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

RESPONDENTS

(CONTINUED)

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

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Table of Contents

PART I - OVERVIEW AND FACTS

1. Peguis First Nation ("Peguis"), an Anishinaabe and Cree Nation, entered into Treaty 1 with the Crown on August 3, 1871, confirming the Nation-to-Nation relationship between the parties. Peguis is the largest First Nation in Manitoba with over 11,000 Members.

2. Peguis gave notice to Canada and Manitoba pursuant to ss. 20(1) of *An Act respecting First Nations, Inuit, Metis children, youth and families*[1] (the "Federal Act") on January 20, 2021, requesting a coordination agreement under ss. 20(2) of the Federal Act. A draft of the *Honouring our Children, Families and Nation Act* (the "Peguis Act") was included.

3. Peguis has since enacted the Peguis Act[2] pursuant to ss. 20(3)(b) of the Federal Act, which deemed that ss. 21 and 22 of the Federal Act now apply. Peguis, Peguis Child and Family Services (the "Agency"), Canada, and Manitoba are finalizing a coordination agreement. The Agency provides child and family services pursuant to the Peguis Act, and not as a mandated agency under *The Child and Family Services Act* (the "MB CFS Act").[3]

4. After the Peguis Act came into force, Manitoba made significant amendments to the MB CFS Act[4] and regulations. The Manitoba Department of Families created a new Assistant Deputy Minister role for the newly established Indigenous Governing Bodies Support Division in response to the implementation of the Federal Act and the Peguis Act.

5. In enacting the Peguis Act, Peguis utilized the advice and technical expertise of the Agency. Pursuant to ss. 5.4(c) of the Peguis Act, the Agency acts as Peguis' representative on child

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[1] S.C. 2019, c. 24.

[2] *Honouring our Children, Families and Nation Act,* **perma.cc/NW44-9797.** The Peguis Act came into force on January 21, 2022 by virtue of the inherent rights of Peguis in collaboration with the Federal Act.

[3] *The Manitoba Child and Family Services Act* C.C.S.M. c. C80 (the "MB CFS Act").

[4] *Ibid*, Amendments include, but are not limited to: Defined terms "federal Act", "Indigenous", Indigenous governing body", "Indigenous law", "Indigenous service provider"; subsections 76.2, 76.3, 76.4 and 76.5 regarding information sharing; Part VI.1 Indigenous Governing Bodies and Indigenous Service Providers, *inter alia*. The *Agency Mandates Regulation* 184/2003 had Schedule B amended where section 4 was repealed, which had provided the provincial mandate for the Agency. Assented to June 1, 2022.

and family matters before any Court or tribunal and with all levels of government for the review, advocacy, development, and implementation of the Peguis Act, *inter alia.*

6. The devastating impact of the infringement of First Nation rights over the care, education, and placement of their children through such events as residential schools, the 60's scoop, and underfunding of services to First Nations is undeniable. These events have had long-lasting, inter-generational trauma which continues to harm the social fabric of First Nations.

7. Peguis has responded. The impact of operating under its own legislation has been positive. Since the coming into force of the Peguis Act, families have been engaged in over 30 Customary Care Agreements, preventing the apprehension of over 30 children – at the same time avoiding the adversarial court process. The Manitoba Court of King's Bench recently pronounced a guardianship order pursuant to the Peguis Act (as opposed to the MB CFS Act), the first of its kind in Manitoba and possibly the first such pronouncement by a Superior Court in Canada. The Agency's unique perspective and expertise relating to the application of the Federal Act has been recognized by the Manitoba Court of Appeal.[5]

PART II – ISSUES IN DISPUTE

8. The questions in issue for the appeals from the Attorneys General of Quebec and Canada are set out in the factum of the AG Canada.[6]

PART III – STATEMENT OF ARGUMENT

9. The Agency will focus its submissions concurrently on the following points:

a. Reconciliation is an applicable constitutional principle in assessing the S. 35[7] right to self-government over First Nation child and family services as it relates to the validity of the Federal Act; and

b. The Federal Act, and in particular sections 21 and 22(3), are consistent with the principles of reconciliation and do not disrupt the architecture of the Constitution.

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[5] *Metis Child, Family and Community Services v. CPR et al.,* 2022 MBCA 40, at paras. 26, 27 and 31.
[6] Attorney General of Canada's Factum, paras. 46-47 ("AG Canada").
[7] *Constitution Act, 1982*, Schedule B to the Canada Act, 1982 (UK), 1982, c. 11, ("S. 35").

Reconciliation as a Constitutional Principle for First Nation-Crown Relations

10. The Constitution is supported by principles and rules that act in concert in its interpretation. The applicable unwritten constitutional principles may vary depending on the legal issues in question and are essential to the ongoing development and evolution of the Constitution.[8] As expressed by former Chief Justice Beverly McLachlin at the 2005 Lord Cooke Lecture[9] in Wellington, New Zealand:

> … even inclusive, written constitutions leave much out, requiring us to look at convention and usage. In addition, the broad, open-textured language used in constitutional documents admits of a variety of interpretations. In order to resolve interpretational issues that may arise from this language, judges may need to resort to conventions and principles not articulated in the written constitution itself.[10]

11. The "living tree" doctrine dictates that the Constitution must be interpreted flexibly over time to meet new social, political, and historic realities. Beginning with *Edwards v. Canada (Attorney General)*[11] the Judicial Council of the Privy Council recognized that the Constitution was akin to a living tree, capable of evolving to meet new social and economic realities. This method of constitutional interpretation has been fundamental to Canada's constitutional order since that pronouncement. This Court has noted:

> A large and liberal, or progressive, interpretation ensures that continued relevance and, indeed, legitimacy of Canada's constituting document. By way of progressive interpretation our Constitution succeeds in its ambitious enterprise, that of structuring the exercise of power by the organs of the state in times vastly different from those in which it was crafted...[12]

12. First Nations and the state have engaged in relationship-building since contact, notably through instruments like the *Royal Proclamation, 1763* and in Peguis' case, the signing of Treaty

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[8] *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at paras. 32, 49-54.
[9] McLachlin, Chief Justice Beverly, *Unwritten Constitutional Principles: What is Going On?* **perma.cc/4AD2-NAQW**, December 1, 2005; accessed October 10, 2022.
[10] *Ibid*.
[11] *Re Section 24 of the BNA Act,* [1930] 1 DLR 98, (*sub nom Edwards v. Canada (Attorney General)* [1930] AC 124 (PC)
[12] *Reference Re. Same Sex Marriage* 2004 SCC 79 at para. 23. See also *R. v. Blais*, 2003 SCC 44 at para.40, where this Court stated that the Charter [and S. 35] must be placed in its proper linguistic, philosophical and historical contexts.

1. Such instruments are acts of reconciliation between First Nations Peoples and Settlers, and are reflections of the sovereign independence of the parties involved.

13. Principles of reconciliation have developed and evolved through the enactment of S. 35, judicial recognition of pre-existing First Nation rights, national inquiries, international commitments, and legislative action.[13] It is submitted that the principles of reconciliation must be applied on constitutional questions involving First Nations S. 35 self-government rights related to child and family services.

14. In the *Quebec Secession Reference,*[14] this Court reviewed the application of constitutional principles and the Court's power to define them. The Court now has an opportunity to provide greater clarity on the application of the principles of reconciliation to First Nations-Crown relations, and specifically, to the constitutional interpretation of S. 35 in the determination of the validity of the Federal Act. It is submitted that reconciliation, and its underlying tenets, is a constitutional principle that reflects Canada's current social, political, and historic realities.

Principles of Reconciliation

15. The TRC has defined reconciliation as being "about establishing and maintaining a mutually respectful relationship between Aboriginal people and non-Aboriginal peoples in this country."[15] This is consistent with the purpose of S. 35 to reconcile First Nations' pre-existing

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[13] See, for example, The Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciliation for the future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Ottawa: TRC 2015) ("TRC"); *UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution/adopted by the General Assembly, 2 October 2007, A/RES/61/295;* An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, SC 2021, c 14; *The Declaration on the Rights of Indigenous Peoples Act*, SBC 2019 c.44; *The Path to Reconciliation Act*, C.C.S.M. c. R30.5.

[14] Supra, note 7. The four constitutional principles were: federalism; democracy; constitutionalism; and the rule of law.

[15] TRC, at p. 6. The TRC also noted that reconciliation is a process stating "A critical part of this process involves repairing damaged trust by making apologies, providing individual and collective reparations, and following through with concrete actions that demonstrate real societal change. Establishing respectful relationships also requires the revitalization of Indigenous law and legal traditions." at p. 121.

societies with asserted Crown sovereignty.[16] Madam Justice McLachlin, as she then was, outlined nine principles of treaty interpretation when it came to the litigation of treaty rights disputes.[17] Along the same vein, it is submitted that the following can be considered as principles of reconciliation, and that these principles can assist in the analysis of S. 35 legal issues. The principles of reconciliation listed below is non-exhaustive:

i. Negotiation – this affords the recognition and implementation of First Nation rights based on their self-determination. This Court has long acknowledged negotiation as the most appropriate way to dealing with First Nation-Crown conflict.[18]

ii. Reconciliation is a fundamental purpose of S. 35 – this is an ongoing process where First Nations and the Crown work collaboratively to establish a mutually respectful framework for living along one another. Reconciliation is a principle cognizable in the Canadian legal and constitutional structure.[19] Not all aspects of self-government are outlined in the case at bar, but the fundamental purpose of S. 35 preserves the ability to express such rights in the future.[20]

iii. Self-determination and self-government – Nation-to-nation relationships, including treaty relationships require developing mechanisms which recognize First Nations as foundational partners to Canada's constitutional framework. The Federal Act provides such a mechanism.[21]

iv. *The United Nations Declaration on the Rights of Indigenous Peoples* (the "UN Declaration") and the *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples* (the "UNDRIPA") - customary international law, such as the UN Declaration, form a legitimate part of the common law. This will be discussed in more detail below.

v. Free, prior and informed consent – as identified in the UN Declaration, securing free, prior and informed consent is a requisite for the Nation-to-Nation relationship to succeed. Article 19 of the UN Declaration requires the state to consult and cooperate in good faith through this principle.[22]

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[16] *R v. Van der Peet*, [1996] 2 SCR 507 at paras. 31-32 ("*Van der Peet*"); *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 at para 186 (aff'd) ("*Delgamuukw*"); and *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para. 17 (aff'd) ("*Haida Nation*").

[17] *R. v. Marshall*, [1999] 3 S.C.R. 456, at para. 78.

[18] *R. v. Sparrow*, [1990] 1 SCR 1075 at p. 1105 ; *Delgamuukw* at para. 186 citing *Sparrow; Haida Nation* at paras. 14, 20, 25 and 38; *Clyde River (Hamlet) v. Petroleum Geo-Services inc.*, [2017] 1 SCR 1069 at para. 24; *R. v. Desautel*, 2021 SCC 17 at paras. 87-91.

[19] *Supra*, note 16, *Van der Peet* at para. 49.

[20] *Ibid*, at paras. 158 and 310 (minority views in favour of the majority opinion on the fundamental purpose of S. 35).

[21] Assembly of First Nations Factum at paras. 52, 98, 117 and 118 ("AFN").

[22] UN Declaration - Article 19 notes that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their

vi. Investment in First Nations – a fair, sustainable, and equitable fiscal relationship, developed in collaboration, is required to enable First Nations to fully operationalise their work towards implementation of child and family wellness laws they may create. Historic underfunding[23] of First Nations is not in line with this principle of reconciliation.[24]

vii. Action dealing with ongoing legacies of colonialism – First Nations have suffered disproportionally when it comes to the destructive impact of colonialism in relation to education, languages, culture, health, the administration of justice as well as economic opportunities and prosperity. Mutual respect and reconciliation are objectives which require dealing with ongoing legacies. The TRC Calls to Action provides direction to deal with such legacies.[25]

The Federal Act acknowledges the principles of Reconciliation

17. The Federal Act respects the principles of reconciliation:

a. The Federal Act, as legislation acknowledging First Nations jurisdiction over child and family services, was drafted in consultation and support of First Nation representatives, in accordance with Article 19 of the UN Declaration;[26]
b. The Federal Act, as expressed through its preamble, in part, addresses legacies of colonialism;
c. The Federal Act places negotiation at the forefront of relations between First Nations, provinces, and Canada, as opposed to the adversarial processes.[27] Negotiation offers an advantage to reconcile First Nation rights for the First Nation-Crown relationship to thrive. Should this Court agree with the position of the AG Quebec, then S. 35 rights to self-government will be just an empty promise;
d. The Federal Act acknowledges the diversity amongst First Nations, by providing an efficient mechanism for individual First Nations to express their distinct cultures and Indigenous Legal Traditions;
e. Equitable funding of Indigenous child and family services is provided for;[28] and

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free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."

[23] *Renvoi a la Cour d'appel du Quebec relative a la Loi concernant les enfants, les jeunes et las familles des Premiers Nations, des Inuits et des Metis*, 2022 QCCA 185, para. 12 ("QCCA Opinion").
[24] *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)*, 2018 CHRT 4 at paras. 40, 215 and 216.
[25] TRC, Calls to Action. **perma.cc/3YLT-UXFZ** accessed on November 9, 2022. Specifically Calls 1-5.
[26] AFN Factum, at para. 2.
[27] The Federal Act, ss. 20(2) and 20(5).
[28] The Federal Act, ss.20(2)(c).

f. First Nation Child and Family Services laws ("FN CFS law") has the force of federal law pursuant to ss. 21(1) of the Federal Act serves to reconcile First Nation Legal Traditions with existing juridical structures. This facilitates the application of FN CFS law through existing court processes and avoids jurisdictional uncertainty. The absence of a tribunal with jurisdiction to apply FN CFS law would render the Federal Act effectively hollow.[29]

18. Acknowledging First Nation jurisdiction over its child and family services does not offend the Constitution.[30] FN CFS law passed under the Federal Act applies only to that First Nation's members. Such legislation also applies concurrently with applicable provincial and federal CFS legislation.[31] FN CFS laws remain subject to *The Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act* as well as the "best interest of the Indigenous child" test within the Federal Act.[32] Arguments raised by some provincial Attorneys General are unfounded.[33] Provincial and territorial child welfare laws are not being eviscerated.[34] Rather, the ability for First Nations to legislate in this area of law enhances the legislative arena for more appropriate cultural continuity, substantive equality and is in the best interests of the Indigenous child, as envisioned in the Federal Act.

19. In applying the principles of reconciliation, the Federal Act does not disrupt the architecture of the Constitution. The AG Canada's pith and substance analysis is the correct manner in which to determine the constitutionality of the Federal Act.[35] Bridge building and First Nations rights recognition is the most appropriate process in this instance.

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[29] See for example, *The Provincial Court Act*, C.C.S.M. C. C275, s. 7. Ss. 21(1) of the Federal Act is also consistent with UN Declaration Article 13.
[30] QCCA Opinion at paras. 59, 364, 494.
[31] The "conflict of laws" provisions of Ss. 22(1) and 22(3) do not displace provincial legislation. Only when there is a conflict amongst the provisions of legislation will an assessment into the overrepresentation of First Nation children in the child and family services system and the need to address the devastating impacts on language, culture and survival of Indigenous peoples will be required. See also *Protection de la jeunesse — 225102,* 2022 QCCQ 6353 at para. 46.
[32] The Federal Act, ss. 19, 21(3) and 22(1). AG Canada's Reply at para. 26.
[33] Factum of the Attorney General of Alberta, at paras. 33 and 37 (AG Alberta"); Factum of the Attorney General of Manitoba at paras. 3, 5 and 6 ("MB AG"); Factum of the Attorney General of Northwest Territories at para. 9 ("AGNT").
[34] AGNT Factum at para. 37.
[35] AG Canada Factum, paras 51-85.

20. It is submitted that the *Van der Peet* test, raised by the Alberta AG, is inappropriate in the questions of this appeal and cross-appeal.[36] Every society has a right to raise their own children. The right to raise one's own children is not a practice, custom or tradition that is site-specific. In error, the authorities relied upon by the Alberta AG deals with an Aboriginal right to fishing and is clearly distinguishable from the issues at bar. Harvesting wildlife is site specific. This attempt to generalize the *Van der Peet* fishing rights holding to other rights elsewhere distorts the inherent and S. 35 right to self-government.

21. It is further submitted that the principles of reconciliation provides an appropriate and necessary perspective of the Federal Act's constitutionality. In applying these principles, the Federal Act remains true to the existing constitutional architecture, staying consistent with S. 35 and appropriately restrictive so as to not disrupt the division of powers.

Reconciliation through the UN Declaration

22. UNDRIPA signals the intention of Canada to be bound by the UN Declaration's Articles as internationally affirmed values. This requires the Court to recognize such values. Canada, by enacting the UNDRIPA, has established a process for ensuring that the laws of Canada are consistent with the UN Declaration. These significant developments in the law allows for the evolution of legal doctrines and principles, such as the principles of reconciliation.

23. In response to the TRC Report, the Manitoba Government enacted *The Path to Reconciliation Act*,[37] which recognised that "…Indigenous people within Canada have been subject to a wide variety of human rights abuses since European contact and that those abuses have caused great harm".[38] The province of British Columbia has also enacted the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019 c. 44.[39] The BC AG stated that their Act advances the UN Declaration as the framework for reconciliation.

24. It is critical to note that jurisdictions other than Canada have moved to legislate the recognition and affirmation of the Articles from the UN Declaration. The UNDRIPA's objective is to advance the federal implementation of the UN Declaration in consultation and cooperation

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[36] AG Alberta Factum at paras. 11, 12 and 18.
[37] C.C.S.M. c R30.5 assented to March 15, 2016.
[38] *Ibid*, preamble.
[39] Factum of the Attorney General of British Columbia at paras. 3 and 6 ("BC AG").

with Indigenous peoples. Recently, Federal Ministers, David Lametti and Marc Miller, issued a statement on the 15th anniversary of the UN Declaration:

> The UN Declaration establishes an international framework of minimum standards for the survival, dignity, and well-being of Indigenous peoples around the world. It speaks of how the recognition of rights will enhance harmonious and cooperative relations between States and Indigenous peoples, based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith.
>
> Demonstrating Canada's commitment to the UN Declaration, on June 21, 2021, the *United Nations Declaration on the Rights of Indigenous Peoples Act* became law in Canada. This Act creates a lasting framework to advance federal implementation of the UN Declaration in consultation and cooperation with First Nations, Inuit and Métis from coast to coast to coast. It ensures sustained and continued efforts to uphold the human rights of Indigenous peoples now and in the future and contains measures to hold the federal government accountable.[40]

25. The Agency endorses the Makivik Corporation's summary on customary international law with special emphasis on the UN Declaration.[41]

Consultations

26. The AFN has noted that Canada undertook extensive engagement where First Nations, provincial and territorial partners participated to address the humanitarian crisis of Indigenous children being overrepresented in the child welfare system. Consultation occurred and the territorial and provincial governments were fully aware of the co-development of the Federal Act.[42],[43] The constructive knowledge resulting from the engagement process has met the consultation threshold questioned by the AGNT.[44]

Conclusion

27. Canadian history is replete with discriminatory Crown policies and laws aimed towards First Nations.[45] Section 88 of the *Indian Act* has been a vehicle for the imposition of provincial child welfare legislative schemes for the mass removal of First Nations children. The standards

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[40] **perma.cc/J9XV-7C4A** accessed on October 31, 2022.
[41] Factum of the Makivik Corporation at paras. 54 and 56.
[42] Assembly of First Nations ("AFN") Factum at paras. 32 and 33.
[43] Factum of the Makivik Corporation at para. 59
[44] AG of Northwest Territories ("AGNT") Factum at para. 29.
[45] QCCA Opinion, at paras. 14-17, 112 and 116.

within which these laws were applied had no regard or value towards First Nations societies,[46] contrary to the Treaty relationship that many First Nations were to benefit from alongside the Crown. These oppressive laws and policies meant that First Nations people could not:

a. Practice their culture due to being banned and suppressed;
b. Speak their language;
c. Get an education;
d. Vote; or
e. Leave the reserve without a Pass from the Indian Agent, creating economic disparity.

These are only some of the realities First Nations people have faced due to past assimilationist policies and laws. It can be argued metaphorically that the Attorneys General who attempt to declare Indigenous child welfare laws unconstitutional is a form of neo-colonialism. The Attorneys General analyses are now dated and risk repeating discriminatory attitudes of the past to the continued disadvantage of First Nations. Applying the principles of reconciliation serves to correct and decolonize those perspectives. The inherent right to self-government has been recognized under S. 35[47] and to deny this right is discriminatory and a continuance of disadvantage aimed at First Nations.

28. The Court has in front of it an opportunity to address the inherent right of self-government directly as it relates to FN CFS laws. This potential to make Canadian law further consistent with the UN Declaration and the UNDRIPA cannot be overlooked. The principles of reconciliation as applied to the constitutional analysis required to answer the questions on appeal adds weight and persuasion to the anticipated reasons from this Court.

PART IV: **COSTS**

29. The Agency seeks no costs and requests that no costs be ordered against it.

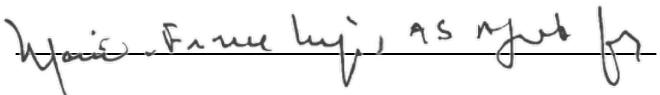
PART V: ORDER REQUESTED

30. The Agency takes no position on the outcome of the appeals.

[46] AFN Factum, at para 31.
[47] QCCA Opinion at paras. 49-50, 59.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Winnipeg, Manitoba, this 14th day of November, 2022.



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PART VI – TABLE OF AUTHORITIES

Statutes / Rules	**Section(s)**
Agency Mandates Regulation, Man Reg 184/2003 *Règlement sur les autorisations accordées aux offices,* Règl du Man 184/2003	Schedule B, section 4
An Act respecting First Nations, Inuit and Metis children, youth and families, S.C. 2019, c.24 *Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, L.C. 2019, Ch. 24	Preamble, 19, 20, 21, 22 Préambule, 19, 20, 21, 22
An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, S.C. 2021, c.14 *Loi sur la United Nations Declaration on the Rights of Indigenous Peoples*, L.C. 2021, Ch. 14	Preamble
The Child and Family Services Act C.C.S.M. c. C80 *Loi surles service à l'enfant et à la famille* c. C89 de la C.P.L.M.	1(1), Part VI.1, 76.2, 76.3, 76.4, 76.5 1(1), Partie VI.1, 76.2, 76.3, 76.4, 76.5
The Declaration on the Rights of Indigenous Peoples Act, SBC 2019 c.44	
The *Honouring our Children, Families and Nation Act*, Peguis First Nation, January 21, 2022	5.4(c)
The Path to Reconciliation Act, C.C.S.M. c. R30.5 *Loi sur la reconciliation,* c. R30.5 de la C.P.L.M	preamble
The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11	35

Loi constitutionelle de 1982, Annexe B de la Loi de 1982 sur le Canada (R-U), 1982	35
The Provincial Court Act, C.C.S.M. c. C275 *Loi sur la cour provincial*, c. C275 de la C.P.L.M.	7 7

Jurisprudence	**Paragraph(s)**
Clyde River (Hamlet) v. Petroleum Geo-Services inc., [2017] 1 SCR 1069	15
Delgamuukw v. British Columbia, [1997] 3 SCR 1010	15
First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2018 CHRT 4	16
Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73	15
Metis Child, Family and Community Services v. CPR et al, 2022 MBCA 40	7
Protection de la jeunesse — 225102, 2022 QCCQ 6353	18
Reference Re. Same Sex Marriage 2004 SCC 79	11
Reference re Secession of Quebec, [1998] 2 S.C.R. 217	10, 14
Re Section 24 of the BNA Act, [1930] 1 DLR 98, (*sub nom Edwards v. Canada (Attorney General)* [1930] AC 124 (PC)	11
Renvoi a la Cour d'appel du Quebec relative a la Loi concernant les enfants, les jeunes et las familles des Premiers Nations, des Inuits et des Metis, 2022 QCCA 185	16,
R. v. Blais, 2003 SCC 44	11
R. v. Desautel, 2021 SCC 17	15

Secondary Sources	**Paragraph(s)**
Statement on the 15th anniversary of the United Nations Declaration on the Rights of Indigenous Peoples by Ministers David Lametti and Marc Miller perma.cc/J9XV-7C4A accessed on October 31, 2022	24
McLachlin, Chief Justice Beverly, *Unwritten Constitutional Principles: What is Going On?* perma.cc/4AD2-NAQW**,** December 1, 2005; accessed October 10, 2022	10
The Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciliation for the future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Ottawa: TRC 2015).	13, 15, 16, 23
UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: Resolution adopted by the General Assembly (2 October 2007), A/RES/61/295	13