

Publisher's Note
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Woodward
Native Law

Whether sacred places are protected by Freedom of Religion — The Supreme Court of Canada held that s. 2(a) of the *Charter* does not protect the object of religious beliefs, only the claimant's freedom to hold such beliefs and manifest them through worship, practice, or teaching and dissemination. Therefore, the wilderness area where the Grizzly Bear Spirit resides was not protected from development into a ski resort: *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 CSC 54, 2017 SCC 54, 2017 CarswellBC 3020, 2017 CarswellBC 3021, [2017] 2 S.C.R. 386 (S.C.C.). See Chapter 14, paragraph 14§240.

Section 35: The first justification decision in a civil context — The B.C. Supreme Court said: "The only cases where the principles of justification have been discussed are regulatory prosecutions...Thus, the present case is unique in that it is a civil case...": *Ahousait Indian Band and Nation v. Canada (Attorney General)*, 2018 BCSC 633, 2018 CarswellBC 961 (B.C. S.C.) at para. 60, Humphries J. See Chapter 5, paragraphs 5§870, 5§1075 and 5§1110.

The Criminal Code sentencing provisions for Aboriginal offenders requires a court to determine if offender is Aboriginal — A sentencing judge has a statutory duty to determine whether the offender is Aboriginal, even when neither the Crown nor the defence bring this to the sentencing judge's attention. A failure to make inquiries as to whether the offender being sentenced is an Aboriginal person, and thus to properly

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address *Gladue* factors when sentencing an Aboriginal offender, is an error of law that renders the decision open to appellate review. This is particularly so when evidence presented during sentencing submissions, (such as that the offender resided at Thunderchild First Nation), should reasonably have caused the sentencing judge to make enquiries to determine whether the offender was of Aboriginal ancestry. However, the duty to determine the offender's Aboriginal ancestry applies even in the absence of such clues: *R. v. Whitstone*, 2018 SKQB 83, 2018 CarswellSask 114 (Sask. Q.B.). See Chapter 17.