. Notwithstanding any other provision of this Act, the aboriginal and treaty.

Treaties (in the rest of Canada but few in BC)
There are two types of treaties with Indigenous Peoples; historic treaties agreed to peace, co-existence and sharing of resources with the Crown and defined European and

59 https://troymedia.com/business/indigenous-business-ready-to-work-with-oil-and-gas/
60 United Nations, Department of Economic and Social Affairs (New York: United Nations, 2017), www.un.org/development/desa/indigenouspeoples

Indigenous rights to the land (however, it should be noted there was a major language barrier when these treaties were signed) and Modern Treaties are nation-to-nation relationships between Indigenous peoples, the federal and provincial Crown and in some cases, a territory or also known as comprehensive land claim agreements or self-government agreements. Modern treaties are generally signed where Indigenous title and rights have not been settled.

Historic treaties were used by the Crown to justify the dispossession of Indigenous land. For the Crown, treaties essentially meant the 'surrendering' or selling of the land. However, land ownership is antithetical to the Indigenous worldview and signatories agreed to sharing the land. Supreme Court decisions are increasingly recognizing this error.

Modern treaties are based on the Comprehensive Land Claims Policy (1973), and the Constitution Act (1982). Twenty-five modern treaties are recognized today, such as the Nisga'a Final Agreement, Tsawwassen First Nation Final Agreement, Tla'amin Final Agreement and Yale First Nation Final Agreement (not yet in effect) in BC. **While much of Canada is covered by historic and modern treaties, a majority of territories in BC remain unceded (not surrendered in any treaty or statute).**

There is a great resource mapping out treaties, territories, language, etc. The Native Land resource does not represent official or legal boundaries of any Nation. You are encouraged to contact the community directly for further understanding.

Indigenous Engagement and the Legal Obligations of a Duty to Consult

The Government of Canada has the duty to consult and accommodate Indigenous Peoples when its projects or activities may infringe on Aboriginal or Treaty Rights.[61] 'Meaningful consultation' takes time and resources. The Government of Canada has created consultation guidelines, however, it is important to recognize and abide first by the consultation process of the First Nation community. As a part of economic reconciliation, all levels of government and private organizations need to prioritize the wishes and needs of Indigenous Peoples and Communities.

The duty to consult now extends under the United Nations Declaration on Indigenous Peoples and the Declaration on the Rights of Indigenous Peoples in B.C.

61 Indigenous and Northern Affairs Canada, Government of Canada and the duty to consult (Ottawa: Government of Canada, 2019), www.aadncaandc.gc.ca/eng/1331832510888/1331832636303

Appendix D: Court Cases That Matter

Land Title

Calder et al. v. B.C. attorney general (1973) — The split Supreme Court of Canada decision in this case opened the door to negotiations between the government and First Nations to establish rights to land and resources and launched the land claims process that continues to this day. B.C. cabinet minister and Nisga'a Chief Frank Arthur Calder, the first status Indian to be elected to a Canadian legislature, and the Nisga'a tribal council took the B.C. government to court, arguing that the Aboriginal Title to approximately 2,600 square kilometres of Nisga'a land in and around the Nass River Valley in northwestern B.C. had never been extinguished.

Although the court ultimately ruled against the Nisga'a, the decision was the first time the courts acknowledged that Aboriginal Title to land existed prior to colonization and the Royal Proclamation of 1763. The judges could not agree, however, on whether that title extended to the modern day, with three of them saying it did and three arguing the title was extinguished when the laws of the B.C. colonial government took effect. A seventh judge ruled against the Nisga'a on a technicality, but the case laid the groundwork for the adoption of the groundbreaking Nisga'a Treaty in 2000, the first contemporary land claims agreement in B.C., and other land agreements.

Delgamuukw v. British Columbia (1997) — Although the Supreme Court of Canada never ruled on the question at the heart of this case, the statements it made about Aboriginal land title were precedent setting for future land rights cases and the land claims process. The court confirmed that aboriginal title entails rights to the land itself, not just the right to extract resources from it. **The court also ruled that the government has a duty to consult with First Nations on issues concerning Crown land and, in some instances, may have to compensate them for infringing on their rights to that land.**

The case was launched by Chief Earl Muldoe, known as Delgamuukw, and other hereditary chiefs of the Gitxsan and Wet'suwet'en First Nations in B.C., who took the provincial government to court in an effort to establish ownership and jurisdiction over 58,000 square kilometres of territory in the Skeena watershed in northwestern B.C. The Supreme Court did not rule on the question of ownership, saying the issue had to be decided at a new trial, but gave a detailed interpretation of what constitutes aboriginal title, laying out guidelines for how the issue should be approached in future disputes.

Tsilhqot'in (Williams) Case 2014

On June 26, 2014, the Supreme Court of Canada (SCC) rendered a historic judgment in the Tsilhqot'in Nation's Aboriginal title case. The SCC allowed the Tsilhqot'in Nation's appeal and, for the first time in Canadian history,

granted a declaration of Aboriginal title. In doing so, the Court confirmed that the doctrine of terra nullius (that no one owned the land prior to Europeans asserting sovereignty) has never applied to Canada, affirmed the territorial nature of Aboriginal title, and rejected the legal test advanced by Canada and the provinces based on "small spots", or site-specific occupation. The Court declared Aboriginal title to approximately 1900 km2 of the Claim Area, including Xeni (Nemiah Valley) and much of the surrounding area, stretching north into Tachelach'ed (Brittany Triangle) and along the Tsilhqox (Chilko River). "The SCC overturned the Court of Appeal's prior ruling that proof of Aboriginal title requires intensive use of definite tracts of land and it also granted a declaration that British Columbia breached its duty to consult the Tsilhqot'in with regard to its forestry authorizations. This case significantly alters the legal landscape in Canada relating to land and resource entitlements and their governance".[62]

Fishing and Hunting

R. v. Sparrow (1990) — This case is considered the first Supreme Court of Canada's (SCC) test of the scope of Section 35(1) of the Constitution Act, 1982, which recognizes and affirms the "existing aboriginal and treaty rights" of Aboriginal people of Canada and has been at the centre of many court battles over land and resource rights. In its decision, the SCC for the first time set out criteria for determining whether a right can be considered to be an "existing" right and whether the government is justified in curtailing such a right.

The case stems from the 1984 arrest of Ronald Edward Sparrow, a member of the Musqueam band in B.C., who was charged with violating fisheries regulations when he used a net that was longer than his fishing licence allowed. Sparrow argued that his right to fish with the net was an existing aboriginal right protected by Sec. 35 (1) of the Constitution Act. The court agreed but stipulated that the right is not absolute and can be, in certain circumstances, infringed upon. Although Mr. Sparrow was convicted at trial, his case ultimately made its way to the Supreme Court of Canada, which had the task of defining, for the first time ever, the scope of section 35 protections, under the constitution act.

The crucial legal developments in Sparrow was that the SCC defined "existing" Aboriginal rights for the first time as rights that existed at the time that the Constitution came into effect. The Court said that these rights arose due to the possession of territory by Aboriginal people prior to the assertion of the Crown's sovereignty. The SCC's ruling resulted in what is known today as the "Sparrow test", which sets out a list of criteria that determines whether a right is existing, and if so, how a government may be justified to infringe upon it.

62 Tsilhqot'in Nation v. British Columbia 2014 SCC 44 – Case Summary, MANDELL PINDER LLP, June 2014. https://www.mandellpinder.com/tsilhqotin-nation-v-british-columbia-2014-scc-44-case-summary/

R v. Van der Peet, [1993] — The Van der Peet case was pivotal in further defining Aboriginal rights as outlined in Section 35 of the Constitution Act, 1982. Dorothy Van der Peet, a member of the Stó:lō First Nation in British Columbia, was charged with selling salmon that had been caught under a food-fishing license. Such a license permitted Aboriginal people to fish solely for the purposes of sustenance and ceremonial use, and prohibited the sale of fish to non-Aboriginal people. Van der Peet challenged the charges, arguing that as an Aboriginal person, her right to sell fish was protected under Section 35 of the Constitution Act.

The provincial court ruled that Van der Peet's right to sell fish was not protected by Section 35, as selling fish did not constitute an "existing" Aboriginal right. This ruling was subsequently overturned by a summary judge, but was later reinstated by the Court of Appeal. In 1996, the Supreme Court upheld the Court of Appeal's finding, ruling that while fishing constitutes an Aboriginal right, the sale of such fish does not. Despite Stót:lō peoples' traditional practice of engaging in complex trade and barter relationships with other First Nations, the Court ruled that trade in salmon did not amount to an Aboriginal right. The Court's decision thus went beyond the earlier Sparrow ruling (1990), to define particular Aboriginal rights regarding fishing. The Supreme Court of Canada held that the essence of Aboriginal rights is how they bridge Aboriginal and non-Aboriginal cultures.

R. v. Marshall (1999) — This court battle over fishing rights in Nova Scotia inflamed tensions between Aboriginal and non-Aboriginal fishermen in the Maritimes and Quebec. Donald Marshall Jr., a Mi'kmaq man from Nova Scotia who decades earlier had been wrongfully convicted — and ultimately acquitted — in a high-profile murder case, had been charged with fishing eels out of season, fishing without a license and fishing with an illegal net but argued that Aboriginal rights stemming from 18th-century treaties with the British Crown exempted him from fisheries regulations.

After the Supreme Court ruled in his favour, upholding the Mi'kmaq and Maliseet people's rights to earn a "moderate livelihood" from commercial fishing and hunting, Aboriginal lobster fishermen interpreted the ruling as granting them rights to catch lobster out of season and clashed with their non-Aboriginal counterparts, who feared lobster stocks would be jeopardized. After a particularly heated showdown in Burnt Church, N.B., the court was forced to issue a clarification of its ruling, which underlined that the ruling applied to fisheries only and not to all natural resources and that the government could restrict Aboriginal fishing rights in the interests of conservation. The ruling was considered a key test of native fishing rights and sparked debate over what should and shouldn't be considered "traditional' use of natural resources.

Nuu-chah-nulth 2009 (Ahousaht et al vs. Canada)
The Nuu-chah-nulth Nations filed against Canada and British Columbia, arguing their claims to a commercial

harvest were based on their Aboriginal rights to harvest and sell sea resources in fishing territories and fishing sites and the unique obligations of the Crown arising from the establishment of reserves for the Nuu-chah-nulth First Nations.

Mme Justice Garson ruled that Nuu-chah-nulth Nations have a right to fish and sell fish within their own territories. While Mme Justice Garson's decision was a clear victory for Nuu-chah-nulth, she was also clear in her ruling that this right to harvest and sell fish is not an unrestricted commercial right. Implementation will require negotiations with the governments of British Columbia and Canada. Today Nuu-chah-nulth Nations involved in the case are attempting to engage Canada (through the Department of Fisheries and Oceans) in meaningful negotiations. Concurrent to this process, Canada is appealing the ruling to the Supreme Court of Canada.

Elections (Voting) and Discrimition of Status and Women (Indian Act)

Corbiere v. Canada (1999) — John Corbiere and other members of the Batchewana Band near Sault St. Marie, Ont., took their Nation and the federal Ministry of Indian and Northern Affairs to court challenging the Indian Act provision that denied band members who lived off reserve the right to vote in band elections. They argued that Sec. 77(1) of the Act violated the equality provision of the Charter of Rights and Freedoms.

The Supreme Court of Canada agreed, declaring the part of the Act that requires electors to be band members "ordinarily resident on the reserve" unconstitutional. The decision led to the changing of the Act, which now defines an elector as someone who is at least 18 and a registered member of the band, and impacted the way First Nations formulate their own rules governing membership.

McIvor v. Canada (2009) — This B.C. Court of Appeal decision forced the federal government to amend the Indian Act to eliminate discrimination against the wives and children of non-status Indians. The case was launched by Sharon McIvor, a B.C. aboriginal woman who had married a non-status Indian, and her son, who was married to a non-Indian and could not legally pass on Indian status to his children.

McIvor and her son, Charles Grismer, launched a Charter challenge alleging that Sec. 6 of the Indian Act violated the right to gender equality under Sect. 15 of the Charter of Rights and Freedoms. Prior to 1985, aboriginal women who married a non-status Indian lost their status while men who married a non-status woman remained status Indians and could confer this status onto their wives and children. The court found that an 1985 amendment to the Indian Act eliminated this provision but left in place provisions that still discriminated against some children of non-status Indians by conferring status to those whose Indian grandparent was a man but not to those whose Indian grandparent was a woman. The appeal court ruled in the

plaintiffs' favour and ordered the government to amend the legislation within a year.

In 2011, Parliament passed Bill C-3, Gender Equity in Indian Registration Act. The bill allowed for changes to make section 6 of the Indian Act more inclusive and fairer. Under the new rules, McIvor's son now had section 6(1)(c) status and could therefore pass on status rights to his children born under section 6(2). However, Bill C-3 did not completely rid the Act of discrimination. The descendants of women, specifically in terms of great-grandchildren, did not have the same entitlements as descendants of men in similar circumstances. Therefore, some individuals were still denied status rights because of gender discrimination.

Community Planning

Squamish Nation v. British Columbia 2014 (Community, Sport and Cultural Development)
On June 4, 2014 the British Columbia Supreme Court released its decision in the Squamish Nation case. In this case the Squamish Nation and Lil'wat Nation challenged the Province's decision to approve the Resort Municipality of Whistler's 2011 Official Community Plan. The Nations argued that the Plan poses potential adverse impacts on their economic interests in the lands by virtue of their Aboriginal title and previous accommodation agreements with the Province, and that the Province failed to fulfill its duty to consult them.

The Court held that the Province incorrectly assessed the scope of consultation that it owed to the Nations and failed to adequately fulfill its duty to consult the Nations. The Court quashed the Province's decision to approve the Plan. In its Reasons for Judgment, the Court clarified that the duty to consult and accommodate extends to economic interests and impacts, and that the Crown may not rely exclusively on third party engagement to fulfill its duty to consult.

Resources to review many cases:
Mandell Pinder
JFK Law
DGW Law Corporation

Appendix E: Adhering to Commitments

For more information on these foundational pieces, please click on the links provided.

Title and Rights	For many Indigenous cultures, land means more than property– it encompasses culture, relationships, ecosystems, social systems, spirituality, and law. For many, land means the earth, the water, the air, and all that live within these ecosystems. As scholars Bonita Lawrence and Enakshi Dua point out using historical examples, "to separate Indigenous peoples from their land" is to "preempt Indigenous sovereignty." Land and Indigenous rights are inextricably linked. Indigenous rights and title are not granted from an external source but are a result of Indigenous peoples' own occupation of and relationship with their territories as well as their ongoing social structures and political and legal systems. As such, Indigenous title and rights are separate from rights afforded to non-Indigenous Canadian citizens under Canadian common law. There are over 300 court cases won by Indigenous Peoples in Canada, and with more than a dozen being precedent setting for title and rights. This impacts major projects, economic development, and legal precedents in their favour, Aboriginal groups now have the leverage to resolve land claims and other issues. Direct, good-faith negotiations can help avoid lengthy regulatory and court battles.
Truth and Reconciliation Commission Report and Calls to Action	The Truth and Reconciliation Commission was initiated in 2008, took 5 years to complete, with over 3000 pages, 10 Principles, 94 Calls to Action (recommendations), with #92 relating specifically to Business and Reconciliation. At its base, economic reconciliation will require an awareness that the engagement being undertaken is with living and breathing First Nation communities, with the entire breadth of their experiences, aspirations and knowledge. These communities have histories, governance, challenges, and ways of life that inform, and with the correct perspective, can add enormous value to the interaction.

	Building trust, through reciprocity and relationship, is at the heart of this, and means understanding these characteristics. As corporate transactions with Indigenous peoples proliferate, as UNDRIP mandates more meaningful engagement, companies that adequately and substantially account for this in their engagement strategy will be the leaders. As a starting point, the reports published by the Truth and Reconciliation Commission, should be required reading for any proponent with a serious Aboriginal engagement strategy. Understanding the why of this work before determining the value of the how
UNDRIP **UNDRIPA (Bill 15)** **DRIPA (BC Bill 41)**	In 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration). It includes 46 articles covering all facets of human rights of Indigenous peoples. The UN Declaration emphasizes the Indigenous peoples' rights to live in dignity, to maintain and strengthen Indigenous institutions, cultures and traditions and to pursue self-determined development, in keeping with Indigenous rights, needs and aspirations. The UN Declaration has been adopted by 148 nations, with Canada adopting it in 2016. On December 3, 2020, the federal government introduced Bill C-15, the United Nations Declaration on the Rights of Indigenous Peoples Act (Bill C-15). Bill C-15 affirms the United Nations Declaration on the Rights of Indigenous Peoples (Declaration) as having application in Canadian law and provides a framework for Canada's implementation of the Declaration. The UN Declaration does not create new rights. It upholds the same human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law. It also reaffirms the importance of the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith. British Columbia passed Bill 41 in November 2019, the BC Declaration on the Rights of Indigenous Peoples Act (DRIPA), which aims to create a path forward that respects the human rights of Indigenous peoples while introducing better transparency and predictability in the work we do together. The Act mandates B.C., in consultation and cooperation with Indigenous peoples, to take all measures necessary to bring provincial laws into alignment with the UN Declaration

	and to develop an action plan to meet the objectives of the UN Declaration, with annual public reporting to monitor progress and ensure accountability. The Act enables new decision-making agreements between B.C. and Indigenous governing bodies on decisions that directly affect Indigenous peoples – with clear processes, administrative fairness and transparency. The Act acknowledges Indigenous governing bodies as determined and recognized by the citizens of the Nation.
MMIWG's Call to Justice	The aim of the inquiry was to investigate and report on the "systemic causes of all forms of violence against Indigenous women and girls" and to examine the "underlying social, economic, cultural, institutional, and historical causes that contribute to the ongoing violence and particular vulnerabilities." There are 231 calls to justice that need to be taken by governments and Canadians in order to end the genocide against Indigenous women and girls as outlined in final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls. They're directed at federal, provincial and Indigenous governments to address areas of human and Indigenous rights, culture, health and wellness, security and justice. Other recommendations are directed at industries, institutions, services such as media, health-care providers, educators, police, Correctional Service Canada and those who work in child welfare. Although these calls to justice are broad and impact so many spaces, this includes everything in our Economic systems... decisions, policy, development, procurement, project development, camps, employment, wages, etc. This is about confronting colonialism, patriarchy, toxic masculinity, abuse, domination, control, racism, discrimination, lateral violence, oppression, inequality and inequities, or basically everything that is not working in all systems.
The Kelowna Accord	The Kelowna Accord is a series of agreements between the Government of Canada, First Ministers of the Provinces, Territorial Leaders, and the leaders of five national Aboriginal organizations in Canada. The accord sought to improve the education, employment, and living conditions for Aboriginal peoples through governmental funding and other programs. The accord was endorsed by Prime Minister Paul Martin, but was never endorsed by his successor, Stephen Harper.

Royal Commission on Aboriginal Peoples

The Royal Commission on Aboriginal Peoples (RCAP) was established by Order in Council on August 26, 1991, in the wake of the Oka Crisis, and it was submitted in October 1996. The Royal Commission on Aboriginal Peoples was mandated to investigate and propose solutions to the challenges affecting the relationship between Aboriginal peoples (First Nations, Inuit, Métis Nation), the Canadian government and Canadian society as a whole.

The Commission's Report, the product of extensive research and community consultation, was a broad survey of historical and contemporary relations between Aboriginal and non-Aboriginal peoples in Canada. When the commission released its final five-volume, 4,000-page report, it contained 444 recommendations for dealing with a breadth of issues, including self-governance, treaties, health, housing, the north, economic development and education. The report included:
Volume 1: Looking Forward, Looking Back;
Volume 2: Restructuring the Relationship (2 parts);
Volume 3: Gathering Strength;
Volume 4: Perspectives and Realities; and
Volume 5: Renewal: A Twenty-Year Commitment.

The Report made several recommendations, the majority of which were not fully implemented. However, it is significant for the scope and depth of research, and remains a significant document to use for anything related to Indigenous Peoples in Canada. Very little response was given by provincial governments, which viewed the report as a federal initiative.

Resources

Decolonization, Reconciliation and Indigenization

Has to be implemented in many spaces and all the work we do. However, it can be quite contextual and there is space for the development of them within the many contexts. The TRC 94 "calls to action" are divided into two parts: legacy (1 to 42) and reconciliation (43 to 94), which allows our minds to categorize the work. But one always has to consider the interconnectedness of this work from an Indigenous worldview or perspective. Meaning that as we work on each of these categories, there are always implications on others. For example, when you grow Indigenous Sovereignty, Self-Determination through Indigenous lead governance and wealth through Indigenous lead economic development, the ripples affects will be felt in the 'Legacy' category of the Calls to Action, as they provide the foundation of funding for child welfare, education, language and culture, health, and justice, as well as for all of the areas in the Reconciliation category. There are more and more resources out there for one to engage with to support their learning and listening journey...just ask "Grandfather Google...he knows a lot".

Unsettling the Settler Within
A compassionate and powerful book that will appeal to both Aboriginal and non-Aboriginal policymakers, politicians, educators, students, and any Canadian with an interest in building a future that both acknowledges and learns from the failures of the past.

Indigenous Ally Toolkit
Montreal Urban Aboriginal Community Strategy Network breaks down allyship into 3 steps.

Cultivating Sympathy and Reconciliation: The Importance of Sympathetic Response
This paper traces the factors that hamper the uptake of reconciliation and the acknowledgement of past events, and develops the following hypothesis: thin sympathy must be developed or acknowledgement will not occur.

Indigenization Guide: Decolonization and Reconciliation
"It is important to note that Indigenous Peoples need allies and not people to tell them what to do, or to direct and benefit from Indigenous issues and challenges. We need to work together and support each other to make a place where all people are valued and included."

For leadership

Reconciliation with Indigenous Peoples: A Holistic Approach - Toolkit for Inclusive Municipalities in Canada and Beyond
This toolkit includes an overview of the issues, courses of action and examples of good practices from Canadian municipalities that are members of the Coalition of Inclusive Municipalities.

Reconciliation Toolkit for Business Leaders

The Congress of Aboriginal Peoples (CAP) has heard from business leaders across the country, sharing with them that they want to help advance reconciliation, but don't know what to do. This toolkit was created as a response to this need for support and guidance.

CCAB's Progressive Aboriginal Relations Program
Progressive Aboriginal Relations (PAR) is a certification program that confirms corporate performance in Aboriginal relations at the Bronze, Silver or Gold level. Certified companies promote their level with a PAR logo signaling to communities that they are good business partners; great places to work, and are committed to prosperity in Aboriginal communities. PAR is the only Corporate Social Responsibility program with an emphasis on Aboriginal Relations.

Reconciliation in Action: The Power of First Nation - Industry Partnerships in British Columbia
Stories showcasing industry wide partnerships with BC First Nations that are part of a growing and diverse cohort of industry and Indigenous agreements to work together to do things differently.

Building a Competitive First Nation Investment Climate
The objective of this textbook is to teach students how to build successful First Nation investment climates, recognizing that many of the elements of a successful investment climate have regional variations.

Planning

Indigenous Perspectives In Planning
The usual focus is how professional planners can engage Indigenous Peoples and communities in their plans whether they are municipal plans, energy projects, or other planning matters. In fact, of course, Indigenous Peoples in communities and territories have their own plans.

Community to Community Forums
The Community to Community Forum Program is a valuable resource for local governments and First Nations to discuss common issues, challenges and mutual opportunities for the benefit of their communities. Learn more at their website.

The Opportunity for Indigenous Infrastructure A Central Economic Recovery Activity
Well-planned, reliable infrastructure is essential to the well-being of all communities. Despite major policy challenges, Indigenous people, companies and governments are closing the infrastructure gap by advancing successful equity infrastructure projects across the country. Canada should follow these examples.

Best Practices For Consultation And Accommodation: Moving To Informed Consent
The best practices found in this report are based on effective consultation and accommodation experiences that were shared by First Nations leaders and managers, lawyers specializing in Indigenous law, and previous reports on consultation and accommodation.

Guide to First Nations Engagement on Local Government Statutory Approvals (Interim)
Gov't of BC - Revised 2014: Ministry of Community, Sport and Cultural Development
Local Government Division
As a result of the Squamish Nation and Lil'wat court case against Whistler OCP

Local Government Participation in the New Relationship with First Nations
MOU between BC Gov't & UBCM.

OCP guide to consultation for BC local governments
It is now mandatory that local governments specifically consider possible pre-public hearing consultation with certain specified parties (eg., First Nations, adjacent local governments) when developing an OCP and that they consider whether consultation should be early and ongoing. When making choices about consultation, councils and boards may wish to take a number of factors into consideration.

First Nations– Municipal Community Infrastructure Partnership Program Service Agreement Toolkit
The CIPP Service Agreement Toolkit provides information on building and maintaining effective relationships, and also has information on how agreements can be developed between First Nation and municipal governments.

Operationalizing Indigenous Consent through Land-Use Planning
Implementation of the United Nations Declaration on the Rights of Indigenous Peoples, particularly the standard of free, prior and informed consent, will have significant impacts on resource development,environmental protection and reconciliation in Canada. A revitalized approach to land-use planning is one way of applying the consent standard and furthering implementation of Indigenous title and rights. Three models of consent-based decision-making are discussed, with particular reference to British Columbia. They aim to structure proper Indigenous- Crown relations in ways that will collaboratively achieve consent, while advancing greater predictability in decision-making.

Policy On Planning Practice And Reconciliation
This policy statement was developed by the Canadian Institute of Planners, in partnership with its consulting team. The statement is based on input gathered from Indigenous planning practitioners and community leaders and CIP members using interviews, surveys, and focus groups. CIP acknowledges and appreciates the invaluable contributions provided by its Indigenous Community Planning Committee in developing this policy.

How Are Official Plans Currently Including Indigenous Rights And Communities?
There is a need to understand where planning currently stands regarding the integration of Indigenous rights. This area of the Ontario Professional Planners Institute website looks into this subject matter.

Land Use Planning 101
The Land Between website takes a peak at land use planning and the duty to consult First Nations.

Forging strong relationships among municipal, regional and First Nation governments in British Columbia
The purpose of this report is to explore practical approaches to encourage and support partnership building among local and First Nation governments in British Columbia.

BC First Nations Land Use Tools:
BC First Nations Land Use Planning: Effective Practices
This is for FN use. This document gives perspective to their land use planning processes.

OUR SACRED LAND: Indigenous Peoples' Community Land Use Planning Handbook in BC
This document aims to share the knowledge, strength and creativity of First Nations involved in LUP with a larger audience . First Nations participants want to see more community-based LUPs delivered by the community for the community.

Information & educational websites

Âpihtawikosisân
Chelsea Vowel is a Metis lawyer from Alberta who has returned to school for creative writing. Her blog, and subsequent book, break down a lot of the myths and stereotypes surrounding Indigenous peoples in funny, plain language. She humanizes the issues, and provides a wealth of citations/further readings. This specific post is a great place to start as it links out to many of her earlier posts that serve as "primers" (introductions) to dozens of important topics.

Frontier Centre for Public Policy: Aboriginal Futures
For over twenty years, the Frontier Centre for Public Policy has focused its research efforts in a variety of public policy areas: Aboriginal Futures explores empowering indigenous Canadians by bringing them into the economic mainstream, restoring property and commercial rights.

Working Effectively with Indigenous Peoples® Blog - Indigenous Corporate Training Inc.
A blog post that ended up expanding into a book. The blog is published by an Indigenous company, Indigenous Corporate Training Inc., founded and run by Bob Joseph from Gwawa'enuxw – a tribe of Kwakwaka'wakw (in Northern BC), and is definitely worth reading beyond the single post highlighted here.

The Future of the Indigenous Economy by FutureEconomy.ca's and the Spotlight on Indigenous Economic Development Indigenous Business Resources
Simon Fraser University Library hosts some good resources.

Indigenous Foundations
This site was created by the First Nations Studies Program at UBC. It provides summaries for many events, cases, and government policies -- useful background information as you seek to understand the current situation in some communities.

Native Land
A website run by the nonprofit organization Native Land Digital. It is a resource for North Americans (and others) to find out more about local Indigenous territories and languages.

UNDRIP

A Business Reference Guide: United Nations Declaration on Indigenous Peoples
Helps business understand, respect, and support the rights of Indigenous peoples by illustrating how these rights are relevant to business activities.

Practical Supplement to the Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples
A compilation of case studies and business practices intended to raise awareness of the corporate responsibility to respect indigenous peoples' rights and the opportunity to support these rights.

Reports

Cash Back - A Yellowhead Institute Red Paper
Closing the Well-Being Gap Through Improved First Nation Governance by John Graham located on the Frontier Center for Public Policy website.
Pathways to Collaboration by the Indigenous Business Investment Council

TD Economics
Aboriginal People In Canada - Growing Mutual Economic Interests Offer Significant Promise for Improving the Well-Being of the Aboriginal Population

National Indigenous Economic Development Board
Any of the numerous reports will provide a wealth of understanding about Community Economic Development for First Nations, Inuit and Metis Peoples in Canada.

Linking Indigenous Communities to Regional Development in Canada
This study focuses on four priority issues to maximise the potential of Indigenous economies in Canada. First, improving the quality of the statistical framework and the inclusion of Indigenous peoples in the governance of data. Second, measures to improve the fairness and transparency for how Indigenous peoples can secure land tenure and the use of tools and such as land use planning to use it to promote community economic development. Third, promoting entrepreneurship so Indigenous peoples can use assets and resources in ways that align with their objectives for development. Fourth, implementing an approach to

governance that adapts policies to places, and empowers Indigenous institutions and communities.

Indigenous-Owned Exporting Small and Medium Enterprises in Canada
This report reviews the characteristics of Indigenous small and medium enterprises (SMEs) involved in international trade, and identifies opportunities for enhanced federal policy and program design to support Indigenous business performance in international markets.

Legal

Olthuis Kleer Townshend LLP. blog offers some great insights into many areas affecting Indigenous Peoples and Nations.

https://libguides.tru.ca/indigenouslaw/cases
Resources for Indigenous Law and Cases

Supreme Court of Canada cases involving Indigenous peoples
This guide presents a number of Supreme Court of Canada decisions dealing with Indigenous law and First Nations rights. Note that this is not a comprehensive list, but one that endeavours to cover the most representative, impactful Supreme Court cases dealing with these issues over the past several decades.

Overview of Indigenous governance in Canada: Evolving relations and key issues and debates
This chapter of the OECD's Linking Indigneous Communities with Regional Development is an overview of the constitutional, political and practical circumstances pertinent to linking Indigenous communities with regional development in Canada. It reviews the historical and current arrangements of First Nation, Inuit and Métis relations with Canadian institutions, and provides an introduction to three key debates: First Nations' prospects for getting out from under the Indian Act; conflicts over land and resources management and; the role of Indigenous knowledge in contemporary decision-making.

Principles Respecting the Government of Canada's Relationship with Indigenous Peoples
These Principles reflect a commitment to good faith, the rule of law, democracy, equality, non-discrimination, and respect for human rights.

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