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 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
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 and
ATTORNEY GENERAL OF THE NORTHWEST TERRITORIES

INTERVENERS

(Style of cause continues next page)

FACTUM OF THE JOINT INTERVENERS
(Métis National Council, Métis Nation-Saskatchewan, Métis Nation of Alberta, Métis Nation British Columbia, Métis Nation of Ontario, and Les Femmes Michif Otipemisiwak)
(Pursuant to Rules 37 and 42 of the Rules of the *Supreme Court of Canada*, SOR/2002-156)

AND BETWEEN:

ATTORNEY GENERAL OF CANADA

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- and -

ATTORNEY GENERAL OF QUÉBEC

RESPONDENT

- and -

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PART I AND PART II: OVERVIEW AND POSITION OF THE INTERVENERS

1. This Court has previously lamented that the task of defining the rights protected by s. 35 of the *Constitution Act, 1982* ("**Section 35**") has fallen largely to the courts.[1] In this appeal, the Act[2] before this Court is an innovative, forward-looking, and desperately needed piece of legislation that gives practical effect to the "national commitment" Section 35 represents.[3] The Métis National Council, Métis Nation-Saskatchewan, Métis Nation of Alberta, Métis Nation British Columbia, Métis Nation of Ontario, and Les Femmes Michif Otipemisiwak ("**Métis Interveners**") jointly intervene because they fully support the Act, which expressly includes the Métis, and make submissions on how it should be considered and understood by this Court.

2. At its core, the Act is rooted on this Court's confirmation that s. 91(24) of the *Constitution Act, 1867* "vested [the federal government] with primary constitutional responsibility for securing the welfare of Canada's aboriginal peoples."[4] All Indigenous peoples are under Parliament's "protective authority" and "reconciliation with *all* of Canada's Aboriginal peoples is Parliament's goal."[5] To its credit, Parliament was no longer willing to sit on the reconciliation sidelines as one of the most pressing issues facing Canada today—the health, welfare, and care of Indigenous babies, children, and youth—passed it by.

3. In response to this "crisis,"[6] the Act sets out national standards for the protection of Indigenous babies, children, and youth, which is unquestionably within Parliament's authority in order to protect Indigenous peoples. In order to ensure Indigenous communities have a meaningful role in achieving these standards, the Act also relies on Parliament's well-established authority to referentially incorporate laws from other entities as federal law.

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1 *R v Desautel*, 2021 SCC 17 at para 85 [***Desautel***]; *Newfoundland and Labrador* (*AG*) *v Uashaunnuat* (*Innu of Uashat and of Mani-Utenam*), 2020 SCC 4 at para 24.

2 *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 [Fr] (the "**Act**")

3 *Desautel* at para 85.

4 *Delgamuukw v British Columbia*, [1997] 3 SCR 1010 at para 176 [***Delgamuukw***].

5 *Daniels v Canada* (*IAND*), 2016 SCC 12 at paras 37, 49.

6 *Reference to the Court of Appeal of Quebec in relation with the Act respecting First Nations, Inuit and Métis children, youth and families*, 2022 QCCA 185 at paras 128, 180, 201, 310 [***QCCA Decision***].

4. Through the Act, Indigenous law—adopted by an "Indigenous governing body"[7]—is brought into the Canadian legal system in an orderly manner by the level of "government to whom [Indigenous peoples] can turn."[8] The federal Crown's recognition of "[t]he inherent right of self-government recognized and affirmed by Section 35"[9] is given practical effect through the creation of statutory rights, mechanisms, and processes, without a final negotiated settlement or a treaty first having to be reached. As ordinary legislation, the Act cannot—and does not—define, amend, or limit Section 35 rights in any way. Rather, it is a statutory scheme that a recognized Indigenous governing body can *choose* to use based on the rights and interests defined in the statute, not a proven Section 35 right. Instead of leaving this pressing issue to be addressed or litigated on a right-by-right, community-by-community basis, the Act represents a proactive legislative tool to address the crisis Indigenous peoples are facing nation-wide.

5. The Act is yet another one of the "legal tools in the reconciliation basket"[10] under which Parliament has embraced its constitutional responsibility and challenged the status quo. Because the Act is grounded on Parliament's constitutional responsibility for all Indigenous peoples, a pith and substance analysis of the Act is a full answer to this appeal. As this Court recently explained, after the validity of an Act is affirmed, the "judgement calls … collectively expressed by Parliament as representatives of the electorate" should be respected by the courts.[11]

PART III: STATEMENT OF ARGUMENT

A. The Act Advances Section 35's Grand Purpose through a Legislative Tool; It Does Not Fully Define, Amend, or Limit Any Section 35 Right

6. The resolution of this appeal must begin with a purposive and contextual understanding of Section 35 as well as a review of this Court's related jurisprudence in order to properly situate and understand the Act, including appreciating what it is, and, just as importantly, what it is not. As explained below, the Act is best understood as a legislative tool that an Indigenous community may voluntarily choose to rely on based on the statutory rights the Act sets out.

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7 Act, s 1 [Fr]. In this factum, "Indigenous governing body" has the definition in the Act.
8 *Daniels* at para 50.
9 Act, s 18 [Fr].
10 *Ktunaxa Nation v British Columbia* (*Forests, Lands and Natural Resource Operations*), 2017 SCC 54 at para 86 [***Ktunaxa***].
11 *R v Sharma*, 2022 SCC 39 at para 107 [***Sharma***].

i) Section 35 and this Court's Jurisprudence in the Context of the Act

7. This Court has recognized "[t]he reconciliation of Aboriginal and non-Aboriginal Canadians in a mutually respectful long-term relationship is the grand purpose of [Section 35]."[12] In order to achieve this purpose, Section 35 contains two themes.[13] ***Firstly***, Section 35 recognizes the *pre-existence* of Indigenous peoples in their territories before Canada became Canada.[14] ***Secondly***, Section 35 provides the "constitutional base"[15] upon which Indigenous pre-existence is reconciled with "assumed"[16] Crown sovereignty through negotiations leading to just settlements, including, agreements, treaties, and other constructive arrangements.[17]

8. Viewed holistically, s. 35(1) recognizes and affirms "existing" Aboriginal rights (i.e., the rights of Indigenous peoples—often referred to as inherent—that do not find their origins in Canada's Constitution).[18] Section 35(2) identifies the various "aboriginal peoples" who hold these rights.[19] Section 35(3) contemplates and provides the mechanism through which "[A]boriginal rights" can be reconciled with assumed Crown sovereignty through negotiated arrangements being constitutionally protected.[20] These provisions are *how* the Crown's assumed sovereignty over Indigenous peoples and their lands gives way to legitimate nation-to-nation, government-to-government relationships that strengthen Canada's constitutional legitimacy and "reconcile diversity within unity."[21]

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12 *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53 at para 10 [***Beckman***]; *Daniels* at para 34; *Mikisew Cree First Nation v Canada* (*Governor General in Council*), 2018 SCC 40 at para 58 [***Mikisew***]; *Desautel* at para 112.

13 *Desautel* at para 26.

14 For Indians and Inuit peoples see: *R v Van der Peet*, [1996] 2 SCR 507 at para 44 [***Van der Peet***]. For Métis peoples see: *R v Powley*, 2003 SCC 43 at para 18.

15 *R v Sparrow*, [1990] 1 SCR 1075 at 1077 [***Sparrow***].

16 *Mitchell v MNR*, 2001 SCC 33 at para 9 [***Mitchell***]; *Haida Nation v British Columbia* (*Minister of Forests*), 2004 SCC 73 at paras 17, 20 [***Haida***]; *Mikisew* at para 57; *Manitoba Métis Federation Inc v Canada* (*AG*), 2013 SCC 14 at paras 9, 66, 70 [***MMF***].

17 *Haida* at para 20; *Sparrow* at 1105–1106; *Van der Peet* at paras 229, 253.

18 *Calder v British Columbia* (*AG*), [1973] SCR 313 at 328; *Delgamuukw* at para 133; *Sparrow* at 1091–1093, 1094.

19 *Desautel* at para 1.

20 *Beckman*; *Quebec (AG) v Moses*, 2010 SCC 17; *First Nation of Nacho Nyak Dun v Yukon*, 2017 SCC 58 [***Nacho Nyak Dun***].

21 *Beckman* at para 10; *Nacho Nyak Dun* at para 37; *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 43.

9. This Court has recognized that Section 35 "*did not* create aboriginal rights; rather, it accorded constitutional status to those rights which were 'existing' in 1982."[22] Moreover, Section 35 rights *do not* find their source in the division of powers. These rights "are held *against* government"[23] and "have nothing to do with whether something lies at the core of the federal government's powers."[24] As the Royal Commission on Aboriginal Peoples concluded, "Aboriginal governments as one of three distinct orders of government in Canada … are sovereign within their several spheres and hold their powers by virtue of their inherent or constitutional status rather than by delegation. They share the sovereign powers of Canada as a whole, powers that represent a pooling of existing sovereignties."[25]

10. While much of this Court's consideration of Section 35 to date has been in the context of developing legal tests for the proof of Aboriginal rights as a defense to a regulatory prosecution or in civil actions alleging an infringement of an Aboriginal right, meeting those tests are *not* the only way for Aboriginal rights to be recognized in Canadian law, short of protection under s. 35(3). If Canadian law is somehow able to grant the Crown assumed sovereignty over Indigenous peoples, the Crown must also have the corollary authority to recognize these pre-existing rights through a negotiated agreement or legislation without an Indigenous community needing to prove such rights based on the tests devised by this Court when those rights are denied.

11. Consistent with this approach to Section 35, this Court has already recognized the provision's promise is more than just a right to go to court based on proving or disproving Aboriginal rights. For example, between the assertion of an Aboriginal right and a final settlement or determination being reached, the honour of the Crown—as a constitutional principle—requires that the potential "rights, interests and claims" embedded in Section 35 be "determined, recognized and respected."[26] This gives rise to a "context-specific [Crown] duty to negotiate."[27] It also gives rise to the Crown's duty to consult and accommodate.[28]

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22 *Delgamuukw* at para 133 [emphasis added].
23 *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44 at para 142 [***Tsilhqot'in***].
24 *Tsilhqot'in* at para 142.
25 Canada, *Report of the Royal Commission on Aboriginal Peoples, Volume 5: Renewal: A Twenty-Year Commitment* (Canada, October 1996) at 150; *Mitchell* at para 130.
26 *Haida* at para 25.
27 *Daniels* at para 56.
28 *Haida* at paras 31–33.

12. These duties, among others, that give effect to Section 35's promise are based on reconciliation being a *process* mandated by Section 35, not a final legal remedy.[29] As this Court has confirmed, "[t]rue reconciliation is rarely, if ever, achieved in courtrooms."[30] As a part of this reconciliation continuum, governments may proactively recognize Aboriginal rights without resorting to the courts. The honour of the Crown is engaged by this recognition, as well as the implementation of these Crown recognized rights.[31] This includes operationalizing what may be considered aspects of a recognized Section 35 right through legislation and statutory rights, without amending Canada's Constitution or first reaching a treaty.

13. For example, a provincial legislature could pass a statute with respect to how consultation obligations owing to Indigenous communities are to be discharged. Notably, this Court has encouraged these types of legislative initiatives.[32] While an Indigenous community could still rely on asserted or proven Section 35 rights to challenge a legislative scheme that is established, they can also choose to rely on the scheme—and the statutory rights and processes created therein—to advance their interests.

14. This type of proactive legislation is just one of the many legal tools in the reconciliation basket, short of judicially proving Section 35 rights or reaching a constitutionally protected treaty. While the courts are the "guardians of the Constitution" and are responsible for the "authoritative interpretation" of s. 35(1),[33] this cannot mean that Crown recognition of Aboriginal rights—prior to formal judicial confirmation of those rights—are questionable or cannot be relied upon by Indigenous peoples. This is particularly so when courts have recognized that the pre-existing Aboriginal rights exist even in the absence of express judicial recognition.[34]

15. While courts must ensure Crown recognition of Aboriginal rights is undertaken through constitutionally valid mechanisms, denying Parliament's ability to proactively recognize rights (and Indigenous peoples' ability to rely on that recognition) would ignore the reality that the

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29 *Haida* at para 32; *MMF* at para 73.

30 *Clyde River v Petroleum Geo-Services Inc*, 2017 SCC 40 at para 24 [***Clyde River***].

31 *MMF* at para 73.

32 *Haida* at para 55; *R v Nikal*, [1996] 1 SCR 1013 at para 110; *Ross River Dena Council v. Government of Yukon*, 2012 YKCA 14 at para 37; *Mikisew* at para 46; *Clyde River* at para 22.

33 *Desautel* at paras 84, 86.

34 *Van der Peet* at paras 28–30; *Delgamuukw* at para 136; *Mitchell* at paras 10–11; *Saik'uz First Nation and Stellat'en First Nation v Rio Tinto Alcan Inc*, 2015 BCCA 154 at paras 61–66.

Crown has the assumed sovereignty that can impact or deny Aboriginal rights, not the courts. It would be untenable if once the Crown—which has been granted assumed control over Indigenous interests—decides to recognize Indigenous lands, rights, or claims, an Indigenous community could then be subjected to strict proof thereof based on the legal tests devised in *Van der Peet* or *Powley* when these rights were previously denied. Such an approach neuters the direction of this Court over the last forty years that has urged negotiations to implement Section 35, rather than defaulting to courts for final judicial determinations on Aboriginal rights, interests, and claims.[35]

ii) The Act as a Legislative Tool in the Reconciliation Basket to Advance Section 35

16. Based on the context and legal frameworks set out above, legislation like the Act is easily understood as a legislative means through which Section 35's overarching purpose is advanced. It is one of the many legal tools in the reconciliation basket to advance Section 35. It is not grounded on proof or establishment of Section 35 rights based on the legal tests set out in *Van der Peet* or *Powley*, but rather anchored on proactive Crown recognition of Indigenous rights and operationalizing this recognition through legislative means.

17. While the Act affirms that "[t]he inherent right to self-government recognized and affirmed by [Section 35] includes 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," it ultimately provides a statutory framework for setting out national standards as well as the orderly referential incorporation of Indigenous laws related to child and family services into the Canadian legal system.[36]

18. The Act, as ordinary legislation, cannot—and does not—amend, fully define, or limit any Section 35 right, including the inherent right of Indigenous self-government. Instead, the Act, based on the legislative choices of the "representatives of the electorate,"[37] facilitates the recognition of aspects of Indigenous self-government through creating statutory rights anchored on Parliament's "constitutional responsibility for securing the welfare of Canada's aboriginal

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35 *Haida* at para 14; *Mikisew* at para 26; *Desautel* at paras 87–92; *Clyde River* at para 24; *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 38.

36 Act, ss 10–17 [Fr], 18(1) [Fr], 21 [Fr], 22(3) [Fr].

37 *Sharma* at para 107.

peoples"[38] and "the federal government's relationship with Canada's Aboriginal peoples"[39] through setting national standards and incorporating Indigenous law by reference.

19. The Act, properly understood, is a legislative tool created by Parliament that an Indigenous community may voluntarily use in order to exercise its "legislative authority"[40] within a statutory framework, not based on a proven Section 35 right. The Act creates a space through which Indigenous communities may choose to negotiate and implement aspects of their Section 35 right of self-government. Notably, a non-participating Indigenous community (or an Indigenous community that choses to withdraw from the Act in the future) could still challenge the Act, or provincial child and family services legislation, based on proving a Section 35 right and an infringement based on the legal tests in *Sparrow*, *Van der Peet*, and *Powley*, etc. In the context of the Act, however, the statutory rights set out in the legislation itself are applicable, not the legal frameworks established by this Court related to establishing Section 35 rights or justifying infringements.

20. In some respects, the Act has certain similarities to how the courts have interpreted the *Indian Act*. For example, the *Indian Act*—an ordinary statute—may not define the proper rights-holder for the purpose of establishing a Section 35 right.[41] Nor does the *Indian Act* modify Section 35 rights[42] or define who are "Indians" within Canada's Constitution.[43] As discussed further below, the *Indian Act* also allows for Indigenous law to be incorporated as federal law with respect to customary elections or membership codes. In drawing this comparison, the Métis Interveners recognize there are also significant differences between the Act and the *Indian Act* (i.e., the Act does not find its origins in Canada's assimilationist history, the Act is not unilaterally imposed on Indigenous communities, Indigenous communities were involved in the Act's development, etc.); however, their point is that courts already recognize that there is a distinction with a difference in the case of ordinary legislation that creates statutory rights without altering constitutionally protected Section 35 rights that continue to exist independently.

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38 *Delgamuukw* at para 176.
39 *Daniels* at para 49.
40 Act, s 18 [Fr].
41 *Tsilhqot'in Nation v British Columbia*, 2007 BCSC 1700 at paras 445, 467–470, aff'd 2012 BCCA 285 at paras 149–150, 155.
42 *Sparrow* at 1091–1092.
43 *Daniels* at paras 18–19.

B. A Pith and Substance Analysis Addresses the Constitutional Validity of the Act; Not Proof of a Section 35 Right

21. Once the Act is properly understood as an ordinary statute that does not define, modify, or limit Section 35 rights, an approach of first requiring a Section 35 self-government right to be established, and then relying on the *Sparrow* infringement and justification framework, falls away. The Act creates statutory rights for any Indigenous governing body it recognizes. As such, a pith and substance analysis provides a full answer as to whether the Act is constitutionally sound and valid.

22. This Court has recognized that s. 91(24) "vested [the federal government] with primary constitutional responsibility for securing the welfare of Canada's aboriginal peoples."[44] In *Daniels*, this Court further explained that "[s.] 91(24) serves a very different constitutional purpose [than Section 35]. It is about the federal government's relationship with Canada's Aboriginal peoples."[45] This Court has also recognized that based on s. 91(24), "it is the federal government to whom [Indigenous peoples] can turn."[46]

23. The Act—through the exercise of Parliament's jurisdiction under s. 91(24)—creates a legislative framework through which the laws of an Indigenous governing body can be recognized and operate within Canadian law *as statutory rights*. As s. 91(24) contemplates, the Act defines and regulates the "relationship" between Indigenous peoples and Parliament, including, how Indigenous law—as referentially incorporated federal law—is brought into the Canadian legal system. Logically, this is done through Parliament's authority, as the level of government Indigenous peoples can turn to, based on s. 91(24). Importantly, the Act ultimately referentially incorporates Indigenous law as federal laws, not as recognized Section 35 rights.

24. The Court of Appeal concluded that based on a "full analysis of the *Act* … its pith and substance is to protect and ensure the well-being of Aboriginal children, families and peoples by promoting culturally appropriate child services, with the aim of putting an end to the over representation of Aboriginal children in child services systems."[47] This is a full answer to the Act's constitutional validity.

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44 *Delgamuukw* at para 176.
45 *Daniels* at para 49.
46 *Daniels* at para 50.
47 *QCCA Decision* at para 333.

25. The Act's purpose and effect is to address the welfare of all Indigenous peoples (i.e., its 'characterization').[48] Its application to First Nations, Inuit, and Métis peoples is unquestionably within s. 91(24)'s scope, as recognized by this Court (i.e., its 'classification').[49] Since the Act creates statutory rights and does not fully define or amend Section 35 rights, the infringement and justification frameworks set out in *Sparrow* have no role. The interplay between Indigenous laws, recognized as federal law, and provincial laws, does not engage the *Sparrow* test.

C. Parliament Can Choose to Referentially Incorporate Laws as Federal Law; Its Authority and Judgment Call in the Act Should Be Respected

26. Sections 21 and 22(3) of the Act incorporate laws passed by an Indigenous governing body into federal law by reference and afford such laws the usual protections federal laws enjoy. This well-established and legally sound legislative technique is a necessary, logical, and fundamental tool to address the acute crisis facing Indigenous peoples across many provinces and territories. Incorporation by reference represents one of several ways Parliament could have operationalized Indigenous laws within Canadian law; it was Parliament's judgment call.

27. Parliament's ability to incorporate the laws of another jurisdiction or body—as federal law—is well-established and flexible.[50] Parliament may even anticipatorily incorporate laws not yet enacted by another body.[51] Courts have recognized the ability of legislatures to incorporate the laws of a foreign legislature,[52] and the ability of Parliament to incorporate the laws of a provincially constituted board.[53] The same must be true for the bodies that represent Indigenous peoples, which this Court has recognized have the authority "to define themselves and to choose by what means to make their decisions, according to their own laws, customs and practices."[54]

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48 *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 at para 86 [***Securities Regulation Reference***]; *Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 51.

49 *Daniels* at paras 49–50; *Securities Regulation Reference* at para 86; *Chatterjee v Ontario (AG)*, 2009 SCC 19 at para 24.

50 *Wewaykum Indian Band v Canada*, 2002 SCC 79 at paras 114–116 [***Wewaykum***]; *Martin v Alberta*, 2014 SCC 25 at para 19 [***Martin***]; *Fédération des producteurs de volailles du Québec v Pelland*, 2005 SCC 20 at para 53; *Coughlin v The Ontario Highway Transport Board*, [1968] SCR 569 at 575, 582–583 [***Coughlin***]; *Ontario (AG) v Scott*, [1956] SCR 137 at 142–143 [***Scott***].

51 *Scott* at 142–143; *Coughlin* at 575, 582–583; *R v Dick*, [1985] 2 SCR 309 at para 44.

52 *Scott* at 142–143.

53 *Coughlin* at 575; *Martin* at paras 1, 19.

54 *Desautel* at para 86.

28. The practice of referentially incorporating Indigenous customs and traditions (i.e., Indigenous law)—as federal law—is already well accepted by courts in the context of the *Indian Act*.[55] In considering s. 2(1) of the *Indian Act*—which contemplates a "council of the band" being "chosen according to the custom of the band"[56]—the Federal Court has explained, "the phrase 'Indigenous legislation' would be more apt than 'custom' in the context of the *Indian Act*.[57] In preferring Indigenous laws, "Parliament referred to a set of norms that find their source and legitimacy outside of the Canadian legal system and that can be described as Indigenous law."[58] Importantly, "[t]he 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 result of [a First Nation's] aboriginal right to make its own laws concerning governance."[59]

29. When Parliament incorporates laws by reference, this Court has explained, "the relevant provisions apply *as federal law*" not as a law of the body from which it was borrowed.[60] As such, the doctrine of federal paramountcy applies to the laws incorporated by reference into federal law, because such laws become federal laws by virtue of having been adopted by Parliament. Section 22(3) of the Act simply codifies this well-established doctrine. Parliament's judgment call to use this well-established legislative technique was available to it and should be respected.

PART IV: SUBMISSIONS ON COSTS

30. The Métis Interveners seek no costs and ask that no costs be awarded against them.

PART V: ORDER SOUGHT

31. The Métis Interveners take no position on the outcome of the appeal.

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55 For example see: *Gamblin v Norway House Cree Nation Band Council*, 2012 FC 1536 at para 34 [***Gamblin***]; *Pastion v Dene Tha' First Nation*, 2018 FC 648 at paras 8–14 [***Pastion***]; *Whalen v Fort McMurray No 468 First Nation*, 2019 FC 732 at para 32 [***Whalen***]; *Waquan v Mikisew Cree First Nation*, 2021 FC 1063 at paras 38–40; *Bertrand v Acho Dene Koe First Nation*, 2021 FC 287 at paras 36, 42 [***Bertrand***]; *Narte v Gladstone*, 2021 FC 433 at para 14; *Ojibway Nation of Saugeen v Derose*, 2022 FC 531 at para 49; *Labelle v Chiniki First Nation*, 2022 FC 456 at para 9.

56 *Indian Act*, RSC 1985, c I-5, s 2(1) [Fr].

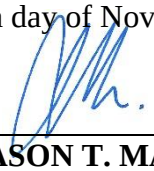
57 *Pastion* at para 13; *Whalen* at para 32.

58 *Bertrand* at para 36.

59 *Gamblin* at para 34.

60 *Wewaykum* at para 114 [emphasis added].

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of November 2022.



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PART VII: TABLE OF AUTHORITIES

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