File No. 36664

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

BETWEEN:

KTUNAXA NATION COUNCIL and KATHRYN TENEESE, ON THEIR OWN BEHALF AND ON BEHALF OF ALL CITIZENS OF THE KTUNAXA NATION

APPELLANTS
(Appellants)

AND:

MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS and GLACIER RESORTS LTD.

RESPONDENTS
(Respondents)

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OPENING STATEMENT

Section 35 of the ***Constitution Act, 1982*** ("s. 35") is not a parallel ***Canadian Charter of Rights and Freedoms*** (the "***Charter***") for Indigenous people. While s. 35 protects certain uniquely Indigenous interests which are strongly rooted in pre-contact and pre-assertion of sovereignty cultures and territories, Indigenous people are entitled to the full range of protections extended by the ***Charter*** for values such as freedom of expression, freedom of conscience, equality and freedom of religion. Indigenous Nations in Canada today are not antiques preserved in amber from the pre-colonial past. They are vibrant and vital societies who have contemporary religious and spiritual values that are informed not only by the pre-colonial past but also by their experiences of colonization and the current realities and challenges of their modern context. As such, they are entitled to rely upon section 2(a) of the ***Charter*** ("s. 2(a)") as the appropriate tool to protect these deeply personal interests that go to their contemporary identity and way of life. For the Ktunaxa, these issues arise in the context of the development of a ski resort in a remote sacred area. For other Indigenous people, like the Te'mexw Nations, these issues arise on a day to day basis when the expansion of urban residential and commercial development results in the disturbance of the remains of their ancestors.[1]

This Court should be careful not to approve of unique limits on constitutional protections for Indigenous peoples or attempt to limit the protection of Indigenous religion or spirituality to the framework provided by s. 35. To impose such limits would place additional burdens on Indigenous people seeking protection for their beliefs and reinforce the message that for too long has been sent by Canadian law and policy: that Indigenous religious and spiritual values are not deserving of the full protection granted to those of other Canadians.

PART I – STATEMENT OF FACTS

1. The Te'mexw Treaty Association ("Te'mexw") accepts the facts as stated by the Appellant.

PART II – STATEMENT OF ISSUES

2. Te'mexw accepts the issues as stated by the Appellant.

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[1] *Nanoose Indian Band v. British Columbia,* 1995 CanLII 1243 (BC CA) [Te'mexw Treaty Association Authorities ("TA") Tab 11].

PART III – STATEMENT OF ARGUMENT

A. Overview of Argument

3. The Court of Appeal accepted that the Ktunaxa's religious beliefs mandate that Qat'muk – the area where the resort at issue is to be developed – remain undisturbed, but put this belief entirely outside the protection of s. 2(a) of the ***Charter***. The Court excluded these beliefs from s. 2(a) protection on the basis that protection is not accorded where to preserve religious beliefs "others are required to act or refrain from acting and behave in a manner consistent with a belief that they do not share."[2] As such, British Columbia was not required to consider the protection of the Ktunaxa's communal religious beliefs in authorizing what for the Ktunaxa would be a desecration of Qat'muk. Instead the Court focused on protecting these values in the context of s. 35 of ***the Constitution Act, 1982*** and the duty to consult.

4. Indigenous religious or spiritual values attached to sacred areas are protected by the ***Charter*** and must be accounted for in government decision making using the framework established by this Court's jurisprudence in ***Doré***[3] and ***Loyola***.[4] This framework mandates balancing the protection of a religious practice or belief against societal interests and the rights of others.[5] Conversely, rather than employ a balancing of interests, the Court of Appeal's decision used the existence of competing interests as the basis for leaving Indigenous practices and beliefs wholly unprotected by the ***Charter***. The effect of this decision is to limit the protection of Indigenous religious and spiritual beliefs to s. 35.

5. By subjecting Indigenous religions to a different legal regime, this approach reinforces a long history in Canadian law and policy of treating Indigenous religions and spiritual beliefs as unworthy of equal protection. Under the Court of Appeal's approach, most non-Indigenous religions are given one form of protection under s. 2(a), largely characterized by a deferential and non-probing standard of proof focused on current, sincerely-held belief, regardless of the centrality of the belief to the non-Indigenous culture. By contrast, Indigenous religions are subject to more limited protection as their beliefs and practices must meet the rigors of the ***Van***

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[2] *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2015 BCCA 352 at para 74 [Appellant's Record Vol. 1, Tab 4].
[3] *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395 [TA Tab 3].
[4] *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, [2015] 1 S.C.R. 613 [TA Tab 6].
[5] *Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551 ("*Amselem")* [TA Tab 16].

der Peet test[6] under s. 35 which requires a higher standard of proof, and that the belief be central to the Indigenous culture and directly connected to historical beliefs. This has adverse implications for the process of reconciliation and the negotiation of modern treaties.

B. The Section 2(a) Analysis Error

6. The Court of Appeal's error in the s. 2(a) analysis lay in considering whether the spiritual or religious belief in question imposed a burden or obligation on a non-believer as a part of assessing whether or nor the spiritual or religious belief attracted ***Charter*** protection at all. This simply is not part of the two-step test that has been articulated by this Court and it is difficult to see how a court would have followed this path were it not for a perceived alternate approach to protecting the interest in s. 35 and the associated duty to consult.

7. Disputes over religious or spiritual practices by their nature arise out of conflicts between the practices and beliefs of divergent belief systems. In ***Amselem*** the dispute arose out of the right of a believer to use co-owned property in a manner inconsistent with the rights of non-believers. In ***Trinity Western*** the issue arose out of the conflict between belief in the sinful nature of same sex relationships as contrasted with beliefs in equality.[7] In ***Hutterian Brethren*** the dispute arose out of a religious prohibition on picture-taking and Alberta's belief that an exemption from picture ID for driver's licenses could not be granted.

8. Where the court below misconceived the issue was in seeing this as a case about the Ktunaxa seeking to impose their belief system on Glacier Resorts. In fact, it was the case of a Crown decision to grant rights to Glacier Resorts which would necessarily conflict with the spiritual and religious beliefs of the Ktunaxa. The ***Charter*** demands that the Crown seriously address this conflict through the framework that has been laid out in the jurisprudence to determine where the balance lies between the ***Charter*** protected religious rights of the Ktunaxa and the potential commercial rights of Glacier Resorts. The Court below allowed the decision maker to avoid this weighty decision concerning existing and <u>proven</u> ***Charter*** rights by moving the dialogue into the context of the duty to consult in respect of as yet unestablished s. 35 rights.

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[6] *R. v. Van der Peet*, [1996] 2 S.C.R. 507 ("*Van der Peet*") at paras 44-47 [TA Tab 15].
[7] *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31, [2001] 1 S.C.R. 772 [TA Tab 18].

In this regard, both the Crown and the courts below fell into a fundamental error which has implications for the level of protection accorded Indigenous religions in Canadian law.

C. The Indigenous Perspective: Historic Denial of Human Rights

9. To understand the implications of the Court of Appeal's error it must be viewed in light of a history which has denied not only Indigenous peoples' s. 35 rights, but also their most basic human and civil rights. Canada denied status Indians the right to vote in elections until well into the 20th century.[8] The freedom of mobility and association of Indians was restricted or denied through the administrative imposition of a pass system for entering and leaving reserves.[9] In British Columbia, Indians were denied the right to pre-empt land and participate in the normal process of landowning through restrictions placed in various colonial and provincial land ordinances and acts.[10] Indian women and their descendants were severed from their communities (and their treaty rights) based on their marital decisions[11] and any Indian who wanted to participate in the ministry or various professions had to choose between their status as an Indian and their aspirations.[12] Canada tried to limit Indians' rights to access the courts or legal advice.[13] The rights of Indians who were not resident on their reserves were limited until the decision of the Supreme Court of Canada in ***Corbiere*** that these restrictions were discriminatory.[14] Finally,

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[8] Inuit people were given the franchise in 1950 by *An Act to amend the Dominion Elections Act, 1938*, S.C. 1950, c. 35, s.1. It wasn't until 1960, that *An Act to amend the Canada Elections Act*, S.C. 1960, c. 7, s. 1 amended the *Canada Elections Act* so registered Indians could vote without enfranchising and losing their Indian status. See Canada, *Aboriginal People: History of Discriminatory Laws* by Wendy Moss and Elaine Gardner-O'Toole (Ottawa: Library of Parliament, Research Branch, 1991) [TA Tab 21].

[9] Report of the Truth and Reconciliation Commission ("TRC Report") (McGill-Queen's University Press, 2015), vol 1, *Canada's Residential Schools: The History, Part I Origins to 1939* at pp127-128 [TA Tab 24]; Royal Commission on Aboriginal Peoples ("RCAP"), vol 1, *Part Two: False Assumptions and a Failed Relationship*, the Indian Act – the Pass System, chapter 9, s. 9.10 at pp 272-273 [TA Tab 23].

[10] *An Ordinance Further to Define the Law Regulating Acquisition of Land in British Columbia*, 1866, 29 Vict. No. 24, as cited in *Delgamuukw v. British Columbia*, (1993), 1993 CanLII 4516 (BC CA), 104 D.L.R. (4th) 470 at para 205 [TA Tab 2].

[11] *An Act to amend and consolidate the laws respecting Indians (the Indian Act)*, S.C. 1876, c.18., at ss. 3(3)(c)-(d), 72 ("*Indian Act, 1876"*) [TA Tab 26]. *McIvor v. Canada (the Registrar, Indian and Northern Affairs)*, 2007 BCSC 827 [TA Tab 7]; *McIvor v. Canada (Registrar of Indian and Northern Affairs)* 2009 BCCA 153 [TA Tab 8]; RCAP, vol 1, *Part Two: False Assumptions and a Failed Relationship*, the Indian Act, chapter 9, s. 9.13 at pp 276-279 [TA Tab 23].

[12] *Indian Act, 1876*, c.18., at s. 86, also see ss. 87-94 [TA Tab 26].

[13] *Indian Act*, R.S.C. 1927, c. 98 at s. 142 [TA Tab 30].

[14] *Corbiere v. Canada (Minister of Indian and Northern Affair*s), [1999] 2 S.C.R. 203 [Appellant's Authorities Tab 9].

Canada actively worked to suppress cultural and religious practices by banning the potlatch[15] and by imposing a system of Christian education in the residential school system which also denied Indians the most basic exercise of freedom of expression – the right to speak and pass on their own language.[16]

10. In contrast to this history of suppression, non-Indigenous religions (particularly Judeo-Christian) are actively protected by our laws. Clergymen and religious assemblages for the purpose of worship are protected from interference[17] and days of religious significance such as Christmas and Easter are universal holidays. Religious beliefs and practices attached to particular places are not unique to Indigenous cultures, but sacred places in the Judeo-Christian tradition are subject to legal protections that make them less vulnerable to threats that give rise to a s. 2(a) claim. Religious structures such as churches, mosques, cemeteries and graveyards are protected from interference based upon bias or hatred[18] and further protections are extended to locations formally designated as cemeteries under provincial legislation.[19] These same protections are not extended to Indigenous religions and sacred places. While no longer explicitly persecuted by our law, they are largely invisible in it.

11. The denial of the s. 35 rights of Indigenous peoples is only a part of this larger history of fundamentally denying their dignity as persons and societies with their own identities, cultures and religions. A central question for this Court is whether this denial of protection for Indigenous religion and spirituality will be continued in the ***Charter*** era by denying it the generous protections offered other religions by s. 2(a).

D. Section 35 Offers Inferior Protection for Contemporary Indigenous Religious Beliefs

12. The recent jurisprudence of this court on the division of powers has indicated a preference for the use of s. 35 over other constitutional doctrines to protect the rights of

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[15] *An Act to further amend the Indian Act*, 1880. S.C. 1884, c. 27. (47 Vict.) at s. 3 [TA Tab 27].
[16] RCAP, vol 1, *Part Two: False Assumptions and a Failed Relationship*, Residential Schools, chapter 10, pp 312-313 [TA Tab 23]; TRC Report, vol 1, *Canada's Residential Schools: The History, Part I Origins to 1939*, the Attack on Aboriginal Language, Culture and Spirituality, at pp 164-166 and Restrictions on spiritual practices, at pp 130-131 [TA Tab 24].
[17] *Criminal Code* R.S.C. 1985, c. C-45 ("*Criminal Code*") at s. 176 [TA Tab 29].
[18] *Criminal Code* at s. 430(4.1) [TA Tab 29].
[19] *Cremation, Interment and Funeral Services Act*, S.B.C. 2004, c. 35, part 9, ss. 47-49 [TA Tab 28].

Indigenous peoples.[20] This principle should not be extended to the area of ***Charter*** protections. Instead this Court should make it clear that the Indigenous peoples of Canada enjoy both ***Charter*** protection as well as the protections provided to their unique rights as Indigenous peoples by s. 35. Governments are then required to show they accounted for both types of protection – where both are engaged – in their decision making. To understand the importance of this two-track approach it is necessary to appreciate the very real differences between the rights protection framework provided by s. 2(a) and s. 35.

The Requirement of Significance

13. The test for s. 35 rights imposes substantial limitations on the practices or activities that are protected based upon their "significance". In ***Van der Peet*** the majority held that the s. 35 test had to be directed at identifying the "crucial elements" - those customs, practices or traditions that were "central" to the Aboriginal society that pre-dated contact with Europeans.[21] This is further refined to protect only those practices that are "integral" to the "distinctive" culture of the First Nation.[22] While subsequent case law has explained that these conditions are not meant to be too onerous, they remain the focus of the s. 35 rights test.

14. The s. 2(a) case law has specifically abjured a similar analysis of religious beliefs protected by the ***Charter***. There is no need to prove that a religious belief or practice constitutes an "obligation" or commandment or for the court to inquire into conflicting religious scholarship or thinking – indeed such an inquiry would be wholly inappropriate.[23]

The Relevant Timeframe

15. The s. 35 jurisprudence has rooted the identification and characterization of Aboriginal rights firmly in the past. Aboriginal rights by definition attach to those activities or practices that were central to a First Nation at the time of contact with Europeans[24] (in British Columbia this is generally accepted to be in the late 18th century while in Eastern Canada it can be as early as

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[20] *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 257 at paras 137-152 [TA Tab 19]. *Grassy Narrows First Nation v. Ontario (Natural Resources)*, 2014 SCC 48, [2014] 2 S.C.R. 447 at para 53 [TA Tab 4].
[21] *Van der Peet* at para 44 [TA Tab 15].
[22] *Van der Peet* at para 46 [TA Tab 15].
[23] *Amselem* at paras 47-48, 50, 53-54 [TA Tab 16].
[24] *Van der Peet* at para 44 [TA Tab 15].

1550).[25] While there is some modest room for the evolution of the practice of the right, the nature of the right cannot have fundamentally changed.[26] By contrast the s. 2(a) inquiry is directed at ascertaining whether or not the spiritual or religious belief is one that is sincerely held by the person or persons before the court at the present time.

16. This is a significant difference. Consider the profound shifts that have occurred since the 19th century in the way adherents to Judeo-Christian religions think about relations between the sexes and members of the family; the role of divorce; the role of women in the clergy and liturgy; the place of LGBTQ persons in the church and the clergy; the status of people of different races and the propriety of relations between them; the relationship that should exist between the state and religion; the relationship that should exist between different religions; and the propriety of individuals discriminating on the basis of religious belief in their private affairs. A person arriving in today's context from the 18th century (and even more so from 1550) would not recognize today's spiritual and religious landscape. We would not expect persons professing religious beliefs in today's milieu to demonstrate their modern beliefs can be established in some ancient text or doctrine.[27]

17. The change in focus from a pre-contact past to a modern present in the protection of the spiritual and religious beliefs of Indigenous peoples is not trivial. Indigenous people have not lived in hermetically sealed communities since the time of contact. Indeed, colonial governments and churches have (as outlined above) deliberately tried to change Indigenous beliefs. In some cases this has resulted in conversion but in other cases has resulted in the emergence of entirely new forms of religious belief and practice, such as the Indian Shaker Church,[28] incorporating both Indigenous and non-Indigenous beliefs.

18. Additionally, Indigenous peoples have faced incredible changes in their social, political and physical circumstances which their spiritual and religious beliefs have had to confront and in

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[25] *Newfoundland and Labrador (Minister of Government Services and Lands*) *v. Drew*, 2006 NLCA 53 at para 6 [TA at Tab 12].
[26] *Lax Kw'alaams Indian Band v. Canada (Attorney General)*, 2011 SCC 56, [2011] 3 S.C.R. 535 at paras 49, 56 [TA at Tab 5].
[27] *Amselem* at para 43 [TA at Tab 16].
[28] Amoss, Pamela T. (1978) Symbolic Substitution in the Indian Shaker Church. *Ethnohistory* 25: 225-49 [TA at Tab 20].

some cases address. This dispute is a case in point – a clear source of conflict that did not exist in the pre-contact environment is the challenge posed to spiritually significant places by, for the Ktunaxa, large scale commercial and industrial development threatening a highly sacred area, or for the Te'mexw Nations, large scale settlement threatening the final resting places of ancestral remains. If s. 2(a) protection is precluded, our law will fail to protect the modern expression of Indigenous religion and spirituality unless it can be wedged into the narrow confines of the evolution of rights doctrine in the context of s. 35.

Deference and the Standard of Proof

19. The s. 35 jurisprudence has placed a significant burden on Indigenous people to establish the existence of an Aboriginal right. While the Court has suggested at various times that it must be flexible in considering the types of evidence adduced in such cases, on the whole it remains a substantial burden. The evidence can be minimal, but only "provided it is sufficiently compelling and supports the conclusions reached"[29] on an objective standard. In a similar vein courts have cautioned against accepting proof of Aboriginal or Treaty rights or proof of their infringement absent a full trial of any issues arising between the parties.[30]

20. By contrast, Canada's jurisprudence with respect to religious and spiritual rights has largely followed the American approach of adopting "a subjective, personal and deferential definition of freedom of religion, centred upon sincerity of belief."[31] The s. 2(a) analysis does not require a detailed proof of the right in the context of religious doctrine. Instead all that is required is that "the claimant sincerely believes in a belief or practice that has a nexus with religion."[32] This is clearly a much less onerous burden than that imposed by the s. 35 jurisprudence with respect to the proof of Aboriginal rights and one which is respectful of our society's choice to give a great deal of deference to sincere spiritual and religious beliefs.

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[29] *Mitchell v. M.N.R.* 2001 SCC 33, [2001] 1 S.C.R. 911, at para 42 [TA at Tab 9].
[30] See for example, *Prophet River First Nation v. Canada (Attorney General)*, 2015 FC 1030 at paras 51-53 [TA at Tab 13]; *Taku River Tlingit First Nation v. Tulsequah Chief Mine Project (Project Assessment Director*), 1999 BCCA 442 [TA at Tab 17]; *R. v. Marshall; R. v. Bernard*, 2005 SCC, [2005] 2 S.C.R. 220 43 at paras 142-144 [TA Tab 14].
[31] *Amselem* at para 45 [TA Tab 16].
[32] *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567 at para 32 ("*Hutterian Brethren*") [TA Tab 1].

E. Implications for Reconciliation and Modern Land Claims Agreements

Applying Section 2(a) Advances the Principle of Neutrality and Furthers Reconciliation

21. There is no compelling reason for the courts to deviate from the s. 2(a) framework for Indigenous spiritual and religious beliefs. Indeed, this Court has highlighted the principle of state neutrality as one of the defining principles of the protection of freedom of religion.[33] Such a principle should inform this Court's own jurisprudence to provide Indigenous religions with the same protection in the same ***Charter*** framework as non-Indigenous beliefs.

22. To instead protect Indigenous religious and spiritual beliefs in the s. 35 framework with its different orientation in terms of definition, timeframe and standard of proof runs afoul of the specific evils condemned in ***Saguenay***: (1) creating a hierarchy of beliefs and casting doubt on the value of those it does not share; and (2) ranking the individuals who hold such beliefs.[34] Furthering such inequities would impact the prospects of reconciliation between Indigenous and non-Indigenous peoples. If Indigenous peoples are to put their faith in a new relationship with the Crown they must believe their treatment as second-class citizens is at an end. They must see their human and civil rights, including their right to freedom of religion, protected on the same footing as non-Indigenous Canadians.

Preservation of the Section 2(a) Framework Facilitates Modern Treaty Making

23. Canada has a long and evolving history of treaty making. In the earliest days of colonial expansion these treaties were political accords. In the early 19th century they became more localized, smaller scale surrenders of lands before evolving in the mid-19th and early 20th century into regional treaties known as the Robinson, Numbered and Williams treaties which covered massive tracts of lands (Treaty 8 for example covers around 840,000 km^2).

24. The events of the 20th century led to a lengthy gap in the treaty making process which was followed by much more sophisticated comprehensive claims settlements, such as the Nisga'a Treaty, which attempt to comprehensively address matters related to s. 35 rights. The slow pace, cost and complexity of this process has been a source of frustration and criticism. As of 2015, 42 years of modern treaty making produced just 26 treaties. These agreements have

[33] *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3 ("*Saguenay*") at paras 70-73 [TA Tab 10].
[34] *Saguenay* at para 73 [TA Tab 10].

taken up to 30 years to negotiate with the average treaty taking fifteen years. As of 2013, Canada had advanced to First Nations over a billion dollars in loans and other funding to negotiate treaties (the amounts invested by the First Nations themselves is unknown).[35]

25. This modern treaty process, for all of its complexity, has not attempted to define or codify the religious or spiritual beliefs and practices of the treaty signatories. Each modern land claim settlement contains explicit assurances that it does not modify the Canadian Constitution or exempt the First Nation or other governments from the operation of the ***Charter***.[36]

26. If the courts do not extend the equal protection of s. 2(a) to Indigenous religious and spiritual values and leave this work to s. 35, there will inevitably be pressure for treaty negotiations to expand to encompass not only collective property rights, harvesting rights, self-government rights and inter-governmental arrangements with Canada and the provinces, but also the spiritual and religious beliefs and practices of the treaty beneficiaries. Given the sensitivity of such matters and how integral they are to individual identity it is difficult to see how this will not further burden an already overburdened process. It will also signal a regression to the treatment of Indigenous peoples as less worthy of the human and civil rights protections granted to others that will discourage engagement in negotiations aimed at reconciliation.

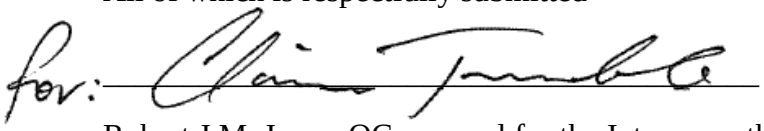
PART IV – SUBMISSIONS ON COSTS

27. Te'mexw does not seek costs and requests that none be awarded against it.

PART V – ORDER SOUGHT

28. Te'mexw requests that it be granted leave to make oral submissions of 10 minutes in length.

All of which is respectfully submitted



Robert J.M. Janes, QC, counsel for the Intervener the Te'mexw Treaty Association

[35] Report of Douglas Eyford (2015), Ministerial Special Representative on Renewing the Comprehensive Land Claims Policy, *A New Direction: Advancing Aboriginal and Treaty Rights* (Ottawa, Aboriginal Affairs and Northern Development Canada) at p 5 [TA Tab 25].
[36] See e.g. *Maa-nulth First Nations Final Agreement* (2009), c. 1, cl. 1.3.1 and 1.3.2 [TA Tab 22].

PART VI – TABLE OF AUTHORITIES

Tab	Cases	Paragraph
1.	*Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, [2009] 2 S.C.R. 567	7
2.	*Delgamuukw v. British Columbia*, (1993), 1993 CanLII 4516 (BCCA), 104 D.L.R. (4th) 470	9
3.	*Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395	4
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7.	*McIvor v. Canada (the Registrar, Indian and Northern Affairs)*, 2007 BCSC 827	9
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9.	*Mitchell v. M.N.R.*, 2001 SCC 33, [2001] 1 S.C.R. 911	19
10.	*Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, [2015] 2 S.C.R. 3	21, 22
11.	*Nanoose Indian Band v. British Columbia*, 1995 CanLII 1243 (BCCA)	Opening Statement
12.	*Newfoundland and Labrador (Minister of Government Services and Lands) v. Drew*, 2006 NLCA 53	15
13.	*Prophet River First Nation v. Canada (Attorney General)*, 2015 FC 1030	19
14.	*R. v. Marshall; R. v. Bernard*, 2005 SCC 43, [2005] 2 S.C.R. 220	19
15.	*R. v. Van der Peet*, [1996] 2 S.C.R. 507	5, 13, 15
16.	*Syndicat Northcrest v. Amselem*, 2004 SCC 47, [2004] 2 S.C.R. 551	4, 7, 14, 16, 20
17.	*Taku River Tlingit First Nation v. Tulsequah Chief Mine Project (Project Assessment Director*), 1999 BCCA 442	19
18.	*Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31, [2001] 1 S.C.R. 772	7
19.	*Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 257	12

	Secondary Sources	
20.	Canada, *Aboriginal People: History of Discriminatory Laws* by Wendy Moss and Elaine Gardner-O'Toole (Ottawa: Library of Parliament, Research Branch, 1991) online: <http://publications.gc.ca/collections/Collection-R/LoPBdP/BP/bp175-e.htm>	9
21.	Amoss, Pamela T. (1978) Symbolic Substitution in the Indian Shaker Church. *Ethnohistory* 25: 225-49	17
22.	*Maa-nulth First Nations Final Agreement*	25
23.	Report of the Royal Commission on Aboriginal Peoples ("RCAP"), vol 1, *Part Two: False Assumptions and a Failed Relationship* (Ottawa: Canada Communication Group, 1996)	9
24.	Report of the Truth and Reconciliation Commission ("TRC Report"), vol 1, *Canada's Residential Schools: The History, Part I Origins to 1939*, (Ottawa: Canada Communication Group, 1996)	9
25.	Report of Douglas Eyford (2015), Ministerial Special Representative on Renewing the Comprehensive Land Claims Policy, *A New Direction: Advancing Aboriginal and Treaty Rights* (Ottawa, Aboriginal Affairs and Northern Development Canada)	24

PART VII – STATUTORY PROVISIONS

Tab	**Statutes**
26.	*An Act to amend and consolidate the laws respecting Indians (the Indian Act)*, S.C. 1876, c.18
27.	*An Act to further amend the Indian Act*, 1880. S.C. 1884, c. 27. (47 Vict.)
28.	*Cremation, Interment and Funeral Services Act*, S.B.C. 2004, c. 35, part 9
29.	*Criminal Code*, R.S.C. 1985, c. C-46
30.	*Indian Act*, R.S.C. 1927, c.98