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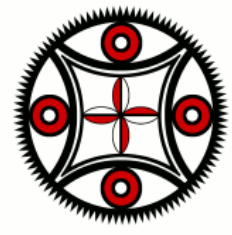

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ABORIGINAL ACTIVITIES AND ABORIGINAL RIGHTS: A COMMENT ON R. V. SAPPIER; R. V. GRAY
By John P. McEvoy

Section 35 of the Constitution Act, 1982, affirms the "existing [A]boriginal rights" of the Aboriginal peoples of Canada but does not define the content of such rights. Beginning with the 1990 decision in Sparrow, and particularly with the 1996 triology of Van der Peet, Gladstone and NTC Smokehouse, the Supreme Court of Canada has refined the content of this significant constitutional provision. This process of refinement continues with the Court's decision in R v. Sappier; R v. Gray. Whereas much Aboriginal rights litigation since 1996 has focused on the Van der Peet "integral to the distinctive culture" test for determining the content of an Aboriginal hunting or gathering right with a focus, in many instances, on specific resources, the Supreme Court in R v. Sappier; R v. Gray adopted a broader approach focusing on the significance of a resource to the Aboriginal "lifestyle." While taking a more generous approach to Aboriginal rights, the Court adopted a less generous approach to the actual exercise of such rights making R. v. Sappier; R. v. Gray an important decision meriting closer analysis.

CULTURE OR CONTRACT: OFF-RESERVATION INDIGENOUS COMMERCIAL LOGGING IN WISCONSIN AND THE MARITIMES
By Guy Campion Charlton

This article compares American and Canadian case law on Indigenous claims to treaty protected logging. It argues that the recent 2005 R. v. Marshall decision, like the earlier American decision in Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt, applies an assumption that tribal treaty negotiators were uninterested in reserving any treaty rights other than those denominated "traditional" by the court. It examines this assumption through a discussion of the logical evolution of treaty protected rights and the moderate-living doctrines. For the most part the imposition of the assumption precludes Indigenous commercial exploitation under treaty jurisprudence while undermining other judicial interpretive methodologies that are more protective of tribal interests.

THE NISGA'A FINAL AGREEMENT: NEGOTIATING FEDERALISM
By Sari Graben

The Nisga'a Nation, federal government and provincial government of British Columbia completed negotiation of the Nisga'a Final Agreement on 4 August 1998. Although the parties incorporated the language of nationhood, new relationships, and intergovernmental agreement, to many it remains unclear whether the Nisga'a Final Agreement creates a third order of

Canadian government. This article wades into the debate on the third order and asks whether the treaty text supports a federal relationship. While it is clear that the type of federal relationship described by the Nisga'a Final Agreement is different from that of the provincial and federal governments, the treaty's use of federalism's foundational legal and political institutions supports understanding it as federal. Moreover, its reading as a federal document can find sufficient support in the jurisprudence on Aboriginal rights and Canadian constitutional law.

WEAVING A THIRD STRAND INTO THE BRAID OF ABORIGINAL–CROWN RELATIONS: LEGAL OBLIGATIONS TO FINANCE ABORIGINAL GOVERNMENTS NEGOTIATED IN CANADA

By Rami Shoucri

Relationships between nations consist of political, legal and economic aspects. This paper will explore the intersection of these three aspects in the context of Aboriginal–Crown relations from the perspective of an analysis of legal obligations on federal and provincial/territorial governments to fund Aboriginal governments arising from politically negotiated agreements within the contemporary Canadian legal framework. The focus will be on arguments based on obligations arising from the sui generis fiduciary relationship, the need to uphold the honour of the Crown and the common law principle that certain rights may exist if they are necessarily incidental to other, already recognized, rights. Although legal principles are applicable, the challenges of recognizing such obligations as "legal" must also be recognized. The paper will conclude with an examination of the relative merits of several possible, in terms of both form and substance, national frameworks to guide the financial negotiations necessary to implement Aboriginal governments. Specifically, the issues will be traced with reference to the experiences of the Inuvialuit people of the Western Arctic in self-government negotiations with the federal and territorial governments.