Court File No. 40619

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

B E T W E E N:

ATTORNEY GENERAL OF QUÉBEC

Appellant

-and-

PEKUAKAMIULNUATSH TAKUHIKAN

Respondent

-and-

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Interveners

FACTUM OF THE INTERVENER, FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA

(Rule 42 of the Rules of Supreme Court of Canada, SOR/2002-156)

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PART I - OVERVIEW

1. This factum proceeds in three parts. **First,** it frames the issues on appeal in light of the broader context: the "programming and funding" approach to essential services. **Second,** it provides a roadmap for analyzing when the specific duties flowing from the honour of the Crown are engaged and when they have been breached. **Third,** it concludes with brief remarks on the role of the judiciary in proceedings like this appeal.

PART II - STATEMENT OF QUESTIONS IN ISSUE

2. The Caring Society proceeds on the basis of the issues set out by the parties.

PART III - STATEMENT OF ARGUMENT

A. The Crown's Approach to First Nation Essential Services

3. To arrive at a workable analytical approach, this Court would benefit from an understanding of the underlying context: the Crown's "programming and funding" approach to essential services.[1] The Court's first exposure to this context was in *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families* (*FNIMCYF Act Reference)*, regarding child and family services. It is unsurprising that the Court's second exposure arises from policing.[2]

4. **First,** both policing and child and family services are part of a group of "basic public services" that are "necessary for the safety and security of the public" particularly when considered through the lens of reconciliation.[3] The Crown's conduct ought to be assessed with this in mind. **Second,** both services have played an essential role in the evolving relationship between the Crown and Indigenous peoples. As this Court has recognized, for much of Canada's history, the state had "wrongly employed a policy of assimilation", including through "the residential schools policy, the 'Sixties Scoop' and the harm and intergenerational trauma that resulted therefrom".[4] Police were involved in implementing these assimilatory policies. For example, the RCMP and other police forces enforced the *Indian Act* and prevented organized opposition to colonial expansion;

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[1] *First Nations Child and Family Caring Society v Attorney General of Canada*, 2016 CHRT 2 at para 83 [2016 CHRT 2].
[2] Canadian Council of Academies, *Toward Peace, Harmony, and Well-Being: Policing in Indigenous Communities, Expert Panel on Policing in Indigenous Communities* (Ottawa, Ontario: Canadian Council of Academies, April 2019) at 8, 72-78 [*Toward Peace*].
[3] Janna Promislow & Naiomi Metallic, "Realizing Aboriginal Administrative Law" in CM Flood & L Sossin, eds, *Administrative Law in Context*, 3rd ed. (Toronto: Emond, 2022) [Promislow & Metallic]; *Toward Peace* at 8, 72; *Anderson v Alberta,* 2022 SCC 6 at paras 43-44.
[4] *FNIMCYF Act Reference*, 2024 SCC 5 at para 10; *Daniels v Canada*, 2016 SCC 12 at para 1.

police were "at the forefront" of enforcing the removal of Indigenous children, their placement in the residential school system and the return of students who attempted to flee; and police play a key role in the enforcement of child welfare laws by state officials, from the Sixties Scoop to the present.[5] Finally, the role of policing cannot be disentangled from the continued overrepresentation of Indigenous children in the foster care system and the overrepresentation of Indigenous people in the criminal justice system.[6]

5. In sum, this appeal concerns services that are essential to Indigenous communities and indissociable from their relationship with the Crown. As for the Crown's "programming and funding" approach to these services, it can be conceived of in four stages:

- **Promise**. The Crown makes an overarching promise: it will work with First Nations to enable them to administer their own effective, culturally responsive service. The promise is generally tied to an express recognition of self-government and the need to facilitate its implementation (see s II of the *First Nations Policing Policy* [*Policy*] and ss 8 and 18 of the *FNIMCYF Act*).[7]
- **Programming**. This promise is placed within, and underpins, either (a) frameworks and programs such as the *First Nations Policing Program* (*FNPP*) or (b) legislation.[8] The former has overwhelmingly been the approach taken by the Crown. While program terms can require First Nations service providers to follow provincial standards, the Crown's promise operates without a "proper [legislative] framework regulating the devolution of program administration."[9] This has been criticized for relying on governmental discretion without corresponding accountability in the Crown's implementation of the promise.[10] For example, the programming element was linked to discrimination in the form of chronic underfunding in *Caring Society v Canada*.[11] While Canada has started to enshrine its promises in legislation,

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[5] *Toward Peace* at 22-32; *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, vol. 1a, at 280-283, 293-294, 558-560.
[6] *FNIMCYF Act Reference* at para 11; *Toward Peace* at 31-32; *R v Gladue*, [1999]1 SCR 688 at para 58; *R v Ipeelee*, 2012 SCC 13 at para 62.
[7] See also *Toward Peace* at 84-85; Judith Rae, "Program Delivery Devolution: A Stepping Stone of Quagmire for First Nations?" (2009) 7 (2) Indigenous LJ 1 at 2-17 ["Rae"].
[8] *Canada (Attorney General) v Simon*, 2012 FCA 312 at paras 4-7 [*Simon*].
[9] 2016 CHRT 2 at para 83; *Simon* at para 6.
[10] *Toward Peace* at 72-78, 94-101; Rae at 18-30; Naiomi Metallic, "A Human Right to Self-Government over First Nations Child and Family Services and Beyond: Implications of the Caring Society Case" (2018) JL & Soc Pol'y 28 at 5-25 [Metallic, "Caring Society Case"].
[11] 2016 CHRT 2 at paras 83, 268, 307-315, 341-345, 388-393, 423-426, 458-465.

even legislation can be vague on the details of implementation (*e.g.,* the lack of clear federal / provincial funding obligations implementing the purposes / principles of the *FNIMCYF Act*).[12]

- **Funding**. The Crown *implements* its promise and corresponding program through bilateral or trilateral "funding agreements" with individual First Nations (also styled as contribution or coordination agreements, etcetera).[13] These agreements coordinate the transition to a First Nations-run service (see s. 90 of the *Police Act* and ss. II and V of the *Policy*) and set out funding amounts for the service. This funding is central to implementing the Crown's promise.
- **Renewal.** These agreements are short-term, despite the longer-term nature of the Crown's promise.[14] In theory, renewal clauses allow for periodic renegotiation of the agreement's terms and funding to ensure the Crown fulfills its promise, but serious imbalances favour the Crown.

6. Despite its importance, the Crown's approach to First Nations essential services has received far less judicial scrutiny than the treaty-making approach. Treaties also contemplate restoring autonomy over essential services, which can include policing.[15] However, modern treaties' core shortcoming is "the slowness of treaty settlements".[16] Such accessibility issues mean that most First Nations rely on the foregoing approach to essential services.

7. This approach was initially touted as a way of "giving participating communities a role in shaping their own… services", pursuant to the Crown's recognition of self-government, without requiring decades of treaty negotiations or litigation.[17] This may explain why 457 Indigenous communities participated in the *FNPP,* in reliance on the Crown's promise.[18]

8. However, in practice, the agreements signed with First Nations and/or their authorized service providers have shown "no evidence of real negotiation".[19] Instead, they have largely been "take it or leave it" Crown propositions, dictating the funding levels, structures and the terms and

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[12] See Naiomi Metallic, Hadley Friedland & Sarah Morales, "The promise and pitfalls of C-92: An Act Respecting First Nations, Inuit and Métis Children, Youth and Families," Yellowhead Institute, July 4, 2019 at 8-9 [Metallic, Friedland & Morales, "The promise and pitfalls of C-92"]; *FNIMCYF Act Reference* at paras 62-66 and 85; 2022 QCCA 185 at paras 272-279, 143.
[13] *Toward Peace* at 88-91; Metallic, "Caring Society Case" at 12-15; *Simon* at para 6.
[14] *Toward Peace* at 88, 94-95.
[15] *Nisga'a Final Agreement* at ch 12; *Toward Peace* at 69-70.
[16] *FNIMCYF Act Reference* at para 8.
[17] *Toward Peace* at xv; see also Rae at 10-14; *Simon* at para 5.
[18] *Toward Peace* at 88-91.
[19] *Attawapiskat First Nation v Canada*, 2012 FC 948 at para 59 [*Attawapiskat*].

conditions to be met.[20] Periodic renegotiation and renewal provisions have been similarly ignored.[21] Instead of promoting self-government, the result has been to "perpetuate disadvantages historically suffered by First Nations people".[22] The Crown's negotiating conduct matters: even the *FNIMCYF Act*, which provides a legislative foothold for accountability, relies on the Crown's approach to negotiating agreements.[23] In any case, there is no such legislation for policing services.

9. This context places the legal issues in focus. While the facts are novel, the proper legal approach is implicit in this Court's jurisprudence. A roadmap of this approach is presented below.

B. Determining when the Honour of the Crown Is Engaged

10. In this appeal, the appellant's inordinate focus on if the honour of the Crown is engaged has rendered complex what ought to have been obvious. The honour of the Crown is a "core precept" that characterizes the "special relationship between Aboriginal peoples and the Crown" — it is, in a sense, an "organizing principle" of a constitutional nature "from which more specific legal doctrines may be derived".[24] These doctrines (*i.e.,* the duties that flow from the honour of the Crown) each have their own triggers. Thus, the Court should resist invitations to draw arbitrary lines restricting when the principle of the honour of the Crown applies. Any filtering is already achieved by whether specific duties are engaged in the circumstances and if they were breached.

11. The Court's statements on the origins of the honour of the Crown are a better guide of when it is engaged. It arose from the "'superimposition of European laws and customs' on pre-existing Aboriginal societies" and imposes obligations on the Crown to treat their modern-day successors honourably "as part of an ongoing process of reconciliation".[25] If the honour of the Crown stems from the Crown's superimposition of European laws and customs, the project of undoing this superimposition — whether through the Treaty approach or the transition to self-government via the essential services programming and funding approach — inherently engages the Crown's honour. Both approaches result in fundamental shifts to the provision of essential services, and to

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[20] Rae at 10-14; Metallic, "Caring Society Case" at 23-26.
[21] *Toward Peace* at 94.
[22] See 2016 CHRT 2 at para 394; see also *Dominique v Public Safety*, 2019 CHRT 9 aff'd 2023 FC 267 [*Dominique*].
[23] Metallic, Friedland & Morales, "The promise and pitfalls of C-92".
[24] *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at para 16 [*Haida*]; *R v Desautel*, 2021 SCC 17 at para 30 [*Desautel*]; *Bhasin v Hrynew,* 2014 SCC 71 at para 64.
[25] *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at para 67 [*MMF*]; *Desautel* para 22.

the ongoing Crown-Indigenous relationship. The Crown's conduct under both approaches places lives on the line, including those of children and families who depend on those essential services.

12. Accordingly, the appellant's suggestion that the honour of the Crown is not engaged at all or is attenuated when there is no claim to a constitutional right is not tenable. First, the honour of the Crown is a grounding principle that predates the *Constitution Act, 1867*.[26] It was judicially recognized before s. 35 and has not been subsumed by s. 35.[27] It imposes duties upon the Crown, including fiduciary duties, that differ from the rights under s. 35.[28] Consequently, whether a promise or agreement engages the honour of the Crown does not depend on that promise or agreement falling within s. 35. The *FNIMCYF Act Reference* reaffirms that where the Crown's promises go beyond the strict confines of s. 35, its honour is no less at stake.[29] Second, the honour of the Crown is, *itself,* a constitutional principle that binds the Crown[30] — and the Crown's promise regarding policing services, underpinned by a recognition of self-government, was supposed to *avoid* First Nations resorting to litigation to vindicate these rights. The Crown cannot turn around and suggest that proceeding by programming and funding allows it to act less honourably.

C. Assessing the Duties that Flow from the Honour of the Crown

13. Even if the honour of the Crown is engaged, it is critical to ascertain which specific duties are engaged — which has not been consistently done in this case. The subsections below analyze the duties at play for each stage of the essential services programming and funding approach. They provide a roadmap for *when* the duty is engaged and *what* the duty entails.

1. Promise Stage: The Duty of Diligent Implementation

14. In *Manitoba Metis Federation* (*MMF*), this Court recognized a duty of diligent implementation flowing from the honour of the Crown, in the context of the obligation set out in s. 31 of the *Constitution Act, 1867*. While it did not exhaustively set out when such a duty would be triggered, it identified the following three factors as attracting the honour of the Crown and the corollary duty of diligent implementation: (1) "'the intention to create obligations' and 'a certain

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[26] *Mikisew Cree First Nation v Canada (Governor General in Council),* 2018 SCC 40 at para 21 [*Mikisew Cree*].
[27] See e.g. *Calder et al v Attorney-General of British Columbia*, 1973 CanLII 4 (SCC) at 395.
[28] See e.g. *Southwind v Canada*, 2021 SCC 28 at para 61.
[29] *FNIMCYF Act Reference,* at paras 59-67, 117; see also *Teslin Tlingit Council v Canada (Attorney General),* 2019 YKSC 3 at para 44; *R v Côté,* 1996 CanLII 170 (SCC) at para 83.
[30] *Toronto (City) v Ontario (AG),* 2021 SCC 34 at para 62. See also A.F. at paras 48-50.

measure of solemnity'"; (2) being "made for the overarching purpose of reconciling Aboriginal interests with the Crown's sovereignty"; and (3) being "explicitly owed to an Aboriginal group".[31]

15. The solemn obligations in *MMF* were of a constitutional nature. However, the factors go to *substance,* not *form.* It is therefore possible for non-constitutional Crown promises meeting the three factors above to attract a duty of diligent implementation. In the *FNIMCYF Act Reference*, this Court recognized that the promises enshrined in the Act created a duty of diligence.[32]

16. Considering the above factors, the duty of diligent implementation is clearly triggered when the Crown adopts an Act or a formal policy framework and program whereby it commits to working with First Nations to promote their self-governance of an essential service. The substance of such a promise possesses the degree of intent and solemnity required; it is clearly made to reconcile Indigenous interests with Crown sovereignty; and it is explicitly owed to First Nations.

17. Such a promise is also taken seriously by Indigenous communities and relied upon as they transition to self-governance over the service. Whether in policing or child and family services, the Crown's approach to implementing its promise can put lives at risk.[33] The Crown cannot disregard its solemn promise and suggest that it need not behave diligently.

18. To clarify, the duty of diligent implementation does not constitutionalise the Crown promise. As the Court put it in the *FNIMCYF Act Reference,* the Crown must diligently implement its promises so long as they remain in force.[34] Thus, the duty is best understood as an implied term to a Crown promise.[35] Insofar as the promise remains in place, so does the implied term of diligent implementation. The Crown cannot tout its promise in public, while undermining it in private.

19. While the duty may not dictate a specific result, it requires rigorous scrutiny of the means the Crown employs, As this Court put it in *MMF*, "[v]iewing the Crown's conduct as a whole…, did the Crown act with diligence to pursue the fulfillment of the purposes of the obligation?"[36] Accordingly, it is critical to distinguish between the promise and the means of implementation. In this case, the Crown's overarching promise in the *Policy/FNPP* should not be conflated with

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[31] *MMF* at paras 71-72.
[32] *FNIMCYF Act Reference* at para 60.
[33] See e.g. *Caring Society v Canada,* 2022 CHRT 8 at para 54; *Toward Peace* at 76-78.
[34] *FNIMCYF Act Reference* at para 65.
[35] Sacha R Paul, "A Comment on Manitoba Métis Federation Inc v Canada" (2013) 37:1 Manitoba LJ 323 at 327.
[36] *MMF* at para 83.

funding agreements, i.e., the *means* by which the Crown implements the promise.

20. At a minimum, when the Crown's means of implementing its promise are not only failing to fulfill the promise, but are actively perpetuating harm to Indigenous communities, then the Crown has breached its duty of diligent implementation. The Crown cannot be said to have acted with honour if a promise of greater autonomy instead becomes a set of shackles.

2. Programing and Funding Stages: The Duty to Negotiate Honourably

21. The process for concluding bilateral or trilateral agreements over essential services with First Nations triggers a duty of honourable negotiation. This duty is well-recognized. While it arises most often in treaty negotiations, there is no reason it should not apply to agreements seeking to implement a promise of self-government over essential services: both are, through different means, concerned with a "just settlement of Aboriginal claims".[37] The Crown cannot be free to disregard its honour merely because it is not negotiating a formal treaty.

22. What does "honourable negotiation" require? At the outset, there must be "negotiation". Thus, the Crown cannot propose adhesion contracts and refuse anything more than trivial changes. Rather, it must demonstrate a genuine openness to accommodating its negotiating counterpart's needs and interests. This is implicit in this Court's repeated affirmation that the honour of the Crown looks toward a "mutually respectful long-term relationship".[38]

23. As for what is meant by "honourable", this Court has recognized that the Crown must refrain from any appearance of "sharp dealing".[39] This standard is coloured by the Crown's informational and institutional advantages. There is a discernable line between fostering a collaborative exchange of information and proposals, and "exploit[ing] the structural disadvantages" faced by First Nations at the negotiating table.[40] At a minimum, governments fall short of honourable negotiation when information they know or ought to know shows the proposed agreement will not actually meet its stated aims, principles or standards, but they do not disclose this to their negotiating counterpart or undertake to address these shortcomings with their counterpart. In some situations, the Crown may need to take further action to fulfill domestic and

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[37] *Mikisew Cree* at para 22; see also *MMF* at para 73.
[38] *Desautel* at para 30.
[39] *Haida* at para 19.
[40] Logan Stack, "Reconciliation at the Border of Public and Private Law: Rethinking Contract Principles in the Context of Impact and Benefit Agreements" (forthcoming) 61:1 OHLJ, online: SSRN at 39 [Stack, "Reconciliation at the Border of Public and Private Law"].

international human rights obligations which it has enshrined in Canadian law.[41]

24. Ultimately, the focus of the inquiry is on the Crown's negotiating conduct. This conduct matters because it carries real-life consequences. When First Nations have no voice in shaping agreements they are asked to sign, or are kept in the dark about key information, their provision of *essential services* is set on a path to failure. In the child and family services context, the Canadian Human Rights Tribunal (CHRT) recognized that these harms included the deaths of children, unnecessary family separations and other irreparable harms stemming from flawed funding levels and formulae, including those incorporated into funding agreements.[42]

3. Renewal Stage: An Honourable Reading of Renegotiation and Renewal Clauses

25. This proceeding has yet to distinguish between duties arising when concluding an initial agreement and duties arising during the renegotiation and renewal stage in the context of essential services. This has led to a lack of legal and factual clarity.

26. As noted earlier, most funding agreements have a limited term, coupled with a renegotiation and renewal clause. The clause's purpose is to allow for review and adjustment of the agreement's terms based on past experience. It provides contractual discretion to renew the agreement, or not, and to accept or reject the other party's changes. The Crown's exercise of its contractual discretion matters. The uncertainty of funding renewals disrupts long term planning for service providers and can lead to service denials and disruptions for the affected community.

27. When a clause in a funding agreement provides a contractual power of discretion to the Crown, a proper interpretation of the clause requires this discretion to be exercised consistently with the purposes for which it is given. This approach is well-established. **First,** this Court has regularly confirmed that the honour of the Crown assists in interpreting an agreement's terms. Clearly, where those terms provide a discretionary power, an honourable interpretation is one that requires the Crown to exercise the power honourably. **Second,** this Court has recognized that, even for private parties, there is a common law duty to exercise contractual discretion in good faith.[43] Civil law requirements are similar.[44] Why would the honour of the Crown require anything less?[45]

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[41] See e.g. *Canadian Human Rights Act*, RSC 1985, c H-6; *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.
[42] See generally 2016 CHRT 2; see also *Toward Peace* at 76-78, 95-96.
[43] *Wastech Services v Greater Vancouver Sewerage and Drainage,* 2021 SCC 7 at para 63.
[44] See Factum of the Intervener AFNQL.
[45] See also Stack, "Reconciliation at the Border of Public and Private Law" at 42.

28. As an example from child and family services, if the Crown is faced with a growing body of information about how an existing agreement is causing irreparable harms to children and families, but reflexively refuses any amendments at the renegotiation and renewal stage, it cannot be said to be exercising its discretion with honour. Such "wilful and reckless conduct"[46] cannot fall within an honourable interpretation and exercise of the renegotiation and renewal clause.

29. **In the alternative,** the renewal and renegotiation stage could be analyzed similar to the programming and funding stage, explained above. If there is a duty to negotiate honourably in reaching an agreement, it follows that this duty is *re*-engaged during renegotiation and renewal.

D. Concluding Remarks on the Judicial Role

30. Before concluding, a few points are worth noting about the Court's role in proceedings like this appeal. **First,** by separating out the stages of Crown conduct— and the duties at play in each — it is clear that none of the duties at play ask the judiciary to re-write any agreement, or even focus on its substance. Rather, they are concerned with analyzing the Crown's negotiating conduct. As Felix Hoehn explained, "the substantive terms governing the… relationship must be determined through negotiations between the political representatives, not courts. The most important role for courts is to enforce parameters for negotiations that are consistent with the honour of the Crown."[47]

31. **Second,** by providing rigorous guidance, this Court can promote meaningful negotiations and reduce the need for further litigation. In the treaty context, this Court's guidance on the honour of the Crown has facilitated negotiations by clarifying the parameters of the Crown's conduct. However, the Court has yet to consider these issues for the Crown's approach to First Nations essential services. This has resulted in a chasm between the Crown's negotiating approach to treaties, compared to agreements for essential services that are "the lifeblood of the community."[48] Despite the Crown's promises (expressly anchored in a recognition of self-government), the actual agreements reached have most often shown "no evidence of real negotiation."[49] This Court's guidance can reduce existing uncertainty about what is expected of the Crown in negotiations.

32. While reconciliation is not always "achieved in courtrooms", this Court must guard against the honour of the Crown becoming a "mere incantation" that the Crown can feel at liberty to

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[46] See e.g. *Caring Society v Canada,* 2019 CHRT 39 at para 242.
[47] Felix Hoehn, "The Duty to Negotiate and the Ethos of Reconciliation" (2020) Sask LR at 38.
[48] *Attawapiskat* at para 57.
[49] *Attawapiskat* at paras 57-59. See also Metallic, "Caring Society Case" at 12-15.

disregard.[50] The Caring Society's litigation before the CHRT (and the non-compliance motions that it has had to bring due to the Crown's ongoing disregard for the CHRT's rulings) highlight that reconciliation requires an avenue for accountability when all else fails. This is very important when remediating harms for vulnerable persons, including children. This Court's guidance can clarify the parameters for meaningful negotiations to reduce the need for litigation.

33. **Third,** providing clear guidance on the Crown's duties is consistent with this Court's preoccupation with protecting the rule of law.[51] The essential services programming and funding approach raises serious concerns about the rule of law, as the implementation of the Crown's solemn promise "operates entirely on the basis of government officials' discretion and creates conditions ripe for (1) multiple inconsistent interpretations and approaches to key program requirements causing confusion and uncertainty; and (2) abuse and arbitrary decision-making".[52]

34. By not anchoring the *Policy* and the *FNPP* in legislation with accountability mechanisms, the Crown has largely evaded judicial scrutiny of its handling of its solemn promise.[53] In this sense, the present appeal involves an overreach by the *executive*. The Court is well within its role by protecting the rule of law. This may also incentivize governments to legislate their commitments and means of implementation for greater clarity, in the vein of further "legislative reconciliation."[54]

35. **Finally,** the roadmap provided in this factum shows how this appeal can be assessed based on duties this Court has already recognized. By separating the Crown's conduct into stages, it becomes clear that the answers can already be found in this Court's jurisprudence.

PARTS IV AND V – SUBMISSIONS ON COSTS AND ORDER SOUGHT

36. The Caring Society seeks no costs and requests that none be awarded against it. The Caring Society takes no position regarding the disposition of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of March, 2024.

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[50] *Clyde River (Hamlet) v Petroleum Geo-Services,* 2017 SCC 40 at para 24; *Haida* at para 16.
[51] See e.g. *Yatar v TD Insurance Meloche Monnex,* 2024 SCC 8 at paras 45-56; *Reference re Secession of Quebec,* 1998 CanLII 793 (SCC) at paras 70-78.
[52] Naiomi Metallic, "The Broad Implications of the *First Nation Caring Society* Decision" (April 24, 2018) online: SSRN, at 48; see also Promislow & Metallic at 143-145.
[53] *Toward Peace* at 72-73, but see *Dominique*; see also Promislow & Metallic at 145-148.
[54] *FNIMCYF Act Reference* at paras 6, 17; see also Naiomi Metallic, "Aboriginal Rights, Legislative Reconciliation, and Constitutionalism" (2023) 27:2 Rev. Const. Stud. 1.

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