SCC File No. 40061

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUEBEC)

BETWEEN:

ATTORNEY GENERAL OF QUÉBEC

APPELLANT

-and-

ATTORNEY GENERAL OF CANADA, ASSEMBLY OF FIRST NATIONS QUEBEC-LABRADOR, FIRST NATIONS OF QUEBEC AND LABRADOR HEALTH AND SOCIAL SERVICES COMMISSION, MAKIVIK CORPORATION, ASSEMBLY OF FIRST NATIONS, ASENIWUCHE WINEWAK NATION OF CANADA, FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

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(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW

1. Chiefs of Ontario ("COO") is a not-for-profit political organization made up of the Chiefs of each of the 133 First Nations in Ontario. COO's mission is to support the Anishinaabe, Mushkegowuk, Onkwehonwe and Lenape Peoples in their efforts to protect and exercise their inherent and Treaty rights. This includes their inherent right to self-determination and self-government, which flow from their relationship to their lands and their Creator.

2. In this appeal, this Honourable Court is asked to decide whether section 35(1) of the *Constitution Act, 1982* protects the right to self-government and Indigenous law-making over child and family services. COO submits that this Court's jurisprudence already recognizes a series of "generic rights" – rights of uniform content that are held by all First Nations. These rights are built on a common foundation: they arise out of and protect space for the continued operation of Indigenous legal orders. It follows from both this body of jurisprudence and the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") that section 35 protects a right to self-government and Indigenous law-making, including over child and family services.

3. Contrary to what the Attorney General of Canada submits, the right to self-government should not be limited to matters that are "necessary to ensure the survival and flourishing" of an Indigenous community "as a distinctive Indigenous community". COO submits that such an approach is inconsistent with the doctrine of continuity and would result in repetition of the problems that have arisen as a result of the narrow interpretation that some courts and governments have given to *Van der Peet.*

PART II – POSITION ON THE ISSUES

4. This appeal raises the following issues:

   (a) Are sections 1-17 of *An Act respecting First Nations, Inuit and Métis children, youth and families, S.C. 2019, c. 24* (the "Act") valid under the division of powers and the architecture of the *Constitution*?

   (b) Are sections 8 and 18 to 26 of the Act valid under Part V of the *Constitution Act, 1982*, and the architecture of the *Constitution*?

5. COO intervenes on the second issue. COO's position is that section 18 of the Act provides a mechanism to implement what section 35 of the *Constitution Act, 1982* already protects: the inherent right to self-government and living Indigenous legal orders.

PART III –STATEMENT OF ARGUMENT

6. In *R v. Van der Peet,* this Court set out its initial account of the rights that fall within the scope of section 35 of the *Constitution Act, 1982*. Narrowly interpreted, *Van der Peet* stands for the proposition that section 35 protects only the specific practices, customs and traditions that were integral to the distinctive cultures of Indigenous peoples prior to contact with Europeans.[1]

7. However, COO submits that set in the context of this Court's section 35 jurisprudence as a whole and its evolution over the past 25 years, *Van der Peet* does not limit the scope of section 35 so narrowly. Rather, this Court's jurisprudence and Canada's international legal commitments both signal that section 35 includes a set of generic rights that protect the legal orders of Indigenous Nations, including the right to self-government.

A. Existing jurisprudence recognizes generic rights that protect space for the operation of Indigenous legal orders

8. The doctrine of Aboriginal rights under section 35 of the *Constitution Act, 1982* is, by its nature, an inter-systemic doctrine. Before the Crown asserted sovereignty, there were no "Aboriginal rights" as we know them today; there were only Indigenous legal orders and the rights and responsibilities they created. The doctrine of Aboriginal rights arises from the interaction between Indigenous legal orders and the common law.[2]

9. The traditional position of the common law has been to recognize and leave space for the continued operation of Indigenous legal orders. As Chief Justice McLachlin explained in her dissenting judgment in *Van der Peet,* although this core principle has not always been honoured, the "golden thread" in the interaction between Indigenous legal orders and the common law is "the recognition by the common law of the ancestral laws and customs [of] the aboriginal peoples who occupied the land prior to European settlement."[3]

10. Prior to the Crown's assertion of sovereignty, Indigenous Nations were self-governing political entities with jurisdiction over their territories and citizens.[4] They operated under their own legal orders, which governed community decision-making processes, guided the actions of

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[1] *R. v. Van der Peet*, [1996] 2 SCR 507, at para 46.
[2] Brian Slattery, "What are Aboriginal Rights?" (2007) *Comparative Research in Law & Political Economy, Research Paper No. 1/2007* 1 at 25.
[3] *R. v. Van der Peet,* [1996] 2 SCR 507, at para 263, per McLachlin J (dissenting).
[4] Kent McNeil, "The Jurisdiction of Inherent Right Aboriginal Governments", (2007) Research Paper for the National Centre for First Nations Governance 1 at 19-20.

individual community members, and set the terms for how each Nation would interact with its neighbouring Nations.[5] When the British asserted sovereignty, a general principle of continuity applied so that the common law preserved these customary legal orders and the rights and responsibilities they created unless they were expressly changed.[6] Significantly, "since the [Indigenous] custom derives legitimacy not from immemorial usage but from a preceding legal regime", after the assertion of Crown sovereignty an Indigenous customary law "may be capable of alteration by the [Indigenous] community within which it applies."[7] In other words, the doctrine of continuity extends to protect Indigenous legal orders as a living tree that can change and evolve, not just Indigenous laws as they existed at the assertion of Crown sovereignty.

11. In 1982, section 35 of the *Constitution Act, 1982* protected these "existing" legal orders and gave them a formal place within Canada's constitutional architecture.[8] As a result, section 35, already gives constitutional protection to the continued existence of Indigenous legal orders and constitutional space for the laws those orders create within Canada's constitutional framework.

12. The doctrine of continuity is reflected in this Court's jurisprudence as a series of "generic" rights that fall within the ambit of section 35. Generic rights are rights that are universal in distribution (held by each Indigenous Nation) and uniform in content (in the sense that each Nation has a similar right, even if each exercises it in a different way and in accordance with its own specific traditions).[9] While the outer contours of these rights are defined and enforced by the

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[5] Val Napoleon, "What Is Indigenous Law? A Small Discussion" (2016) Indigenous Law Research Unit 1 at 2; Senwung Luk, "Confounding Concepts: The Judicial Definition of the Constitutional Protection of the Aboriginal Right to Self-Government in Canada" (2009) 41:1 Ottawa L. Rev. 101 at 103; Brian Slattery, "Making Sense of Aboriginal and Treaty Rights" (2000) 79:2 Can. Bar Rev. 196 at 198.

[6] On the doctrine of continuity, see: *R. v. Desautel,* 2021 SCC 17, at para. 68; *Mitchell. v. Minister of National Revenue*, [2001] 1 SCR 911, 2001 SCC 33, at paras. 10 and 62; Mark Walters, "The 'Golden Thread' of Continuity: Aboriginal Customs at Common Law and Under the Constitution Act, 1982," (1999) 44 McGill L.J. 711 at 715-719.

[7] Mark Walters, "The 'Golden Thread' of Continuity: Aboriginal Customs at Common Law and Under the Constitution Act, 1982," (1999) 44 McGill L.J. 711 at 720, citing *Hineiti Rirerire Arani v. Public Trustee Zealand*, (1919), [1920] A.C. 198, [1840-1932] NZPC.C. 1 (P.C.) at 6.

[8] *R. v. Sparrow,* [1990] 1 SCR 1075, at 1091; *R. v. Côté*, [1996] 3 SCR 139, at 174; Brian Slattery, "Making Sense of Aboriginal and Treaty Rights" (2000) 79:2 Can. Bar Rev. 196 at 205.

[9] *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 487-488. Brian Slattery, "Making Sense of Aboriginal and Treaty Rights" (2000) 79:2 Can. Bar Rev. 196 at 211.

common law and section 35 of the *Constitution Act, 1982*, the rights arise from and provide space for diverse Indigenous legal orders.

13. There are at least three generic rights which have already been recognized by this Court. The first is the right to enter treaties with the Crown.[10] This right is generic in the sense that all Nations hold it, and it has the same basic contours. While for the Crown, the power to enter treaty flows from the Royal Prerogative[11], for Indigenous Nations the power to enter treaty flows from pre-existing Indigenous laws that governed their relationships with other Indigenous Nations and with other parts of Creation.[12] For example, discussing the correct interpretation of the Robinson-Huron and Robinson-Superior Treaties, the Ontario Superior Court in *Restoule* characterized the two Treaties as "sacred agreements that brought the [Crown] newcomers into the existing relationship the Anishinaabe had will [*sic*] all of creation.[13] This reflects an Anishinaabe legal framework for entering into a treaty relationship.

14. The power to enter treaty in accordance with Indigenous laws survived the assertion of Crown sovereignty and persists to this day. The treaties that result are a form of inter-societal law that brings together the Crown's authority rooted in its law and the Indigenous Nation's authority rooted in its law into a new relationship that gives voice to both legal traditions.[14]

15. The second category of generic right is Aboriginal title – the right of an Indigenous Nation to exclusively use and benefit from the land it held prior to the assertion of Crown sovereignty.[15]

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[10] *Simon v. The Queen,* [1985] 2 SCR 387; *R. v. Sioui,* [1990] 1 SCR 1025; Brian Slattery, "What are Aboriginal Rights?" (2007) *Comparative Research in Law & Political Economy, Research Paper No. 1/2007* 1 at 9-10.

[11] Brian Slattery, "What are Aboriginal Rights?" (2007), *Comparative Research in Law & Political Economy, Research Paper No. 1/2007* 1 at 10.

[12] Heidi Kiiwetinepinesiik Stark, "Respect, Responsibility, and Renewal: The Foundations of Anishinaabe Treaty Making with the United States and Canada" (2010) 34:2 American Indian Culture and Research J. 145 at 147-148; Brian Slattery, "Making Sense of Aboriginal and Treaty Rights" (2000) 79:2 Can. Bar Rev. 196 at 208; *Restoule v. Canada (Attorney General)*, 2018 ONSC 7701, at paras. 65-67, 89-91, affirmed on appeal, 2021 ONCA 779, leave to appeal granted, [2022] S.C.C.A. No. 5.

[13] *Restoule v. Canada,* 2018 ONSC 7701, at para 414, affirmed on appeal, 2021 ONCA 779, leave to appeal granted, [2022] S.C.C.A. No. 5.

[14] Brian Slattery, "What are Aboriginal Rights?" (2007) *Comparative Research in Law & Political Economy, Research Paper No. 1/2007* 1 at 10; *Restoule v. Canada (Attorney General)*, 2018 ONSC 7701, at paras 65, 89-91, affirmed on appeal, 2021 ONCA 779, leave to appeal granted, [2022] S.C.C.A. No. 5.

[15] *Delgamuukw v. British Columbia,* [1997] 3 SCR 1010, at para 117.

Aboriginal title is a generic right, in the sense that it is potentially available to all Indigenous Nations and always gives rise to the same basic bundle of rights. Like the right to enter treaties, Aboriginal title is rooted partially in Indigenous laws and partially in the Crown's common law. It arises both from the fact of physical occupation of the land by Indigenous peoples in accordance with the common law of title, and from pre-existing Indigenous legal orders. [16] Because it finds its source partially in Indigenous legal orders, Indigenous land tenure systems, laws governing land use and trespass laws can all be relied upon to help establish title.[17]

16. Once it is established, Aboriginal title protects space for the continued operation of Indigenous legal orders on Aboriginal title lands. For example, in *Delgamuukw,* Chief Justice Lamer observed that "[d]ecisions with respect to [lands subject to Aboriginal title] are also made by that community."[18] As Professor Slattery points out, this has two significant implications:

> First, the manner in which the members of the group use their aboriginal lands is presumptively governed by the internal law of the group. So, in effect, the concept of aboriginal title supplies a protective legal umbrella, in the shelter of which customary land law may develop and flourish. Second, since decisions with respect to the lands must be made by the community, there must be some internal structure for communal decision-making.[19]

The result is that section 35 keeps the Crown from interfering with title lands, while leaving space for Indigenous law to define how those lands are used, and how decisions are made about them. [20]

17. Third, *Van der Peet* properly understood protects a generic right to preserve the essential cultural practices and customs that are at the heart of an Indigenous Nation's culture.[21] Though each Nation will have its own distinctive practices and customs, every Nation is entitled to preserve key aspects of their culture free from interference. This often includes traditional methods of earning a livelihood,[22] for example, through harvesting fish and game. How this harvesting

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[16] *Delgamuukw v. British Columbia,* [1997] 3 SCR 1010, at para 114.
[17] *Delgamuukw v. British Columbia,* [1997] 3 SCR 1010, at paras 148, 157.
[18] *Delgamuukw v. British Columbia,* [1997] 3 SCR 1010, at para 115.
[19] Brian Slattery, "Making Sense of Aboriginal Rights" (2000) 79:2 Can. Bar Rev. 196 at 215.
[20] Kent McNeil, "Indigenous Law and Aboriginal Title" (2016) 13:1 Osgoode Hall Law School Legal Studies Research Paper Series 1 at 8-9.
[21] *R v. Van der Peet*, [1996] 2 SCR 507; Brian Slattery, "What are Aboriginal Rights?" (2007) *Comparative Research in Law & Political Economy. Research Paper No. 1/2007* 1 at 8.
[22] *R v. Sappier; R v. Gray,* [2006] 2 SCR 686, at paras 37-40, 45.

happens, by whom and when, is governed by Indigenous law.[23] Section 35 protects Indigenous people from laws that will interfere with their harvesting practices, leaving space for these Indigenous laws to continue to operate, and to evolve in response to new circumstances.

18. COO submits that recognizing an Aboriginal right to self-government is a necessary and incremental next step in this established tradition. Over 25 years ago, the Royal Commission on Aboriginal Peoples set out the argument for taking this step clearly and cogently, when it stated:

> The basic argument in favour of a constitutional right of self-government is relatively straightforward. At the time of European contact, Aboriginal peoples were sovereign and independent peoples, possessing their own territories, political systems and customary laws. Although colonial rule modified this situation, it did not deprive Aboriginal peoples of their inherent right of self-government, which formed an integral part of their cultures. This right continued to exist, in the absence of clear and plain legislation to the contrary. […] As a result, the inherent right of self- government was recognized and affirmed in section 35(1) of the *Constitution Act, 1982* as an existing Aboriginal or treaty-protected right. This constitutional right assumes a contemporary form, one that takes account of the changes that have occurred since contact, the modern needs of Aboriginal peoples, and the existence of a federal system in Canada.[24]

B. The scope of an Aboriginal right to self-government under section 35

19. COO submits that the generic right to self government under section 35 should accord each Indigenous Nation a full box of rights to govern its people and territory. This includes, particularly but not only, jurisdiction to make, administer and enforce laws about how best to support the well-being of children and families.

20. The Attorney General of Canada has argued that the scope of the right to self-government stretches only to those matters that are necessary to ensuring the survival of an Indigenous Nation as a distinctive community.[25] COO submits that the narrow and stringent approach proposed by the Attorney General would repeat past mistakes and create new problems.

21. First, it is an uneasy fit with the doctrine of continuity. This doctrine provides that pre-existing Indigenous legal orders and rights created under those legal orders survived the assertion of Crown sovereignty. Canadian law has suggested there may be an exception to this principle for

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[23] Val Napolean, "What is Indigenous Law? A Small Discussion" (2016) Indigenous Law Research Unit 1 at 2.
[24] Report of the Royal Commission on Aboriginal Peoples, Vol 2: Restructuring the Relationship (1996) 1 at 191.
[25] Factum of the Attorney General of Canada, at para 162.

laws and law-making powers that are inconsistent with the Crown's sovereignty.[26] This exceptional category, if it exists, is narrow.[27] There are a range of areas of decision-making that may not be strictly necessary to the survival of an Indigenous Nation as a distinctive community but are nonetheless important parts of meaningful self-government, such as systems of family regulation like marriage and divorce, rules for distribution and sharing of resources within communities and families, written election laws, and formal education systems. Unless the Crown can point to some mechanism by which Indigenous law-making power in these areas was "extinguished", according to the doctrine of continuity, jurisdiction in these areas persists.

22. Second, the Attorney General's approach risks repeating some of the more notorious problems with interpretation and implementation of the *Van der Peet* decision. *Van der Peet* has been criticized for encouraging reliance on racialized stereotypes about what makes an Indigenous Nation "what it was" prior to contact,[28] and for "freezing rights" in a way that "ignore[s] the dynamic nature of [Indigenous]" peoples and their laws.[29] Although the Attorney General's approach helpfully abandons the pre-contact lens, the proposal to limit self-government to areas "necessary" to the survival of an Indigenous Nation as a distinctive community still requires Canadian courts or governments to determine for an Indigenous Nation what are the "necessary" aspects of an Indigenous Nation's culture. The past twenty-five years of experience since *Van der Peet* suggest these courts and governments are ill-equipped for this role.

23. Third, the Attorney General's proposed test continues to fragment the right of self-government into piece-meal jurisdictions, each of which Indigenous Nations will have to show is "necessary" to their survival through time consuming and expensive litigation.[30] This leaves the

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[26] *Mitchell v. Minister of National Revenue,* [2001] 1 SCR 911, 2001 SCC 33, at paras 10, 62, 64, although this argument was not relied on by the majority.
[27] *Mitchell v. Minister of National Revenue,* [2001] 1 SCR 911, 2001 SCC 33, at para 151.
[28] John Borrows and Leonard I. Rotman, "The Sui Generis Nature of Aboriginal Rights: Does it Make a Difference?" (1997) 36:1 Alberta L. R. 9 at 36.
[29] Kent McNeil, "The Jurisdiction of Inherent Right Aboriginal Governments" (2007) Research Paper for the National Centre for First Nations Governance 1 at 13-14.
[30] See, Kent McNeil, "The Jurisdiction of Inherent Right Aboriginal Governments" (2007) Research Paper for the National Centre for First Nations Governance 1 at 13-33.

right as an empty, rather than a full, box.[31] This is not consistent with the development of law and policy on this issue, nor with international legal principle as detailed below.

24. COO submits that an appropriate approach is animated by the principle that after the assertion of Crown sovereignty, Indigenous Nations each preserved a "full box" of self-government rights to make laws about their own Nations. It would then be open to the Crown to show that these rights were in some way limited.

C. UNDRIP recognizes a right to self-determination rooted in Indigenous legal orders

25. UNDRIP further supports the conclusion that section 35 protects the exercise of self-government rooted in Indigenous legal orders.

26. UNDRIP provides that self-government is a human right held by all Indigenous peoples by virtue of their status as peoples.[32] UNDRIP sets out the following protections for this right:

(a) Art. 3 guarantees "Indigenous peoples […] the right to self-determination. By virtue of this right, they freely determine their political status and freely pursue their economic, social and cultural development."

(b) Art. 4 states that "Indigenous peoples […] have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions."

(c) Art. 5 provides that "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State."

27. A conception of section 35 that says Indigenous peoples can only exercise self-government powers if they can show those powers were tied to narrow "practices, customs or traditions integral to their distinctive culture" prior to the arrival of Europeans is not consistent with the broad right

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[31] John Borrows and Leonard I Rotman, "The Sui Generis Nature of Aboriginal Rights: Does it Make a Difference?" (1997) 36:1 Alberta L. R. 9 at 33, fn 131.

[32] S James Anaya, "The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era" in Charters & Stavenhagen, eds, *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (Copenhagen: International Work Group for International Affairs, 2009) 184 at 186-187; John Borrows, "Revitalizing Canada's Indigenous Constitution: Two Challenges" in *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws* (Waterloo, ON: CIGI, 2017) 20 at 21.

to self-government set out in Articles 3 to 5 of UNDRIP.[33] Rather, under UNDRIP, the right to self-government is: a) available to *all* Indigenous peoples; b) in relation to *all* their internal affairs; c) which they may exercise in accordance with and as a manifestation of their own laws.

28. UNDRIP defines Indigenous peoples' rights according to Indigenous peoples' own laws.[34] For example, UNDRIP protects Indigenous peoples' rights to practice and revitalize cultural traditions;[35] to their lands;[36] and to determine the membership of their nations[37] in part by requiring states to respect and protect Indigenous laws governing those matters. The Special Rapporteur observes that the maintenance of Indigenous peoples' laws and legal institutions are an essential aspect of their right to self-determination.[38] As Professor John Borrows points out, these UNDRIP articles signal that Indigenous peoples' own laws must be treated as a prominent part of the architecture of section 35.[39]

29. This Court has repeatedly sought to ensure that the fundamental human rights set out in the *Charter of Rights and Freedoms* are interpreted in a manner that is consistent with Canada's international obligations and the relevant principles of international law.[40] The *Charter* has been "presumed to provide at least as great a level of protection as is found in the international human

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[33] John Borrows, "Revitalizing Canada's Indigenous Constitution: Two Challenges" in *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws* (Waterloo, ON: CIGI, 2017) 20 at 23.

[34] Brenda L. Gunn, "Beyond *Van der Peet*: Bringing Together International, Indigenous and Constitutional Law" in *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws* (Waterloo, ON: CIGI, 2017) 29 at 33-34.

[35] UNDRIP, Articles 11(1) and 11(2).

[36] UNDRIP, Article 26(3).

[37] UNDRIP, Articles 33(1) and 33(2).

[38] "Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples" (21 July 2017), A/72/186, at para 61.

[39] John Borrows, "Revitalizing Canada's Indigenous Constitution: Two Challenges" in *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws* (Waterloo, ON: CIGI, 2017) 20 at 23; Brenda L. Gunn, "Beyond *Van der Peet*: Bringing Together International, Indigenous and Constitutional Law" in *UNDRIP Implementation: Braiding International, Domestic and Indigenous Laws* (Waterloo, ON: CIGI, 2017) 29 at 35-36; "Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples" (21 July 2017), A/72/186, at para 61.

[40] *R v. Hape,* [2007] 2 SCR 292, 2007 SCC 26, at para 55; *Saskatchewan Federation of Labour v. Saskatchewan,* [2015] 1 SCR 245, 2015 SCC 4, at para 64.

rights documents that Canada has ratified".[41] The rights set out in section 35 are no less foundational and should be subject to the same interpretive principle.

30. UNDRIP is a declaration of basic human rights principles, akin to the Universal Declaration of Human Rights.[42] Parliament has committed to ensuring that Canadian law is consistent with UNDRIP,[43] and passed legislation affirming "the Declaration as a universal human rights instrument with application in Canada."[44] In taking this step, the Minister of Indigenous and Northern Affairs commented that Canada intended "nothing less than to adopt and implement the declaration in accordance with the Canadian constitution" and to "breath[e] life into section 35… recognizing it now as a full box of rights for Indigenous people in Canada."[45] In line with this, this Court should interpret section 35 in a manner that is consistent with the protections set out in UNDRIP[46] by recognizing a generic right to self-government rooted in Indigenous legal orders.

PARTS IV AND V - SUBMISSIONS ON COSTS AND ORDER REQUESTED

31. Chiefs of Ontario does not seek costs and requests that none be awarded against it.

32. Chiefs of Ontario does not take a position on the ultimate disposition of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11TH DAY OF NOVEMBER, 2022

Maggie Wente, Krista Nerland and Jesse Abell

Counsel for the Interveners, Chiefs of Ontario

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[41] *Divito v. Canada (Public Safety and Emergency Preparedness)*, [2013] 3 SCR 157, 2013 SCC 47, at para 234.

[42] S James Anaya, "The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era" in Claire Charters & Rodolfo Stavenhagen, eds, *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (Copenhagen: International Work Group for International Affairs, 2009) 184 at 186-187.

[43] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, s 5.

[44] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14, s 4(a).

[45] Minister of Indigenous and Northern Affairs Carolyn Bennett, "Announcement of Canada's Support for the United Nations Declaration on the Rights of Indigenous Peoples" (Statement delivered at the 15th Session of the United Nations Permanent Forum on Indigenous Issues, 10 May 2016).

[46] See *R v. Hape,* [2007] 2 SCR 292, 2007 SCC 26, at para 55.

PART VI – TABLE OF AUTHORITIES

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