SCC File No. 38795

**IN THE SUPREME COURT OF CANADA**
**(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

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

**Appellants**

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA and HER MAJEST THE QUEEN IN RIGHT OF ONTARIO and HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA

**Respondents**

AND:

ASSEMBLY OF MANITOBA CHIEFS, TSESHAHT FIRST NATION, ATTORNEY GENERAL OF SASKATCHEWAN, MANITOBAKEE WATINOWI OKIMAKANAKINC., TREATY LAND ENTITLEMENT COMMITTEE OF MANITOBA INC., ANISHINABEK NATION, WAUZHUSHK ONIGUM NATION, BIG GRASSY FIRST NATION, ONIGAMING FIRST NATION, NAOTKAMEG WANNING FIRST NATION AND NIISAACHEWAN FIRST NATION, COALITION OF THE UNION OF BRITISH COLUMBIA INDIAN CHIEFS, PENTICTON INDIAN BAND AND WILLIAMS LAKE FIRST NATION, FEDERATION OF SOVEREIGN INDIGENOUS NATIONS, ATIKAMEKSHENENG ANISHINAWBEK FIRST NATION, KWANTLEN FIRSTNATION, ASSEMBLY OF FIRST NATIONS, ASSEMBLY OF FIRST NATIONS QUEBEC-LABRADOR, GRANDCOUNCIL TRATY #3, MOHAWK COUNCIL OF KANAWA:KE, ELSIPOGTOG FIRST NATION, CHEMAWAWIN CREE NATION, AND WEST MOBERLY FIRST NATIONS

**Interveners**

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**FACTUM OF THE INTERVENER,**
**WAUZHUSHK ONIGUM NATION**
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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## Part I Overview

1. This Factum begins by identifying the principal errors of fact and law contained in Canada's Factum. It then submits that the principles adopted by this Court's 1984 decision in *Guerin v. The Queen*[1] were binding on the lower courts and further, that the application of those principles to this case would have restored the Honour of the Crown and advanced the goal of reconciliation.

## Part II Issues

2. This factum raises two broad issues:

Issue 1: How Canada's Factum misstates the facts and the law.
Issue 2 (a): Why *Guerin* is the governing authority and why it was not applied.
Issue 2 (b): Resulting errors in analyzing the evidence.
Issue 2 (c): Resulting errors in apprehending the scope of Canada's fiduciary duty.

## Part III Statement of Argument

### Issue 1: How Canada's Factum misstates the facts and the law

3. Canada continues to try to rewrite history by relying on the fact that it *could* have expropriated when the relevant fact is that it never did. This is contrary to the law of expropriation as explained by the Alberta Court of Appeal in its 1997 decision in *Costello*:

> **… experience strongly suggests a need to provide incentives to lawful behaviour. In the present context, it has long been held that an authority that assumes possession of land following an invalid expropriation generally cannot resist damages in trespass on the ground that it *could* have effected a valid expropriation. The policy rationale of that rule, while not stated expressly in the case law, is clear. If such a defence was available, an expropriating authority would have little reason to comply with the detailed procedural requirements set out in the *Expropriation Act*. Regardless of such compliance, it could take land at the cost of expropriation damages, as opposed to trespass damages.[2] (italics in the original)**

4. Canada asks this Court to base its decision on what would have happened in a "non-breach" world of assumed lawful conduct even though it could not and did not lead evidence to establish what would have happened had an expropriation *actually* taken place and the Crown *actually* exercised its fiduciary control over the compensation payable to the Band as required by section 48 of the *Indian Act*.[3] As recently affirmed by this Court:

[1] [1984] 2 S.C.R. 335.
[2] *Calgary (City) v Costello*, 1997 ABCA 281 at para. 50
[3] Tab 1, section 48 of the *Indian Act*, 1927

> **[t]he Crown fulfils its fiduciary obligation by meeting the prescribed standard of conduct, not by delivering a particular result.[4]**

5. Canada relies on expropriation compensation as the appropriate measure of equitable compensation as though compensation for expropriated Indians reserve lands would necessarily be the same as for non-Indian lands. The majority of this Court in *Osoyoos* set out several reasons why the value of Indian lands might not be assessed in the same way as non-Indian lands. And while Justice Gonthier wrote the dissent in that decision, he recognized that the Crown's consent under what was then section 48 of the *Indian Act* did not just authorize the taking of Indian lands. It was also the source of the Crown's fiduciary control over the separate question of the compensation payable to the Band.

> **The Crown's consent pertains to the very fact of an expropriation in a particular case as well as to those elements of the expropriation that are subject of negotiation and with respect to which there is the possibility of exploitation, such as the rights taken in the expropriated land, the conditions attach to the taking of the land as well as the quantum of compensation.[5]**

6. Canada continues to rely heavily on an appraisal report that was based entirely on "comparable sales" of off-reserve properties when there was nothing to compare these sales to because there was never any sale, surrender, expropriation or other disposition of the reserve lands or of any easement over them. Instead, as the Appellants/Plaintiffs argued at trial[6], Canada effectively forced the Band to invest its reserve lands in the Lac Seul storage project and then failed to ensure a reasonable return for the Band on this investment. Neither the Lac Seul storage agreement nor any applicable legislation required this unfair result. On the contrary, Canada's fiduciary duty to invest an asset which it holds in trust on the Band's behalf was confirmed by Justice Rothstein in *Ermineskin*:

> **In my opinion, if the situation is such that the Crown is in the position of a fiduciary, although not strictly speaking a trustee at common law, and holds funds on behalf of the bands, it is not improper to ascribe to the Crown a duty to invest those funds in the manner of a common law trustee, subject to any legislation limiting its ability to do so.[7]**

[4] *Williams Lake Indian Band v Canada*, 2018 SCC 4 at para. 48.
[5] *Osoyoos Indian Band v. Oliver (Town)*, 2001 SCC 85 at para. 155.
[6] Written Submissions of the Plaintiff, March 2, 2017, at paras 65 to 69. (AR, Vol II, Tab 5).
[7] *Ermineskin Indian Band & Nation v. Canada*, 2009 SCC 9 at para. 73.

7. Canada denies liability for its failure to ensure a reasonable return on this investment on the ground that it would be unfair "to judge [Canada's] actions of the past by the standards of today" as though a reasonable return on an investment was a foreign concept in 1929 or that it somehow could not apply to the forced investment of Indian assets. But as stated by Justice Collier, the Trial Judge in *Guerin,* (and as quoted with approval by Justice Wilson, para. 16):

   > **… it was their land. It was their potential investment and revenue. It was their future.[8]**

8. Canada alleges that the Band had no "leverage to broker a better deal", as though Canada, the Band's fiduciary and the principal proponent and financial backer of the project, had no such leverage either. In support, it relies on the "value to the owner" method of compensating owners of expropriated lands. In fact, Eric C. Todd's 1992 text entitled ***The Law of Expropriation and Compensation in Canada*** explains the effect of the leading 1914 Privy Council decision, *Cedar Rapids v. Lacoste*, as follows:

   > **Value to the taker may, as in *Cedar Rapids*, be greater than value to the owner. This will certainly be the case where the taker requires the interest to achieve an objective which would be impossible, at least economically impracticable, without it.[9]**

9. Moreover, Canada ignores the final result in the same *Cedar Rapids* case. Rendered in January 1928 and, therefore, highly relevant in the present case, the Privy Council's final decision upheld the second arbitration award in which the expropriating company's original offers of $2,800 and $1,700 for the "bare value" of the land were rejected and replaced by awards of $45,000 and $75,000.[10] These significantly greater awards were of the same magnitude as the awards of the dissenting arbitrator in the first arbitration who relied on evidence that the lands in question "have very great value" as "component parts of a hydro-electric power development".[11]

10. Canada submits that the Crown was entitled to "represent and balance many different interests", not just the Band's. But Justice Binnie's famous "many hats" metaphor, found at para. 96 of his judgment in *Wewaykum*, explicitly applied only to situations "*prior to reserve creation*", italics in the original. In the context of this case, where the use of these lands to

[8] *Guerin et al v. R.* [1982] 2 F.C. 385 at para. 86, quoted at para.
[9] Tab 2, Eric C. Todd, *The Law of Expropriation and Compensation in Canada,* at pages 111-112; *Cedar Rapids v. Lacoste* (1914), 16 DLR 168.
[10] *Lacoste v. Cedar Rapids*, [1928] 2 DLR 1; Justice Gleason only cited this decision.
[11] *Cedar Rapids v. Lacoste* (1914), 16 DLR 168 at para. 18.

generate hydro-electric power was inevitable but the compensation payable to the Band remained to be determined, Canada's fiduciary duty was articulated by Justice Dickson (as he then was) at para. 107 of this Court's decision in *Guerin*:

> **Equity will not countenance unconscionable behaviour in a fiduciary, whose duty is that of utmost loyalty to his principal.**

**Issue 2 (a): Why *Guerin* is the governing authority and why it was not applied**

11. In *Guerin*, the Band had surrendered 162 acres of reserve land to Canada to be leased to a golf course but only on specifically authorized terms. Canada found it impossible to obtain those terms but, rather than return to the Band for further instructions, Canada entered into a lease on terms less favourable than those the Band had authorized. At par. 52 of her judgment, Justice Wilson found that Canada breached its fiduciary duty by committing the Band to an unauthorized use of its reserve lands. She held that Canada's liability for this kind of breach was to be assessed at the date of trial on the presumption that the Band would have wished to develop its land in the most advantageous way possible during the period of unauthorized use.

12. In the present case, there is no dispute that Canada failed to either obtain a surrender of or expropriate the right to flood over 11,000 acres of reserve lands for the Lac Seul storage project. The use of these lands for that purpose was, therefore, unauthorized and remained so to the date of trial. But the lower courts failed or refused to apply *Guerin*. Instead, they accepted Canada's argument that since it *could have* expropriated those lands under the *Indian Act*, equitable compensation should be based on the amount the Band would have received on their expropriation in 1929. This Intervener identifies two reasons why the lower courts failed or refused to apply *Guerin*.

13. First, the lower courts failed to find that Canada's most fundamental breach of fiduciary duty was, as it was in *Guerin*, permitting, indeed committing, the reserve lands to be used for an unauthorized purpose. In fact, Canada's breach was far more serious in this case because in *Guerin*, the Band had at least surrendered the land and consented to its use as a golf course. Nonetheless, *Guerin* decided that Canada had permitted the unauthorized use of the reserve lands and that this constituted a particular kind of breach that called for a particular kind of remedy, one drawn from pre-existing fiduciary law as set out in the 1908 Supreme Court of

Canada decision in *McNeill v. Fultz*.[12] But having failed to correctly identify the correct breach, the lower courts failed to apply the correct remedy.

14. Second, the lower courts accorded more importance to the Trial Judge's view of *what would have happened* than to the remedy required by law for *what actually did happen*. Instead of applying *Guerin* to proven facts, they invented "alternative facts", finding that the Band would, in any event, have never received greater compensation than the amount they awarded it on the assumption that the reserve lands were expropriated. At par. 318 of his decision, the Trial Judge wrote:

> **As noted earlier, I find that the project would have happened regardless of the views of the members of the LSFN. Had they been kept fully informed, they could not, in my view, have been able to put an end to the project. Moreover, having little leverage there is no evidence from which one can find that they would have been able to strike a better deal than that which I discuss later in these Reasons.**

15. It is true that the Band could not have "put an end to the project"; if necessary, Canada could have authorized a lawful expropriation of the reserve lands under section 48(1) of the *Indian Act*. But section 48 has two subsections. Since no lawful expropriation had ever happened under subsection 48(1), the discretionary control exercised by the Governor in Council over the compensation payable to the Band under subsection 48(2) was also never exercised. The reasoning of the lower courts conflated the two subsections of section 48 into the first, thereby writing out of their invented scenario the very source of Canada's fiduciary duty to prevent an exploitative bargain. It also led to their conclusion, never acknowledged by the Trial Judge, the majority of the Court of Appeal or by Canada, that the Band was not entitled to **any** compensation for this clear breach of Canada's fiduciary duty, a wrong in itself.

*16.* In support of this scenario, the lower courts relied on evidence that none of the four non-Indian occupiers of land on the foreshore of Lac Seul was compensated on the basis of the utility of those lands for the Lac Seul storage project. That is also true but the analogy is unsustainable for many reasons. It ignores the differences between Indian ownership of reserve lands and non-Indian ownership of private lands as explained by the majority in *Osoyoos*. None of the four, a church, the Hudson's Bay Company, the Canadian National Railway and the Province of Ontario, was compensated as though it had been expropriated.

[12] (1906) 38 S.C.R. 198.

Instead, all four negotiated and were paid for flowage rights over their lands. And most significantly, Canada had no fiduciary duty to protect the interests of any of these parties. The single conclusion the lower courts could have drawn from this evidence was that the only land flooded without authority at Lac Seul was 11,304 acres of reserve land.

**Issue 2 (b) Resulting errors in analyzing the evidence**

17. In *Guerin*, again at par. 52, Justice Wilson also held that the Band did need not to prove that it would have developed the reserve lands in the most advantageous way possible. Unlike in a contracts case, "in equity a presumption is made to that effect". That is because, as Justice McLachlin later observed in *Canson Enterprises Ltd. v. Boughton & Co.*: **"equity is concerned not only to compensate the plaintiff, but to enforce the trust which is at the heart"** of a fiduciary's obligation.[13]

18. At the very least, this presumption imposed on the lower courts the obligation to give careful consideration to the evidence supporting the Appellants' submission that the most advantageous use of the reserve lands during the period of unauthorized use was their actual use to generate hydro-electric power.

19. Support for this submission came from Mr. Bell, the appraiser who testified on behalf of Canada. His report acknowledged that the advent of the Lac Seul storage project changed the most advantageous use of the reserve lands in question. It stated: "demand for hydro electric power resulted in the flooding of these lands in order to accommodate the development of a hydro electric power dam … At this point, the flooded lands had a greater utility as flooded land rather than their previous use".[14]

20. The lower courts ignored this evidence, Justice Gleason holding at par. 78 that in 1929, the law in Canada did not allow the "special adaptability" of land for hydro-electric development to be considered in the determination of its value on expropriation. As already noted at para. 12, this Intervener denies the correctness of that ruling but, more importantly, denies its relevance. Had the lower courts applied *Guerin*, they would not have adopted expropriation compensation as the way to assess equitable compensation to begin with. Instead, they would have been required to give careful consideration to Mr. Bell's admission that the Lac Seul

[13] [1991] 3 SCR 534 at par. 61.
[14] Duncan Bell, Appraisal Report Lac Seul First Nation, AR, Vol. CCXLI, Exhibit 7997, page 79.

storage project resulted in the reserve lands having "greater utility as flooded land".

21. The Appellants led expert evidence from Mr. Falk that water *storage* sites, like Lac Seul, can be as important to the generation of hydro-electric power as the water *power* sites where the generators are located, often very far down stream from the storage dam. His report stated: "The regulation of Lac Seul was seen as providing an immediate benefit to the hydraulic generating stations on the Winnipeg River in Manitoba that were then in operation and that were planned to meet growing demands for electricity in Winnipeg."[15] But when considering the Appellants' return on investment claim, including from revenues generated in Manitoba, the Trial Judge made this observation at par. 353:

> **… had Canada proposed such an arrangement to the Provinces, there is no evidence that they would have been open to considering it. Ontario vocally opposed to the amount being proposed to be paid to the LSFN, and it played "hard ball" when it came to negotiating the ultimate payment that was made. In my view, it is even less likely that Manitoba would have agreed to an arrangement of the sort the LSFN now proposes as its power plants were located miles from the LSFN and many were created long after the Ear Falls Dam was built.**

22. Again, had the Trial Judge applied *Guerin,* he would have been required to carefully consider Mr. Falk's uncontested evidence that the storage of water at Lac Seul contributed to the production of hydro-electric power in Manitoba. But, in fact, he did not need Mr. Falk's evidence to know this. He already knew from the historical evidence that the Lac Seul storage project was originally conceived by Canada to serve the power needs of Winnipeg and was largely paid for by Manitoba power producers. He already knew that if the storage of water at Lac Seul was not important for the generation of hydro-electric power in Manitoba, the project would have never been built in the first place.

23. In support of their return on investment claim, the Appellants called an expert witness, Mr. Gillis, to provide his opinion about what would constitute a "commercially reasonable return on the First Nation's involuntary investment of its flooded reserve land in the Project".[16] Canada called an opposing expert, Mr. Hamal. At par. 83 of his decision, the Trial Judge indicated that he was not going to accept the evidence of Mr. Gillis. But he also committed

[15] Trevor Falk, The Transformation of Lac Seulinto a Storage Reservoir forHydroelectric Generation, AR, Vol. CCXLVII, Exhibit 8177, para. 45.
[16] James Gillis, Second Reply Report Regarding Benefits from Hydroelectric Developments Associated with the Lac Seul Storage Project, AR, Vol. CCXXXV, Exhibit 7897, para. 5.

himself to distinguish the two historical precedents relied upon by Mr. Gillis: the Stoney Band precedent and the Columbia River Treaty precedent. He wrote:

> **I prefer the evidence of Mr. Hamal to that of Mr. Gillis. Like Mr. Hamal, I found that Mr. Gillis's conclusions as to the value of the LSFN land to the Lac Seul Storage Project were neither reasonable nor conservative. As is discussed below, I do not accept his comparisons of the Lac Seul Storage Project with the Bow River sites development with the Stoney Indian Band and the Columbia River Treaty. Unlike Mr. Gillis, I find none of these circumstances are comparable to the situation of the LSFN in 1929, at Lac Seul.**

24. Then, at paras. 381 and 382 of his decision, the Trial Judge explained how he distinguished the Stoney Band precedent, the Kananaskis Falls Development, from the Lac Seul case. In the immediately preceding paragraphs, he had decided that he would accept Mr. Bell's valuation of the Lac Seul reserve lands even though it ignored the effect the Lac Seul storage project would have had on the commercial value of those lands. Seeing the contradiction, he went on:

> **This manner of proceeding may seem contrary to that advanced by Indian Affairs in the Kananaskis Falls development where, it will be recalled, the Department informed Calgary Power that the cost of the land must exceed its agricultural value as the "value in the lands consists in their usefulness in connection with the development of power at Kananaskis Falls and in this connection they have a considerable value."**
>
> **But the Lac Seul Storage Project and the Kananaskis Falls development were considerably different in at least one material respect. Indian Affairs had a legal opinion that Calgary Power had no ability to expropriate any Reserve lands. This put Calgary Power vis-à-vis the Stoney Indian Band in an entirely different position than Canada was vis-à-vis LSFN Reserve. There was no expropriation by Calgary Power and thus the principle stated above did not apply.**

25. However, the Federal Court of Appeal disagreed with the Trial Judge's finding that there was no power of expropriation available in the Stoney Band, thus removing that ground for distinguishing the Stoney precedent. It is true that the lower courts gave another reason for distinguishing the Stoney example from Lac Seul: the former was, in part, a water *power* site whereas Lac Seul was only a water *storage* site. But, as already noted, this reasoning ignored the very reason the Lac Seul storage project was built in the first place. Without these invalid legal and factual distinctions, the lower Courts would have been required to carefully consider Mr. Gillis' opinion based on the Stoney precedent.

26. As for the 1961 Columbia River Treaty, it was not analysed at all by either of the lower courts on grounds of relevance. At par. 349 of his decision, the Trial Judge wrote:

> **The most obvious difficulty is that the Treaty was signed 32 years after the Lac Seul Storage Agreement became operational. While the Bow River and Stoney Indian Band agreements were contemporaneous or pre-dated with the Lac Seul Storage Project, the Columbia River Treaty did not. Moreover, as Mr. Hamal testified, the Treaty was a complex multi-national undertaking involving the building of four dams in two countries on rivers that twined between them. I find that this arrangement, for these reasons, offers no assistance to the Court.**

27. This was also contrary to *Guerin*. At par. 50 of *Guerin*, Justice Wilson confirmed that the assessment equitable compensation in cases of unauthorized use of reserve lands could only be conducted at trial. She adopted the principle that "compensation is to be assessed by reference to the value of the assets at the date of restoration and not at the date of deprivation". Had the lower courts applied *Guerin*, they would have been required to carefully consider evidence about the increasing value of the same kind of asset during the entire period of unauthorized use. Indeed, the Columbia River Treaty was evidence was of particular relevance because it showed how the fiduciary itself managed the same kind of asset during the same period.

**Issue 2 (c): Resulting errors in apprehending the scope of Canada's fiduciary duty**

28. *Guerin* said that in assessing equitable compensation for the breach of allowing unauthorized use of reserve lands, the lower courts were to "presume[d] that the Band would have wished to develop its land in the most advantageous way possible" during the period of unauthorized use. Accordingly, the award of equitable compensation should capture and reflect the gains the Band would realize by putting the land to its presumed, most advantageous use, throughout the entire period of unauthorized use. This could only be done assessing equitable compensation at the end of this period, at trial, with the benefit of hindsight.

29. The lower courts did the opposite. They assessed only the Band's losses and only from a 1929 perspective. At par. 439, the Trial Judge wrote:

> **… the decision-maker must look forward to determine the value of what is going to be lost as a result of the inability to use 11,304 acres of Reserve land … I agree that this is the approach the reasonably prudent person would be taking in 1929, faced with the inevitable taking of the land.**

30. This was directly contrary to *Guerin* but it was entirely consistent with the Trial Judge's view that Canada never had a fiduciary duty to achieve gains for the Band even though he was well aware that Canada had achieved gains for the Stoney Band by informing Calgary Power that

"the cost of the land must exceed its agricultural value as the "value in the lands consists in their usefulness in connection with the development of power at Kananaskis Falls and in this connection they have a considerable value."

31. But the project proponent at Stoney was Calgary Power. At Lac Seul, Canada itself was the principal proponent of the project and its loyalties were to Ontario and Manitoba, its project partners, not to the Band. The Trial Judge saw no problem with that. Indeed, despite his assertion that Canada's conduct in this case was "inexplicable", his judgment both explained and condoned Canada's conduct by showing how it was motivated throughout not by Canada's utmost loyalty to the Band but by its utmost loyalty to Ontario and Manitoba.

32. For her part, Justice Gleason had a more specific reason for denying the Appellants' revenue sharing claim. At par. 61 of her decision, she wrote:

> **For the appellants to recover the value of a revenue-sharing agreement, they must be able to establish that it forms part of what the Lac Seul First Nation lost as a result of Canada's breach: see *Canson* at p. 551 ("equitable compensation must be limited to loss flowing from the [fiduciary's] acts in relation to the interest he undertook to protect").**

33. According to her interpretation of this quote from *Canson*, Canada had no obligation to negotiate a revenue sharing agreement for the Band because it never undertook to do so. *Guerin* is indeed an example of how a particular undertaking could, as Chief Justice Dickson held at par. 107, "inform and confine the field of discretion within which the Crown was free to act". However, Justice Gleason was wrong to suggest that the *absence* of an undertaking could reduce the broad scope of the fiduciary duty imposed *by law* on Canada as explained by the Chief Justice at par. 96 of *Guerin*.

## Part IV Conclusion

34. What happened in this case can be simply stated: Canada invested the reserve lands in the Lac Seul storage project without authority and without obtaining a reasonable return on this investment for the Band. On those facts, this Intervener submits that *Guerin* required the lower courts to assess equitable compensation at trial with the benefit of hindsight based on the presumption of most advantageous use and that they failed to do so.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

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**Christopher Rootham**
Ottawa Agent for the Intervener, Wauzhushk Onigum Nation

**Part VI – Table of Authorities**

| Authorities | Paragraph in Memorandum of Argument |
|---|---|
| *Guerin v. The Queen*, [1984] 2 SCR 335 | 11, 17, 27, 28 |
| *Calgary (City) v. Costello*, 1997 ABCA 281 | 5 |
| *Williams Lake Indian Band v Canada*, 2018 SCC 4 | 6 |
| *Osoyoos Indian Band v. Oliver (Town),* 2001 SCC 85 | 5, 16 |
| *Ermineskin Indian Band and Nation* v. *Canada*, 2009 SCC 9 | 8 |
| *Guerin et al v. R.* [1982] 2 F.C. 385 | 7 |
| Eric C.E. Todd, The Law of Expropriation and Compensation in Canada (Scarborough: Carswell, 1992) at p 111-112 | 10 |
| *Cedar Rapids v. Lacoste* (1914) 16 DLR 168 | 10, 11 |
| *Lacoste v. Cedar Rapids* [1928] 2 DLR 1 | 11 |
| *McNeil v Fultz* (1906) 38 S.C.R. 198 | 15 |
| *Canson Enterprises Ltd. v. Boughton & Co, [1991] 3 SCR 534* | 17, 32 |

## Part VII – Legislation

| Statutes and Regulations | Paragraph in Memorandum of Argument |
| --- | --- |
| *Indian Act,* R.S.C. 1985, c I-5 s. 48 | 4, 5, 15 |