

# Some thoughts about the relationship between Québec property law and Indigenous legal traditions



PRESENTED BY

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## The relationship between Québec law and Indigenous legal traditions

Geneviève Motard presents the main conclusions of stages two and three of the research project *legitimus*, to which she has contributed. The research project has three stages: (1) to understand state-enacted law and Innu law in the area of land ownership and resource management, (2) to understand the interactions between Québec law and the Indigenous legal orders, and (3) to reflect on potential avenues for the future.

## The unequal relationship between Québec law and the Indigenous legal orders

The conclusions set out by Motard are based on two main observations. First, the subordination to Québec law in the civilist tradition leads to unequal treatment for Indigenous views on land, since they do not derive from the civilist tradition. Second, this situation leads to the perpetuation of a hegemonic relationship between Québec law and Indigenous legal traditions. From the international law standpoint, this constitutes a form of unjustified discrimination.

## The Indigenous legal traditions ignored by Québec law

Despite some signs of receptiveness to Indigenous legal traditions, the players in Indigenous legal orders are given no role in Québec law, and there is a deep lack of consideration for the Indigenous legal traditions in Québec law in the field of land ownership and resource management. A survey of Québec statutes reveals significant differences between Québec law and the Indigenous traditions with respect to values, decision-making processes and actors. For example, the principles of responsibility for and the need to take care of the land are not incorporated into Québec's legislative framework, and neither is the Indigenous conception of territory.

## The hegemonic relationship between Québec law and the Indigenous legal traditions

A hegemonic relationship results from this imbalance. In particular, Québec law fails to refer to Indigenous territory in its land ownership and resource management regimes. Québec law assumes that there is no Indigenous territory outside the reserves.

## Potential avenues for the future

The main possibilities involve a renewed relationship based on respect for Indigenous political rights and territories, and on work to revive and revitalize Indigenous legal traditions. Motard suggests two avenues that have received little attention in the doctrine; both involve reflecting on the role of the law as the main source of normativity in Québec law. First, she suggests making Indigenous territories visible in statutes and on the ground, while guaranteeing closer collaboration with Indigenous nations. Second, she proposes updating Québec's statutes to eliminate the ways in which they discriminate against Indigenous territories, in particular with respect to the vestigial remains in Québec law of the principle of *terra nullius*.



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