Sui Generis

Sui generis is a latin phrase used in many different contexts and is generally used when referring to something that possesses unique characteristics that are not easily categorized. In the context of Canadian Aboriginal law, *sui generis* is a legal term describing the relationship between the Government (the Crown) and the Aboriginal peoples of Canada in relation to Aboriginal title, rights, and treaties.[1] These rights and relationships are "unique," "one of a kind," or "in their own class."[2] This is due both to the unique place of these rights and relationships in Canadian law and the source of the rights, since Aboriginal peoples occupied Canada prior to settlement by Europeans.[3]

Development of the Term

The first use of the term appeared in the Supreme Court of Canada decision *Guerin v The Queen*.[4] *Guerin* is a decision about a lease that the Crown granted to a developer on traditional Aboriginal land. *Sui generis* was used to describe the special kind of fiduciary relationship between the Crown and Aboriginal peoples. A fiduciary relationship generally occurs when one group or person is required to act in another's interest in the context of that relationship. In the context of the relationship between the Crown and Aboriginal peoples, the Supreme Court defined that relationship in two ways. First, if Aboriginal groups wanted to give up their interests in land, they could only do so to the Crown. Second, the surrender of land by an Aboriginal band to the Crown created an obligation on the Crown to hold the land for the use and benefit of that band.[5]

***Sui Generis* Today**

Today, the term is used to describe Aboriginal-Crown relationships and rights in many similar contexts. For example, In *R v Sparrow*,[6] the Supreme Court ruled that this fiduciary duty was the guiding principle for the interpretation of Aboriginal and treaty rights in section 35(1) of the *Constitution Act, 1982*.[7] As that section is the part of the Constitution that recognizes and affirms Aboriginal rights and title in Canada, *sui generis* is now commonly used to describe Aboriginal title, rights, and treaties.

In another example, Aboriginal title is described as *sui generis* in that:

- it is *inalienable*, or that it can only be given up or sold to the Crown;
- its *source* is the prior occupation of Canada by Aboriginal peoples; and
- it is held *communally*, or by the entire Aboriginal group[8]

The term is also used to describe Aboriginal rights[9] and treaties,[10] among other legal interests. Over time, *sui generis* has become a catch-all term for describing different legal rights and interests held by Aboriginal peoples in Canada.

[1] Peter W Hogg, *Constitutional Law of Canada*, 2012 Student ed (Toronto: Carswell 2012) at 28-31.

[2] John Borrows & Leonard Rotman, "The Sui Generis Nature of Aboriginal Rights: Does it Make a Difference?" (1997) 36 Alta L Rev 5.

[3] *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 1997 CanLII 302 (SCC) at para 114 .

[4] *Guerin v The Queen*, [1984] 2 SCR 335, 1984 CanLII 25 (SCC) .

[5] *Ibid* at p 387.

[6] *R v Sparrow*, [1990] 1 SCR 1075, 1990 CanLII 104 (SCC) .

[7] *Constitution Act, 1982*, s 35(1), being Schedule B to the *Canada Act 1982* (UK), 1982 c 11.

[8] *Delgamuukw*, *supra* note 3 at paras 113-115.

[9] *R v Van der Peet*, [1996] 2 SCR 507, 1996 CanLII 216 (SCC).

[10] *R v Sioui*, [1990] 1 SCR 1025, 1990 CanLII 103 (SCC).