

Indigenous Law and Common Law in New Zealand and Canada

Dwight Newman, KC

Professor of Law and Canada Research Chair in Rights,
Communities, and Constitutional Law

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New Zealand: The Ellis Case

Ellis v R, [2022] NZSC 114

- Tikanga (Polynesian-originated Maori law) part of the common law “where relevant”
- Majority affirms tikanga as the “first law” of Aotearoa/New Zealand
- Three separate judgments – some complexity resulting, but ultimately a rejection of colonial incorporation tests and treatment of tikanga as both a separate system of living law and potentially part of common law
- Possible political reactions

Canada: Developments on Place of Indigenous Law Generally

- Indigenous legal traditions as part of “law of the land” (Grammond J in *Pastion v Dene Tha’ First Nation*, 2018 FC 648)
- Ongoing citation in later FC cases but limited practical relevance in mostly election law cases
- Resistance in some other Canadian cases: *Coastal GasLink Pipeline Ltd v Huson*, 2019 BCSC 2264; *Agency Chiefs Tribal Council Inc. v Big River First Nation*, 2022 SKCA 16 (complex)
- Cautious developments, and less fusion-oriented than New Zealand’s *Ellis* decision
- Possible shifts with UNDRIP - *Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319

Canada – Application of *Charter of Rights* to Indigenous Governments

- What's interaction of Indigenous law and *Canadian Charter of Rights and Freedoms*? (possible comparison to some important jurisprudence in South Africa on customary law and constitutional values)
- *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10 – complex 4-2-1 division in case concerning whether *Charter* applied to Vuntut Gwitchin First Nation
- Competing desires for integration and diversity – complex future paths