ABORIGINAL PEOPLES

- "Aboriginal peoples": collective name for original inhabitants in Canada and theirs descendants (Pop. 2016: 1.7 M)

- Three groups of Aboriginal peoples:
  - Indians (First Nations) – 58%
  - Inuit (Arctic) – 35%
  - Métis (mixed aboriginal and non-aboriginal) 4%
### Aboriginal Peoples

<table>
<thead>
<tr>
<th></th>
<th>Population totale</th>
<th>Autochtones</th>
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<tbody>
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<td>Ontario</td>
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<td>Québec</td>
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<td>Nunavut</td>
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</table>

Statistique Canada 2016
First Nations in Canada
Prior to European settlement, Aboriginal peoples occupied what is now Canada, having established their own cultures, government, social organizations, languages, economies, etc.

16th – 17th centuries: Commercial alliances between France /Great Britain and Aboriginal people (fur trade)
EUROPEAN COLONIAL SETTLEMENT

- 17th – 18th centuries: Military alliances with Aboriginal peoples to secure territory control in North America

- In 1759, Britain defeated France in Quebec
ABORIGINAL RIGHTS

- Royal Proclamation (1763)
  - Administrative structure of the British North American colonies
  - Recognition of Aboriginal rights to lands
  - Protocols for all dealings with Aboriginal peoples
ABORIGINAL RIGHTS

- **Indian Act** (19th – 21st centuries)
  - Canadian law that governs in matters pertaining to Indian status, bands and reserve land

- **Treaties** (18th – 21st centuries)
  - Land surrender treaties were signed
  - Modern treaties were signed
ABORIGINAL RIGHTS

- **Amendment** to the *Constitution of Canada* (1982) – Section 35:
  - Treaty Rights are recognized and affirmed
  - Existing Aboriginal Rights are recognized and affirmed
ABORIGINAL RIGHTS

- *Aboriginal rights*: stem from the **prior occupancy** by Aboriginal peoples / Held as a result of longstanding use and occupancy of the land

- *Aboriginal rights*: range of **cultural**, **social**, **political**, and **economic** rights including the right to land, as well as to fish, to hunt, to practice one’s own culture

ABORIGINAL RIGHTS

Section 35 Constitution Act (1982)

Aboriginal rights

Aboriginal Title (right in the land)

Political, social, economic & cultural (fishing, hunting, trapping, etc.)

Treaty rights

Existing treaties

Future treaties
ABORIGINAL RIGHTS

- Aboriginal rights varies with respect to their degree of connection with the land – Notion of spectrum *(Delgamuukw, 1997)*
  - Practices, customs and traditions /no use and occupation of the land
  - Practices, customs and traditions related to a particular piece of land
  - Aboriginal title, which is a right in the land
IMPACTS OF ABORIGINAL RIGHTS

- **Laws**, regulations & policies
- **Territorial use** (lands, rivers, lakes, natural resources, etc.)
- **Activities** (hunting, fishing, trapping, etc.)
- **Projects** (economic development)
1. Aboriginal rights *varies* with respect to their degree of connection with the land

2. Aboriginal rights *exists* independently of Government recognition

3. Aboriginal rights are *collective rights*

4. A group claiming the existence of an Aboriginal right has the *onus of proving* the existence of such a right

5. Any *ambiguities or doubtful expressions* in the wording of the treaty must be resolved in favor of the Aboriginal people (*Badger*, 1996 / *Sundown*, 1999)
6. A treaty is an agreement whose nature is sacred (Sundown, 1999)

7. Aboriginal rights can only be transacted with the Crown (Calder, 1973)

8. Government has the responsibility to act in a fiduciary capacity with respect to Aboriginal peoples (Royal Proclamation/Constitutional Act/Sparrow, 1990): the relationship between Government and aboriginals is trust-like, rather than adversarial

9. The honor of the Crown (Government) is at stake in dealings with aboriginal peoples
10. Government has a **duty to consult**, which is grounded in the honor of the Crown – Seeks to provide protection to Aboriginal rights while furthering the goals of reconciliation (**Haida Nation** & **Taku River**, 2004 – **Rio Tinto Alcan**, 2010):

- Remains on the shoulders of the Government and does not extend to third parties (industries)
- Meaningful and **good faith** consultation (both parties)
- Must fully **inform** Aboriginal peoples about the proposed action and **learn** of their interests and concerns (more than just an exchange of information)
10. Government has a duty to consult even though the group had not legally proved the existence of their Aboriginal rights (Haida Nation & Taku River, 2004)

- Duty to consult arises when Government knows about the potential existence of an aboriginal right and contemplates a decision that might adversely affect it
- Scope of duty to consult is proportionate to impact of decision
- Guidelines for Governmental officials to fulfill the duty to consult
12. Government has a **duty to accommodate or to compensate**

13. When an administrative body of the Crown has to make a decision on a question touching Aboriginal rights, the approval process in itself is sufficient to trigger the duty to consult ([Chippewas of the Thames & Hamlet of Clyde River](https://www.canlii.org/en/ca/supreme-court-of-canada/cases/2017/scotc363.html), 2017)
CONCLUSION

- Aboriginal peoples have **constitutional rights**
- Some **uncertainties** arise about the existence and location of Aboriginal rights
- **Understanding** this particular context
- **Cooperation & Respect**
Former chief justice Antonio Lamer wrote in the *Delgamuukw* decision 20 years ago:

"Let us face it, we are all here to stay."
THANK YOU!