

TRESPASS AND ACCESS TO AQAM LANDS LAW

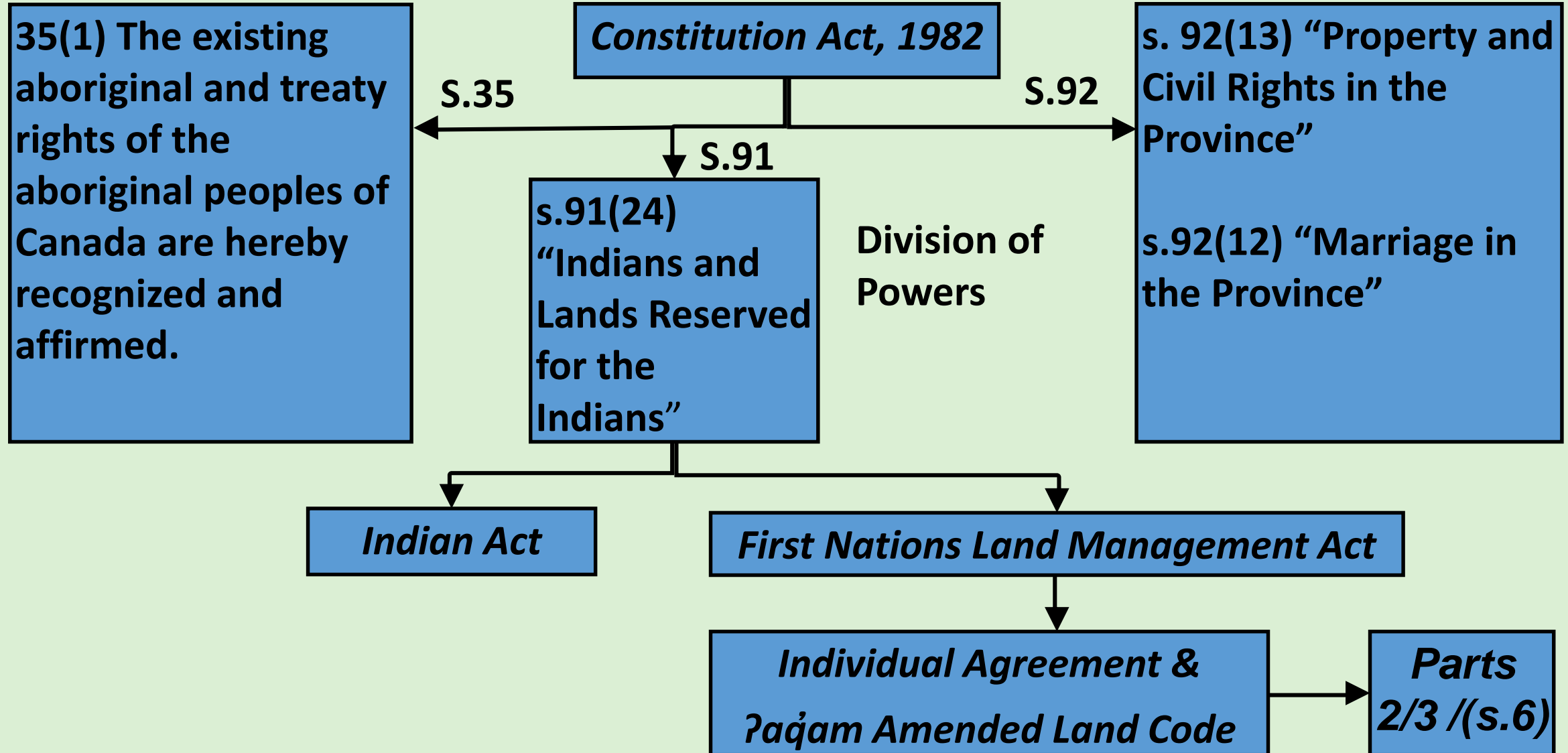
Community Consultation Meeting
/ Second Reading

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Cedar Law Corporation

Agenda/Overview of Proposed Law

- Authority to enact a Trespass and Access to Aqam Lands Law
- Definitions (s.2), Interpretation (ss.3,4), Application (ss.5-7)
- Prohibited Purposes (s.8)
- Permits to enter for what would otherwise be a prohibited purpose (ss.9 – 12)
- Trespass (s.13)
- Exceptions to Trespass (s.14)
- Enforcement (ss.15 – 22)
- Amendments (ss.23 – 26)

Authority to Enact a Trespass and Access to ʔaḡam Lands Law



Authority to Enact a Trespass and Access to ʔaq'am Lands Law

6.1 Council shall develop laws consistent with this Land Code regarding the management, administration, use and protection of ʔaq'am Lands.

6.2 Without limiting the generality of section 6.1, Council may make laws in relation to:

(a) development, conservation, protection, management, use and possession of ʔaq'am Lands;

6.3 For greater certainty, Council may make laws in relation to ʔaq'am Lands including:

(m) removal and punishment of persons trespassing upon ʔaq'am Lands or frequenting ʔaq'am Lands for prohibited purposes;

Prohibited Purposes

1. Prohibited Purposes

- ***Different for member, community member, occupier (holder of land instrument/rental housing), any person***

2. Permits – How can a person enter for what would otherwise be a prohibited purpose?

“Community Member” vs “Member” vs “Occupier”

Community Member:

- (a) a member of a **Ktunaxa Band** who resides on ʔaqʼam ʔamak (ʔaqʼam Lands); or
- (b) a person who consistently volunteers at or participates in ʔaqʼam community events or meetings, without receiving compensation for doing so; or
- (c) a person who is deemed a community member by Council; or
- (d) a person who is the **immediate family** of a ʔaqʼamnikʼ (member), whether or not that person: resides with the ʔaqʼamnikʼ (member), resides on ʔaqʼam ʔamak (ʔaqʼam Lands), or is deceased;

“Community Member” vs “Member” vs “Occupier”

Member = Membership List

Occupier = A person who has either...

(a) Land instrument

(b) Tenancy agreement with ?aq'am

-to and from in accordance with land instrument or tenancy agreement

Any person = any person, includes all categories

Any person who does “X” is entering ʔaǰam Lands for a Prohibited Purpose

1. disposes or dumps **garbage** on ʔaǰam ʔamak (ʔaǰam Lands), except...

w/ the permission of ʔiʔwatnaʔis ʔaǰam (Council) & in a garbage bin or other receptacle designated by ʔaǰam for garbage disposal

a ʔaǰamnik' (member) discarding of a wildlife carcass or edible parts of wildlife that are not suitable for human consumption

**Any person who is NOT a member and does
“X” without a permit is entering ʔaḳam
Lands for a Prohibited Purpose**

1. hunting, fishing or trapping

2. removing berries, roots, trees, flowers, or any other natural resources from ʔaḳam ʔamak (ʔaḳam Lands);

3. off-roading

Loitering = Prohibited Purpose

A person who is not either a ?aq'amnik' (member) or community member, and who is loitering on k'itqawxawi?kini? ?amak (?aq'am Community Lands), must be deemed to be frequenting ?aq'am ?amak (?aq'am Lands) for a prohibited purpose

“loitering” means to be present for any reason other than to attend an ?aq'am community event or meeting;

Permits to Enter ʔaǰam Lands

- Granted either by Council or a person authorized by Council (s.9)
- Must set out: name, address, phone number, birth date, purpose for which access to ʔaǰam Lands is allowed → very specific details – ex type of animal to be hunted, berry to be gathered and area where gathering is allowed, trails to be used for off-roading, etc (s.9)
- Can be cancelled by written notice delivered to permit holder (s.10)
- Permit Holder must keep contact info updated and carry upon them a copy of the permit and identification (s.11)
- Permit Holder must produce copy of the permit and identification to either a peace officer or person authorized by Council, upon request (s.12)

Other Exceptions to Trespass

- enters kitqawxawigkinit̓ ʔamak (ʔaq'am Community Lands) for the purpose of entering privately held ʔaq'am ʔamak (ʔaq'am Lands) with the permission of the occupier (s.14(a))
- Invited by occupier and then told to leave, with reasonable notice (s.14(b))
- Goes directly to an ʔaq'am public building to seek permission to be on ʔaq'am ʔamak (ʔaq'am Lands) (s.14(c))

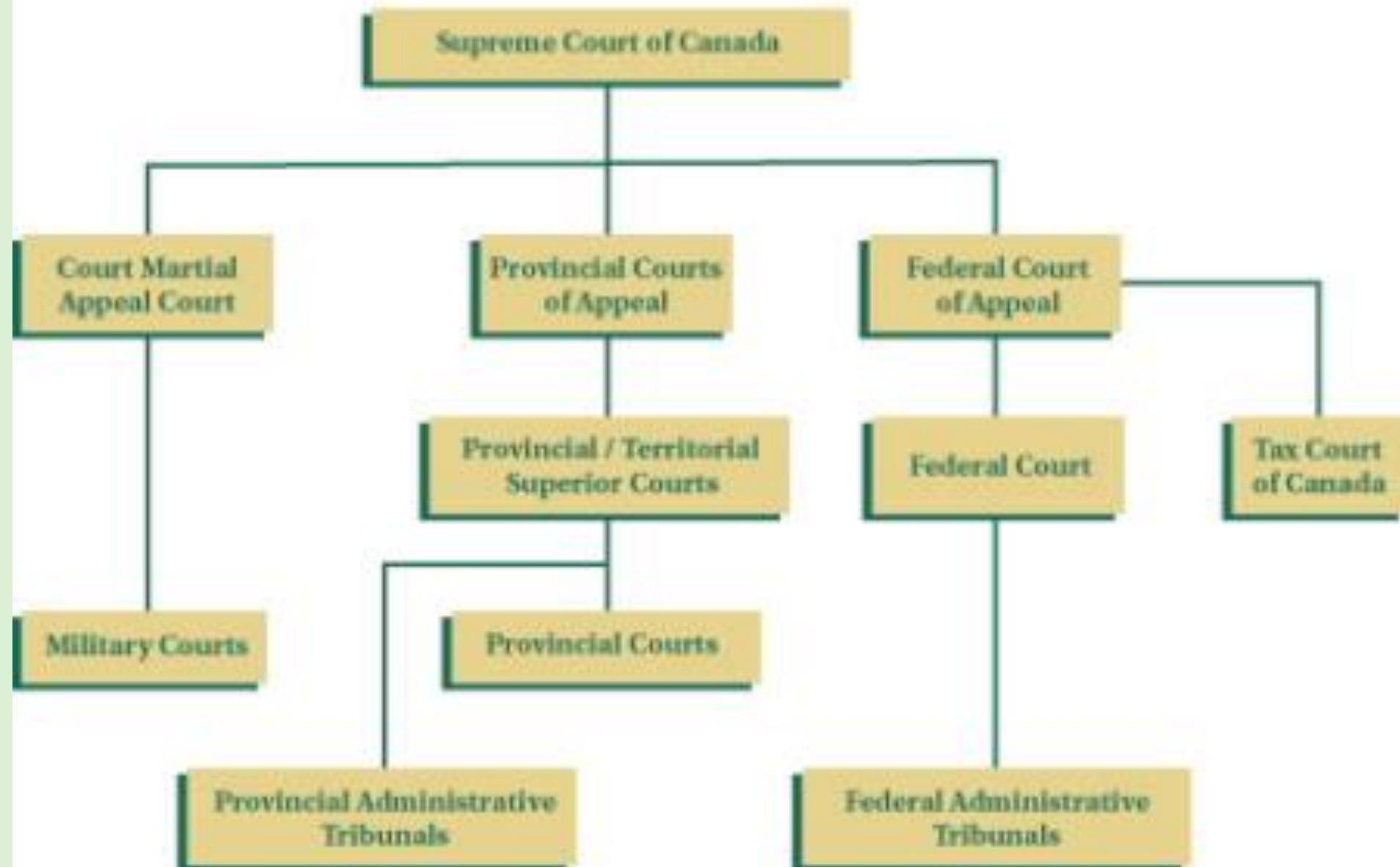
Enforcement

1. Demand made by peace officer or person authorized by Council to provide name and address. Failure to comply = offence
2. Demand made by peace officer or person authorized by Council to leave. Failure to comply = offence
3. Refusal to leave = peace officer may remove by force. Resistance or interference with forced removal = offence
4. Penalty for Offences:
 - *1st offence = \$2K fine and/or 3 months imprisonment*
 - *Subsequent offence = \$5K fine and or 6 months imprisonment*

Enforcement Cont'd

- reasonable grounds to believe that an offence under this ᑲa-knumuᑭtiᑭ (Law) is being committed at any place within ᑲaq'am ᑲamak (ᑲaq'am Lands) = Warrant may be granted to search and seize evidence (s.21)
- Found committing an offence at any place within ᑲaq'am ᑲamak (ᑲaq'am Lands) = No Warrant required; automatic power to search and seize evidence, and to arrest (s.22)
- Summary Conviction Criminal Code Procedures Apply (s.23)

Outline of Canada's Court System



QUESTIONS?