



Section 25 – Aboriginal and treaty rights

[← Previous](#)[Table of contents](#)[Next →](#)

Provision

25. The guarantee 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 that have been recognized by the Royal Proclamation of October 7, 1763; and
- b. any rights or freedoms that now exist by way of land claim agreements or may be so acquired.

Similar provisions

Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing aboriginal and treaty rights of the aboriginal peoples of Canada.

See also the following international, regional and comparative law instruments that are not legally binding on Canada but include similar provisions: International Labour Organization *Convention 107* and *Convention 169* addressing indigenous rights; The *United Nations Declaration on the Rights of Indigenous Peoples*; The Organization of American States *American Declaration on the Rights of Indigenous Peoples*. None of these instruments, however, purport to reconcile potential conflicts between individual rights and collective aboriginal rights in the manner contemplated by section 25.

Purpose

There is insufficient judicial consideration of this provision to state the purpose with any certainty. In *R. v. Kapp*, [2008] 2 SCR 483, the federal government proposed that section 25 is a mechanism for the reconciliation of conflicts between the rights and freedoms guaranteed by the Charter and aboriginal, treaty, or other rights and freedoms of the aboriginal peoples of Canada.

Analysis

There is little clear judicial direction on section 25. The section has been discussed briefly by the Supreme Court of Canada in five cases, but it has yet to have had occasion to apply it in a majority decision (*Reference re Secession of Quebec*, [1998] 2 S.C.R. 217; *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203; *Gosselin (Tutor of) v. Quebec (Attorney General)*, [2005] 1 S.C.R. 238; *Kapp, supra*; *Beckman v. Little Salmon/Carmacks First Nation*, [2010] 3 SCR 103). What little judicial treatment there has been, as well as the plain wording of the provision, make it clear that section 25 does not create any new rights but rather protects against the abrogation or derogation of existing aboriginal, treaty or other rights or freedoms by the protections in the Charter (*Corbiere*, per L'Heureux-Dubé J., concurring in the result;