

Publisher's Note
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Woodward
Native Law

Chapter 10: Individual Possession and Development of Reserves is fully replaced in this release. This revised chapter is the most recent, comprehensive and authoritative writing on the subject of individual interests on reserves in Canada. The chapter begins with fundamental principles, and continues with a discussion of the legal basis for economic development of individually possessed lands. 100 years of case law about the Indian Act provisions is reviewed. The framework for interests under the *First Nations Land Management Act* is included, plus several special topics such as the rights of children and spouses.

Conflict of laws – systems of First Nations Law. An important new contribution to legal thinking about aboriginal rights is found in the decision of Madam Justice Chappel of the Ontario Superior Court of Justice in *Beaver v. Hill*. The Court points out that when there is a challenge to the fundamental jurisdiction of the court based on an independent system of First Nations law, certain of the Conflict of Laws principles may apply. The court goes on to set out a framework for analyzing such a situation. See Chapter 2, paragraphs 2§855 and following.

The Fiduciary Obligation. Canada's fiduciary obligation was further clarified by the Supreme Court of Canada in *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4, 2018 CarswellNat 158 (S.C.C.). Canada was the exclusive intermediary between B.C. and First Nations in relation to reserve

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creation, a situation which conferred a degree of control that left a cognizable Aboriginal interest “vulnerable” to the adverse exercise of Canada’s discretion, and was therefore sufficient to ground a sui generis fiduciary obligation. See Chapter 3, paragraphs 3I1361 and 3I1480 and Chapter 8, paragraph 8I660.

Colonial obligations. The *Specific Claims Tribunal Act* creates a special, extended meaning of “Crown” for the purposes of Crown legal obligations, beyond what can be found in the Terms of Union between Canada and British Columbia. The *Williams Lake* decision, see Chapter 8, paragraph 8I664.