

Sources of Indigenous Rights

Current Debates and Historical Documents



Native Studies - Indigenous and Canadian Relations

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IN COLLABORATION WITH
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UNDER A PARTNERSHIP BETWEEN
LEARNING BIRD AND
INDIGENOUS AND NORTHERN AFFAIRS CANADA



Learning Bird



Indigenous and
Northern Affairs Canada

Affaires autochtones
et du Nord Canada

Learning Objectives

These slides describe a case study where the struggle to protect Indigenous rights was heard by the Supreme Court of Canada.

It looks at the rights in question and the historical documents where these rights are protected.

Clyde River

Clyde River is a small community in Nunavut on the shores of Baffin Bay. The Clyde River community depends on hunting and fishing for food and to earn money.

Treaty rights to hunt, fish and trap wildlife on traditional territory are protected in section 35 of the Canadian constitution.

The ***constitution*** is a law that explains how a country or a nation will be governed. It explains how the government will be organized, what rights citizens will have, and so on.

Oil and Gas Exploration

However, many oil and gas companies believe oil and natural gas lie below the waters near Clyde River. They want to explore the area to find out what kind of resources are there.



Oil and Gas Exploration

Exploration involves sound blasts below the water every 13 to 15 seconds, 24 hours a day. That's an explosion loud enough to burst a human eardrum.

The community worries this exploration will harm or kill the animal populations that live in the waters or force them to leave the area.

Consultations with the Community

In 2013, there were consultations with the community about exploring for oil and natural gas. Consultations means the government and private companies get together with Indigenous communities to talk about their plans and listen to any concerns.

The government of Canada has a legal duty to consult and accommodate when a government activity might impact Indigenous rights, such as mining, forestry, or oil and gas extraction.

However, the community did not believe their questions were answered at these consultations. A community member explains “We were treated unfairly. The government didn’t hear our concerns.”

Right to be Consulted

Then, in 2014, the government gave a permit to oil and gas companies allowing them to do explorations for the next 5 years. This meant the Clyde River community did not believe the government was protecting their right to be consulted.

A lawyer for the Clyde River community says, “Fairness is owed to the Indigenous peoples... Knowing what you’re entitled to will actually give Indigenous groups and leaders the tools to challenge future projects on their traditional territory and land.”

Supreme Court of Canada Hears the Clyde River Case

In December 2016, the Supreme Court of Canada - Canada's highest court of law - heard the Clyde River case. It is considered a *landmark* case on Indigenous rights. That means it is the first court decision to be made on this topic.

The court's decision sets a path to guide government, and private companies who will have to work together on consultations with Indigenous communities in the future.



Where are rights protected?

Section 35 of the Constitution Act, 1982 recognizes Indigenous rights.

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.*
3. *For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.*
4. *Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.*

Where are rights protected?

Section 35 of the Constitution Act, 1982 recognizes Indigenous rights.

Indigenous rights are recognized in the constitution, but the exact rights are not named.



Comprehension Questions

- 1) Where is Clyde River? What resources do community members depend on to earn a living?
- 2) Which resources are oil and gas companies interested in?
- 3) Which rights does the community believe will be impacted if oil and gas companies are allowed to explore for natural resources?
- 4) Where are these rights protected?
- 5) Why did the community decide to go to court to protect their rights?

Discussion Questions

- 1) Why was consultation with the Clyde River community important?
- 2) How do you think consultations impact the relationship between Indigenous communities and the government? Indigenous communities and private companies?
- 3) Why is the Clyde River case important for other Indigenous communities in the future?

Summary

- 1) Talked about the Clyde River case study
- 2) Identified the Indigenous rights that are protected
- 3) Found the document that protects these rights
- 4) Explained why a landmark court case like Clyde River is an important event for Indigenous rights

Credits

Slide 3 - Clyde River Map -

<https://maps.google.com>

Slide 5 - Oil Exploration.jpg

[https://www.flickr.com/search/?text=arctic%20oil
&license=4%2C5%2C6%2C9%2C10](https://www.flickr.com/search/?text=arctic%20oil&license=4%2C5%2C6%2C9%2C10)

Slide 7 -

<https://www.newsdeeply.com/arctic/articles/2016/12/06/arctic-town-heads-to-canadas-supreme-court-to-battle-fuel-exploration>

Slide 8 - SCC.jpg

https://en.wikipedia.org/wiki/Supreme_Court_of_Canada

Slide 9 - Constitution Act.jpg

http://www.loppar.gc.ca/About/Parliament/senatoreugeneforseysbook/assets/img/_photos/ch2b-Constitution_Act.jpg