

Publisher's Note
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Woodward
Native Law

Reliance on this text by the courts. The Federal Court of Appeal, the Specific Claims Tribunal of Canada, the Yukon Territory Supreme Court, British Columbia Supreme Court, Ontario Superior Court of Justice, and Quebec Superior Court of Justice, have all recently quoted or relied on passages in this text. Please see the Judicial Commentary tab, and references throughout the text.

Interpretation of the Rupert's Land Order. A little-known part of the Constitution, the Rupert's Land Order, was interpreted by the Yukon Territory Supreme Court. The Order gives rise to a legally binding constitutional obligation that Canada enter into treaty negotiations. See Chapter 2, paragraph 2§730.

Scope of Canada's powers under s. 91(24). An aggressive challenge to federal power by a mining company was unsuccessful. Taseko Mines Limited argued that s. 91(24) only conferred jurisdiction on Canada to respond to substantial risks of harm to interests "unique to aboriginal peoples", and would not empower Parliament to give special consideration to impacts on First Nations that are also shared by other Canadians. The Federal Court doubted, but did not need to decide the point. See Chapter 3, paragraph 3§175.

Whether the protection from seizure under s. 89 is discriminatory. The Federal Court of Appeal considered the question of whether the protections afforded by s. 89 of the

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Indian Act may present a disadvantage to some status Indians, and is therefore discriminatory under s. 15 of the *Charter*. Relying on a passage in this text, the Federal Court of Appeal concluded that the protection can be waived, and is therefore not discriminatory. See Chapter 6, paragraph 6§540.