

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

IN THE MATTER OF a Reference to the Court of Appeal of Québec in relation to the *Act respecting First Nations, Inuit and Métis children, youth and families* (Order in Council No.: 1288-2019)

BETWEEN:

ATTORNEY GENERAL OF QUÉBEC

APPELLANT

-and-

ATTORNEY GENERAL OF CANADA, ASSEMBLÉE DES PREMIÈRES NATIONS QUÉBEC-LABRADOR (APNQL), COMMISSION DE LA SANTÉ ET DES SERVICES SOCIAUX DES PREMIÈRES NATIONS DU QUÉBEC ET DU LABRADOR (CSSSPNQL), SOCIÉTÉ MAKIVIK, ASSEMBLÉE DES PREMIÈRES NATIONS ASENIWUCHE WINEWAK NATION OF CANADA, SOCIÉTÉ DE SOUTIEN À L'ENFANCE ET À LA FAMILLE DES PREMIÈRES NATIONS DU CANADA

RESPONDENTS

-and-

ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF THE NORTHWEST TERRITORIES

INTERVENERS

[Style of cause continued on next page]

**FACTUM OF THE INTERVENERS,
CARRIER SEKANI FAMILY SERVICES SOCIETY, CHESLATTA CARRIER NATION,
NADLEH WHUTEN, SAIK'UZ FIRST NATION AND STELLAT'EN FIRST NATION
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)**

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[Style of cause continued]

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TABLE OF CONTENTS

PART I – OVERVIEW OF POSITION AND FACTS..... 1

 A. Overview 1

 B. Facts 2

PART II – POSITION ON QUESTIONS RAISED..... 2

PART III – STATEMENT OF ARGUMENT..... 2

 A. Section 35 rights can be recognized and implemented via legislation..... 2

 B. A new framework is required to resolve conflicts between Indigenous and ss.
 91/92 laws4

PART IV – COSTS 10

PART V – TABLE OF AUTHORITIES 11

PART I—OVERVIEW OF POSITION AND FACTS

A. Overview

1. Cheslatta Carrier Nation, Nadleh Whuten, Saik’uz First Nation, and Stelat’en First Nation are First Nations whose territories are located in north-central British Columbia. Each is a “band” under the *Indian Act*, and their members are “aboriginal peoples of Canada” under s. 35 of the *Constitution Act, 1982*. A key aspect of their internal legal and political orders relates to caring for the health and well-being of their communities. They have always exercised, and continue to exercise, responsibilities over what is termed “child and family services” by Crown governments.
2. Carrier Sekani Family Services Society (“CSFS”) is a non-profit society that has been providing holistic wellness services for over 30 years to its member First Nations, which includes Cheslatta, Nadleh, Saik’uz, and Stelat’en (collectively referred to in this submission with CSFS as the “**Carrier Sekani Intervenors**”). CSFS is a Level C4 “Delegated Aboriginal Agency” which exercises certain delegated responsibilities under the Province’s *Child, Family and Community Service Act*. It is required to deliver services compliant with the minimum national standards and principles regarding the best interests of children set out in *An Act respecting First Nations, Inuit and Métis children, youth and families* (the “**Act**”).
3. For 40 years, Cheslatta, Nadleh, Saik’uz, and Stelat’en have engaged in a variety of self-government and “rights-recognition” processes with Canada, including the B.C. Treaty process. To date, those processes have not led to concrete or positive results. In contrast, the Act’s starting premise is that s. 35 of the *Constitution Act, 1982* recognizes a right to self-government, including “jurisdiction in relation to child and family services, including legislative authority in relation to those services and authority to administer and enforce laws made under that legislative authority”.¹ On the strength of that premise, the Carrier Sekani Intervenors have newly been able to focus on the actual substance of how they will re-assume that jurisdiction and exercise their

¹ *An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c. 24, [s. 18\(1\)](#).

law-making authority, rather than engaging in long, drawn-out, preliminary, and unfruitful discussions about whether that jurisdiction exists in the first place.

4. The Carrier Sekani Interveners make these submissions to assist the Court in determining whether ss. 18 to 26 of the Act are constitutionally valid.

B. Facts

5. The Carrier Sekani Interveners take no position on the facts set out in the parties' factums.

PART II—POSITION ON QUESTIONS RAISED

6. The Carrier Sekani Interveners take no position on the questions raised in these appeals.

PART III—STATEMENT OF ARGUMENT

7. The Carrier Sekani Interveners make two submissions: (i) using legislation, like the Act, to recognize and implement s. 35 rights is consistent with the “grand purpose” of s. 35, which is to advance reconciliation; and (ii) the new conflict of laws problem central to these appeals cannot be resolved by subsuming Indigenous laws into the ordinary division of powers framework. A new framework must be developed, which acknowledges that at Confederation, Parliament and the provincial legislatures were not endowed with constitutional jurisdiction to legislate in relation to matters pertaining to Indigenous self-government.

A. Section 35 rights can be recognized and implemented via legislation

8. This Court has enshrined the following three principles which provide a strong basis for this Court to confirm that a s. 35 right of self-government can be recognized and implemented using a statutory scheme such as the second part of the Act: (i) the “grand purpose” of s. 35 is to effect the reconciliation of the pre-existence of distinctive Indigenous societies with the assertion of Crown sovereignty;² (ii) the honour of the Crown requires the Crown to delineate Aboriginal

² *R. v. Van der Peet*, [1996] 2 S.C.R. 507 at [para. 49](#); *R. v. Desautel*, 2021 SCC 17 at [para. 112](#); *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53 at [para. 10](#).

rights so that they can be implemented and respected;³ and (iii) reconciliation is rarely, if ever, achieved through litigation, and that all things being equal and as a first resort, negotiated outcomes for s. 35 issues should be encouraged and preferred over litigated ones.⁴

9. To submit, as the Attorney General of Quebec does, that only a court, treaty, or constitutional amendment can recognize s. 35 rights and provide a basis for implementing them is at odds with these principles. That position, if accepted, would force Indigenous groups into either an adversarial judicial process against the Crown to achieve what the Court has urged the parties to do for themselves, as part of reconciling their interests, or engage in time-consuming negotiation processes with uncertain outcomes, all while children and communities continue to suffer. It is difficult to imagine why a statutory scheme which sets out how s. 35 rights can be exercised is not available to governments to help them fulfill the grand purpose of s. 35.⁵
10. The Carrier Sekani Interveners' 40 years of experience negotiating with Canada, which has not resulted in the recognition or implementation of any element of their right to self-government, exemplifies the pitfalls of relying on individual negotiations between Indigenous groups and the Crown to recognize and implement the elements of the right to self-government at issue here. Carrier Sekani children have continued to suffer for those 40 years.
11. By contrast, legislation such as the Act looks to circumvent such challenges by eliminating the near-insurmountable preliminary hurdle of having to prove or negotiate the existence of an Indigenous right to self-government in relation children and families on a community-by-community basis. This allows Indigenous groups and the Crown to use their time and resources to focus on the actual substance of the issue: caring for children. This approach best aligns with

³ *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14 at [para. 69](#), citing *Beckman v. Little Salmon/Carmacks First Nation*, 2010 SCC 53 at [para. 42](#); *R. v. Desautel*, 2021 SCC 17 at [para. 30](#); *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at [para. 25](#).

⁴ *R. v. Desautel*, 2021 SCC 17 at [para. 87](#); *Mikisew Cree First Nation v. Canada (Governor General in Council)*, 2018 SCC 40 at [para. 22](#); *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40 at [para. 24](#); *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at [para. 14](#); *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at [para. 186](#).

⁵ QCCA Opinion at [para. 449](#).

the above-noted principles, which are central to this Court's s. 35 jurisprudence, as well as with past recommendations by national commissions.⁶

B. A new framework is required to resolve conflicts between Indigenous and ss. 91/92 laws

12. The Court should develop a new framework to address the following conflict of laws problem that is central to these appeals and, in particular, to the constitutional validity of ss. 21(1) and 22 of the Act: how should an Indigenous law in relation to child and family services interact with the Act, other federal legislation, and provincial laws of general application that also regulate matters pertaining to child and family services in relation to the same Indigenous group?
13. Contrary to what the Attorney General of Canada argues,⁷ the Court must develop such a framework in this case to provide guidance to future courts that will inevitably be asked to address this issue. This is crucial, as British Columbia recently tabled a bill to amend its child and family services legislation to similarly direct that, in the event of a conflict or inconsistency between provincial child and family services law and an Indigenous law, “the Indigenous law prevails to the extent of the conflict or inconsistency.”⁸ There is a need for the Court to uphold the validity of the Act and issue guidance as to the constitutional soundness of its implementation.
14. The new framework should extend the existing concept of cooperative federalism already recognized by the Court,⁹ in a manner which is firmly rooted in the legal and historical reality that, at Confederation, Parliament and the provincial legislatures only assumed the powers that earlier colonial governments possessed.¹⁰

⁶ Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*, vol. 3 “Gathering Strength”, Ottawa, Canada Communication Group, 1996 at [pp. 48-49](#); Truth and Reconciliation Commission of Canada, “Truth and Reconciliation Commission of Canada: Calls to Action,” 2015 at [p. 1, Call 4](#).

⁷ See, e.g., Factum of the Attorney General of Canada at paras. 10, 170, and 209.

⁸ Legislative Assembly of British Columbia, Bill 38 – 2022: *Indigenous Self-Government in Child and Family Services Amendment Act*, 3rd Session, 42nd Parliament, [s. 19](#).

⁹ *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at [para. 50](#); *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 at [paras. 17-19](#); *Quebec (Attorney General) v. Canada (Attorney General)*, 2015 SCC 14 at [paras. 17-19](#).

¹⁰ See, e.g., the historical discussion in *Campbell et al. v. AG BC/AG Cda & Nisga’a Nation et al.*, [2000 BCSC 1123](#). See also the trilogy of U.S. Supreme Court Cases reviewing (in the American context) that

15. The right to self-government at issue in these appeals, is an inherent right that belonged to Indigenous peoples in Canada prior to Confederation.¹¹ For example, the Court held in *R. v. Sioui* that British colonial policy in the 1700s recognized the authority of Indigenous peoples to continue to exercise autonomy over their internal affairs, “intervening in this area as little as possible.”¹² McLachlin C.J., writing for the majority of the Court in *Mitchell*, held that the assertion of British sovereignty over Indigenous lands did not displace pre-existing Indigenous legal orders, which “were absorbed into the common law as rights, unless (1) they were incompatible with the Crown’s assertion of sovereignty, (2) they were surrendered voluntarily via the treaty process, or (3) the government extinguished them.”¹³ Similarly, the Court of Appeal for British Columbia held in *Casimel* that Stellat’en’s adoption law survived Crown policies of assimilation, as a right recognized and affirmed under s. 35 of the *Constitution Act, 1982*.¹⁴
16. The right to self-government at issue in these appeals was outside of the powers enjoyed by the colonies, which were passed on to Parliament and the legislatures in ss. 91 and 92 of the *Constitution Act, 1867*.¹⁵ In *Campbell*, the Supreme Court of British Columbia reviewed the this Court’s jurisprudence and held as follows:¹⁶

[81] A consideration of these various observations by the Supreme Court of Canada supports the submission that aboriginal rights, and in particular a right to self-government akin to a legislative power to make laws, survived as one of the unwritten “underlying values” of the Constitution outside of the powers distributed to Parliament and the legislatures in

the right of Indigenous peoples to govern themselves had never been extinguished by colonial action: *Johnson & Graham's Lessee v. McIntosh*, [21 U.S. \(8 Wheat\) 543 \(1823\)](#), *Cherokee Nation v. Georgia*, [30 U.S. \(5 Pet\) 1 \(1831\)](#), and *Worcester v. Georgia*, [31 U.S. \(6 Pet\) 515 \(1832\)](#).

¹¹ *Campbell et al. v. AG BC/AG Cda & Nisga’a Nation et al.*, 2000 BCSC 1123 at [paras. 68-70](#); see also Articles 3 and 4 of the *United Nations Declaration on the Rights of Indigenous Peoples* ([s. 4\(a\)](#)) and [Schedule](#) to the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14) and Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples, vol. 2 “Restructuring the Relationship”, Ottawa, Canada Communication Group, 1996 at [p. 198](#).

¹² *R. v. Soui*, [1990] 1 S.C.R. 1025 at [pp. 1054-1055](#).

¹³ *Mitchell v. M.N.R.*, 2001 SCC 33 at [para. 10](#).

¹⁴ *Casimel v. Insurance Corp. of British Columbia*, 1993 CanLII 1258 (B.C. C.A.) at [paras. 42 and 52](#).

¹⁵ *Campbell et al. v. AG BC/AG Cda & Nisga’a Nation et al.*, 2000 BCSC 1123 at [paras. 76-80](#).

¹⁶ *Campbell et al. v. AG BC/AG Cda & Nisga’a Nation et al.*, 2000 BCSC 1123 at [para. 81](#).

1867. The federal-provincial division of powers in 1867 was aimed at a different issue and was a division “internal” to the Crown.

17. Whatever that division of powers involved, it did not include, modify, or extinguish the Indigenous right of self-government at issue here.¹⁷ That right was, and remains, exclusively within the jurisdiction of Indigenous governments, something that is now recognized, affirmed, and indeed enshrined in s. 35 of the *Constitution Act, 1982*.
18. It follows then that, contrary to the argument of the Attorney General of Canada,¹⁸ laws passed by Indigenous governments pursuant to their right to self-government in relation to children and families are enacted pursuant to that constitutionally recognized jurisdiction. They are not federal laws enacted pursuant to s. 91(24) of the *Constitution Act, 1867*.¹⁹ Two consequences flow from this. First, Parliament cannot declare that such Indigenous laws are “federal laws”, as it purported to do in s. 21(1) of the Act to invoke the doctrine of paramountcy.²⁰ Second, Parliament cannot “codify” how the doctrine of paramountcy will apply to address conflicts between Indigenous, federal, and provincial laws, as it has purported to do in s. 22.
19. Instead, a new framework must be developed to resolve this new conflict of laws problem. As this Court noted in *Canadian Western Bank*, “the very functioning of Canada’s federal system must continually be reassessed in light of the fundamental values it was designed to serve.”²¹ In light of the promises embedded in s. 35, a new framework which includes Indigenous peoples “as political actors and creators of law” is required.²² The new framework should be informed by, and reflect, the following four principles.
20. **Principle 1 – Doctrines developed to deal with conflicts between ss. 91-92 laws are ill-suited to address the new conflict of laws problem:** the doctrines of paramountcy and interjurisdictional immunity were developed to address the interaction between federal and provincial laws, not the interaction between s. 35, federal, and/or provincial laws. Their purpose

¹⁷ Royal Commission on Aboriginal Peoples, Report of the Royal Commission on Aboriginal Peoples, vol. 2 “Restructuring the Relationship”, Ottawa, Canada Communication Group, 1996 at [p. 198](#).

¹⁸ See, e.g., Factum of the Attorney General of Canada at paras. 9-10.

¹⁹ QCCA Opinion at [para. 540](#).

²⁰ QCCA Opinion at [para. 541](#).

²¹ *Canadian Western Bank v. Alberta*, 2007 SCC 22 at [para. 22](#).

²² QCCA Opinion at [para. 562](#).

is to “permit an appropriate balance to be struck in the recognition and management of the inevitable overlaps in rules made at the two levels of legislative power”²³ (i.e., ss. 91-92). As noted in *Campbell*,²⁴ Indigenous self-government falls outside the division of powers and, therefore, outside of extant division of powers rules, which were not designed, and are ill-equipped, to address the new problem. For example, applying the doctrine of interjurisdictional immunity risks creating a “legal vacuum” – a highly undesirable result when dealing with the protection of children and families.²⁵ Likewise, for the reasons set out below, resolving the new problem using the doctrine of paramountcy generates enormous complexity due to the current state of that doctrine, which holds that federal and provincial laws are both to be applied in a given situation, unless doing so rises to the high bar of impossibility of compliance with both, or would result in a frustration of Parliament’s purpose.²⁶ This is constitutionally unworkable.

21. **Principle 2 – Rights infringement frameworks were not designed to address the new conflicts of law problem:** the *Sparrow* framework,²⁷ which was developed to address infringements of Aboriginal rights, is ill-fitting.²⁸ It was developed in the context of limiting the Crown’s ability to regulate Indigenous harvesting rights under ss. 91 or 92 of the *Constitution Act, 1867*. It is not capable of resolving the conflict of laws issues which will inevitably arise.
22. **Principle 3 – Reconciling the pre-existence of Indigenous societies with the assertion of Crown sovereignty requires preserving the constitutional space for Indigenous peoples as distinct political actors and creators of law:** while provincial and federal child and family services laws currently apply to Indigenous peoples, those laws should cease to apply as soon as an Indigenous group re-assumes its jurisdiction over children and families by passing its own law (to the extent that the law addresses the matters covered in the federal or provincial law at issue). In the case at bar, the Court of Appeal provided reasoning that is equally applicable here:²⁹

²³ *Canadian Western Bank v. Alberta*, 2007 SCC 22 at [para. 24](#).

²⁴ *Campbell et al. v. AG BC/AG Cda & Nisga’a Nation et al.*, [2000 BCSC 1123](#).

²⁵ *Canadian Western Bank v. Alberta*, 2007 SCC 22 at [para. 44](#).

²⁶ *Canadian Western Bank v. Alberta*, 2007 SCC 22 at [para. 69-75](#).

²⁷ *R. v. Sparrow*, [\[1990\] 1 S.C.R. 1075](#).

²⁸ Kent McNeil, "Challenging Legislative Infringements of the Inherent Aboriginal Right of Self-Government," (2003) 22 Windsor YB Access Just 329 at [p. 344](#).

²⁹ QCCA Opinion at [para. 560](#).

[560] The premise of s. 35 is that Aboriginal peoples are founding partners of Canada with a right to self-government in certain areas of jurisdiction of particular interest to them, the exercise of which right must be coordinated and reconciled with the powers of the federal and provincial governments. In order to do so, it is essential that these governments be able to take action within their own fields of jurisdiction so as to reconcile the interests of the population as a whole which they represent with those of Aboriginal peoples.

23. There are three reasons why provincial and federal laws should cease to apply once an Indigenous group has re-assumed jurisdiction.
24. First, as set out above, Indigenous self-government does not fall within ss. 91-92. Jurisdiction over one's own children and families is a core element of self-government itself. The *United Declaration on the Rights of Indigenous Peoples* (which Canada has incorporated into domestic law) supports this view.³⁰ Article 4 of the Declaration provides that Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government over their internal and local affairs. Article 22 mandates that particular attention be paid to the rights of Indigenous women, youth, and children. In ratifying the *United Nations Convention on the Rights of the Child* in 1991,³¹ Canada specifically declared that "in assessing what measures are appropriate to implement the rights recognized in the Convention for aboriginal children, due regard must be paid to not denying their right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion and to use their own language."³² The human rights enshrined in these international instruments all require that Indigenous people be provided autonomy over such matters, which includes not being subject to provincial or federal laws after they have passed their own laws to regulate those matters.
25. Second, there is an urgent moral imperative, which is a central tenet of reconciliation, to reduce overrepresentation of Indigenous children in care and to maintain their cultural connections.³³

³⁰ Articles 3, 4, 5, 22, 23 of the *United Nations Declaration on the Rights of Indigenous Peoples* ([s. 4\(a\)](#) and [Schedule](#) to the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14).

³¹ Article 30 of the *United Nations Declaration on the Rights of Indigenous Peoples* ([s. 4\(a\)](#) and [Schedule](#) to the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14).

³² United Nations, [Convention on the Rights of the Child](#), New York, November 20, 1989 (ratified by Canada on December 13, 1991).

³³ Truth and Reconciliation Commission of Canada, "What We Have Learned: Principles of Truth and Reconciliation," 2015 at [pp. 104-105](#) and [111](#).

The Court recognized in *Canadian Western Bank* that “federalism was the legal response of the framers of the Constitution to the political and cultural realities that existed at Confederation...Each head of power was assigned to the level of government best placed to exercise the power”.³⁴ The same dynamic is live here: Indigenous communities are, and have always been (including before Confederation), best situated to take care of their children and families and to determine what is in their best interest, and to legislate in that regard.³⁵ That power survived Confederation, and falls within s. 35, not ss. 91 or 92. Indeed, s. 35 gives Indigenous peoples a “special status as distinct social and political actors within Canada, a status they already held but which was put on hold by the colonial assimilation policies”.³⁶

26. Third, while the division of powers analysis “focuses on legislative competence”, not policy effectiveness,³⁷ it also takes into account pragmatic and consequential concerns to ensure that workable and realistic rules are developed.³⁸ Applying existing division of powers rules here would give rise to up to four or more separate protection regimes applying to the same Indigenous child: provincial law, the minimum national standards in the Act, and any Indigenous laws to which the child has a “tie”, as contemplated in s. 24(1) of the Act. This would result in enormous complexity for both Indigenous and non-Indigenous frontline child and family services workers, who would be tasked with determining applicable laws in acute, sometimes urgent circumstances. Sorting this out would inevitably entail drawing Indigenous people into litigation and associated delays, expenses, and uncertainty, draining resources away from service delivery. Too often, Indigenous children have been the victims of such spats between Crown governments.³⁹

³⁴ *Canadian Western Bank v. Alberta*, 2007 SCC 22 at [para. 22](#).

³⁵ QCCA Opinion at [para. 476](#).

³⁶ QCCA Opinion at [para. 554](#).

³⁷ *Reference re Securities Act*, 2011 SCC 66 at [para. 90](#).

³⁸ See, e.g., *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121 at [145](#): “This unbroken line of authority is, of course, predicated on the basic premise that no practical effect could be given to the division of powers...if Parliament were “absolutely debarred from trenching to any extent upon the matters assigned to the provincial legislature”.

³⁹ QCCA Opinion at [para. 558](#).

27. **Principle 4 – Existing legal tools are available to ensure no jurisdictional gaps:** Indigenous child and family services jurisdiction can be harmonized in at least two ways. Parliament and the provincial legislatures can specify in their legislation pertaining to Indigenous children and families that such legislation ceases to apply to an Indigenous group once it passes its own law, at least insofar as the Indigenous group’s law addresses the matters covered in the federal or provincial law. See, for example, the existing *Family Homes on Reserves and Matrimonial Interests or Rights Act*, S.C. 2013, c. 20, which includes interim federal rules that only apply until they are overtaken by a First Nation’s own law. The Court could also clarify in the new framework that federal and provincial laws no longer apply to the citizens of an Indigenous group that has passed its own law, at least insofar as that law directly addresses matters also covered in the federal or provincial law. This approach will obviate the need for expensive and time consuming litigation, and will therefore be compatible with the objective of reconciliation.
28. This dynamic provides for an Indigenous group to take a stepwise approach to re-assuming jurisdiction while ensuring no gaps in the coverage of child and family services matters where it has not fully re-assumed jurisdiction. For example, an Indigenous group may choose to re-assume jurisdiction over prevention services but, for capacity or other reasons, not re-assume jurisdiction over protective services until a later time. Drawing on the proposed principles, in such circumstances the Indigenous law would apply to preventative services, with the relevant provincial or federal law applying to protective services.

PART IV—COSTS

29. The Carrier Sekani Interveners do not seek costs and ask that no costs be awarded against them.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Vancouver, B.C., November 14, 2022.



for:

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PART V—TABLE OF AUTHORITIES

Legislation and Regulations	Paragraph References
<i>An Act respecting First Nations, Inuit and Métis children, youth and families</i> , S.C. 2019, c. 24	2-4, 7, 11, 12, 18, 26
<i>Child, Family and Community Service Act</i> , R.S.B.C. 1996, c. 46	2
<i>Constitution Act, 1867</i> (U.K.), 30 & 31 Vict., c. 3 , reprinted in R.S.C. 1985, App. II, No. 5	16, 18, 20, 21, 24, 25
<i>Constitution Act, 1982</i> , being Schedule B to the Canada Act 1982 (UK), c. 11	1, 3, 4, 7-9, 15, 17, 19, 20, 25
<i>Family Homes on Reserves and Matrimonial Interests or Rights Act</i> , S.C. 2013, c. 20	27
<i>Indian Act</i> , R.S.C. 1985 c. I-5	1
Legislative Assembly of British Columbia, Bill 38 – 2022: Indigenous Self-Government in Child and Family Services Amendment Act , 3rd Session, 42nd Parliament	13
<i>United Nations Declaration on the Rights of Indigenous Peoples Act</i> , S.C. 2021, c. 14	15, 24
Case Law	Paragraph References
<i>R. v. Desautel</i> , 2021 SCC 17	8
<i>R. v. Soui</i> , [1990] 1 S.C.R. 1025	15
<i>R. v. Sparrow</i> , [1990] 1 S.C.R. 1075	21
<i>R. v. Van der Peet</i> , [1996] 2 S.C.R. 507	8
<i>Bank of Montreal v. Hall</i> , [1990] 1 S.C.R. 121	26
<i>Beckman v. Little Salmon/Carmacks First Nation</i> , 2010 SCC 53	8
<i>Campbell et al. v. AG BC/AG Cda & Nisga'a Nation et al.</i> , 2000 BCSC 1123 .	14-16, 20
<i>Canadian Western Bank v. Alberta</i> , 2007 SCC 22	19, 20, 25
<i>Casimel v. Insurance Corp. of British Columbia</i> , 1993 CanLII 1258 (B.C. C.A.)	15
<i>Cherokee Nation v. Georgia</i> , 30 U.S. (5 Pet) 1 (1831)	14
<i>Clyde River (Hamlet) v. Petroleum Geo-Services Inc.</i> , 2017 SCC 40	8
<i>Delgamuukw v. British Columbia</i> , [1997] 3 S.C.R. 1010	8
<i>Haida Nation v. British Columbia (Minister of Forests)</i> , 2004 SCC 73	8

<i>Johnson & Graham's Lessee v. McIntosh</i> , 21 U.S. (8 Wheat) 543 (1823)	14
<i>Manitoba Metis Federation Inc. v. Canada (Attorney General)</i> , 2013 SCC 14	8
<i>Mikisew Cree First Nation v. Canada (Governor General in Council)</i> , 2018 SCC 40	8
<i>Mitchell v. M.N.R.</i> , 2001 SCC 33	15
<i>Quebec (Attorney General) v. Canada (Attorney General)</i> , 2015 SCC 14	14
<i>References re Greenhouse Gas Pollution Pricing Act</i> , 2021 SCC 11	14
<i>Reference re Pan-Canadian Securities Regulation</i> , 2018 SCC 48	14
<i>Reference re Securities Act</i> , 2011 SCC 66	26
<i>Worcester v. Georgia</i> , 31 U.S. (6 Pet) 515 (1832)	14
Secondary Sources	Paragraph References
Kent McNeil, " Challenging Legislative Infringements of the Inherent Aboriginal Right of Self-Government ", (2003) 22 Windsor YB Access Just 329 at p. 344	21
Royal Commission on Aboriginal Peoples, <i>Report of the Royal Commission on Aboriginal Peoples</i> , vol. 2 " Restructuring the Relationship ", Ottawa, Canada Communication Group, 1996	15, 17
Royal Commission on Aboriginal Peoples, <i>Report of the Royal Commission on Aboriginal Peoples</i> , vol. 3 " Gathering Strength ", Ottawa, Canada Communication Group, 1996	11
Truth and Reconciliation Commission of Canada, " Truth and Reconciliation Commission of Canada: Calls to Action ", 2015	11
Truth and Reconciliation Commission of Canada, " What We Have Learned: Principles of Truth and Reconciliation ", 2015	25
United Nations, Convention on the Rights of the Child , New York, November 20, 1989 (ratified by Canada on December 13, 1991)	24