File No. 40061

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR QUÉBEC)

IN THE MATTER OF THE REFERENCE TO THE COURT OF APPEAL OF QUÉBEC IN RELATION WITH 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

ASSEMBLY OF FIRST NATIONS QUÉBEC-LABRADOR (AFNQL)

FIRST NATIONS OF QUÉBEC AND LABRADOR HEALTH AND SOCIAL SERVICES COMMISSION (FNQLHSSC)

MAKIVIK CORPORATION

ASSEMBLY OF FIRST NATIONS

ASENIWUCHE WINEWAK NATION OF CANADA

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

RESPONDENTS

- and -

ATTORNEY GENERAL OF MANITOBA

ATTORNEY GENERAL OF BRITISH COLUMBIA

ATTORNEY GENERAL OF ALBERTA

INTERVENERS

(Style of cause continues next page)

FACTUM OF THE INTERVENER
Listuguj Mi'gmaq Government
(Pursuant to Rules 37 and 42 of the Rules of the *Supreme Court of Canada*, SOR/2002-156)

AND BETWEEN:

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- and -

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- and -

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INUVIALUIT REGIONAL CORPORATION

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PART I: OVERVIEW

> The history of the interface of Europeans and the common law with aboriginal peoples is a long one. … Yet running through this history, from its earliest beginnings to the present time is a **golden thread**—the recognition by the common law of the ancestral laws and customs [of] the aboriginal peoples who occupied the land prior to European settlement.[1]

1. The golden thread remains an integral—if often overlooked—strand of Canada's constitutional fabric. The Listuguj Mi'gmaq Government—which represents a Mi'gmaq community in Québec with a traditional territory spanning the Gaspé Peninsula and northern New Brunswick[2]—has fought for generations for its right to self-government (the "**Inherent Right**") and the golden thread to be recognized and respected. The fight continues with this case.

2. After over a century of assimilationist policies that robbed Indigenous children of their cultures and communities, Canada adopted the landmark *Act respecting First Nations, Inuit and Métis children, youth and families* (the "***Act***"), which affirms that the Inherent Right is protected by section 35 of the *Constitution Act, 1982* ("**Section 35**") and includes jurisdiction in relation to child and family services.[3]

3. Québec wrongly asserts that the *Act* is invalid and that the Inherent Right can only be recognized by a modification to the constitution, tri-lateral treaty, or judicial declaration.[4]

4. The LMG submits that ss. 8 and 18–26 of the *Act* are valid and exemplify:

(a) the golden thread of continuity, which recognizes Indigenous self-government and laws as a part of Canada's constitutional fabric and is now reinforced by Section 35;

(b) the Crown's duty to delineate Section 35 rights and associated Indigenous jurisdiction to ensure they are not unjustifiably infringed or de facto denied;

(c) true cooperative federalism, which seeks to reconcile federal, provincial, *and* Indigenous jurisdiction.

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[1] *R v Van Der Peet*, [1996] 2 SCR 507 at para 263 McLachlin J, dissenting [*Van Der Peet*] [emphasis added]; Mark D Walters, "The "Golden Thread" of Continuity: Aboriginal Customs at Common Law and Under the Constitution Act, 1982" (1999) 44 McGill LJ 711 at 737–738 [Walters]. See also *Van Der Peet* at paras 173–174 L'Heureux Dubé J, dissenting; Sébastien Grammond, "Recognizing Indigenous Law: A Conceptual Framework" (2022) 100:1 Can Bar Rev at 15–16.

[2] *Martin v Province of New Brunswick and Chaleur Terminals Inc*, 2016 NBQB 138 at para 14.

[3] *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24, ss 8(a), 18(1) [*Act*].

[4] Mémoire du Procureur général du Québec (30 May 2022) at para 34 ("QC Factum").

PART II: ISSUES

5. The LMG submits that ss. 8 and 18–26 of the *Act* are valid.

PART III: STATEMENT OF ARGUMENT

i) The *Act* Exemplifies the Golden Thread of Continuity of Indigenous Laws

6. The *Act*'s recognition of the Inherent Right as a Section 35 right at ss. 8 and 18 reflects Canada's constitutional architecture—it is a contemporary application of the golden thread.

7. In *Mitchell*, then Chief Justice McLachlin confirmed the continuity of the golden thread:

> [A]boriginal interests and customary laws were presumed to survive the assertion of sovereignty, and 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. Barring one of these exceptions, the practices, customs and traditions that defined the various aboriginal societies as distinctive cultures continued as part of the law of Canada.[5]

8. This golden thread, now intertwined with Section 35, wove the Inherent Right into Canada's constitution. It has never been broken or replaced. It can be traced from Canada's origins to the present—it continues to inform recognition of Indigenous laws today.

9. The thread begins with the "prior occupation of Canada by aboriginal peoples" and "pre-existing systems of aboriginal law."[6] Through the recognition of Indigenous legal orders, "Aboriginal governments give [Canada's] constitution its deepest and most resilient roots in the Canadian soil."[7] As the Royal Commission on Aboriginal Peoples explained:

> Shared sovereignty, in our view, is a hallmark of the Canadian federation and a central feature of the three-cornered relations that link Aboriginal governments, provincial governments and the federal government. These governments are sovereign within their respective spheres and hold their powers by virtue of their constitutional status rather than by delegation."[8]

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[5] *Mitchell v MNR*, 2001 SCC 33 at paras 10, 9, 62 [*Mitchell*] [citations omitted].
[6] *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at para 114 [*Delgamuukw*]; *The Queen v Secretary of State for Foreign and Commonwealth Affairs*, [1981] 4 CNLR 86 (Eng CA) at 3 [BOA at Tab 2] [*The Queen v Secretary of State for Foreign and Commonwealth Affairs*].
[7] Canada, *Report of the Royal Commission on Aboriginal Peoples, Volume 2: Restructuring the Relationship* (1996) at 214 ("RCAP Report 1996, Vol 2"), as cited in *Mitchell* at para 129.
[8] RCAP Report 1996, Vol 2 at 240–241, as cited in *Mitchell* at para 130.

10. Québec wrongly asserts that "les pouvoirs étatiques des autochtones … n'ont pas été incorporés en *common law* et ne sont pas compatibles avec la souveraineté de la Couronne."[9] To the contrary, during the early British colonial period, "it was of the first importance to pay great respect to [Indigenous peoples'] laws and customs and never to interfere with them except when necessary in the interests of peace and good order."[10] Thus, the golden thread "was part of a body of fundamental constitutional law that was logically prior to the introduction of English common law and governed its application in the colony."[11]

11. The *Royal Proclamation 1763* "tacitly acknowledged these laws and usages of the Indians to be in force."[12] The *Royal Instructions* to Governor Murray—which, together with the *Royal Proclamation 1763*, may "be termed the Indian Bill of Rights"[13]—then acknowledged the continuation of Indigenous laws and government explicitly:

> And you are to inform yourself with the greatest Exactness of the Number, Nature and Disposition of the several Bodies or Tribes of Indians, of the manner of their Lives, and the Rules and Constitutions, by which they are governed or regulated.[14]

12. Québec wrongly asserts that "l'incorporation des règles de droit locales en *common law*…s'appliquait qu'aux règles de droit privé et non aux règles de droit public."[15] This Court has already confirmed that while only those elements of French colonial law "governing the proprietary relations between private individuals"[16] were incorporated into the common law, the rights and laws of Indigenous people were dealt with differently. Recognition of Aboriginal

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[9] QC Factum at para 101.
[10] *The Queen v Secretary of State for Foreign and Commonwealth Affairs*, at 3 [BOA at Tab 2].
[11] Brian Slattery, *Understanding Aboriginal Rights*, Can Bar Rev 66.4 (1987): 727 at 737–738, as cited in *R v Côté*, [1996] 3 SCR 139 at para 49 [*Côté*]; see also Walters at 718.
[12] *Connolly v Woolrich* (1867), 11 LCJ 197, 17 RJRQ 75 (Que SC) at 75 [*Woolrich*], aff'd (1869), 17 RJRQ 266, 1 CNLC 151 (Que QB).
[13] *St Catharines Milling and Lumber Co v R*, 13 SCR 577 at 652, aff'd [1888] UKPC 70. See also *Calder et al v Attorney-General of British Columbia*, [1973] SCR 313 at 394–395; *R v Marshall; R v Bernard*, 2005 SCC 43, at para 86.
[14] *George R to Governor James Murray, Royal Instructions*, 7 December 1763, reprinted in Sessional Papers (1907) at para 61 [emphasis added]. See also *R v Sioui*, [1990] 1 SCR 1025 at 1050; Canada, Royal Commission on Aboriginal Peoples, *Partners in Confederation: Aboriginal peoples, self-government, and the Constitution* (Ottawa: RCAP, 1993) at 18.
[15] QC Factum at para 101.
[16] *Côté* at para 49.

rights and customary law "was arguably a necessary incident of British sovereignty which displaced the pre-existing colonial law governing New France."[17]

13. At Confederation, the golden thread was stitched into Canada's constitution, which is "similar in Principle to that of the United Kingdom."[18] Although the *Constitution Act, 1867* is silent as to the Inherent Right and Indigenous jurisdiction, it did not extinguish them:

> [A]boriginal 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 1867.[19]

14. Thus, from Confederation until today, Canadian courts have held that the *Constitution Act, 1867* did not extinguish Indigenous laws.[20] Rather, Indigenous laws governing such matters as marriage and adoption survived, even after the enactment of federal or provincial statutes of general application in those areas.[21]

15. For example, only nine days after Confederation, the Québec Superior Court recognized the validity of a marriage according to "[Indian] laws of marriage", finding that:

> [The Royal Charter for incorporating The Hudson's Bay Company, AD 1670] did introduce the English law, but did not at the same time make it applicable generally or indiscriminately; it did not abrogate the Indian laws and usages. The Crown has not done so. Their laws of marriage existed and exist under the sanction and protection of the Crown of England.[22]

16. Similarly, and more recently, in *Casimel*, the British Columbia Court of Appeal confirmed that Indigenous customary laws governing adoption remained in force and effect despite the *Constitution Act, 1867*, the *Indian Act*, and British Columbia's *Adoption Act*.[23]

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[17] *Côté* at para 49.
[18] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, Preamble.
[19] *Campbell v British Columbia* (*AG*), 2000 BCSC 1123 at para 81 [*Campbell*].
[20] *Casimel v Insurance Corp of British Columbia*, 82 BCLR (2d) 387 (CA) at para 24 [*Casimel*]; *Manychief v Poffenroth* (1994), 164 AR 161 (QB) at paras 51–52 [*Manychief*].
[21] *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at paras 380–383 [QCCA Decision]; *Woolrich*; *Casimel* at paras 44, 50; *Pastion v Dene Tha' First Nation*, 2018 FC 648 at para 8 [*Pastion*]; *Alderville First Nation v Canada*, 2014 FC 747 at paras 26–29 [*Alderville*]; *Katie's Adoption Petition (Re)*, 32 DLR (2d) 686 (NWT TCt); *Manychief* at para 63.
[22] *Woolrich* at 25; *R v Nan-E-Quis-A-Ka* (1889), 1 Terr LR 211 at paras 2, 8–9 [BOA at Tab 1].
[23] *Casimel* at para 51. See also *Manychief* at paras 51–53.

17. Québec wrongly asserts that the *Act* would remodel the constitution, creating an Indigenous order of government by introducing "institutions politiques étrangères et incompatibles avec le système canadien."[24] But Indigenous laws are not foreign.[25] "Indigenous legal traditions are among Canada's legal traditions. They form part of the law of the land."[26]

18. Canada's constitutional architecture has always made room for the Inherent Right, even if Indigenous self-government often persisted in the shadows—the *Act* simply shines a light on a constitutional reality.

19. Section 35 did not create Aboriginal rights out of whole cloth; rather, it gave the golden thread a new constitutional dimension. On a plain reading, the existing Aboriginal rights continued at common law—including the Inherent Right—were "recognized and affirmed" by Section 35.[27] Thus, the sources of Section 35 rights include "the relationship between common law and pre-existing systems of aboriginal law."[28] "Examples of recognition of Aboriginal customary law can be found in common law decisions, statutory enactments, and more recently, Section 35 Aboriginal rights and title jurisprudence."[29]

20. Because Section 35 rights are held by communities, recognition of a community's Indigenous laws is a corollary to the recognition of their communal right to engage in specific practices. "[T]he nature of communal rights mandates that the community regulate, or authorize, appropriate exercise of these rights by its individual members."[30] In recognition of Indigenous communities' responsibility to regulate the exercise of their rights, courts have held that:

(a) treaty rights to fish "do not belong to the individual, but are exercised by authority of the local community";[31]

(b) members of Indigenous communities are governed by their communities' laws when exercising the incidents of Aboriginal title;[32]

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[24] QC Factum at para 79. See also Attorney General of Alberta Factum (21 October 2022) at para 41.
[25] *Manychief* at para 59.
[26] *Pastion* at para 8.
[27] *Casimel* at para 52; *Manychief* at para 36; *Van der Peet* at paras 227, 262 McLachlin J, dissenting; *Mitchell* at paras 114–115.
[28] *Delgamuukw* at para 114.
[29] *Alderville* at para 25.
[30] *Bernard v R*, 2017 NBCA 48 at para 58.
[31] *R v Marshall*, [1999] 3 SCR 533 at para 17.
[32] *William v British Columbia*, 2012 BCCA 285 at para 149.

(c) an Indigenous community may, in keeping with its own laws, permit members of another Indigenous community to benefit from its treaty right to hunt;[33] and

(d) "It is for Aboriginal peoples … to define themselves and to choose by what means to make their decisions, according to their own laws, customs and practices." [34]

21. Section 35 protects Indigenous laws associated with the practice of Aboriginal and treaty rights from unjustified infringement by other levels of government. Where an Indigenous law articulates a community's preferred means of exercising a Section 35 right, the Crown has a duty to justify any abrogation of the law amounting to an infringement of the underlying right.[35]

22. Just as Section 35 rights must be "interpreted flexibly to permit their evolution over time,"[36] Indigenous laws are not frozen relics of the pre-colonial past. Indigenous communities retain an "inherent law-making capacity";[37] Indigenous laws "are not fixed in time and may evolve in response to changed circumstances."[38] Indigenous legal traditions are "a consensual and community-based means of producing law that, while not materially constrained by ancestral practices, enables contemporaries to find their own path between tradition and modernity."[39]

23. Contemporary federal and provincial statutes recognize Indigenous laws.[40] The *Indian Act*, for example, recognizes the Indigenous laws of First Nations governing leadership selection. These laws are not the product of delegated authority; a First Nation enacts them "in accordance with its Aboriginal right to self-government."[41]

> The capacity of [a First Nation] to make laws concerning matters of leadership and governance are not derived from the *Indian Act* or other statutory power. Rather it is a

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[33] *R v Shipman*, 2007 ONCA 338 at paras 42–45; *R v Meshake*, 2007 ONCA 337 at paras 31–33.
[34] *R v Desautel*, 2021 SCC 17 at para 86 [*Desautel*].
[35] *R v Sparrow*, [1990] 1 SCR at 1113 [*Sparrow*].
[36] *Sparrow* at 1093; *Van der Peet* at para 64.
[37] *Whalen v Fort McMurray No 468 First Nation*, 2019 FC 732 at para 32 [*Whalen*].
[38] *Joseph v Schielke*, 2012 FC 1153 at para 36; *Mcleod Lake Indian Band v Chingee* (1998), 153 FTR 257 at para 17 (FC). See also *Bertrand v Acho Dene Koe First Nation*, 2021 FC 287 at paras 36–40 [*Bertrand*].
[39] Ghislain Otis, "Elections, Traditional Governance and the Charter" in Gordon Christie, ed, Aboriginality and Governance: A Multidisciplinary Perspective (Penticton, BC: Theytus Books, 2006) 217 at 220, as cited in *Whalen* at para 32.
[40] *Indian Act*, RSC 1985, c I-5, s 2(1), svv "child" and "council of the band" (d); *Civil Code of Québec*, CQLR c CCQ-1991, arts 132, 132.0.1, 132.1, 140, 149.1 and 152.1, 199.10, 543.1; *An Act respecting Cree, Inuit and Naskapi Native persons*, CQLR, c A-33.1, art 14.
[41] *Mclean v Tallcree First Nation*, 2018 FC 962 at para 10.

> result of the exercise of the First Nation's aboriginal right to make its own laws concerning governance.[42]

24. Because customary elections are not regulated by the *Indian Act*, regulations enabled by the *Indian Act* cannot amend or supplement customary Indigenous electoral laws.[43] These laws are very real examples of Indigenous communities exercising their right to self-government and law-making authority within their own spheres of jurisdiction.

25. The golden thread, as articulated in *Mitchell*, mandates a recognition-first approach: the existence of Indigenous laws is acknowledged, and the validity of Indigenous laws is presumed. Indigenous laws, like federal and provincial laws, ought to benefit from a presumption that they are the result of a valid exercise of jurisdiction.[44] This presumption can be rebutted—where Indigenous jurisdiction is incompatible with Crown sovereignty or, where the underlying right is not inalienable, it was surrendered or lawfully extinguished—but the burden of rebutting the presumption lies with the person challenging the Indigenous law.

26. Unfortunately, *Pamajewon* has been read as encouraging a denial-first approach; governments responded to *Pamajewon* by denying the validity of Indigenous laws in the absence of proof in court that governance of a particular custom, practice, or tradition was an integral part of the distinctive culture of a claimant group. This community-by-community, case-by-case, subject-by-subject approach is at odds with the long-standing recognition of the Inherent Right as exemplified by the golden thread. The impoverished range of subject matters over which Indigenous communities might eke out recognition of their self-government using this approach would leave Indigenous jurisdiction threadbare. The Inherent Right would be left in tatters.

27. By establishing a regime that clarifies the relationship between federal, provincial, and Indigenous laws, the *Act* not only confirms that Indigenous jurisdiction over child and family services is compatible with Crown sovereignty, it honours the golden thread by seeking to reconcile the shared sovereignty that underpins a three-way division of legislative powers.

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[42] *Gamblin v Norway House Cree Nation Band Council*, 2012 FC 1536 at para 34 [emphasis added]. See also *Taykwa Tagamou First Nation v Linklater*, 2020 FC 220 at para 36; *Pastion* at para 12; *Ratt v Matchewan*, 2010 FC 160 at paras 101–102.
[43] *Bertrand* at para 87.
[44] *Rogers Communications Inc v Châteauguay (City)*, 2016 SCC 23 at para 81.

28. The golden thread is now braided into Section 35, binding Canada's federal, provincial, *and* Indigenous governments in a cooperative constitutional order. By affirming Indigenous jurisdiction in relation to child and family services, the *Act* exemplifies the principles of recognition and continuity that are the warp and weft of Canada's constitution.

ii) The *Act* Exemplifies the Crown's Duty to Delineate Section 35 Rights and Jurisdiction

29. The promise of recognition of Indigenous laws underpins Canada's constitution.[45] Constitutional promises to Indigenous people must be implemented purposively and diligently.[46]

30. The QCCA correctly found "in the case of the Aboriginal rights contemplated in s. 35 of the *Constitution Act, 1982*, the honour of the Crown requires governments to delineate those rights so they can be implemented in a tangible way."[47] Equally, the Crown has a duty to delineate Indigenous communities' jurisdiction. Not only could Canada adopt the *Act*, it was obliged to do so (or something similar) to ensure respect for the Inherent Right and jurisdiction in relation to child and family services.

31. Once it is acknowledged that Indigenous laws exist, it follows that the Crown must respect them. "[T]he rule of law provides that the law is supreme over the acts of both government and private persons."[48] This is true of all valid laws—including Indigenous laws. The Crown must take active measures—like those the *Act* provides for—to determine the scope of Indigenous laws to avoid infringing them unjustifiably or denying them de facto.

32. Canada has embraced its duty to delineate Indigenous rights and jurisdiction by acknowledging that "[r]ecognition of the inherent jurisdiction and legal orders of Indigenous nations is … the starting point of discussions aimed at interactions between federal, provincial, territorial, and Indigenous jurisdictions and laws."[49]

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[45] *Campbell* at para 81.
[46] *Manitoba Métis Federation Inc v Canada* (*AG*), 2013 SCC 14 at para 75 [*Manitoba Métis Federation*]; *Yahey v British Columbia*, 2021 BCSC 1287 at para 86; *Desautel* at para 30; *R v Kelley*, 2007 ABQB 41 at para 64.
[47] QCCA Decision at para 443.
[48] *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 71.
[49] Government of Canada, "Principles respecting the Government of Canada's relationship with Indigenous peoples" (2018) at Principle 4 ("GoC Principles"); Mémoire du Procureur général du Canada (15 August 2022) at footnote 137.

33. Québec's approach, in contrast, is at odds with its duty to delineate rights and jurisdiction. Québec and the LMG have signed a delegation agreement under the *Youth Protection Act*,[50] but it limits the LMG to administering the province's regime.[51] As a result, systemic barriers to effective service delivery remain, including culturally inappropriate timelines, restrictions on community engagement, language requirements, and prohibitions on service delivery off reserve.[52] Moreover, no negotiated agreement with Québec could ever recognize the LMG's authority in the New Brunswick portion of its traditional territory.

34. Québec's denial of the Inherent Right as the starting point for negotiations regarding child and family services is "a betrayal of the Crown's duty to act honourably in fulfilling its promise."[53] Québec has a duty to work with Indigenous communities to delineate their inherent jurisdiction, as directed by the *Act*.

iii) The *Act* Exemplifies True Cooperative Federalism

35. The *Act* exemplifies true cooperative federalism by seeking to reconcile federal, provincial, *and* Indigenous jurisdiction. As Canada recognizes: "Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government."[54]

36. In contrast, Québec's approach distorts cooperative federalism. By insisting that self-government may only be recognized through treaties or constitutional amendment, Québec seeks to give itself a veto over recognition of Indigenous jurisdiction. Québec's praise for negotiations as the best way to recognize self-government is belied by four decades of meager success.[55]

37. Québec's approach, if adopted, would create an unacceptable, "awkward patchwork of constitutional protection for aboriginal rights across the nation,"[56] with Indigenous communities

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[50] Agreement Concerning Sharing of Specific Responsibilities and Coordination and Cooperation in the Delivery of Social Services ("YPA Agreement") [Cahier de prevue du Procureur Général du Québec ("CDPPGQ"), Vol 8 at 2754].
[51] YPA Agreement [CDPPGQ, Vol 8 at 2754]. See also QC Factum at paras 2, 55; PGQ-51 Déclaration sous serment de Chantal Maltais at paras 95–105, [CDPPGQ, Vol. 5 at 1788–1791].
[52] *Youth Protection Act*, ch P-34.1, s 46, 47, 47.2, 51.3, 52, 53, 53.0.1, 72.5; *Charter of the French Language*, ch C-11, s. 35, 97; *Regulation to authorize professional orders to make an exception to the application of section 35 of the Charter of the French language*, C-11, r 10, s 2.
[53] *Manitoba Metis Federation* at para 82.
[54] GoC Principles, Principle 4.
[55] QC Factum at para 55.
[56] *Côté* at para 53.

lucky enough to be in provinces that respect the Inherent Right able to negotiate treaties, while the rest would suffer their right to exercise self-determination being put off indefinitely.

38. Québec wrongly asserts that "[e]n agissant de manière unilatérale et non coordonnée, le Parlement fédéral a miné les efforts des provinces visant à réaliser l'objectif de l'art. 35: la réconciliation."[57] To the contrary, Québec's approach defies true cooperative federalism and reconciliation, by which agreement is preferred but not required "where the constitutional division of powers authorizes unilateral action."[58]

39. The *Act* incentivizes cooperation through negotiation of coordination agreements, but it also recognizes that negotiations may fail and prescribes rules to resolve conflicts.[59] Thus, the *Act* ensures that neither the federal nor provincial governments may leverage negotiations to veto recognition. This is the approach urged by the Royal Commission on Aboriginal Peoples:

> [O]ur preference is for co-operative action by all governments in Canada. This is in the interests of the governments themselves, as issues that long have festered will be resolved expeditiously and in a spirit of goodwill, and settlements will be reached that work with, rather than against, provincial priorities. But the frustration of Aboriginal peoples is substantial and justified. Federal action on matters of federal jurisdiction should not be postponed.[60]

40. Now that Canada has finally embraced true cooperative federalism, constitutional doctrine should promote collaboration, as provided for in the *Act*, rather than frustrate legitimate Indigenous jurisdiction.[61]

PART IV: SUBMISSIONS CONCERNING COSTS

41. The LMG asks for no costs on this appeal and that none be awarded against it.

PART V: ORDER SOUGHT

42. The LMG takes no position on the outcome of the appeal.

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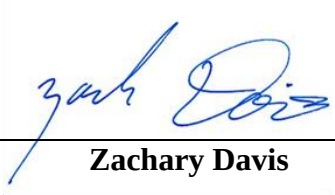
[57] QC Factum at para 82.
[58] *Quebec* (*AG*) *v Canada* (*AG*), 2015 SCC 14 at para 20.
[59] *Act*, ss 20(3)(b), 21, 22.
[60] Canada, *Report of the Royal Commission on Aboriginal Peoples, Volume 5: Renewal: A Twenty-Year Commitment* (1996) at 7.
[61] *Canadian Western Bank v Alberta*, 2007 SCC 22 at para 24.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of November 2022.



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PART VI: TABLE OF AUTHORITIES

Item	Paragraph(s)
LEGISLATION	
An Act respecting First Nations, Inuit and Métis children, youth and families, SC 2019, c 24, ss 8, 18(1), 20(3)(b), 21, 22 *Loi concernant les enfants, les jeunes et les familles des Premières Nations,des Inuits et des Métis*, LC 2019, ch 24, ss 8, 18(1), 20(3)(b), 21, 22	2, 39
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PART VII: STATUTORY PROVISIONS

None.