

# *ABORIGINAL RIGHTS IN CANADA UNDERSTANDING BASIC CONCEPTS*

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# ABORIGINAL PEOPLES

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- "*Aboriginal peoples*": collective name for **original inhabitants** in Canada and their 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

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	<b>Population totale</b>	<b>Autochtones</b>
Ontario	13 242 160	374 395
Québec	7 965 450	182 890
Colombie-Britannique	4 560 240	270 585
Alberta	3 978 145	258 640
Manitoba	1 240 695	223 310
Saskatchewan	1 070 560	175 015
Nouvelle-Écosse	908 340	51 495
Nouveau-Brunswick	730 705	29 380
Terre-Neuve-et-Labrador	512 250	45 725
Île-du-Prince-Édouard	139 685	2 740
Yukon	35 110	8 195
Territoires du Nord-Ouest	41 135	20 860
Nunavut	35 580	30 550
Canada	34 460 065	1 673 780

*Statistique Canada 2016*

# First Nations in Canada



# EUROPEAN COLONIAL SETTLEMENT

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- Prior to European settlement, Aboriginal peoples **occupied** what is now Canada, having **established** their own cultures, government, social organizations, languages, economies, etc.
- 16<sup>th</sup> – 17<sup>th</sup> centuries: **Commercial alliances** between *France / Great Britain* and Aboriginal people (fur trade)

# EUROPEAN COLONIAL SETTLEMENT

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- 17<sup>th</sup> – 18<sup>th</sup> centuries: **Military alliances** with Aboriginal peoples to secure territory control in North America
- In 1759, Britain **defeated** France in Quebec

# ABORIGINAL RIGHTS

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- **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** (19<sup>th</sup> – 21<sup>th</sup> centuries)
  - Canadian law that governs in matters pertaining to Indian status, bands and reserve land
- **Treaties** (18<sup>th</sup> – 21<sup>th</sup> 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

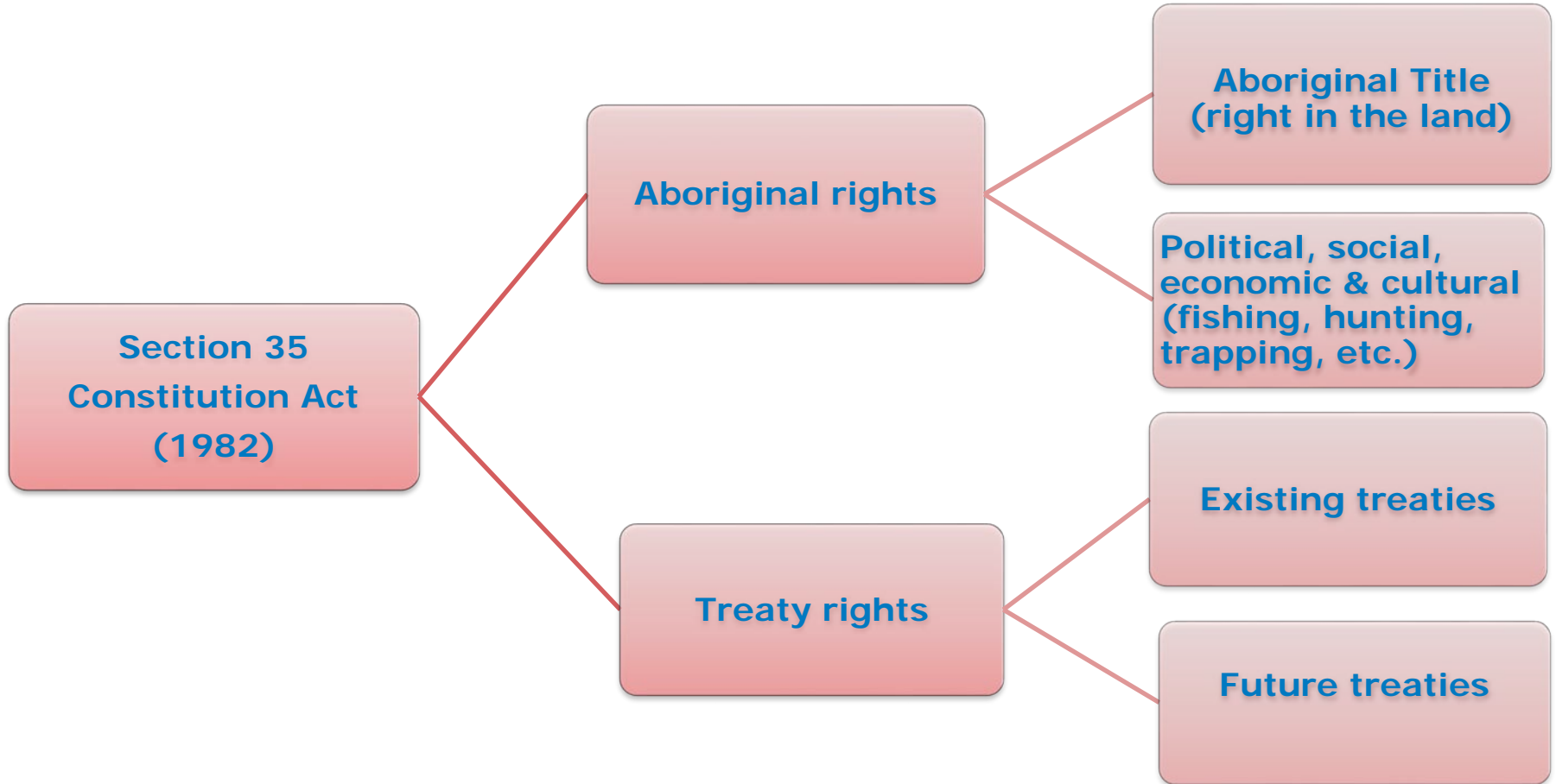
# ABORIGINAL RIGHTS

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- *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

➤ *Asch, Michael. Home and Native Land: Aboriginal Rights and the Canadian Constitution. Agincourt: Methuen, 1984, 30.*

# ABORIGINAL RIGHTS



# ABORIGINAL RIGHTS

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- *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

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- **Laws**, regulations & policies
- **Territorial use** (lands, rivers, lakes, natural resources, etc.)
- **Activities** (hunting, fishing, trapping, etc.)
- **Projects** (economic development)

# SUPREME COURT OF CANADA

## SOME PRINCIPLES

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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)

# SUPREME COURT OF CANADA

## SOME PRINCIPLES

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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

# SUPREME COURT OF CANADA

## SOME PRINCIPLES

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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)



# SUPREME COURT OF CANADA

## SOME PRINCIPLES

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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

# SUPREME COURT OF CANADA

## SOME PRINCIPLES

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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](#), 2017)

# CONCLUSION

- Aboriginal peoples have **constitutional rights**
- Some **uncertainties** arise about the existence and location of Aboriginal rights
- **Understanding** this particular context
- **Cooperation & Respect**

# CONCLUSION

- 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!***