



Canadian Constitutional Law: Substantive and Procedural Protections for Aboriginal and Treaty Rights

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group of environmental law analysts and
strategists based in Vancouver, British
Columbia**

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The Canadian Constitution

- ***“The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”***

–Constitution Act, 1982, s. 35(1)

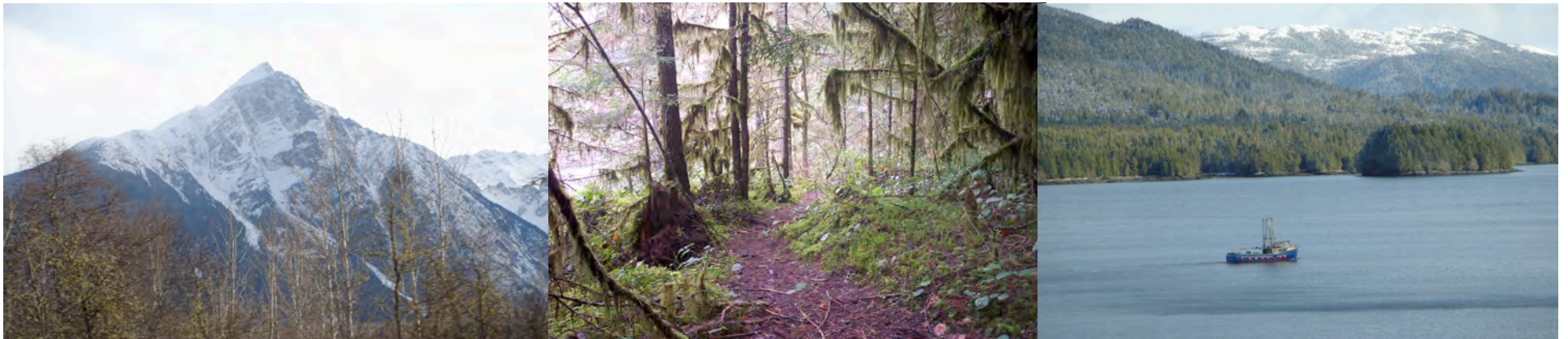


Aboriginal Title

Aboriginal Title is collectively held and encompasses:

- “right to exclusive use and occupation of land”
- “the right to choose to what uses land can be put, subject to the ultimate limit that those uses cannot destroy the ability of the land to sustain future generations of Aboriginal Peoples”
- “an inescapable economic component”

– *Delgamuukw v. BC*, [1997] 3 S.C.R. 1010 at para 166



Aboriginal Title

- Aboriginal Title continues to exist in British Columbia – more than 60 First Nations have filed writs
- Justifying infringements of Aboriginal Title may require the “full consent” of the First Nation
 - *Delgamuukw v. BC* at para 168



Consultation and Accommodation in the Interim Period

- “To limit reconciliation to the post-proof sphererisks unfortunate consequences. When the distant goal of proof is finally reached, the Aboriginal peoples may find their land and resources changed and denuded. This is not reconciliation. Nor is it honourable.”

– *Haida Nation v. BC*, 2004 SCC 73 at para 35

