




**Aboriginal Rights:
what role can a senator play?**

AFCS Youth Leadership Symposium

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Senator

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2005 - Summoned to the Senate

- Why me?
- Because I'm an Aboriginal female.
- Because I had a public profile.
- Because I did public work that I was told not to do!
Speaking about equity issues, discrimination, WIS,
Aboriginals.




Youth Leadership Participants

age? 19 - 29

status?

on reserve?

educational level?






What do senators do?

- Legislation
- Sponsor or critic of bills
- Committee work and reports
- Statements, QP, inquiries
- External work



What are Aboriginal rights?

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- Treaties
 - UNDRIP
 - Charter of Rights & Freedoms
 - Human Rights act
 - Constitution
- 



Treaties

What are they


What do they `give` FNs






United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

-adopted by the UN General Assembly in 2007, Canada signed in 2010

- **Article 1:** full enjoyments of rights as individuals or collective
 - **Article 3 & 4 :** right to self-determination & right to self-government
 - **Article 14:** right to design their own educational systems
 - **Article 19:** right to be consulted; “free, prior and informed consent.”
 - **Article 21:** right to improvements in housing
 - **Article 26:** right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired
 - **Article 44:** all rights equally guaranteed to male and female indigenous individuals
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Canadian Charter of Rights and Freedoms (1982)

-Section **15.** (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin , colour, religion, sex, age or mental or physical disability.

- Section **25.** The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.






Canadian Human Rights Act (CHRA)

-CHRA is a federal law that prevents discrimination. Section 67 of the CHRA was a specific section that stated the CHRA did not apply to the Indian Act.

Section 3. (1) For all purposes of this Act, the prohibited grounds of discrimination are **race, national or ethnic origin, colour**, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.





Constitution Acts of Canada (1867, 1982)

Constitution Act, 1867


Section 91(24): Federal government has exclusive jurisdiction of “Indians, and Lands reserved for the Indians.”

Constitution Act, 1982

Section 35.

(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.





Indian Act

Codifies how the Canadian State interacts with Indians.

Covers all aspects of Indian life:
governance, land use, healthcare, education, and Indian
reserve system.

Overall, the Indian Act is archaic and paternalistic,
as sole power and authority is in the hands of the Minister
of AANDC.

Positive Aspects: collective & exclusive land rights on reser
ve;

state provides for education, health, housing





Some of the Negative Aspects:

Residential schools


Gender discrimination in defining status


Unstated paternity

blood quantum system of status

land seizure? Good or bad?

Ultimate authority in the hands of the
Minister and Federal Government





What is the relationship between aboriginal rights and the Indian act?

- The IA rules!
- Until s67 of the CHRA was deleted, the CHRA did not apply on reserves.

There is no act which implements treaties.

There is no act defining Aboriginal or treaty rights.



What role do court challenges and decisions play in aboriginal rights?

- Court decisions affirm and define specific aboriginal rights.


Aboriginal Title: Delgamuukq v. British Columbia (Attorney General) SCC 1977; Tsilqot'in Nation v. British Columbia SCC 2014


Aboriginal Rights: R. v. Sparrow SCC (1990)

Consultation and Accommodation: Haida First Nation v. British Columbia & Weyerhaeuser SCC (2004); Mikisew Cree First Nation v. Canada Alberta Fed. Court (2014)

Membership: Cobiere v. Canada (Minister of Indian and Northern Affairs) SCC (1999); Mclvor v. The Registrar (Indian and Northern Affairs) BC Court of Appeal 2009


UN/International: Lovelace v. Canada, United Nations Human Rights Committee (1979-1981)





What role does federal legislation play in aboriginal rights?

- Ideally should uphold Aboriginal rights
- Ideally should define AR in contemporary terms
- Ideally should implement treaty and ARs
- Ideally should implement FN Self-governance



Egs. of bills affecting first nation rights
that have passed in the last 10 years




Examples of Legislation affecting with First Nations

Bill C-45: Jobs and Growth Act 2012. Omnibus budget bill. *Royal Assent December 2012.*

Bill C-27: First Nations Financial Transparency Act. Require each First Nation to prepare and publically disclose audited consolidated financial statements and a schedule of remuneration and expenses for its chief and council. *Royal Assent March 2013.*

Bill S-2: Family Homes on Reserves and Matrimonial Interests of Rights Act. Establishes matrimonial rights and interests for First Nations citizens on reserve in the event of marriage breakdown. *Royal Assent June 2013 (Formerly C-8 and S-4)*

Bill S-8: Safe Drinking Water for First Nations Act. Establishes a framework of regulations in regards to water quality and water systems on reserves. *Royal Assent June 2013 (Formerly S-11)*






Legislation affecting with First Nations (cont'd)


Bill C-9: First Nations Election Act. Creates a stand-alone piece of legislation for First Nations to “opt-into” for those First Nations that remain under the Indian Act election provisions. *Royal Assent April 2014.*

Bill C-25: Qualipu Mi’Kmaq First Nation Act. Creation of a landless First Nation. *Royal Assent June 2014.*

Bill C-428: Indian Act Amendment and Replacement Act. Private member’s bill, Rob Clarke, MP for Desnethé—Missinippi—Churchill River. *Royal Assent December 2014.*

Self Government Agreements: *Tsawwassen First Nation (2007); Maa-nulth First Nation (2009); Yale First Nation (2013); Sioux Valley Dakota Nation Governance Act (2014); Tla’amin First Nation (2014)*





MRP: S-2

- establishes matrimonial real property rights on reserve following a marriage breakdown


- concerns about access to courts, housing shortage, services for family violence, property interests for non-aboriginals

SDW: S-8

- establishes regulations for water and wastewater standards on-reserve

- concerns about lack of capacity, funding for projects,

- allows regulations to derogate aboriginal rights!







First Nations Elections: C-9

- opt-in legislation to modernize band election rules custom code and IA First Nations
- extends election terms to 4 years, provides recall mechanism, sets out procedure for contested elections and specific offences and penalties in relation to election of chief and council.
- Still allows minister to interfere in ongoing protracted leadership disputes and make them come under the act.


FNFTA: C-27

- requires chief and council to post financial statements online
 - overrides Privacy act provisions regarding OSR
 - salary information misleading because OSR-portions included
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What can you do to protect or promote aboriginal rights?

- ?
- ?
- ?
- ?



The main problems

- No real consultation and accommodation.
- Colonial culture still prevails.
- AANDC policy making powers are supreme.
- Wrong structure for self determination, SG
- Not enough support from the non-A public.