

Parallel Paths

Fiduciary Doctrine and the Crown-Native
Relationship in Canada

LEONARD IAN ROTMAN



Parallel Paths Fiduciary Doctrine And The Crown Native Relationship In Canada

**Anthony O'Donnell (LLB.), Richard
Johnstone**



Parallel Paths Fiduciary Doctrine And The Crown Native Relationship In Canada:

Parallel Paths Leonard Ian Rotman, 1996 The author argues that the fiduciary obligations akin to trust obligations of the dominion government for Aboriginal people have been mistakenly interpreted as something similar to father son relations On the contrary the author contends that if one properly interprets papal bulls the Royal Proclamation and historical treaties it becomes clear that the true nature of fiduciary obligations is founded on nation to nation relationships

The Honour and Dishonour of the Crown Jamie D. Dickson, 2019-01-31 In Canada the fundamentals of law relating to Aboriginal peoples are unclear and Indigenous communities lack appropriate guidance in terms of efficiently accessing the legal system to address breaches of their rights This is yet another injustice endured by Aboriginal peoples in Canada However the Supreme Court of Canada has begun to place greater emphasis on the honour of the Crown principle and less on the paternalistic complex notion that governments owe a fiduciary duty to Aboriginal peoples Dickson explores both theoretical and practical implications of this fundamental shift and possible future outcomes

Indigenous Difference and the Constitution of Canada Patrick Macklem, 2001-12-15 There is a unique constitutional relationship between Aboriginal people and the Canadian state a relationship that does not exist between other Canadians and the state It is from this central premise that Patrick Macklem builds his argument in this outstanding and significant work Why does this special relationship exist What does it entail in terms of Canadian constitutional order There are Macklem argues four complex social facts that lie at the heart of the relationship First Aboriginal people belong to distinctive cultures that were and continue to be threatened by non Aboriginal beliefs philosophies and ways of life Second prior to European contact Aboriginal people lived in and occupied North America Third prior to European contact Aboriginal people not only occupied North America they exercised sovereign authority over persons and territory Fourth Aboriginal people participated in and continue to participate in a treaty process with the Crown Together these four social conditions are exclusive to the Aboriginal people of North America and constitute what Macklem refers to as indigenous difference Exploring the constitutional significance of indigenous difference in light of the challenges it poses to the ideal of equal citizenship Macklem engages an interdisciplinary methodology that treats constitutional law as an enterprise that actively distributes power primarily in the form of rights and jurisdiction among a variety of legal actors including individuals groups institutions and governments On this account constitutional law refers to an ongoing project of aspiring to distributive justice disciplined but not determined by text structure or precedent Far from threatening equality constitutional protection of indigenous difference promotes equal and therefore just distributions of constitutional power The book details constitutional rights to Aboriginal people that protect interests associated with culture territory sovereignty and the treaty process and explores the circumstances in which these rights can be interfered with by the Canadian state It also examines the relation between these rights and the Canadian Charter of Rights and Freedoms and proposes extensive reform of existing treaty processes in order to protect and promote their exercise Macklem's book offers

a challenge to traditional understandings of the constitutional status of indigenous peoples relevant not only to Canadian debates but also to those in other parts of the world where indigenous peoples are asserting greater autonomy over their collective futures

Developing a Cross-cultural Law Curriculum Anthony O'Donnell (LLB.), Richard Johnstone, 1997 This work makes the case that cross cultural issues are central to the purposes of legal education and no longer can such issues be seen as an add on to the traditional curriculum The authors argue instead for a critical multiculturalism that is attuned to questions of gender class sexuality and social justice and that must inform the whole law school curriculum

This Is Not a Peace Pipe Dale Turner, 2006-02-06 How can indigenous people best assert their legal and political distinctiveness In This is Not a Peace Pipe Dale Turner explores indigenous intellectual culture and its relationship to and within the dominant Euro American culture He contends that indigenous intellectuals need to engage the legal and political discourses of the state respecting both indigenous philosophies and Western European intellectual traditions According to Turner the intellectual conversation about the meaning of indigenous rights sovereignty and nationhood must begin by recognizing firstly that the discourses of the state have evolved with very little if any participation from indigenous peoples and secondly that there are unique ways of understanding the world embedded in indigenous communities Further amongst indigenous peoples a division of intellectual labour must be invoked between philosophers who possess and practice indigenous forms of knowledge and those who have been educated in the universities and colleges of the Euro American world This latter group Turner argues must assert protect and defend the integrity of indigenous rights sovereignty and nationhood as they are the ones able to speak the language of the dominant culture while being guided by their indigenous philosophies This is Not a Peace Pipe is a work that will be controversial amongst indigenous scholars by upsetting the assumptions many have about how best to fight for recognition of their legal and political distinctiveness It will be debated for years to come

Sovereignty's Promise Evan Fox-Decent, 2011-12-08 Arguing that the state and its people stand in a fiduciary relationship *Sovereignty's Promise* puts forward a bold new account of political authority and its legal limits In doing so it presents a fresh argument for common law constitutionalism and a novel theoretical framework for understanding the requirements of the rule of law

The Proposed Nordic Saami Convention Nigel Banks, Timo Koivurova, 2013-01-31 In 2005 an expert group representing the governments of Norway Sweden and Finland and the Saami parliaments of these countries agreed upon a draft text of a Nordic Saami Convention Key parts of the text deal with the recognition of Saami land and resource rights More recently the three governments have embarked on negotiations to move from this draft text to a final convention that may be adopted and ratified by all three countries Negotiations commenced in the Spring of 2011 and should be completed within five years This collection of essays explores the national and international dimensions of indigenous property rights and the draft Convention which recognises the Saami as one people divided by international boundaries Part one of the book seeks to provide a global and theoretical context for these developments in the Nordic

countries with a series of essays dealing with the moral and legal reasons for recognising indigenous property interests and different conceptualisations of the relationship between indigenous peoples and settler societies including recognition reconciliation and pluralism Part two of the book examines some international legal issues associated with the Convention including the background to the Convention Part three turns to examine aspects of the recognition of Saami property interests in each of the three Nordic states while Part four provides some comparative experiences examining the recognition of indigenous property rights in a number of jurisdictions including Canada Australia and a number of South American states An additional essay considers gender issues in relation to indigenous property rights Sharing the Land, Sharing a Future Katherine Graham, David Newhouse, 2021-06-11 Sharing the Land Sharing a Future looks to both the past and the future as it examines the foundational work of the Royal Commission on Aboriginal Peoples RCAP and the legacy of its 1996 report It assesses the Commission's influence on subsequent milestones in Indigenous Canada relations and considers our prospects for a constructive future RCAP's five year examination of the relationships of First Nations Metis and Inuit peoples to Canada and to non Indigenous Canadians resulted in a new vision for Canada and provided 440 specific recommendations many of which informed the subsequent work of the Truth and Reconciliation Commission of Canada TRC Considered too radical and difficult to implement RCAP's recommendations were largely ignored but the TRC reiterates that longstanding inequalities and imbalances in Canada's relationship with Indigenous peoples remain and quite literally calls us to action With reflections on RCAP's legacy by its co chairs leaders of national Indigenous organizations and the Minister of Crown Indigenous Relations and leading academics and activists this collection refocuses our attention on the groundbreaking work already performed by RCAP Organized thematically it explores avenues by which we may establish a new relationship build healthy and powerful communities engage citizens and move to action **Aboriginal Ownership and Management of Resources in Canada** Canadian Bar Association, 2003 **Māori Property Rights and the Foreshore and Seabed** Claire Charters, Andrew Erueti, 2007 Exploring an issue of international significance this collection of essays addresses the reconciliation of the pre existing inherent rights of indigenous peoples with those held and asserted by the state Focusing upon the Maori tribes of New Zealand topics include the historical origins of the Ngati Apa decision one of the most controversial modern decisions on Maori rights how the Foreshore and Seabed Act FSA compares with schemes created in other countries with indigenous inhabitants how the FSA has led to major changes in the country's political landscape and how it stacks up against international human rights and environmental laws This detailed study also explores New Zealand's legislation and how it has undermined the rights of Maori tribes tipping the reconciliation process too far in favor of the state *The Arctic Promise* Natalia Loukacheva, 2007-01-01 In Canada's Eastern Arctic and Greenland the Inuit have been the majority for centuries In recent years they have been given a promise from Canadian and Danish governments that offers them more responsibility for their lands and thus control over their lives without fear of being outnumbered by outsiders The

Arctic Promise looks at how much the Inuit vision of self governance relates to the existing public governance systems of Greenland and Nunavut and how much autonomy there can be for territories that remain subordinate units of larger states By means of a bottom up approach involving cultural immersion contextual jurisprudential and historical legal comparisons of Greenland and Nunavut The Arctic Promise examines the forms evolution and scope of the right to autonomy in these Arctic jurisdictions Loukacheva argues that the right to autonomy should encompass or protect Inuit jurisdiction in legal systems and the administration of justice and should allow the Inuit direct participation in international affairs where issues that affect their homelands are concerned The Arctic Promise deals with areas of comparative constitutional law international law Aboriginal law legal anthropology political science and international relations using each to contribute to the understanding of the right to indigenous autonomy **Trust Ownership and the Future of News** Gavin

Ellis,2014-06-29 Crumbling business models mean news media structures must change Gavin Ellis explores the past and present use of newspaper trusts drawing on case studies such as the Guardian the Irish Times and the Pulitzer Prize winning Tampa Bay Times to make the case for a form of ownership dedicated to sustaining high quality journalism **Racisms in a**

Multicultural Canada Augie Fleras,2014-04-29 In acknowledging the possibility that as the world changes so too does racism this book argues that racism is not disappearing despite claims of living in a post racial and multicultural world To the contrary racisms persist by transforming into different forms whose intent or effects remain the same to deny and disallow as well as to exclude and exploit Racisms in a Multicultural Canada is organized around the assumption that race is not simply a set of categories and that racism is not just a collection of individuals with bad attitudes Rather racism is as much a matter of interests as of attitudes of property as of prejudice of structural advantage as of personal failing of whiteness as of the other of discourse as of discrimination and of unequal power relations as of bigotry This multi dimensionality of racism complicates the challenge of formulating anti racism and anti colonialist strategies capable of addressing it Employing a critical framework that puts politics and power at the centre of analysis this book focuses on why racisms proliferate how they work in contemporary societies and how the way we think and talk about racism changes over time Specifically it examines the working of contemporary racisms in a multicultural Canada that claims to abide by principles of multiculturalism and a commitment to a post racial society **Protection of First Nations Cultural Heritage** Catherine Bell,Robert

Paterson,2009-05-01 Indigenous peoples around the world are seeking greater control over tangible and intangible cultural heritage In Canada issues concerning repatriation and trade of material culture heritage site protection treatment of ancestral remains and control over intangible heritage are governed by a complex legal and policy environment This volume looks at the key features of Canadian US and international law influencing indigenous cultural heritage in Canada Legal and extralegal avenues for reform are examined and opportunities and limits of existing frameworks are discussed Is a radical shift in legal and political relations necessary for First Nations concerns to be meaningfully addressed **A Companion to**

American Indian History Philip J. Deloria, Neal Salisbury, 2008-04-15 A Companion to American Indian History captures the thematic breadth of Native American history over the last forty years Twenty five original essays by leading scholars in the field both American Indian and non American Indian bring an exciting modern perspective to Native American histories that were at one time related exclusively by Euro American settlers Contains 25 original essays by leading experts in Native American history Covers the breadth of American Indian history including contacts with settlers religion family economy law education gender issues and culture Surveys and evaluates the best scholarship on every important era and topic Summarizes current debates and anticipates future concerns An Overview of Aboriginal and Treaty Rights and

Compensation for Their Breach Robert Mainville, 2001-04-01 A pressing issue today is how to compensate Aboriginal peoples for the infringement of their rights Aboriginal rights include more than a title within the fiduciary relationship between the federal government and Aboriginal peoples is the issue of compensation for the infringement of Aboriginal and treaty rights In an historical and legal context Mainville examines Aboriginal and treaty rights origins major Canadian court decisions that have defined them the impact of the Canadian Constitution and the limits to the government's ability to infringe upon Aboriginal and treaty rights Mainville argues that while Canadian law can provide guidelines for compensation expropriation law is inadequate to address the issue fully and instead provides clear and practical principles for compensation

Aboriginal Peoples and the Law Jim Reynolds, 2018-05-15 Can Canada claim to be a just society for Indigenous peoples To answer this question and as part of the process of reconciliation the Truth and Reconciliation Commission urged a better understanding of Aboriginal law for all Canadians Aboriginal Peoples and the Law responds to that call introducing readers with or without a legal background to modern Aboriginal law and outlining significant cases and decisions in straightforward non technical language Jim Reynolds provides the historical context needed to understand relations between Indigenous peoples and settlers and explains key topics such as sovereignty fiduciary duties the honour of the Crown Aboriginal rights and title treaties the duty to consult Indigenous laws and international law This critical analysis of the current state of the law makes the case that rather than leaving the judiciary to sort out what are essentially political issues Canadian politicians need to take responsibility for this crucial aspect of building a just society **Divergences in Private Law** Andrew

Robertson, Michael Tilbury, 2016-01-28 This book is a study of doctrinal and methodological divergence in the common law of obligations It explores particular departures from the common law mainstream and the causes and effects of those departures Some divergences can be justified on the basis of a need to adapt the common law of contract torts equity and restitution to local circumstances or to bring them into conformity with local values More commonly however doctrinal or methodological divergence simply reflects different approaches to common problems or different views as to what justice or policy requires in particular circumstances In some instances divergent methodologies lead to substantially the same results while in others particular causes of action defences immunities or remedies recognised in one jurisdiction but not another

undoubtedly produce different outcomes Such cases raise interesting questions as to whether ultimate appellate courts should be slow to abandon principles that remain well accepted throughout the common law world or cautious about taking a uniquely divergent path The chapters in this book were originally presented at the Seventh Biennial Conference on the Law of Obligations held in Hong Kong in July 2014 A separate collection entitled The Common Law of Obligations Divergence and Unity ISBN 9781782256564 is also being published *Developing A Cross Cultural Curriculum* Therese

O'Donnell,2012-07-23 First published in 1997 Routledge is an imprint of Taylor Francis an informa company **Recovering Canada** John Borrows,2017-06-22 Canada is covered by a system of law and governance that largely obscures and ignores the presence of pre existing Indigenous regimes Indigenous law however has continuing relevance for both Aboriginal peoples and the Canadian state In his in depth examination of the continued existence and application of Indigenous legal values John Borrows suggests how First Nations laws could be applied by Canadian courts and tempers this by pointing out the many difficulties that would occur if the courts attempted to follow such an approach By contrasting and comparing Aboriginal stories and Canadian case law and interweaving political commentary Borrows argues that there is a better way to constitute Aboriginal Crown relations in Canada He suggests that the application of Indigenous legal perspectives to a broad spectrum of issues that confront us as humans will help Canada recover from its colonial past and help Indigenous people recover their country Borrows concludes by demonstrating how Indigenous peoples law could be more fully and consciously integrated with Canadian law to produce a society where two world views can co exist and a different vision of the Canadian constitution and citizenship can be created

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