Kichesipirini Algonquin First Nation
Kichi Sibi Anishnabe / Algonquin Nation
Canada

By Honouring Our Past We Determine Our Future

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Kichesipirini Interpretive Principles for s. 35 of the Constitution Act, 1982

In Canada, customary aboriginal law has a constitutional foundation because Canada's actual origins began in customary law, beginning politically and geographically within the Aboriginal territory of the Algonquins, and expanded through the governance models and normative values and customs of the Indigenous Peoples of Canada.

This part of Canadian heritage having Constitutional protection is a very serious commitment on the part of Canada to preserve and protect the original legal foundations of Canada, and subtly agree to reverse, at least in expressed principal, the irregularities associated with our history of colonization.

Unfortunately in Canada there is a tremendous ravine between principle and procedure.

The Algonquin situation gives us all a unique opportunity to identify and reconcile these gaps.

It should begin with attempting to understand those protections articulated in our Constitution rather than just spitting them out as fine sounding rhetoric.

Proper understanding of Section 35 of the Constitution Act, 1982, from a Kichesipirini perspective, must be read understanding that since colonization there are primarily two legal "types" of Aboriginal entities;

- those under statute, easily identified because they are named and listed, who are now under external administration, and, then,

- those still holding customary rights as recognized under international law with the correlating existence of both Customary Traditional Title and Universal Common Law Native Jurisdiction, removed from statute limitations and British legal interpretations of common law.

One Aboriginal population is under domestic statute and therefore is not sovereign.

The other population, not specifically defined, is not under domestic statute, and since aboriginal rights are inherent and alienable unless given up, including by coming under external statute, the unidentified population still hold customary rights through concepts of natural citizenship to the original nations, and are still under the jurisdiction of international law. They may hold potential forms of sovereignty based on the specific customs of the original nation.

Contextual to the Algonquin situation, the Kichesipirini Algonquin First Nation are the customary central government of the broader Algonquin Nation. Our complete rights exist because we have not come under the Indian Act, and we are not located on a reserve administered through domestic statute. We are still sovereign.

This has very important implications for all Algonquins, registered or not. The Kichesipirini Algonquin First Nation still has the ability to exercise jurisdiction, or the ability to make laws, without relying on the statutes associated with our colonial administration. That is the potential available to the Algonquin Nation.

This is also very good for Canada.

Section 35 of the Constitution Act, 1982 reads, with emphasis and interpretive insertions added, as:

s. 35(1) The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.
(2) In this Act, Aboriginal peoples of Canada includes the Indian, Inuit and Métis peoples of Canada.(emphasis mine)

With our concepts of Customary Traditional Title and Universal Common Law Native Jurisdiction found in international law applied Section 35 of the Constitution Act, 1982 can be interpreted then as such:

s. 35(1)" The existing Aboriginal" [*Traditional Title where there has been no cessation*] "and treaty rights" [where there has been cessation through statute treaty, or the existence of customary treaty, or the potential to enter into international Treaty based on customary law] "of the Aboriginal" [*all descendents of relevant Aboriginal / Indigenous peoples who self identify and are accepted as part of distinct polities*]" peoples" [*are organized in distinct political entities exercising some form of Aboriginal title and jurisdiction, or recognized under statute*] of Canada are hereby recognized and affirmed" [*acknowledged and protected*].(emphasis mine)

This first section can be considered as referring to the original Aboriginal nations in their uncompromised or original inherent state exercising their sovereign political right to continued existence or their sovereign right to enter into treaty.

(2) "In this Act," [*where the government of Canada now inherits the Crown's fiduciary responsibilities in exchange for increased delegated independence and jurisdiction through statute must recognize those rights consistent with international law that recognizes customary law*] "Aboriginal peoples of Canada includes" [**but is not limited to**] "the Indian, Inuit and Métis peoples of Canada" [*the administered Aboriginal peoples who are administered under domestic statute, under the delegated jurisdiction of the BNA, a statute, and subsequent domestic policy, only exercising general common law native title and limited jurisdiction, removed from customary identity and rights*]. (emphasis mine)

The use of "includes" within legal documents means the application is not exclusive to those entities listed but must be understood to apply to others not specifically listed. Those Aboriginal communities still holding Customary Traditional Title and Universal Common Law Native Jurisdiction are beyond the jurisdiction of the existing statute, and are still holding customary international rights

Section 35 is not part of the Canadian Charter of Rights and Freedoms. Rights protected by s.35 are constitutional rights, the highest order of Canadian law.

The 1982 Constitution Act included section 25 of the Canadian Charter of Rights and Freedoms, which stipulated that:

"guarantees in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any **aboriginal**, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including a) any rights or freedoms recognized by the Royal Proclamation of October 7, 1763 and b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired." (emphasis added)

When we apply the concepts of Customary Traditional Title and Universal Common Law Native Title to this equation it can be interpreted as such:

Guarantees [*promises as in contract*] in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, [*protects potential inherent rights belonging to the peoples with traditional title and the right to include international Treaty*], treaty [*those with title and rights already modified through treaty, or those with the existing potential right to international Treaty*] or other rights or freedoms [*general common law native rights under domestic policy and the right to negotiate land claims, or potential international rights*]that pertain to the aboriginal peoples of Canada including
a) any rights or freedoms recognized by the Royal Proclamation of October 7, 1763 [*held by the sovereign Aboriginal **Nations** holding customary rights to traditional title and the right to international treaty, and **Indians**, [loosely organized holding general common law and individual rights*] and
b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.
[*through continuance of domestic policy and the acquiesce of traditional title by the Crown in exchange for statute recognition, or land claim processes that contribute to Treaties that recognize the Constitutional obligation to preserve the international rights of specific Indigenous Peoples*] (emphasis mine)

The Kichesipirini Algonquin First Nation asserts, that while the administrations of Canada and the provinces are subject to statute limitations regarding recognition of the Aboriginal rights all persons of Aboriginal ancestry in Canada, especially those whose rights are considered extinguished prior to 1982, the Kichesipirini Algonquin First Nation, not having come under statute limitations, and still holding customary jurisdiction; having a documented record of entering into international treaties and confederacies, having a documented record directly associated with the original foundations of the polity known as Canada, and participating in the development of international law, is in a position to assert, protect, preserve and perfect the customary rights held by all persons of Aboriginal ancestry, regardless if they are considered extinguished prior to 1982.

The appropriate recognition of these potential rights, in accordance to law, inclusive of customary law, common law, and universal common law, will be considered as part of the Algonquin Land Claim and subsequent Treaty with appropriate Kichesipirini Algonquin First Nation participation, accommodation, and compensation.

The Kichesipirini Algonquin First Nation also asserts that resources currently used to further the complex INAC system are inflated and not consistent with the purposes of the Constitution, historical fact, or international law. Part of the Constitutional irregularities is that these administrations place an

unfair burden on the Canadian public, when in fact, according to an examination of the Algonquin historical record, which would include a contextual examination of the principles of law exercised by the Kichesipirini, it was not the citizens that paid the burden, but instead the involved chartered companies and incorporations.

This requirement of those corporations to pay for use, rents, damages and royalties directly to the people affected as first priority could assist in reintroducing responsible environmental and health monitoring controls, as well as providing new personal and social revenues.

These benefits do not only belong to Aboriginal peoples, they are a broad body of human rights law that is held within Aboriginal title and jurisdiction. While Indigenous Peoples may deserve intergenerational compensations for past grievances as part of settlements, and the ability to be re-established according to their original identities and governments, they are not the only qualified recipients of these previous social and economic orders and legal principles. While these equitable principles equally belong to all persons, but now, after reconciliation, recognizing the appropriate re-established First Nations as priori jurisdictions, and as such, these benefits are to remain under the jurisdiction of those First Nations, unless given up, in accordance to the principles of international law.

While recognizing these potentials are radically different from what we have become familiar to, they are not removed from the original common aspirations of peaceful nations. Based on these common hopes of the human family the Kichesipirini Algonquin First Nation commits to preserving the legitimate rights of all Canadian citizens, preserving territorial integrity, and bringing lasting certainty regarding title to land for the best interests of Canada, through good faith negotiations and the principles of justice.

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