

University of Nebraska - Lincoln

DigitalCommons@University of Nebraska - Lincoln

Great Plains Quarterly

Great Plains Studies, Center for

1993

Review of Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian Rights

Theron Josephson

University of Nebraska-Lincoln

Follow this and additional works at: <https://digitalcommons.unl.edu/greatplainsquarterly>



Part of the [Other International and Area Studies Commons](#)

Josephson, Theron, "Review of Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian Rights" (1993). *Great Plains Quarterly*. 745.

<https://digitalcommons.unl.edu/greatplainsquarterly/745>

This Article is brought to you for free and open access by the Great Plains Studies, Center for at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Great Plains Quarterly by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

Aboriginal Water Rights in Canada: A Study of Aboriginal Title to Water and Indian Rights. By Richard H. Bartlett. Calgary: University of Calgary Press, 1989. xxvi + 235 pp. \$30.00.

This study is one of a series sponsored by the Canadian Institute for Natural Resource Law. Written by Richard Bartlett of the College of Law at the University of Saskatchewan, it is first and foremost a discourse on the current legal status of water rights of Canada's aboriginal peoples.

The author sets the stage by reviewing the significance of water in the lives of Canada's original inhabitants, as well as the impact of modern settlement. Against this backdrop, he defines the two theoretical underpinnings of aboriginal water rights: title to water based on historic habitation of a geographic area, and the usufructuary right to water created by the establishment of a reserve. Bartlett's explanation of these concepts is a necessary prerequisite for understanding the specific issues he subsequently addresses.

The remainder of the book delineates the scope of established and potential aboriginal water rights by examining issues such as riverbed ownership, pollution, riparian rights, jurisdiction, non-consumptive uses, water power, flooding, and the effect of modern treaties. This is no small task considering the elaborate legal mosaic of overlapping federal/provincial/tribal jurisdictions and the diversity of native cultures.

As the analysis makes clear, the strength of native claims differs not only in regard to the variety of provincial legal approaches, but also by the type of water issue involved, the particular physical environment, the distinctive characteristics of the aboriginal culture relating to water use, and the time and order of events. Therefore, some issues are appropriately dealt with on a regional basis.

A pleasing aspect of the book is the straightforward consideration of politically sensitive matters. Even more useful is the short point by point summary at the end of each chapter. This concise review insures the reader's recognition

of critical conclusions as he or she travels through a sea of legal ambiguities, albeit with an experienced captain. The book also contains tables of statutes and important cases, including relevant jurisprudence from the United States.

Although more background information on precedent cases may have been useful, it is clear that such additional detail could not be supplied in a book of this length. In summary, Bartlett has produced a valuable resource for both the legal practitioner and the scholar or layperson interested in aboriginal water rights.

Theron Josephson
Department of Geography
University of Nebraska-Lincoln