

Creating Legal Space for Animal-Indigenous Relationships

by Rachel Forbes

The first law enacted in Canada to protect existing Aboriginal rights was section 35 of the *Constitution Act, 1982*.² The first law in Canada to recognize the rights of non-human animals as anything other than property has yet to be enacted. The first Supreme Court of Canada (hereafter referred to as the Court) case to interpret section 35 was *R. v. Sparrow*.³ The 1990 case confirmed an Aboriginal right of the Musqueam peoples of British Columbia to fish for food, social and ceremonial purposes. Since this precedent-setting case, many similar claims have been brought before the courts by way of the fluctuating legal space created by s.35. Many of these cases have been about establishing rights to fish⁴, hunt⁵, and trap non-human animals (hereafter referred to as animals). The Court has developed, and continues to develop tests to determine the existence and scope of Aboriginal rights. These tests primarily embody cultural, political and, to a surprisingly lesser degree, legal forces. One of the principal problems with these tests is that they privilege, through the western philosophical lens, the interests of humans. Animals are, at best, the resources over which ownership is being contested.

The Euro-centric legal conceptualization of animals as 'resources' over which ownership can be exerted is problematic for at least two reasons. First, the relegation of animals solely to a utilitarian role is antithetical to Indigenous-animal relationships and therefore demonstrates one of the fundamental ways the Canadian legal system is ill equipped to give adequate consideration to Indigenous law. Second, failure to consider animals' inherent value and agency in this context reproduces the human-animal and culture-nature binaries that are at the root of many of western Euro-centric society's inequities.

This paper argues that Aboriginal peoples' relationships with animals are a necessary, integral and distinctive part of their cultures⁶ and, therefore, these relationships and the actors within them are entitled to the aegis of s.35. Through the legal protection of these relationships, animals will gain significant protection as a corollary benefit. If the Court were to protect the cultural relationships between animals and Aboriginal groups, a precondition would be acceptance of Indigenous legal systems. Thus, this paper gives a brief answer to the question, what are Indigenous legal systems and why are animals integral to them?

The Anishinabe (also known Ojibwe or Chippewa) are Indigenous peoples who have historically lived in the Great Lakes region. The Bruce Peninsula on Lake Huron is home to the Cape Croker Indian Reserve, where the Chippewas of Nawash First Nation live. The people of this First Nation identify as Anishinabe. The Anishinabek case of *Nanabush v. Deer* is a law among these people and is used throughout the paper as an example of Indigenous-animal relationships. Making the significant assumption that s.35 has the capacity to recognize Indigenous law, the subsequent section of the paper asks why we should protect these relationships and how that protection should be achieved. Finally, the paper concludes that both the ability of s.35 to recognize Indigenous-animal relationships, and the judicial and political will to grant such recognition, are unlikely. Indigenous-animal relationships are integral to the distinctive culture of the Anishinabek, however the courts would be hesitant to allow such an uncertain and potentially far-reaching right. This is not surprising given that such a claim by both Indigenous and animal groups would challenge the foundations upon which the Canadian legal system is based.

There are many sensitive issues inherent in this topic. It should be noted the author is not of Indigenous ancestry, but is making every effort to learn about and respect the Indigenous legal systems discussed. While this paper focuses on a number of Anishinabek laws; it is neither a complete analysis of these practices, nor one that can be transferred, without adaptation, to other peoples. Finally, Indigenous peoples and animal rights and Indigenous law scholars, such as Tom Regan and Mary Ellen Turpel-Lafond, respectively, may insist on an abolitionist approach to animal 'use' or reject the legitimacy of s.35 itself.⁷ These perspectives are worthy and necessary. This paper positions itself amongst these and other sources in order to reflect upon the timely and important issue of the legal status of Indigenous-animal relationships.

I: WHAT ARE INDIGENOUS LEGAL SYSTEMS?

The Law Commission of Canada defines a legal tradition as "a set of deeply rooted, historically conditioned attitudes about the nature of law, the role of law in the society and the polity, the proper organization and operation of a legal system, and the way law is or should be made, applied, studied, perfected and taught."⁸

Indigenous legal traditions fit this description. They are living systems of beliefs and practices, and have been recognized as such by the courts.⁹

Indigenous practices developed into systems of law that have guided communities in their governance, and in their relationships amongst their own and other cultures and with the Earth.¹⁰ These laws have developed through stories, historical events that may be viewed as 'cases,' and other lived experiences. Indigenous laws are generally non-prescriptive, non-adversarial and non-punitive and aim to promote respect and consensus, as well as close connection with the land, the Creator, and the community. Indigenous laws are a means through which vital knowledge of social order within the community is transmitted, revived and retained. After European 'settlement' the influence of Indigenous laws waned. This was due in part to the state's policies of assimilation, relocation and enfranchisement.¹¹ Despite these assaults, Indigenous legal systems have persevered; they continue to provide guidance to many communities, and are being revived and re-learned in others. For example, the Nisga'a's legal code, *Ayuuk*, guides their communities and strongly informs legislation enacted under the *Nisga'a Final Agreement*, the first modern treaty in British Columbia.¹²

The land and jurisdiction claims of the Wet'suwet'en and Gitksan Nations ultimately resulted in the Court's decision in *Delgamuukw*,¹³ a landmark case that established the existence of Aboriginal title. The (overturned) BC Supreme Court's statement in *Delgamuukw*¹⁴ reveals two of the many challenges in demonstrating the validity of Indigenous laws: "what the Gitksan and Wet'suwet'en witnesses[es] describe as law is really a most uncertain and highly flexible set of customs which are frequently not followed by the Indians [sic] themselves." The first challenge is that many laws are not in full practice, and therefore not as visible as they could be and once were. What the courts fail to acknowledge, however, is that the ongoing colonial project has served to stifle, extinguish and alter these laws. The second challenge is that the kind of law held and practiced by Indigenous peoples is quite for-

eign to most non-Indigenous people. Many Indigenous laws have animals as central figures. In Anishinabek traditional law, often the *animals are the lawmakers*¹⁵: they develop the legal principles and have agency as law givers. For instance, the Anishinabek case *Nanabush v. Deer, Wolf*, as outlined by Burrows, is imbued with legal principles, lessons on conduct and community governance, as well as 'offenses' and penalties. It is not a case that was adjudicated by an appointed judge in a courtroom, but rather one that has developed over time as a result of peoples' relationships with the Earth and its inhabitants. An abbreviated summary of the case hints at these legal lessons:

Nanabush plays a trick on a deer and deliberately puts the deer in a vulnerable position. In that moment of vulnerability, Nanabush kills the deer and then roasts its body for dinner. While he is sleeping and waiting for the deer to be cooked, the Wolf people come by and take the deer. Nanabush wakes up hungry, and out of desperation transforms into a snake and eats the brains out of the deer head. Once full, he is stuck inside the head and transforms back into his original shape, but with the deer head still stuck on. He is then chased and nearly killed by hunters who mistake him for a real deer.

This case is set within the legal context of the Anishinabek's treaty with deer. In signing the treaty, the people were reminded to respect beings in life and death and that gifts come when beings respect each other in interrelationships.¹⁶ Nanabush violated the rights of the deer and his peoples' treaty with the deer. He violated the laws by taking things through trickery, and by causing harm to those he owed respect. Because his actions were not in accordance with Anishinabek legal principles, he was punished: Nanabush lost the thing he was so desperately searching for, and he ended up nearly being killed.

This case establishes two lessons. The first is that, like statutory and common law, with which Canadians are familiar, Indigenous law does not exist in isolation. Principles are devised based on multiple teachings, pre-

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vious rules and the application of these rules to facts. That there are myriad sources of Indigenous law suggests that the learning of Indigenous law would require substantial effort on the part of Canadian law-makers.¹⁷ The second is that animals hold an important place in Indigenous law, and those relationships with animals – and the whole ‘natural’ world – strongly inform the way they relate to the Earth.

II: CAN CANADIAN LAW ACCEPT INDIGENOUS LEGAL SYSTEMS?

If there were a right recognized under s.35 concerning the Indigenous-animal relationship, what would it look like? Courts develop legal tests to which the facts of each case are applied, theoretically creating a degree of predictability as to how a matter will be judged. Introduced in *Sparrow*, and more fully developed in *Van der Peet*, a ‘test’ for how to assess a valid Aboriginal right has been set out by the Court. Summarized, the test is: “in order to be an Aboriginal right an activity must be an element of a practice, custom or tradition integral to the distinctive culture of the Aboriginal group claiming the right.”¹⁸ There are ten, differently weighted factors that a court will consider in making this assessment.

The right being ‘tested’ in this discussion is the one exemplified in *Nanabush v. Deer*: the ability of Indigenous peoples to recognize and practice their laws, which govern relationships, including death, with deer and other animals. The courts have agreed that a generous, large and liberal construction should be given to Indigenous rights in order to give full effect to the constitutional recognition of the distinctiveness of Aboriginal culture. Still, it is the courts that hold the power to define rights as they conceive them best aligning with *Canadian society*¹⁹; this is one way that the Canadian state reproduces its systems of power over Indigenous peoples.²⁰

The application of the Aboriginal right exemplified in *Nanabush v. Deer* to the *Sparrow* and *Van der Peet* tests would likely conclude that the Anishinabek do have an integral and distinctive relationship with animals. However, due to the significant discretion of the Court on a number of very subjective and politically sensitive factors, it is uncertain that the *Nanabush v. Deer* case would ‘pass’ *Van der Peet*’s required ten factors.²¹ This is indicative of the structural restraints that s.35 imposes.²² The questions it asks impair its ability to capture and respect the interrelationships inherent in Indigenous peoples’ interactions with animals. For example, the Court will characterize hunting or fishing as solely subsistence, perhaps with a cultural element. Shin Imai contends these activities mean much more: “To many...subsistence is a means of reaffirming Aboriginal identity by passing on traditional knowledge

to future generations. Subsistence in this sense moves beyond mere economics, encompassing the cultural, social and spiritual aspects for the communities.”²³ Scholar Kent McNeil concludes that: “regardless of the strengths of legal arguments in favour of Indigenous peoples, there are limits to how far the courts [...] are willing to go to correct the injustices caused by colonialism and dispossession.”²⁴ It is often not the legal principles that determine outcomes, but rather the extent to which Indigenous rights can be reconciled with the history of settlement without disturbing the current economic and political structure of the dominant culture.

III: WHY PROTECT THE ANIMAL-INDIGENOUS RELATIONSHIP?

Legally protecting animal-Indigenous relationships offers symbiotic, mutually respectful benefits for animals and for the scope of Aboriginal rights that can be practiced. For instance, a protected relationship would have indirect benefits for animals’ habitat and right to life: it would necessitate protecting the means necessary, such as governance of the land, for realization of the right. This could include greater conservation measures, more contiguous habitat, enforcement of endangered species laws, and, ideally, a greater awareness and appreciation by humans of animals and their needs.

Critical studies scholars have developed the argument that minority groups should not be subject to culturally biased laws of the mainstream polity.²⁴ Law professor Maneesha Deckha points out that animals, despite the central role they play in a lot of ‘cultural defences,’ have been excluded from our ethical consideration. Certainly, the role of animals has been absent in judicial consideration of Aboriginal rights.²⁶ Including animals, Deckha argues, allows for a complete analysis of these cultural issues and avoids many of the anthropocentric attitudes inherent in Euro-centric legal traditions. In *Jack and Charlie*²⁷ two Coast Salish men were charged with hunting deer out of season. They argued that they needed to kill a deer in order to have raw meat for an Aboriginal religious ceremony. The Court found that killing the deer was not part of the ceremony and that there was insufficient evidence to establish that raw meat was required. This is a case where a more nuanced consideration of the laws and relationships with animals would have resulted in a more just application of the (Canadian) law and prevented the reproduction of imperialist attitudes.

A criticism that could be lodged against practicing these relationships is that they conflict with the liberty and life interests of animals.²⁸ Theoretically, if Indigenous laws are given the legal and political room to fully operate, a balance between the liberty of animals and the cultural and legal rights of Indigenous peoples can be struck.²⁹ Indeed, Indigenous peoples’ cultural and legal

concern for Earth is at its most rudimentary a concern for the land, which is at the heart of the challenge to the Canadian colonial system. If a negotiated treaty was reached, or anti-cruelty and conservation laws were assured in the Indigenous peoples' self government system, then Canadian anti-cruelty³⁰ and conservation laws,³¹ the effectiveness of which are already questionable, could be displaced in recognition of Indigenous governance.³²

Indigenous peoples in Canada were – and are, subject to imposed limitations – close to the environment in ways that can seem foreign to non-Indigenous people.³³ For example, some origin stories and oral histories explain how boundaries between humans and animals are at times absent:

Animal-human beings like raven, coyote and rabbit created them [humans] and other beings. People ...acted with respect toward many animals in expectation of reciprocity; or expressed kinship or alliance with them in narratives, songs, poems, parables, performances, rituals, and material objects.³⁴

Furthering or reviving these relationships can advance the understanding of both Indigenous legal systems and animal rights theory. Some animal rights theorists struggle with how to explain the cultural construction of species difference: Indigenous relationships with animals are long standing, lived examples of a different cultural conception of how to relate to animals and also of an arguably healthy, minimally problematic way to approach the debate concerning the species divide.³⁵

A key tenet of animal-Indigenous relationships is respect. Shepard Krech posits that Indigenous peoples are motivated to obtain the necessary resources and goals in 'proper' ways: many believe that animals return to the Earth to be killed, provided that hunters demonstrate proper respect.³⁶ This demonstrates a spiritual connection, but there is also a concrete connection between Indigenous peoples and animals. In providing themselves with food and security, they 'manage' what Canadian law calls 'resources.'³⁷ Because of the physical nature of these activities, and their practical similarity with modern 'resource management,' offering this as 'proof' of physical connection with animals and their habitat may be more successful than 'proving' a spiritual relationship.

Finally, there are health reasons that make the Indigenous-animal relationship is important. Many cultures have come to depend on the nutrients they derive from particular hunted or fished animals. For example, nutrition and physical activity transitions related to hunting cycles have had negative impacts on

individual and community health.³⁸ This shows the multidimensionality of hunting, the significance of health, and, by extension, the need for animal 'resources' to be protected.

IV: HOW SHOULD WE PROTECT THESE ABORIGINAL RIGHTS?

If the Anishinabek and the deer 'win' the constitutional legal test ('against' the state) and establish a right to protect their relationships with animals, what, other than common law remedies,³⁹ would follow? Below are ideas for legal measures that could be taken from the human or the animal perspective, or both, where benefits accrue to both parties.

If animals had greater agency and legal status, their needs as species and as individuals could have a meaningful place in Canadian common and statutory law. In *Nanabush v. Deer*, this would mean that the deer would be given representation and that legal tests would need to be developed to determine the animals' rights and interests. Currently the courts support the view that animals can be treated under the law as any other inanimate item of property. Such a legal stance is inconsistent with a rational, common-sense view of animals,⁴⁰ and certainly with Anishinabek legal principles discussed herein.⁴¹ There are ongoing theoretical debates that inform the practical questions of how animal equality would be achieved: none of these in isolation offers a complete solution, but combined they contribute to the long term goal.

Barsh and James Sákéj Youngblood Henderson advocate an adoption of the reasoning in the Australian case *Mabo v. Queensland*,⁴² where whole Aboriginal legal systems were imported intact into the common law. Some principles that Canada should be following can also be drawn from international treaties that Canada has or should have signed on to.⁴³ Another way to seek protection from the human perspective is through the freedom of religion and conscience section of the *Charter*. Professor John Borrows constructs a full argument for this, and cites its challenges, in *Living Law on a Living Earth: Aboriginal Religion, Law and the Constitution*.⁴⁴ The strongest, but perhaps most legally improbable, way to protect the animal-Indigenous relationship is for Canada to recognize a third, Indigenous order of government (in addition to provincial and federal), where all three orders are equal and inform one another's laws. This way, Indigenous laws would have the legal space to fully function and be revived. Endowing Indigenous peoples with the right to govern their relationships would require a great acquiescence of power by governments and a commitment to the establishment and maintenance of healthy self-government in Indigenous communities. Louise Mandell offers some reasons why Canada should treat

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Aboriginal people in new ways, at least one of which is salient to the third order of government argument:

To mend the [E]arth, which must be done, governments must reassess the information which the dominant culture has dismissed. Some of that valuable information is located in the oral histories of Aboriginal Peoples. This knowledge will become incorporated into decisions affecting the [E]arth's landscape when Aboriginal Peoples are equal partners in decisions affecting their territories.⁴⁵

V: CONCLUSION

A legal system that does not have to justify its existence or defend its worth is less vulnerable to challenges.⁴⁶

While it can be concluded that s.35 has offered some legal space for Indigenous laws and practices, it is too deeply couched in Euro-centric legal traditions and the anthropocentric cultural assumptions that they carry. The most effective strategy for advancing Indigenous laws and culture, that would also endow many animals with greater agency, and relax the culture-nature, human-animal binaries, is the formal recognition of a third order of government. Lisa Chartrand explains that recognition of legal pluralism would be a mere affirmation of legal systems that exist, but which are stifled: "...this country is a multijuridical state, where the distinct laws and rules of three systems come together within the geographic boundaries of one political territory."⁴⁷

Revitalizing Indigenous legal systems is and will be a challenging undertaking. Indigenous communities must reclaim, define and understand their own traditions: "The loss of culture and traditions caused by the historic treatment of Aboriginal communities makes this a formidable challenge for some communities. Equally significant is the challenge for the Canadian state to create political and legal space to accommodate revitalized Indigenous legal traditions and Aboriginal law-making."⁴⁸ The project of revitalizing Indigenous legal traditions requires the commitment of resources sufficient for the task, and transformative change to procedural and substantive law. The operation of these laws within, or in addition to, Canadian law would of course cause widespread, but worthwhile controversy.

In *Animal Bodies, Cultural Justice*⁴⁹ Deckha argues that an ethical relationship with the animal Other must be established in order realize cultural and animal rights. This paper explores and demonstrates the value in finding legal space where cultural pluralism and respect for animals can give rise to the practice of Indigenous laws and the revitalization of animal-Indigenous relationships. As Borrows writes: "Anishinabek law provides guidance about how to theorize, practice and order our association with the [E]arth, and could do so in a way that produces answers that are very different from those found in other sources."⁵⁰

1. This paper was first written for Maneesha Deckha's class, "Animals Culture and the Law" at the University of Victoria's Faculty of Law. A copy of the original, full length paper is available from the author: rsforbes@alumni.sfu.ca
2. 35(1): "The existing [A]boriginal and treaty rights of the [A]boriginal peoples of Canada are hereby recognized and affirmed." The Supreme Court ruled in *R. v. Sparrow* ([1990] 1 SCR 107) that, before s.35 came into effect in 1982, Aboriginal rights existed through common law, which can be changed by legislation. Therefore, before 1982, Parliament could extinguish Aboriginal rights, whereas now these rights have constitutional protection and cannot be fully extinguished.
3. *R. v. Sparrow* [1990] 1 SCR 107.
4. E.g. *R. v. Van der Peet* [1996] 2 SCR 507; *Jack and Charlie v The Queen* (1986), 21 DLR (4th) 641 (SCC).
5. E.g. *R. v. Badger*, [1996] 1 SCR 771.
6. John Borrows makes a similar argument in, *Living Law on a Living Earth: Aboriginal Religion, Law, and the Constitution* [forthcoming]. He argues for recognition that the Earth is a living being with agency that is integral to the distinctive societies of Aboriginal peoples and thus is subject to protection through s.35 and/or s.2 of the Charter.
7. E.g., Regan would advocate a strictly abolitionist approach (*The Case for Animal Rights*, 1983); Turpel-Lafond would defy the legitimacy of s.35 at all (*Turpel-Lafond, M.E. 1991. "Home/Land." 18 Cdn.J. of Family Law 17*).
8. Meryman, J.H. 1985. *The Civil Law Tradition*. Stanford: Stanford University Press, 1. In *Law Commission of Canada (LCC). 2006. Justice Within: Indigenous Legal Traditions*. Ottawa: 4.
8. *Calder v. Attorney General of BC*, [1973] SCR 313: 346 - 347.
10. Chartrand, L. 2005. *Accommodating Indigenous Legal Traditions*. Prepared for Indigenous Bar Association of Canada: 9.
11. The *Enfranchisement Act 1869* and *Indian Act 1876* (and later editions) were 'tools' in putting these beliefs into practice.
12. The Nisga'a's Ayuuk is discussed in more detail in: Krech III, Shepard. 1999. *The Ecological Indian: Myth and History*. New York: W.W. Norton and Company: 7.
13. [1997] 3 S.C.R. 1010 (SCC).
14. (1991) 79 DLR (4th) 185 (BCSC): 455.
15. Borrows, personal communication, April 20, 2007.
16. The treaty is explained in *Crow, Owl, Deer et al. v. Anishinabek*. In Borrows, J. 2002. *Recovering Canada: The Resurgence of Indigenous Law*. Toronto: University of Toronto Press, chap. 1.
17. All law requires a translation process: White, J.B. 1990. *Justice as Translation*. Chicago: University of Chicago Press.
18. *Van der Peet*, note 4: 46. *Van der Peet* elaborated on how to define and scope a right, which *Sparrow* did not cover.
19. *R. v. Pamajewon*, [1996] 2 S.C.R. 821.
20. This tension can also exist between Indigenous peoples and academics, such as myself, who write about Indigenous beliefs and laws without ever having lived them.
21. *Van der Peet*, note 4. The infringement and extinguishment aspects of s.35 are addressed in the original paper.
22. For more on the limitations of s.35, see the original version of this paper and: Walkem A. and H. Bruce. 2003. *Box of Treasures or Empty Box?* Penticton: Theytus Books; Christie, G. 1998. "Aboriginal Rights, Aboriginal Culture, and Protection." *Osgoode Hall L.J.*, Vol.36, No.3, 450; *Turpel-Lafond*, note 8.
23. Imai, S. 1999. *Aboriginal Law Handbook*, 2nd Ed. Scarborough: Carswell Thomson Canada Ltd.: 47.
24. McNeil, K. 2004. "The Vulnerability of Indigenous Land Rights in Australia and Canada." *Osgoode Hall L.J. Vol.42, No.2: 300*.
25. Deckha, M. 2007. *Animal Justice, Cultural Justice: A Posthumanist Response to Cultural Rights in Animals*, unpublished: 1, and sources cited therein.
26. On the absence of animal considerations in cultural theory and in Canadian case law: Deckha, note 25.
27. *Jack and Charlie*, note 4: 651.
28. For example, Deckha, note 27.
29. Indigenous laws have at their core respect for Earth and all its inhabitants: if harm is done to animals or if the ecosystem becomes compromised, human animals will also suffer. Further, Indigenous peoples, such as the Anishinabek, do obtain consent from the animals prior to killing them.
30. *Criminal Code of Canada*, ss.446, 447.
31. E.g. *Species at Risk Act*, SC 2002, c.29.
32. Given the history of the Criminal Code provisions (L. Létourneau. 2003. "Toward Animal Liberation? The New Anti-Cruelty Provisions in Canada and Their Impact on the Status of Animals." 40: 4 *Alberta L.Rvw.*1041), and the failure of our domestic laws and international commitments, it is uncertain why there would be any less faith in Indigenous laws than in Canadian ones.
33. Including, perhaps, some Indigenous people.
34. Krech, note 13.
35. More on how animal rights theory can inform the Indigenous-animal relationship: Francione, G. 1995. "The Dominion of Humans over Animals, the 'Defects' of Animals, and the Common Law." *Animals, Property and the Law*. Philadelphia: Temple University Press, 33-46; Cavalieri, P. 2001. "Speciesism." *The Animal Question: Why Nonhuman Animals Deserve Human Rights*. Oxford: Oxford University Press, 69-86; Nussbaum, M. 2006. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge: Harvard University Press, 325-346.
36. Krech, note 13: 212.
37. Krech, note 13: 211.
38. Samson, C. and J. Petty. 2005. *Environmental and Health Benefits of Hunting Lifestyles and Diets for the Innu of Labrador*. Edinburgh: British Association of Canadian Studies' "First Nations, First Thoughts Conference."
39. One reason courts hesitate to recognize broad Aboriginal rights is because of the unknown scope and scale of the remedies that would follow. The adequacy and suitability of those remedies are another question altogether.
40. Magnotti, L. 2006. "Pawing Open The Courthouse Door: Why Animals' Interests Should Matter." 80 *St. John's L.Rvw* 455.
41. On reforming the place of animals in the legal system: Garner, R. "Liberalism, Property and the Representation of Animals in the Legal System" in *The Political Theory of Animal Rights* (Manchester: Manchester University Press, 2005) 39-53; G. Francione, note 37.
42. *Mabo v. Queensland [No.2]* (1992), 175 CLR 1. In Barsh, R. and J.S. Youngblood Henderson. 1997. "The Supreme Court's *Van der Peet* Trilogy: Naïve Imperialism and Ropes of Sand." 42 *McGill Law Journal* 993: 10.
43. For example, Canada is a signatory to the Universal Declaration of Human Rights but has voted against the UN Declaration on the Rights of Indigenous Peoples. For more, see Chartrand, ch.2, note 11.
44. Borrows, note 6:13-14; Tanner, A. 1979. *Bringing Home Animals: Religious Ideology and Mode of Production of the Mistassini Cree Hunters*. London: C. Hurst and Company, 109, 136-150; Francione, G. 2000. *Introduction to Animal Rights: Your Child or the Dog?* 109: 51.
45. Mandell, L. 2003. "Offerings to an Emerging Future." In Walkem, note 24.
46. *Law Commission of Canada*, note 9: 8.
47. Chartrand, note 11.
48. *Law Commission of Canada*, note 9: 10.
49. Deckha, note 27.
50. Borrows, note 6: 38.