



# Conference on Indigenous Private Law

## Call for Papers

Montréal, Québec  
May 8, 2020

**Conference Co-Chairs: Professor Andrew Hutchison, University of Cape Town  
Professor Frankie Young, Western University**

In our legally plural world the discourse on Indigenous legal norms is currently expanding rapidly. In some Commonwealth countries, such as those in Africa, Indigenous (or Customary) laws have long been recognised as authoritative in certain types of dispute. The South African Constitution (for example) recognises African Customary law as a binding source of law where applicable, and equal to the Common law. This has been less true for Indigenous groups in other Commonwealth countries, such as those living in Canada or Australia. Times are changing, however, and Indigenous norms are increasingly being viewed as binding even in these latter countries.

Past choice of law rules enforced by the legal systems of Commonwealth countries have tended to shape Indigenous law into certain accepted fields of inquiry. In some countries, this problem is more acute than others. Legal pluralism theory, however, recognises that community norms, arising from the ground up, may be binding in that community and may exist as a de facto alternative to State law. This argument underlies, for example, the distinction between Aboriginal and Indigenous law in Canada. In South Africa, by contrast, the distinction is between the 'living' and 'official' versions of African Customary law: current, lived norms of communities have been recognised as binding by the Constitutional Court and as taking preference over the potentially ossified written law captured in the legislation, case precedents, and textbooks of the former era. If the 'law in action' is to be the recognised Indigenous law in other

Commonwealth countries, then we need to broaden the fields of inquiry beyond those traditionally recognised as falling within the jurisdiction of Indigenous legal norms.

The **Journal of Commonwealth Law**, in cooperation with the Faculties of Law at the **Université de Montréal** and the **University of Cape Town**, will host a symposium devoted to exploring the issues inherent in Indigenous private law. We call for papers specifically on Indigenous Private law issues. What norms govern matters relating to Property, Persons and Family, or Succession for example? Beyond that, is there an Indigenous law of Contracts or Torts, or a law relating to (commercial) associations? We invite perspectives from around the Commonwealth and are open to different theoretical frames of reference or methodologies of inquiry. We are also open to papers which discuss how State laws relate to Indigenous private law issues, or the regulation of the Indigenous economy.

The conference will be held at the Université de Montréal on May 8, 2020, and the papers will be published in the Journal of Commonwealth Law, a peer-reviewed journal devoted to exploring legal issues from a multi-jurisdictional perspective. We seek contributions from both established and new scholars from around the Commonwealth, Ireland and the United States.

## **We welcome papers in both English and French.**

Participants will be responsible costs of travel and accommodation.

Please submit an abstract of 250 words and a short CV prior to February 28, 2020 to:

**Editor**  
**Journal of Commonwealth Law**  
**editor@journalofcommonwealthlaw.org**

Those interested in obtaining more information about the conference are invited to contact

**Profess Andrew Hutchison**  
**Conference Chair**  
**Faculty of Law**  
**University of Cape Town**  
**Andrew.Hutchison@uct.ac.za**

or

**Matthew P Harrington**  
**Professor of Law**  
**Faculté de droit**  
**Université de Montréal**  
**matthew.p.harrington@umontreal.ca**