

**IN THE SUPREME COURT OF CANADA**  
(On Appeal from the Federal Court of Appeal)

B E T W E E N :

**ROGER SOUTHWIND, FOR HIMSELF, AND ON BEHALF OF THE MEMBERS OF  
THE LAC SEUL BAND OF INDIANS, AND LAC SEUL FIRST NATION**

Appellants  
(Appellants)

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,  
and HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA**

Respondents  
(Respondents)

- and -

*(continued on next page)*

---

**FACTUM OF THE INTERVENER  
ASSEMBLY OF MANITOBA CHIEFS**  
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

---

**FOX FRASER LLP**  
1120 17 Ave SW  
Calgary, AB T2T 0B4  
T: 403-910-5392  
F: 403-407-7795

**Carly Fox**  
**Emily Guglielmin**  
E: [cfox@foxfraserlaw.com](mailto:cfox@foxfraserlaw.com)  
[egugliemin@foxfraserlaw.com](mailto:egugliemin@foxfraserlaw.com)

**Counsel for the Intervener,  
Assembly of Manitoba Chiefs**

**CHAMP & ASSOCIATES**  
43 Florence Street  
Ottawa, ON K2P 0W6  
T: 613-237-4740  
F: 613-232-2680

**Bijon Roy**  
E: [broy@champlaw.ca](mailto:broy@champlaw.ca)

**Agent for the Intervener,  
Assembly of Manitoba Chiefs**

**ASSEMBLY OF MANITOBA CHIEFS, TSESHAHT FIRST NATION, ATTORNEY  
GENERAL OF SASKATCHEWAN, MANITOBA KEEWATINOWI OKIMAKANAK  
INC., TREATY LAND ENTITLEMENT COMMITTEE OF MANITOBA INC.,  
ANISHINABEK NATION, WAUZHUSHK ONIGUM NATION, BIG GRASSY FIRST  
NATION, ONIGAMING FIRST NATION, NAOTKAMEGWANNING FIRST NATION,  
NISAACHEWAN FIRST NATION, COALITION OF THE UNION OF BRITISH  
COLUMBIA INDIAN CHIEFS, PENTICTON INDIAN BAND, WILLIAMS LAKE  
FIRST NATION, FEDERATION OF SOVEREIGN INDIGENOUS NATIONS,  
ATIKAMEKSHENG ANISHNAWBEK FIRST NATION, KWANTLEN FIRST NATION,  
ASSEMBLY OF FIRST NATIONS, ASSEMBLY OF FIRST NATIONS QUEBEC-  
LABRADOR, GRAND COUNCIL TREATY #3, MOHAWK COUNCIL OF  
KAHNAWÀ:KE, ELSIPOGTOG NATION, CHEMAWAWIN CREE NATION, WEST  
MOBERLY FIRST NATIONS**

Intervenors

**ORIGINAL TO:**

**THE REGISTRAR**

Supreme Court of Canada

**COPIES TO:**

**MANDELL PINDER LLP**

422 – 1080 Mainland Street  
Vancouver, BC V6B 2T4

**Rosanne Kyle**

**Elin Sigurdson**

**Kendra Shupe**

T: (604) 681-4146

F: (604) 681-0959

E: [rosanne@mendellpinder.com](mailto:rosanne@mendellpinder.com)

[elin@mandellpinder.com](mailto:elin@mandellpinder.com)

[kendra@mandellpinder.com](mailto:kendra@mandellpinder.com)

**Counsel for the Appellants,  
Roger Southwind, For Himself  
and on Behalf of the Members of  
the Lac Seul Band of Indians,  
and Lac Seul First Nation**

**SUPREME ADVOCACY LLP**

Suite 100 - 340 Gilmour Street  
Ottawa, ON K2P 0R3

**Marie-France Major**

T: (613) 695-8855

F: (613) 695-8580

E: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for the Appellants,  
Roger Southwind, For Himself  
and on Behalf of the Members of  
the Lac Seul Band of Indians,  
and Lac Seul First Nation**

**ATTORNEY GENERAL OF CANADA**

Department of Justice  
Civil Litigation Section  
50 O'Connor Street, 5th Floor  
Ottawa, ON K1A 0H8

**Christopher Rupar**

**Dayna Anderson**

**Michael Roach**

T: (613) 967-6290

F: (613) 954-1920

E: [christopher.rupar@justice.gc.ca](mailto:christopher.rupar@justice.gc.ca)

**Counsel for the Respondent, Her Majesty  
the Queen in Right of Canada**

**ATTORNEY GENERAL OF CANADA**

50 O'Connor Street, Suite 500, Room 556  
Ottawa, ON K2P 6L2

**Robert Frater**

T: (613) 670-6289

F: (613) 954-1920

E: [robert.frater@justice.gc.ca](mailto:robert.frater@justice.gc.ca)

**Agent for the Respondent, Her Majesty the  
Queen in Right of Canada**

**ATTORNEY GENERAL FOR ONTARIO**

Crown Law Office - Civil  
720 Bay Street, 8<sup>th</sup> Floor  
Toronto, ON M7A 2S9

**Leonard Marsello**

**Dona Salmon**

T: (416) 326-4939

F: (416) 326-4181

E: [leonard.marsello@ontario.ca](mailto:leonard.marsello@ontario.ca)  
[dona.salmon@ontario.ca](mailto:dona.salmon@ontario.ca)

**Counsel for the Respondent, Her Majesty  
the Queen in Right of Ontario**

**ATTORNEY GENERAL FOR  
MANITOBA**

Manitoba Justice - Civil Legal Services  
730 - 405 Broadway  
Winnipeg, MB R3C 3L6

**Kirsten Wright**

T: (204) 945-2843

F: (204) 948-2826

E: [Glenn.McFetridge@gov.mb.ca](mailto:Glenn.McFetridge@gov.mb.ca)  
[Kirsten.Wright@gov.mb.ca](mailto:Kirsten.Wright@gov.mb.ca)

**Counsel for the Respondent, Her Majesty  
the Queen in Right of Manitoba**

**DEVLIN GAILUS WATSON**

201 – 736 Broughton Street  
Victoria, BC V8W 1E1

**Christopher Devlin**

T: (250) 361-9469

F: (250) 361-9429

E: [christopher@dgwlaw.ca](mailto:christopher@dgwlaw.ca)

**Counsel for Tseshah First Nation**

**BORDEN LADNER GERVAIS LLP**

1300 - 100 Queen Street  
Ottawa, ON K1P 1J9

**Nadia Effendi**

T: (613) 787-3562

F: (613) 230-8842

E: [neffendi@blg.com](mailto:neffendi@blg.com)

**Agent for the Respondent, Her Majesty the  
Queen in Right of Ontario**

**GOWLING WLG (Canada) LLP**

2600 - 160 Elgin Street  
Ottawa, ON K1P 1C3

**D. Lynne Watt**

T: (613) 786-8695

F: (613) 788-3509

E: [lynne.watt@gowlingwlg.com](mailto:lynne.watt@gowlingwlg.com)

**Agent for the Respondent, Her Majesty the  
Queen in Right of Manitoba**

**SUPREME ADVOCACY LLP**

100 – 340 Gilmour Street  
Ottawa, ON K2P 0R3

**Eugene Meehan**

T: (613) 695-8855 Ext: 101

F: (613) 695-8580

E: [emeehan@supremeadvocacy.ca](mailto:emeehan@supremeadvocacy.ca)

**Agent for Tseshah First Nation**

**ATTORNEY GENERAL FOR  
SASKATCHEWAN**

820 – 1874 Scarth Street  
Aboriginal Law Branch  
Regina, SK S3P 3B3

**P. Mitch McAdam**

T: (306) 787-7846  
F: (306) 787-9111  
E: [mitch.mcadam@gov.sk.ca](mailto:mitch.mcadam@gov.sk.ca)

**Counsel for Attorney General for  
Saskatchewan**

**OLTHUIS, KLEER, TOWNSHEND LLP**

250 University Avenue, 8<sup>th</sup> Floor  
Toronto, ON M5H 3E5

**Kate Kempton**

**Kevin Hille**

T: (306) 787-7846  
F: (306) 787-9111  
E: [kkemptom@oktlaw.com](mailto:kkemptom@oktlaw.com)

**Counsel for Manitoba Keewatinowi  
Okimakanak Inc.**

**DUBOFF EDWARDS HAIGHT &  
SCHACHTER**

1900 - 155 Carlton Street  
Winnipeg, MB R3C 3H8

**Harley Schachter**

T: (204) 942-3361  
F: (204) 942-3362  
E: [schachter@dehslaw.com](mailto:schachter@dehslaw.com)

**Counsel for Treaty Land Entitlement  
Committee of Manitoba Inc.**

**GOWLING WLG (CANADA) LLP**

2600 – 160 Elgin Street  
Ottawa, ON K1P 1C3

**D. Lynne Watt**

T: (613) 786-8695  
F: (613) 788-3509  
E: [lynne.watt@gowlingwlg.com](mailto:lynne.watt@gowlingwlg.com)

**Agent for Attorney General for  
Saskatchewan**

**SUPREME ADVOCACY LLP**

Suite 100 - 340 Gilmour Street  
Ottawa, ON K2P 0R3

**Marie-France Major**

T: (613) 695-8855  
F: (613) 695-8580  
E: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for Manitoba Keewatinowi  
Okimakanak Inc.**

**WESTAWAY LAW GROUP**

230 – 55 Murray Street  
Ottawa, ON K1N 5M3

**Genevieve Boulay**

T: (613) 702-3042  
F: (613) 722-9097  
E: [genevieve@westawaylaw.ca](mailto:genevieve@westawaylaw.ca)

**Agent for Treaty Land Entitlement  
Committee of Manitoba Inc.**

**WESTAWAY LAW GROUP**

230 – 55 Murray Street  
Ottawa, ON K1N 5M3

**Cynthia Westaway**  
**Genevieve Westaway**  
**K.R. Virginia Lomax**

T: (613) 722-6339

F: (613) 722-9097

E: [cynthia@westawaylaw.ca](mailto:cynthia@westawaylaw.ca)

**Counsel for Anishinabek Nation**

**WESTAWAY LAW GROUP**

230 – 55 Murray Street  
Ottawa, ON K1N 5M3

**Esther De Vos**

T: (613) 722-3042

F: (613) 722-9097

E: [esther@westawaylaw.ca](mailto:esther@westawaylaw.ca)

**Agent for Anishinabek Nation**

**DAVID GARTH LEITCH**  
**PROFESSIONAL CORPORATION**

23 Edith Drive  
Toronto, ON M4R 1Y9

**David Leitch**

T: (416) 573-8947

F:

E: [dgl@dgleitch.ca](mailto:dgl@dgleitch.ca)

**Counsel for Wauzhushk Onigum Nation**

**NELLIGAN O'BRIEN PAYNE LLP**

300 - 50 O'Connor Street  
Ottawa, ON K1P 6L2

**Christopher Rootham**

T: (613) 231-8311

F: (613) 788-3667

E: [christopher.rootham@nelliganlaw.ca](mailto:christopher.rootham@nelliganlaw.ca)

**Agent for Wauzhushk Onigum Nation**

**WOODWARD & COMPANY**

200 - 1022 Government Street  
Victoria, BC V8W 1X7

**Eamon Murphy**

T: (250) 383-2356

F: (250) 380-6560

E: [eamon@woodwardandcompany.com](mailto:eamon@woodwardandcompany.com)

**Counsel for Big Grassy First Nation,  
Onigaming First Nation,  
Nautkamegwanning First Nation and  
Niisaachewan First Nation**

**MICHAEL SOBKIN**

300 - 331 Somerset Street West  
Ottawa, ON K2P 0J8

**Michael Sobkin**

T: (613) 282-1712

F: (613) 288-2896

E: [msobkin@sympatico.ca](mailto:msobkin@sympatico.ca)

**Agent for Big Grassy First Nation,  
Onigaming First Nation,  
Nautkamegwanning First Nation and  
Niisaachewan First Nation**

**MANDELL PINDER LLP**  
422 – 1080 Mainland Street  
Vancouver, BC V6B 2T4

**Brenda Gaertner**  
**Peter Millerd**  
**Erica Stahl**  
T: (604) 681-4146  
F: (604) 681-0959  
E: [brenda@mendellpinder.com](mailto:brenda@mendellpinder.com)

**Counsel for Coalition of the Union of  
British Columbia Indian Chiefs, Penticton  
Indian Band and Williams Lake First  
Nation**

**MAURICE LAW**  
300, 602 - 12th Avenue S.W.  
Calgary, AB T2R 1J3

**Ronald Maurice**  
T: (403) 266-1201  
F: (403) 266-2701  
E: [rmaurice@mauricelaw.com](mailto:rmaurice@mauricelaw.com)

**Counsel for Federation of Sovereign  
Indigenous Nations and Atikameksheng  
Anishnawbek First Nation**

**JFK LAW CORPORATION**  
340 - 1122 Mainland Street  
Vancouver, BC V6B 5L1  
T: (604) 687-0549  
F: (607) 687-2696

**Tim Dickson**  
**Robin Dean**  
**Naomi Moses**  
E: [tdickson@jfkclaw.ca](mailto:tdickson@jfkclaw.ca)

**Counsel for Kwantlen First Nation**

**SUPREME ADVOCACY LLP**  
Suite 100 - 340 Gilmour Street  
Ottawa, ON K2P 0R3

**Marie-France Major**  
T: (613) 695-8855  
F: (613) 695-8580  
E: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for Coalition of the Union of British  
Columbia Indian Chiefs, Penticton Indian  
Band and Williams Lake First Nation**

**SUPREME ADVOCACY LLP**  
Suite 100 - 340 Gilmour Street  
Ottawa, ON K2P 0R3

**Marie-France Major**  
T: (613) 695-8855  
F: (613) 695-8580  
E: [mfmajor@supremeadvocacy.ca](mailto:mfmajor@supremeadvocacy.ca)

**Agent for Federation of Sovereign  
Indigenous Nations and Atikameksheng  
Anishnawbek First Nation**

**GOWLING WLG (CANADA) LLP**  
2600 - 160 Elgin Street  
Ottawa, ON K1P 1C3  
T: (613) 786-0197  
F: (613) 563-9869

**Guy Régimbald**  
E: [guy.regimbald@gowlingwlg.com](mailto:guy.regimbald@gowlingwlg.com)

**Agent for Kwantlen First Nation**

**ASSEMBLY OF FIRST NATIONS**

1600 - 55 Metcalfe Street  
Ottawa, ON K1P 6L5  
T: (613) 241-6789 Ext: 228  
F: (613) 241-5808

**Stuart Wuttke**

E: [swuttke@afn.ca](mailto:swuttke@afn.ca)

**Counsel for Assembly of First Nations**

**SUPREME LAW GROUP**

900 - 275 Slater Street  
Ottawa, ON K1P 5H9  
T: (613) 691-1224  
F: (613) 691-1338

**Moira Dillon**

E: [mdillon@supremelawgroup.ca](mailto:mdillon@supremelawgroup.ca)

**Agent for Assembly of First Nations**

**DIONNE SCHULZE SENC**

502 - 507, Place d'Armes  
Montreal, QC H2Y 2W8  
T: (514) 842-0748  
F: (514) 842-9983

**David Schulze**

E: [dschulze@dionneschulze.ca](mailto:dschulze@dionneschulze.ca)

**Counsel for Assembly of First Nations  
Quebec-Labrador**

**CONWAY BAXTER WILSON LLP**

400 - 411 Roosevelt Avenue  
Ottawa, ON K2A 3X9  
T: (613) 691-0368  
F: (613) 688-0271

**David Taylor**

E: [dtaylor@conway.pro](mailto:dtaylor@conway.pro)

**Agent for Assembly of First Nations  
Quebec-Labrador**

**FIRST PEOPLES LAW**

502 - 55 East Cordova Street  
Vancouver, BC V6A 0A5  
T: (604) 685-4240  
F: (604) 283-9349

**Bruce McIvor**

E: [bmcivor@firstpeopleslaw.com](mailto:bmcivor@firstpeopleslaw.com)

**Counsel for Grand Council Treaty #3**

**GOLDBLATT PARTNERS LLP**

500 - 30 Metcalfe Street  
Ottawa, ON K1P 5L4  
T: (613) 482-2463  
F: (613) 235-3041

**Colleen Bauman**

E: [cbauman@goldblattpartners.com](mailto:cbauman@goldblattpartners.com)

**Agent for Grand Council Treaty #3**



**MOHAWK COUNCIL OF  
KAHNAWÀ:KE**

P.O. Box 720  
Mohawk Territory of Kahnawà:ke  
Kahnawà:ke, QC J0L 1B0  
T: (450) 632-7500  
F: (450) 638-3663

**Francis Walsh**  
**Stacey Douglas**  
E: [Francis.Walsh@mck.ca](mailto:Francis.Walsh@mck.ca)

**Counsel for Mohawk Council of  
Kahnawà:ke**

**SEMAGANIS WORME**  
300 - 203 Packham Avenue  
Saskatoon, SK S7N 4K5  
T: (306) 664-7175  
F: (306) 664-7176

**Donald Worme**  
**Alisa Lombard**  
**Aubrey Charette**  
Email: [dworme@swllegal.ca](mailto:dworme@swllegal.ca)

**Counsel for Elsipogtog First Nation**

**ARVAY FINLAY LLP**  
816 - 1175 Douglas Street  
Victoria, BC V8W 2E1  
T: (250) 380-2788 Ext: 5  
F: (888) 575-3281

**Catherine Boies Parker**  
**Mark Underhill**  
**John Trueman**  
E: [cboiesparker@arvayfinlay.ca](mailto:cboiesparker@arvayfinlay.ca)

**Counsel for Chemawawain Cree Nation**

**POWER LAW**

1103 - 130 Albert Street  
Ottawa, ON K1P 5G4  
T: (613) 702-5560  
F: (613) 702-5560

**Maxine Vincelette**  
E: [mvincelette@powerlaw.ca](mailto:mvincelette@powerlaw.ca)

**Agent for Mohawk Council of Kahnawà:ke**

**GOWLING WLG (CANADA) LLP**  
2600 - 160 Elgin Street  
Ottawa, ON K1P 1C3  
T: (613) 786-0171  
F: (613) 788-3587

**Jeffrey W. Beedell**  
E: [jeff.beedell@gowlingwlg.com](mailto:jeff.beedell@gowlingwlg.com)

**Agent for Chemawawain Cree Nation**

**CAMP FIORANTE MATTHEWS  
MOGERMAN**

400 - 856 Homer Street  
Vancouver, BC V6B 2W5  
T: (604) 689-7555  
F: (604) 689-7554

**Reidar M. Mogerman, Q.C.**  
**Naomi Kovak**  
**Chya Mogerman**  
E: [rmogerman@cfmlawyers.ca](mailto:rmogerman@cfmlawyers.ca)

**Counsel for West Moberly First Nations**

**MICHAEL SOBKIN**

300 - 331 Somerset Street West  
Ottawa, ON K2P 0J8  
T: (613) 282-1712  
F: (613) 288-2896

**Michael Sobkin**  
E: [msobkin@sympatico.ca](mailto:msobkin@sympatico.ca)

**Agent for West Moberly First Nations**

## TABLE OF CONTENTS

---

<b>PART I – OVERVIEW OF POSITION AND STATEMENT OF FACTS .....</b>	<b>1</b>
<b>PART II – THE AMC POSITION ON THE QUESTION IN ISSUE .....</b>	<b>2</b>
<b>PART III – STATEMENT OF ARGUMENT .....</b>	<b>2</b>
<b>A. First Nation’s Laws and Perspective Regarding Nature of the Breach.....</b>	<b>2</b>
<i>First Nation’s Perspective – Treaty and Fiduciary Relationship.....</i>	<i>3</i>
<i>First Nation’s Laws and Perspectives – Land .....</i>	<i>5</i>
<i>The Proposed Approach is Consistent with UNDRIP         and Reconciliation .....</i>	<i>7</i>
<b>B. First Nation’s Laws and Perspective in Valuing the Loss.....</b>	<b>7</b>
<b>PART IV – SUBMISSIONS CONCERNING COSTS.....</b>	<b>10</b>
<b>PART V – ORDER SOUGHT.....</b>	<b>10</b>
<b>PART VI – TABLE OF AUTHORITIES .....</b>	<b>11</b>

## PART I – OVERVIEW OF POSITION AND STATEMENT OF FACTS

1. This factum is filed on behalf of the Assembly of Manitoba Chiefs (“AMC”). The AMC endorses the summary of facts as stated by the Appellants.
2. The failure to consider the First Nation’s laws and perspectives when determining the nature of the breach of Treaty and fiduciary duties results in an unbalanced award of compensation that favours the Crown. The goal of equitable compensation is to uphold the fiduciary relationship and to restore the First Nation to the position it would have been in had the breach not occurred.<sup>1</sup> In this case, the Crown undertook to protect the Lac Seul First Nation’s interest in its reserve land set apart under the terms of Treaty 3,<sup>2</sup> yet the compensation awarded by the trial court and upheld by the Court of Appeal fails to reflect the First Nation’s laws and perspectives regarding the Treaty relationship, the fiduciary relationship or the land that was lost. Instead, it reflects the cost of a hypothetical one-time historical expropriation that failed to fully compensate the Lac Seul First Nation for the permanent loss of use of its reserve land.
3. A distinct framework for assessing equitable compensation in First Nations claims for breach of Treaty and breach of fiduciary duty is necessary to reflect the unique and important origin of the Crown-First Nations relationship.<sup>3</sup> This Court has the opportunity to provide guidance and establish a unique framework for compensating First Nations that have suffered losses due to the Crown’s historical wrongdoing.
4. As the Treaty relationship is sacred, and performance of Treaty obligations is of the highest order, the nature of the obligation calls for the highest standard of fiduciary conduct<sup>4</sup> and the most beneficial assessment of compensation for the First Nation where the fiduciary obligation has been

---

<sup>1</sup> *Beardy's & Okemasis Band #96 and #97 v. Her Majesty the Queen in Right of Canada*, [2016 SCTC 15](#) [*Beardy's*] at para 7; *Canson Enterprises Ltd v Boughton & Co*, [1991] 3 SCR 534, [1991 CanLII 52 \(SCC\)](#) [*Canson*] at 551.

<sup>2</sup> *Southwind v Canada*, 2017 FC 906 [Trial Decision] at para 227; *Southwind v Canada*, 2019 FCA 171 at paras 47-48.

<sup>3</sup> This is supported by the general principle that differences between the types of fiduciary relationships may, depending on the circumstances, dictate the approach to damages. See *Canson* at 546 (McLachlin J).

<sup>4</sup> *Beardy's* at paras 75 -76, *R v Sioui*, [1990] 1 SCR 1025, [1990 CanLII 103](#) (SCC) at 1063; *R v Badger*, [1996] 1 SCR 771, [1996 CanLII 236](#) (SCC) at para 41.

breached. This Court has the opportunity to provide guidance on the practical application of valuing losses in claims for breach of Treaty and fiduciary duty, as the current anchorless approach has resulted in several deficiencies that prevent First Nations from achieving proper redress.

5. The AMC advocates for the avoidance of a pan-Indigenous approach to consideration of First Nations laws and perspectives. First Nations are as different from one another as are other nations and cultures in the world.<sup>5</sup> Although each First Nation will have its own unique perspective and laws regarding what was altered or lost due to the Crown's breach of Treaty or fiduciary duty, there are some overarching statements regarding First Nations laws and perspectives used in this factum to illustrate the proposed method of determining the nature of the breach and valuing the loss for the purposes of assessing equitable compensation.

## **PART II – THE AMC POSITION ON THE QUESTION IN ISSUE**

6. The AMC takes no position on the outcome of this appeal. Instead, it asks this Court to clarify how equitable compensation is assessed and awarded to First Nations that have long suffered from the Crown's breaches of Treaty and fiduciary duty in relation to their land. In particular, the AMC asks this Court to provide direction on the assessment of equitable compensation with due consideration of the First Nation's laws and perspective with regard to first determining the nature of the breach, and then carrying this perspective through to valuing the loss suffered by the First Nation.

## **PART III – STATEMENT OF ARGUMENT**

### **A. First Nation's Laws and Perspective Regarding Nature of the Breach**

7. An approach to equitable compensation that starts with an understanding of the First Nation's laws and perspectives is critical to place the loss that is suffered within the contextual and cultural framework within which the loss exists. The first step in assessing equitable compensation is the determination of the nature of the obligation and the breach at issue.<sup>6</sup> In the case at bar, the First Nation's laws and perspectives were not considered from the outset of the assessment. The result is that the compensation awarded does not reflect the First Nation's laws and perspectives that were a necessary part of the Treaty's formation and subsequent meaning. If

---

<sup>5</sup> John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002) [*Recovering Canada*] at 3.

<sup>6</sup> *Beardy's* at paras 74 and 77.

First Nation's laws and perspectives are not considered, the court cannot adequately understand the generational value of the land that was lost nor the sacred and ongoing nature of the Treaty and fiduciary relationship that was breached. Since equitable compensation only remedies those losses which were caused by the breach,<sup>7</sup> the AMC's proposed approach ensures that First Nation's laws and perspectives are considered at the outset of the assessment and carry through to the final award.

*First Nation's Perspective – Treaty and Fiduciary Relationship*

8. Each Treaty promise must be understood in context, in light of how the First Nation's and the Crown's legal perspectives intertwined to produce an agreement. Although "Treaties may appear to be no more than contracts...they are far more".<sup>8</sup> Treaties are unique; "an agreement *sui generis*" and fundamentally, "They are a solemn exchange of promises made by the Crown and various First Nations".<sup>9</sup> These solemn promises are rooted in perspectives that flow from two vastly different legal cultures. First Nations and the Crown each brought their own legal standards, principles, customs and traditions to each negotiation and used them to decide whether to enter into an agreement.

9. A failure to characterize the nature of the breach in light of the First Nation's perspective of the Treaty and fiduciary relationship risks valuing claims in a manner that benefits the Crown and continues to perpetuate the historical disadvantages suffered by First Nations due to the Crown's unlawful behaviour. Historically, the Crown has acted with unfettered discretion in its interpretation and implementation of the Treaties, which has left Treaty promises forgotten and has undermined the Crown's duty of honour.<sup>10</sup> Without due care and attention, the Crown-First Nation relationship is in constant danger of becoming badly distorted to the detriment of the more vulnerable party.<sup>11</sup> Section 35(1) must not "perpetuat[e] the historical injustice suffered by aboriginal peoples at the hands of colonizers who failed to respect the distinctive cultures of pre-existing aboriginal societies".<sup>12</sup> The Crown's unfettered discretion has resulted in a multitude of

---

<sup>7</sup> *Canson* at 556 (McLachlin J).

<sup>8</sup> *R v Sundown*, [1999] 1 SCR 393, [1999 CanLII 673](#) (SCC) [*Sundown*] at para 24.*R. v.*

<sup>9</sup> *Simon v The Queen*, [1985] 2 SCR 387, [1985 CanLII 11](#) (SCC) [*Simon*] at para 33; *Sundown*, [1999] 1 SCR 393 at para. 24.

<sup>10</sup> *Restoule v Canada (Attorney General)*, [2018 ONSC 7701](#) [*Restoule*] at para 495.

<sup>11</sup> *R v Turtle*, [2020 ONCJ 429](#) [*Turtle*] at para 97.

<sup>12</sup> *R. v. Côté*, [1996] 3 SCR 139, [1996 CanLII 170](#) (SCC) at para 53.

claims for breach of Treaty and breach of fiduciary duty, including the case at bar. The failure to consider the First Nation's perspective on the Treaty and fiduciary relationship from the outset of the assessment of equitable compensation risks further undermining an already distorted Treaty and fiduciary relationship.

10. The inquiry into the spirit and intent of the Treaty should expand further than the question of what the First Nations signatories understood about particular written clauses to consider the perspective of the First Nation regarding the pre-existing relationships and legal frameworks that informed and gave meaning to the Treaties. Although the courts have indicated that a central task of Treaty interpretation is to identify, if possible, the “common intention” of the parties, the analysis has disproportionately focused on capturing the “meeting of the minds” with respect to the specific term of the Treaty at the time the Treaty was formed.<sup>13</sup> Treaty interpretation should focus on the meaning of a Treaty's term as part of an “ongoing relationship”,<sup>14</sup> because Treaties are living agreements.<sup>15</sup> As constitutionally protected rights, Treaties must be “affirmed in contemporary form rather than in their primeval simplicity and vigour”.<sup>16</sup> Canadian law must further acknowledge First Nations perspectives on the Treaty-making process and the Crown-First Nation relationship.

11. Fulsome consideration of the First Nation's perspective of the Treaty and fiduciary relationship from the outset of the assessment of equitable compensation will ensure that the ongoing nature of the Treaty and fiduciary relationship will be compensated in the final award. The central imperative of historical Treaties in Canada was to establish a new structure of relationships between First Nations and the Crown that would endure forever.<sup>17</sup> For many First

---

<sup>13</sup> Michael Coyle, “As Long as the Sun Shines: Recognizing That Treaties Were Intended to Last” in John Borrows & Michael Coyle, eds. *The Right Relationship: Reimagining the Implementation of Historic Treaties* (Toronto: University of Toronto Press, 2017) 39 [*As Long as the Sun Shines*] at 45, 49 and 50; *R v Marshall*, [1999] 3 SCR 456, [1999 CanLII 665](#) (SCC) at 491; Heidi Kiiwetinepinesiiik Stark, “Changing the Treaty Question: Remediating the Right(s) Relationship” in John Borrows & Michael Coyle, eds. *The Right Relationship: Reimagining the Implementation of Historic Treaties* (Toronto: University of Toronto Press, 2017) 248 at 274.

<sup>14</sup> *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005 SCC 69](#) [*Mikisew*] at para 25.

<sup>15</sup> *Living Treaties: Lasting Agreements: Report of the Task Force to Review Comprehensive Claims Policy Canada* (Ottawa: Dept. of Indian Affairs and Northern Development, 1986).

<sup>16</sup> *Sundown* at para 32.

<sup>17</sup> Coyle, *As Long as the Sun Shines* at 49.

Nations, the phrase “as long as the sun shines, as long as the grass grows and as long as the water flows” is indicative of the mutually beneficial and ongoing Treaty relationship.<sup>18</sup> The fiduciary relationship is one of the highest loyalty and good faith. It often arises out of the historical and ongoing relationship between the Crown and First Nations,<sup>19</sup> which for many First Nations, is referenced in terms of kinship. For some First Nations, the Queen is described as a “Mother” because, among other reasons, a mother protects her children but also respects their autonomy.<sup>20</sup> It is key that courts interpret Treaty rights protected by section 35(1) in ways that are “consistent with an Indigenous perspective on the ongoing fiduciary relationship between Indigenous peoples and the Crown”.<sup>21</sup> Where the determination of the nature of the breach is not grounded in the First Nation’s perspective, including the sacred and ongoing nature of the Treaty and fiduciary relationship, the assessment of compensation risks failing to reflect the true loss to the First Nation.

*First Nation’s Laws and Perspective - Land*

12. In assessing equitable compensation, the First Nation’s laws and perspectives regarding the right at issue, in this case the inherent and Treaty right to land, must inform the understanding of the nature of the breach. While courts generally recognize that First Nations land has an “important cultural component”<sup>22</sup> and that Treaty land is characterized by its unique and collective nature,<sup>23</sup> this recognition is not always reflected through to the valuation of the loss and compensation awarded. The failure to consider the First Nation’s perspective from the outset of the assessment of compensation results in awards that are grounded in concepts of private land valuation or unprincipled lump sum figures that are not connected to the true loss suffered by the First Nation.

---

<sup>18</sup> Joe Hyslop et al, *Dtantu Balai Betl Nahidei – Our Relations to the Newcomers: Treaty Elders’ Teachings Volume 3* (Winnipeg: Treaty Relations Commission of Manitoba and Assembly of Manitoba Chiefs Secretariat, 2015) [*Our Relations to the Newcomers*] at 31, 82, 86, 90, 91.

<sup>19</sup> Jack Woodward, *Native Law* (Toronto: Thomson Reuters, 2019) (loose-leaf updated 2020, release 5), Ch 3, E.1, 3§1310, referring to *Elder Advocates of Alberta Society v Alberta*, [2011 SCC 34](#) at paras 39 and 48.

<sup>20</sup> *Turtle* at para 53.

<sup>21</sup> *Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, [2018 SCC 4](#) at para 130.

<sup>22</sup> *Osoyoos Indian Band v Oliver (Town)*, [2001 SCC 85](#) at para 46.

<sup>23</sup> *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203, [1999 CanLII 687](#) (SCC) at para 17.



13. First Nations laws have existed since the beginning of time, long before European contact and continue to exist today,<sup>24</sup> as such these laws often contain the foundation for the First Nation's perspective regarding the nature of a breach of Treaty or fiduciary duty. First Nations laws "...should not just be received as evidence that Aboriginal peoples did something in the past on a piece of land. It is more than evidence: it is actually law. And so, there should be some way to bring to the decision-making process those laws that arise from the standards of the indigenous people before the court".<sup>25</sup> In determining the nature of the breach in an assessment of equitable compensation, however, First Nations laws should be considered on a case-by-case basis and not applied by Canadian courts unless requested to do so by the First Nation.<sup>26</sup>

14. First Nations laws and perspectives can be used to conceive of the nature of the breach as not just the physical loss of or alteration to land but as a broader breach that alters relationships and affects future generations. The loss of land to a First Nation is egregious because it impacts an inherent right, which originates from the Creator.<sup>27</sup> Generally, for First Nations there is "value *in* the world, and in relationships properly maintained with the land".<sup>28</sup> For the Anishinaabe, their survival and the rights of future generations are tied to the land, and the sacredness and understanding of the land is passed on generationally.<sup>29</sup> Land is considered "a living part of the web of interconnected relations" and "people had responsibilities toward the land; the land, in turn, sustained the people and was meant to sustain future generations".<sup>30</sup> Where the right at issue is the inherent and Treaty right to land, the nature of the breach must be evaluated in light of the generational and ecological importance of the land to the First Nation, which will in turn be reflected in the valuation of the loss.

---

<sup>24</sup> Borrows, *Recovering Canada* at 3-4.

<sup>25</sup> *R v Marshall; R v Bernard*, [2005 SCC 43](#) at para 130, citing John Borrows "Creating an Indigenous Legal Community" [\(2005\) 50 McGill LJ 153](#) at 173.

<sup>26</sup> Borrows, *Recovering Canada* at 26-27.

<sup>27</sup> Joe Hyslop et al, *Our Relations to the Newcomers* at 113.

<sup>28</sup> Gordon Christie, "A Colonial Reading of Recent Jurisprudent: *Sparrow*, *Delgamuukw* and *Haida Nation*" [\(2005\) 23 Windsor YB Access Just 17](#) at 50.

<sup>29</sup> D'Arcy Linklater et al, *Ka'Esi Wahkotumahk Aski – Our Relations with the Land: Treaty Elders' Teachings Volume 2* (Winnipeg: Treaty Relations Commission of Manitoba and Assembly of Manitoba Chiefs Secretariat, 2014) at 89.

<sup>30</sup> *Restoule* at para 169.

*The Proposed Approach is Consistent with UNDRIP and Reconciliation*

15. The consideration of First Nations laws and perspectives from the outset of the assessment of equitable compensation is consistent with the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) and the principle of reconciliation. In particular, Article 26(3) of UNDRIP requires the state to ensure that the customs and traditions of the Indigenous group are included in the protection and recognition of Indigenous lands.<sup>31</sup> Reconciliation is about mending existing relationships.<sup>32</sup> In Manitoba, the definition of reconciliation is legislated as “the ongoing process of establishing respectful relationships between Indigenous and non-Indigenous peoples” in order to, among other things, “create a more equitable and inclusive society”.<sup>33</sup> UNDRIP and the principle of reconciliation support remedying breach of Treaty and fiduciary duty claims in a manner that is grounded in the First Nation’s laws and perspectives.

**B. First Nation’s Laws and Perspectives in Valuing the Loss**

16. This Court has an opportunity to provide guidance on the difficult task of assessing equitable compensation and, in doing so, can prevent global compensation assessments with a vague nexus between the losses suffered and the compensation awarded. When Treaty promises are breached, remedies must be determined by reference to their *sui generis* nature. Common law and equitable remedies, like international law remedies,<sup>34</sup> may be helpful by way of analogy, however, since Treaties are not formed through these sources of law alone, they cannot be determinative. As Treaties were created using First Nations laws on First Nations lands, the First Nation’s laws and perspectives must carry through to address the consequences of a Treaty’s breach. The law of equitable compensation must recognize the First Nations perspective so that the compensation provided both atones for the breach and honours the loss as it is understood by those who have suffered it.

17. First Nations claims involving a breach of Treaty or fiduciary duty cannot be too reliant on conceptions and valuation of private land that divorce the loss from the nature of the breach. The decision in *Whitefish*, for example, relies on concepts of private land valuation and ignores the

---

<sup>31</sup> *UNDRIP*, GA Res 295, UNGAOR, 61st Sess, Supp No 49, [UN Doc A/RES/61/295](#), 46 ILM 1013 (2007) at 26(3). See also 8.2(b), 28.

<sup>32</sup> *Mikisew* at para 1.

<sup>33</sup> *The Path to Reconciliation Act*, [CCSM c R30.5](#).

<sup>34</sup> *Simon* at para 33.

First Nation’s laws, perspectives, and the impact of the breach on the collective and communal rights of the First Nation.<sup>35</sup> *Whitefish* has resulted in a regime where considerable time and resources are spent retaining experts who create a multitude of hypothetical situations that are disconnected from the actual loss. This includes by conceiving of “realistic contingencies” and consumption patterns of the First Nation, or as found by Zinn J. in the trial decision of the case at bar, by constructing a fictional flowage easement to the benefit of the Crown.<sup>36</sup> The compensation principles used in Canadian law to address civil wrongs are not designed to address ongoing claims that stretch for decades, if not centuries,<sup>37</sup> nor to compensate for losses of a unique and collective nature. These principles must be adapted to better reflect the First Nation’s perspective of the loss suffered.

18. When assessing equitable compensation, the valuation of First Nations claims should begin with direct evidence from the First Nation on the loss suffered and what, in the First Nation’s perspective, would be an adequate remedy for the loss. Courts should hear, consider, and apply evidence from a First Nation, including oral history evidence, when valuing a claim, to shift away from wholly relying on experts who throughout the valuation process are divorced from the true loss caused by the breach.

19. Although consideration of oral history evidence in First Nations claims is not a new concept,<sup>38</sup> courts have grappled with applying this type of evidence in a meaningful way.<sup>39</sup> Courts have found that a First Nation’s perspective was not “particularly useful in relation to the resolution of the technical issue before the Court” despite the court’s explicit acknowledgment that the First Nation viewed its own perspective as equally important to the Euro-Canadian one,<sup>40</sup> or discounted

---

<sup>35</sup> Alison Aho, “Equitable Compensation as a Tool for Reconciliation: Remediating Breach of Fiduciary Duty for Indigenous Peoples” (2019) 3:2 *Lakehead LJ* 55 at 61-62 referring to *Whitefish Lake Band of Indians v Canada (Attorney General)*, 2007 ONCA 744 [*Whitefish*].

<sup>36</sup> *Huu-Ay-Aht First Nations v Her Majesty the Queen in Right of Canada*, 2016 SCTC 14 at paras 28-145, 157-192, 210-217, 233-252, 257-329; *Tsleil-Waututh Nation v. Her Majesty the Queen in Right of Canada*, 2016 SCTC 11 at paras 133 and 235; *Beardy’s* at paras 12-15; 19-7;1 and 138-160; *Whitefish* at para 229; Trial Decision at paras 358-362.

<sup>37</sup> Coyle, *As Long as the Sun Shines* at 53.

<sup>38</sup> *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, 1997 CanLII 302 (SCC) at paras 98, 84.

<sup>39</sup> Coyle, *As Long as the Sun Shines* at 51.

<sup>40</sup> *Montana Band v R*, 2006 FC 261 at para 313, 31.

Elder evidence because Elders were active in the “pursuit of Indian rights”.<sup>41</sup> This approach must be admonished because it is counter to the accepted principle that oral history evidence must be given equal weight to other kinds of evidence.<sup>42</sup>

20. Existing Canadian case law and tools can be of assistance in creating a system of assessing equitable compensation that utilizes a meaningful, engaged approach to understanding evidence of the First Nation’s laws and perspectives. In *Restoule*, for example, the Anishinaabe and Euro-Canadian perspective “came before the court on equal footing”<sup>43</sup> and the Court engaged with the evidence of Elders when setting out the necessary context to the Treaty promises and assessing the true meaning of the Treaty.<sup>44</sup> This concept is not novel: the Specific Claims Tribunal and the Federal Court have also incorporated First Nations perspectives in various proceedings and procedures.<sup>45</sup> While useful tools exist, they are still imperfect and sporadically applied. Concrete guidance from this Court on the necessary inclusion and meaningful application of oral history will be of clear benefit to First Nations who bring breach of Treaty and fiduciary duty claims before lower courts.

21. While assessing equitable compensation is difficult,<sup>46</sup> it need not be nebulous, impossible, nor fail to engage with the perspective and evidence of those who have suffered the loss.<sup>47</sup> To ensure meaningful consideration of First Nations perspectives, and to provide clarity to lower courts when assessing equitable compensation, principles can be drawn from the law in other contexts. In Canada, courts and legislatures have developed principles and factors to assess damages in claims involving non-economic loss for pain and suffering;<sup>48</sup> general damages for

---

<sup>41</sup> *Lac La Ronge Indian Band v Canada*, [2001 SKCA 109](#) at para 37.

<sup>42</sup> *Mitchell v MNR*, [2001 SCC 33](#) at para 39.

<sup>43</sup> *Restoule* at para 12.

<sup>44</sup> See *Restoule* at paras 21, 56, 110, 209, 444-445.

<sup>45</sup> See for example: *Specific Claims Tribunal Act*, [SC 2008, c22](#) at s. 13(1)(b) and *Beardy’s* at paras 161-172; Federal Court of Canada, “[Practice Guidelines for Aboriginal Law Proceedings](#)” (April 2016).

<sup>46</sup> Trial Decision at para 229 citing *Lember v Perris*, [2010 ONSC 3690](#) at para 76

<sup>47</sup> See Trial Decision at paras 511-512 for the factors the Court considered in assessing damages.

It is unclear in the Court’s reasoning how it assessed values for the difficult to quantify losses set out in the factors to arrive at the global compensation award.

<sup>48</sup> *Stapley v Hejslet*, [2006 BCCA 34](#) at paras 45-46; *Shongu v Jing*, [2016 BCSC 901](#) at paras 135-166.

defamation;<sup>49</sup> and the loss of companionship<sup>50</sup> and consortium<sup>51</sup> in a manner that squarely addresses the perspective of those who have suffered loss. In Australia, the courts and legislatures have specifically tackled the assessment of hard to quantify claims that involve Indigenous peoples' relationship to the land and non-economic losses by engaging the Indigenous perspective to understand what was lost.<sup>52</sup> Clear principles that engage the First Nations perspective can ensure First Nations losses will be meaningfully considered in the assessment of equitable compensation.

#### **PART IV - SUBMISSIONS CONCERNING COSTS**

22. The AMC does not seek costs and should not be liable to pay costs to any party.

#### **PART V – ORDER SOUGHT**

23. The AMC takes no position regarding the disposition of this appeal.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of November 2020.**

---

Carly Fox  
Emily Guglielmin

Counsel for the Intervener

---

<sup>49</sup> *Hill v Church of Scientology of Toronto*, [1995] 2 SCR 1120, [1995 CanLII 59](#) (SCC) at paras 182-185; *Elkow v Sana*, [2020 ABCA 350](#) at paras 20-21; *Paderewski v Skorski*, [2017 ONSC 6594](#) at paras 139-151.

<sup>50</sup> *Family Law Act*, [RSO 1990, c F.3](#) ss. 61(1)(e); *To v Toronto Board of Education*, [2001] OJ No 3490, [2001 CanLII 11304](#) (ON CA) at paras 20-30; *Pittman Estate v Bain*, 112 DLR (4<sup>th</sup>) 257, [1994 CanLII 7489](#) (ON SC) at paras 975-995.

<sup>51</sup> *Tort-Feasors Act*, [RSA 2000, c T-5](#) s. 2.1; *Woelk v Halvorson*, [1980] 2 SCR 430, [1980 CanLII 17](#) (SCC); *Forsberg v Naidoo*, [2011 ABQB 252](#) at paras 24-29.

<sup>52</sup> See the *Australian Native Title Act 1993*, [No. 110, 1993](#) at Division 5; *Northern Territory v. Mr. A. Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples*, [\[2019\] HCA 7](#) at paras 51-54; 323; 353; 159; 165 and 180; 194 and 200-202; 230; and 237 and 3.

## PART VI – TABLE OF AUTHORITIES

<b>Case Law</b>	<b>Paragraph References</b>
<i>Beardy's &amp; Okemasis Band #96 and #97 v. Her Majesty the Queen in Right of Canada</i> , <a href="#">2016 SCTC 15</a>	2, 4, 7, 17, 20
<i>Canson Enterprises Ltd v Boughton &amp; Co</i> , [1991] 3 SCR 534, <a href="#">1991 CanLII 52 (SCC)</a>	2, 3, 7
<i>Corbiere v Canada (Minister of Indian and Northern Affairs)</i> , [1999] 2 SCR 203, <a href="#">1999 CanLII 687 (SCC)</a>	12
<i>Delgamuukw v British Columbia</i> , [1997] 3 SCR 1010, <a href="#">1997 CanLII 302 (SCC)</a>	19
<i>Elder Advocates of Alberta Society v Alberta</i> , <a href="#">2011 SCC 34</a>	1
<i>Elkow v Sana</i> , <a href="#">2020 ABCA 350</a>	21
<i>Forsberg v Naidoo</i> , <a href="#">2011 ABQB 252</a>	21
<i>Hill v Church of Scientology of Toronto</i> , [1995] 2 SCR 1120, <a href="#">1995 CanLII 59 (SCC)</a>	21
<i>Huu-Ay-Aht First Nations v Her Majesty the Queen in Right of Canada</i> , <a href="#">2016 SCTC 14</a>	17
<i>Lac La Ronge Indian Band v Canada</i> , <a href="#">2001 SKCA 109</a>	19
<i>Lember v Perris</i> , <a href="#">2010 ONSC 3690</a>	21
<i>Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)</i> , <a href="#">2005 SCC 69</a>	10, 15
<i>Mitchell v MNR</i> , <a href="#">2001 SCC 33</a>	19
<i>Montana Band v R</i> , <a href="#">2006 FC 261</a>	19
<i>Northern Territory v. Mr. A. Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples</i> , <a href="#">[2019] HCA 7</a>	21
<i>Osoyoos Indian Band v Oliver (Town)</i> , <a href="#">2001 SCC 85</a>	12
<i>Paderewski v Skorski</i> , <a href="#">2017 ONSC 6594</a>	21

<i>Pittman Estate v Bain</i> , 112 DLR (4 <sup>th</sup> ) 257, <a href="#">1994 CanLII 7489</a> (ON SC)	21
<i>R v Badger</i> , [1996] 1 SCR 771, <a href="#">1996 CanLII 236</a> (SCC)	4
<i>R v Côté</i> , [1996] 3 SCR 139, <a href="#">1996 CanLII 170</a> (SCC)	9
<i>R v Marshall</i> , [1999] 3 SCR 456, <a href="#">1999 CanLII 665</a> (SCC)	10
<i>R v Marshall; R v Bernard</i> , <a href="#">2005 SCC 43</a>	13
<i>R v Sioui</i> , [1990] 1 SCR 1025, <a href="#">1990 CanLII 103</a> (SCC)	4
<i>R v Sundown</i> , [1999] 1 SCR 393, <a href="#">1999 CanLII 673</a> (SCC)	8, 10
<i>R v Turtle</i> , <a href="#">2020 ONCJ 429</a>	9, 11
<i>Restoule v Canada (Attorney General)</i> , <a href="#">2018 ONSC 7701</a>	9, 14, 20
<i>Shongu v Jing</i> , <a href="#">2016 BCSC 901</a>	21
<i>Simon v The Queen</i> , [1985] 2 SCR 387, <a href="#">1985 CanLII 11</a> (SCC)	8, 16
<i>Stapley v Hejslet</i> , <a href="#">2006 BCCA 34</a>	21
<i>To v Toronto Board of Education</i> , [2001] OJ No 3490, <a href="#">2001 CanLII 11304</a> (ON CA)	21
<i>Tseil-Waututh Nation v. Her Majesty the Queen in Right of Canada</i> , <a href="#">2016 SCTC 11</a>	17
<i>Whitefish Lake Band of Indians v Canada (Attorney General)</i> , <a href="#">2007 ONCA 744</a>	17
<i>Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)</i> , <a href="#">2018 SCC 4</a>	11
<i>Woelk v Halvorson</i> , [1980] 2 SCR 430, <a href="#">1980 CanLII 17</a> (SCC)	21

<b>Legislation</b>	<b>Paragraph References</b>
<i>Family Law Act</i> , <a href="#">RSO 1990, c F.3</a>	21
<i>Specific Claims Tribunal Act</i> , <a href="#">SC 2008, c22</a>	20
<i>The Path to Reconciliation Act</i> , <a href="#">CCSM c R30.5</a> .	15
<i>Tort-Feasors Act</i> , <a href="#">RSA 2000, c T-5</a>	21
<b>Secondary Sources</b>	<b>Paragraph References</b>
Aho, Alison, “Equitable Compensation as a Tool for Reconciliation: Remediating Breach of Fiduciary Duty for Indigenous Peoples” <a href="#">(2019) 3:2 Lakehead LJ 55</a>	17
Borrows, John, “Creating an Indigenous Legal Community” <a href="#">(2005) 50 McGill LJ 153</a>	13
Borrows, John, <i>Recovering Canada: The Resurgence of Indigenous Law</i> (Toronto: University of Toronto Press, 2002)	5, 13
Christie, Gordon, “A Colonial Reading of Recent Jurisprudent: <i>Sparrow</i> , <i>Delgamuukw</i> and <i>Haida Nation</i> ” <a href="#">(2005) 23 Windsor YB Access Just 17</a>	14
Coyle, Michael, “As Long as the Sun Shines: Recognizing That Treaties Were Intended to Last” in John Borrows & Michael Coyle, eds. <i>The Right Relationship: Reimagining the Implementation of Historic Treaties</i> (Toronto: University of Toronto Press, 2017) 39	10, 11, 17, 19
Federal Court of Canada, “ <a href="#">Practice Guidelines for Aboriginal Law Proceedings</a> ” (April 2016)	20
Hyslop, Joe et al, <i>Dtantu Balai Betl Nahidei – Our Relations to the Newcomers: Treaty Elders’ Teachings Volume 3</i> (Winnipeg: Treaty Relations Commission of Manitoba and Assembly of Manitoba Chiefs Secretariat, 2015)	11, 13
Kiiwetinepinesiik Stark, Heidi, “Changing the Treaty Question: Remediating the Right(s) Relationship” in John Borrows & Michael Coyle, eds. <i>The Right Relationship: Reimagining the Implementation of Historic Treaties</i> (Toronto: University of Toronto Press, 2017) 248.	10



- Linklater, D'Arcy et al, *Ka'esi Wahkotumahk Aski – Our Relations with the Land: Treaty Elders' Teachings Volume 2* (Winnipeg: Treaty Relations Commission of Manitoba and Assembly of Manitoba Chiefs Secretariat, 2014) 14
- Living Treaties: Lasting Agreements: Report of the Task Force to Review Comprehensive Claims Policy Canada* (Ottawa: Dept. of Indian Affairs and Northern Development, 1986). 10
- United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 295, UNGAOR, 61st Sess, Supp No 49, [UN Doc A/RES/61/295](#), 46 ILM 1013 (2007) 15
- Woodward, Jack, *Native Law* (Toronto: Thomson Reuters, 2019) (loose-leaf updated 2020, release 5) 11