**Chapter Outline**

to accompany

*Indigenous Peoples within Canada: A Concise History*, Fifth Edition

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**Chapter 17: Canadian Courts and Aboriginal Rights**

The purpose of this chapter is to discuss the issue of Aboriginal rights as well as the experience of Indigenous Peoples in Canadian courts. In this chapter, the issue of Aboriginal rights is traced through the various court cases that have attempted to define what these rights entail. Oftentimes, these court cases centre around land, with the first precedent-setting case taking place in Ontario in 1884. In *St Catharines Milling v. The Queen*, the Privy Council in London ruled that as “heathens and barbarians”, Indigenous Peoples held no proprietary rights to the soil. A century later, one of the most well-known land conflicts culminated with a standoff at Oka, Quebec, in 1990 (discussed in Chapter 19).

Litigation in Canada regarding land claims and Aboriginal rights has been marked by several ongoing key court cases, beginning with the 1973 Supreme Court decision in *Calder v. Attorney General of British Columbia*. Although the Nisga’a lost on a technicality, the existence of Aboriginal rights was affirmed, and this led Prime Minister Pierre Trudeau to concede that Indigenous Peoples may have more rights than he had previously recognized. A number of other cases throughout the 1980s continued to reinforce the idea that Aboriginal rights existed prior to European contact and that these rights have to be taken into consideration. Cases such as *Delgamuukw*, as well as the *Marshall* cases, have all moved Canada’s courts toward recognition of Aboriginal rights and attempts to define what these rights entail. There have also been some landmark decisions for the Métis. In 2001, the Ontario Court of Appeal ruled that as a distinct people, the Métis had the right to hunt and fish out of season. , In 2017, the Supreme Court of Canada agreed with the Manitoba Métis Federation that the Crown had failed to implement the land grand provisions of the Manitoba Act of 1870. Despite this progress, there have been setbacks as well; even though Aboriginal Rights are protected by the Constitution, the division of powers between the federal and provincial governments also means that it is likely further litigation will continue as both governments and Indigenous Peoples alike strive to have clear definitions placed on these rights.

The criminal justice system has also been in the spotlight since the 1970s. As statistics began to point to the high number of incarcerations within the justice system, many began to question why the numbers were so skewed toward Indigenous Peoples and what might be done. This resulted in a number of inquiries and commissions, which have found that the justice system has failed Indigenous Peoples and that, “…at best, the equal application of the law has unequal results.” In 2001, a 2.5milliondollar commission was launched to undertake a thorough examination of the criminal justice system. The Commission on First Nations and Métis Peoples and Justice Reform released its findings in 2004, and among other recommendations, called for better screening of police candidates, more Indigenous personnel throughout the justice system, and better training for police forces.

On the other side of the picture, in 2000, Canada’s first Indigenous court opened on the Tsuu T’ina reserve west of Calgary, and by 2005, about sixty percent of First Nations had agreements in place for locally controlled policing. However, when considering the legal position of First Peoples, the role of the Indian Act must also be accounted for. With the goal of protection and assimilation, the Act has emphasized control instead of development, thereby stifling initiative and enterprise, and subjecting First Nations to colonial rule.

The chapter closes with a discussion of the high rates of violence against Indigenous women, girls, and 2LSLGBTQQIA+ people in Canada. A report examined the multitude of factors that led to these human and Indigenous rights abuses and provided a controversial conclusion upon its release; such was an example of genocide in Canada. The report did provide specific calls to justice to end the cycles of violence.