

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

B E T W E E N :

**NISGA’A NATION, as represented by NISGA’A LISIMS GOVERNMENT**

Appellant  
(Appellant)

- and -

**MALII also known as GLEN WILLIAMS, GWAAS HLAAM also known as GEORGE PHILIP DANIELS, LUUXHON also known as DON RUSSELL, GAMLAXYELTXW also known as WILHELM MARSDEN, SINDIHL also known as GRAHAM MORGAN, WATAKHAYETXW also known as DEBORAH GOOD, GWINUU also known as PHYLLIS HAIZIMSQUE, WII’LITSXW also known as GREGORY RUSH, HAIZIMSQUE also known as VERA HOWARD, on behalf of themselves and in their capacity as THE GITANYOW HEREDITARY CHIEFS and on behalf of all members of THE GITANYOW NATION**

Respondents  
(Respondents)

*(Style of cause continued on next page)*

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**FACTUM OF THE INTERVENERS,  
ASSEMBLY OF MANITOBA CHIEFS**

*(Pursuant to Rules 37 and 42 of the Rules of the Supreme Court of Canada)*

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*(...style of cause continued)*

- and -

**HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA  
and THE ATTORNEY GENERAL OF CANADA**

Respondents  
(Respondents)

- and -

**UNION OF BRITISH COLUMBIA INDIAN CHIEFS,  
LITTLE SALMON CARMACKS FIRST NATION, KLUANE FIRST NATION,  
TR'ONDĚK HWĚCH'IN GOVERNMENT,  
CHAMPAGNE and AISHIHIK FIRST NATIONS and SELKIRK FIRST NATION,  
CONGRESS OF ABORIGINAL PEOPLES, MÉTIS NATION OF ONTARIO,  
MANITOBA MÉTIS FEDERATION and MANITOBA MÉTIS FEDERATION INC.,  
KITIGAN ZIBI ANISHINABEG, WEST MOBERLY FIRST NATIONS,  
THE FIRST NATIONS OF THE MAA-NULTH TREATY SOCIETY, TSAWWASSEN  
FIRST NATION and TLA'AMIN NATION,  
NIIST, WILLIAM (BILL) BLACKWATER ON HIS OWN BEHALF AND ON BEHALF  
OF THE NORTHERN GITXSAN CHIEFS, YELLOWKNIVES DENE FIRST NATION,  
WABUN TRIBAL COUNCIL and KÁTL'ODEECHE FIRST NATION and  
ASSEMBLY OF MANITOBA CHIEFS**

Interveners

**SCC No. 41644**

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

**B E T W E E N :**

**SKII KM LAX HA, also known as DARLENE SIMPSON, also known as CHIEF  
SIMPSON, on behalf of herself and, in her capacity as TSETSAUT/SKII KM LAX HA  
HEREDITARY CHIEF, and on behalf of all members of the TSETSAUT/SKII KM LAX  
HA NATION (“TSKLH NATION”)**

Appellant / Respondent on cross-appeal  
(Respondent)

*(Style of cause continued on next page)*

- and -

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Respondents / Appellants on cross-appeal  
(Appellants)

- and -

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and ATTORNEY GENERAL OF CANADA**

Respondents  
(Respondents)

- and -

**MATAWASKIYAK (MADAWASKA MALISEET FIRST NATION), NEQOTKUK (TOBIQUE FIRST NATION), WOTSTAK (WOODSTOCK FIRST NATION), BILIJK (KINGSCLEAR FIRST NATION), SITANSISK (ST MARY'S FIRST NATION) and WELAMUKOTUK (OROMOCTO FIRST NATION), CONGRESS OF ABORIGINAL PEOPLES, KITIGAN ZIBI ANISHINABEG, MÉTIS NATION OF ONTARIO, WEST MOBERLY FIRST NATIONS, THE FIRST NATIONS OF THE MAA-NULTH TREATY SOCIETY, TSAWWASSEN FIRST NATION and TLA'AMIN NATION, NIIST, WILLIAM (BILL) BLACKWATER ON HIS OWN BEHALF AND ON BEHALF OF THE NORTHERN GITXSAN CHIEFS, YELLOWKNIVES DENE FIRST NATION, CHIEF PETRA A'HUILLE and MAIYOO KEYOH SOCIETY, WABUN TRIBAL COUNCIL and KÁTL'ODEECHE FIRST NATION and ASSEMBLY OF MANITOBA CHIEFS**

Interveners

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## PART I – OVERVIEW AND STATEMENT OF FACTS

1. This factum is filed on behalf of the Assembly of Manitoba Chiefs (“AMC”). The AMC accepts the factual record as presented by the parties. The AMC is comprised of all 63 First Nations in Manitoba, who are parties to Treaties 1, 2, 3, 4, 5, 6 and 10 and the Dakota Nations who are party to a pre-Confederation Treaty, also called pre-1975 Treaties (the “**Historical Treaties**”).

2. The AMC respectfully submits that this Court’s determination of the issues on appeal should be carefully confined to limit inadvertent effects on the rights of First Nations who are parties to Historical Treaties. The Attorney General of Canada invites the Court to clarify the principles governing the litigation participation rights of Indigenous peoples with overlapping rights claims under section 35 of the *Constitution Act, 1982*.<sup>1</sup> This formulation is broader than those advanced by the First Nations parties to these appeals.<sup>2</sup> Adopting Canada’s broad framing of the issue risks unintended consequences for First Nations whose circumstances and evidentiary records are not before the Court.

3. First Nations in Manitoba entered sacred, Nation-to-Nation Historical Treaties with the Crown to establish enduring relationships of mutual respect and guarantee the setting aside of reserve lands for their exclusive use and benefit. Canada’s implementation of these commitments has been incomplete and delayed. This delay ultimately necessitated the Treaty Land Entitlement Framework Agreement and accompanying First Nation-specific settlement agreements (“**TLE Agreements**”), intended to fulfill outstanding Historical Treaty promises. Several First Nations have also concluded separate TLE settlements outside of the TLE Agreements. The continuing delays in land conversion, together with recent federal agreements recognizing new Métis claims, create a complex landscape for section 35 litigation in Manitoba.

4. In this context, a distinctions-based approach to participation in section 35 proceedings is required. Procedural decisions must safeguard the integrity of the Historical Treaties and ensure

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<sup>1</sup> Schedule B to the *Canada Act 1982 (UK)*, [1982, c 11](#) [*Constitution Act, 1982*]; Factum of the Respondent, Attorney General of Canada, SCC Nos 41516 & 41644, dated 12 September 2025 at para 33.

<sup>2</sup> Factum of the Appellant, Nisga’a Nation, as represented by Nisga’a Lisims Government, SCC No 41516, dated 18 July 2025 at para 70; Factum of the Appellant, Skii Km Lax Ha, also known as Darlene Simpson et al, SCC No 41644, dated 18 July 2025 at para 39.

that Treaty First Nations have a meaningful role in section 35 litigation within their Treaty territories. Granting automatic party status to groups claiming unproven or more recent rights risks frustrating the implementation of outstanding Treaty obligations and undermining the constitutional protection afforded to Treaty rights.

## **PART II – STATEMENT OF POSITION**

5. The AMC takes no position on the outcome of this appeal. Rather, it submits that the Attorney General of Canada’s broad formulation of the issue risks undermining First Nations Historical Treaty rights in Manitoba. The AMC’s submissions are divided into three parts:

- A. A discussion of the historical and constitutional foundation of the Historical Treaties;
- B. An overview of the unique Manitoba context and potential implications of this appeal for First Nations rights; and
- C. A proposal for a distinctions-based framework, grounded in existing jurisprudence, to guide the determination of participation rights in section 35 litigation.

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

### **A. The Historical and Constitutional Foundations of Treaty Rights**

6. Historical Treaties are sacred agreements that reflect First Nations sovereignty and right to self-determination.<sup>3</sup> They must independently grant their First Nations parties the ability to participate in legal proceedings that could affect the scope of their Treaty rights.

7. Historical Treaties are intended to create mutually beneficial relationships between Treaty partners. The arrival of Europeans did not result in the subjugation of First Nations sovereignty in favour of the Crown. First Nations exercised their own sovereignty alongside the Crown’s assumed sovereignty through the Historical Treaties, moving forward toward co-existence and balance in the practice of First Nations law.<sup>4</sup> These foundational agreements reflect First Nations inherent

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<sup>3</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) at 138.

<sup>4</sup> Alan Hanna, “[Reconciliation Through Relationality in Indigenous Legal Orders](#)” (2019) 56:3 *Alta L Rev* 817 at 823-824; Doris Pratt, Harry Bone & the Treaty & Dakota Elders of Manitoba with contributions by the AMC Council of Elders, *Untuwe Pi Kin He – Who We Are: Treaty*

rights as sovereign peoples. The AMC submits that Treaty rights cannot be extinguished. Any infringement of Treaty rights must meet the strict justification test set out in *Sparrow*.<sup>5</sup>

8. Section 35(1) of the *Constitution Act, 1982* “recognizes and affirms” both inherent (Aboriginal) and Treaty rights.<sup>6</sup> First Nations have inherent rights that arise from their prior occupation of North America as sovereign peoples. Historical Treaty rights, in turn, represent the formal recognition and continuation of those inherent pre-contact rights within a Nation-to-Nation framework.<sup>7</sup> Historical Treaties are “part of the constitutional fabric of this country.”<sup>8</sup> They reflect pre-existing First Nations’ terms in agreeing to share the land with settlers.<sup>9</sup>

9. Section 35 gives constitutional force to pre-existing rights and upholds the Nation-to-Nation relationships reflected in the Treaties, which recognize First Nations rights as continuing.<sup>10</sup> In *Desautel*, this Court confirmed that section 35 recognizes “the prior occupation of Canada by Aboriginal societies” and reconciles “their contemporary existence with Crown sovereignty.”<sup>11</sup> Section 35 requires the Crown to uphold Historical Treaty promises as binding constitutional commitments.<sup>12</sup>

## **B. The Manitoba Context: Modern Agreements and Overlapping Claims**

10. Safeguarding First Nations Historical Treaty rights is especially important given Canada’s decision to sign new modern Métis agreements that seek to grant section 35 rights within established Historical Treaty territories. These contested modern agreements risk diminishing and infringing upon First Nations sacred Treaty rights.

11. Historical Treaties cover the entire province of Manitoba. When First Nations in Manitoba concluded Historical Treaties, the Crown agreed to set aside lands for the exclusive use and benefit

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*Elders’ Teachings Volume 1*, 2nd ed (Winnipeg: Treaty Relations Commission of Manitoba & Assembly of Manitoba Chiefs Secretariat, 2014) at 27.

<sup>5</sup> Hyslop et al at 103, 118; *R v Sparrow*, [1990] 1 SCR 1075 at 1111-1119 [*Sparrow*].

<sup>6</sup> *Constitution Act, 1982*, s 35.

<sup>7</sup> *R v Van Der Peet*, [1996] 2 SCR 507 at para 112; Hyslop et al at 113.

<sup>8</sup> *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at paras 106 [*Restoule*], citing *Restoule v Canada (Attorney General)*, 2020 ONSC 3932 at para 151.

<sup>9</sup> *Restoule* at para 108.

<sup>10</sup> *Sparrow* at 1105-1108.

<sup>11</sup> *R v Desautel*, 2021 SCC 17 at para 31 [*Desautel*].

<sup>12</sup> *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 at paras 68-80 [*Manitoba Metis Federation*].

of First Nations. Canada did not fulfill that promise. Since 1997, Canada, Manitoba, and many First Nations in Manitoba have concluded TLE Agreements to settle related claims. First Nations in Manitoba continue to pursue the full and proper implementation of their Historical Treaty rights, including through the TLE Agreements process, as well as Treaty Land Entitlement negotiations. Yet nearly thirty years later, First Nation signatories to the TLE Agreements have not received almost 50% of the lands owed.<sup>13</sup>

12. Unlike First Nations in Manitoba, Métis communities were not signatories to the Historical Treaties. Instead, the Métis have their own distinct history. In Manitoba, Canada adopted the *Manitoba Act* to set aside land for the Métis. This legislation was not a Treaty but was intended to fulfill certain Crown promises.<sup>14</sup>

13. Métis rights cannot be defined in the same way as First Nations rights because Métis communities arose after contact with Europeans. This Court confirmed that principle in *Desautel*:

I hasten to add that this criterion will need to be modified in the case of the Métis. Because Métis communities arose after contact between other Aboriginal peoples and Europeans, “the manner in which the aboriginal rights of other aboriginal peoples are defined is not necessarily determinative of the manner in which the aboriginal rights of the Métis are defined”. Given that the present case is not about Métis s. 35(1) rights, I leave for another day precisely what criterion should be applied to determine whether a Métis community is an “aboriginal peopl[e] of Canada”, in cases where there is doubt.<sup>15</sup>

14. Now, Métis communities are asserting section 35 rights in areas overlapping Historical Treaty territories. On November 30, 2024, the Manitoba Métis Federation and Canada signed the Red River Métis Self-Government Recognition and Implementation Treaty. This agreement intends to grant section 35 rights and set a framework for future rights recognitions, including over Historical Treaty territory in Manitoba.<sup>16</sup>

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<sup>13</sup> *Treaty Land Entitlement Committee Inc v Canada (Indigenous and Northern Affairs)*, [2021 FC 329](#) at paras [1-16](#) [TLEC].

<sup>14</sup> *Manitoba Metis Federation* at paras [21-31](#); [91-94](#).

<sup>15</sup> *Desautel* at para [32](#) [references omitted].

<sup>16</sup> Memorandum of Argument of the Intervener, Manitoba Métis Federation and Manitoba Métis Federation Inc, SCC No 41516, dated 15 August 2025 at para 4; Affidavit of David N Chartrand, dated 13 August 2025, Exhibit A, [Red River Métis Self-Government Recognition and Implementation Treaty](#), Preamble(R), ss 3(a), 3(d), 3(e), 84, 88.

15. Modern Métis agreements purporting to establish section 35 rights in First Nations traditional and Historical Treaty territories are contested due to their assertion of unproven rights and lack of required consultation with First Nations that have pre-existing Historical Treaty rights; therefore, they should be treated with caution when determining party status to section 35 litigation. Treaty 9 signatory First Nations have challenged Canada’s adoption of a self-government agreement with the Métis Nation of Ontario due to the Crown’s failure to consult them. The First Nations allege that the agreement will harm their Treaty rights by increasing competition for resources and generating cumulative impacts.<sup>17</sup> Additionally, when Canada concluded a Métis recognition agreement before determining the rights of the Algonquins of Ontario—a First Nation asserting rights in the same area—, the Algonquins of Ontario sought to quash the recognition due to Canada’s failure to consult them.<sup>18</sup> A Métis group has also contested Canada’s conclusion of self-government agreements with another Métis group for lack of consultation.<sup>19</sup>

16. Canada’s choice to unilaterally conclude new agreements purporting to recognize unproven and post-contact Métis rights complicates Historical Treaty implementation. The already protracted implementation process risks further setbacks if communities with asserted rights receive expanded party status in section 35 litigation through their unproven claims. The experience of First Nations adherents in the TLE Agreements’ implementation illustrates the practical consequences of expanding groups’ participatory rights based on unproven claims or contested agreements. In *Treaty Land Entitlement Committee Inc v Canada*, the Federal Court found that Canada’s unilateral addition of Métis consultation into the TLE Agreement process caused “significant delays” in implementing the Agreement.<sup>20</sup>

17. Other delays in the Historical Treaty implementation process may arise if this Court takes an expansive approach to party status in section 35 litigation. Using contested agreements to grant broad party status without clear procedural limits risks introducing collateral issues, diverting

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<sup>17</sup> *Brunswick House First Nation v Canada (Attorney General)*, [2023 CanLII 73071 \(FC\)](#) at paras 4-10.

<sup>18</sup> *Whiteduck v Ontario*, [2023 ONCA 543](#) at paras 1-7.

<sup>19</sup> *Metis Settlements General Council v Canada (Crown-Indigenous Relations)*, [2024 FC 487](#) at paras 1-3 [*Metis Settlements*].

<sup>20</sup> *TLEC* at para 19.

resources, and impeding the timely resolution of processes, such as land conversion, that are integral to the fulfilment of longstanding Historical Treaty commitments.

18. These delays would hinder the fulfilment and exercise of First Nations sacred Treaty and inherent rights. Until the Crown fulfills its Historical Treaty obligations, First Nations remain unable to fully benefit from the Treaties. Reconciliation requires section 35 litigation to be tried effectively and in a timely manner.<sup>21</sup> Introducing additional procedural roadblocks by granting broad, pan-Indigenous based section 35 party status will not promote reconciliation. It will jeopardize the Crown’s ability to fulfil its duty to diligently implement Treaty promises,<sup>22</sup> leaving First Nations in Manitoba with “an empty shell of a treaty promise.”<sup>23</sup>

### **C. A Distinctions-Based Approach to Participation in Section 35 Litigation**

19. The AMC advocates for a cautious approach to determining the issues in these appeals to ensure that the result does not inadvertently harm First Nations and Historical Treaty rights. Historical Treaty rights arise from distinct histories of occupation, displacement, and survival. Reconciliation can only be advanced by adopting a distinctions-based approach that respects the unique legal foundations of First Nations Historical Treaty rights.

20. This Court’s decision in these appeals has a substantial risk of impacting First Nations in Manitoba due to the similarity between court rules governing joinder. In the underlying appeals, the ability to add parties under Rule 6-2(7) of the British Columbia *Supreme Court Civil Rules* is at issue. In particular, Rule 6-2(7)(b)(ii) establishes that the court may add a party if “that person’s participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on.”<sup>24</sup> This is substantially similar to Manitoba’s rule in that “[e]very person whose presence as a party is by law necessary to enable the court to adjudicate effectively and

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<sup>21</sup> *Kwikwetlem First Nation v British Columbia (Attorney General)*, [2021 BCCA 311](#) at paras [174-175](#).

<sup>22</sup> *Restoule* at para [254](#).

<sup>23</sup> *Manitoba Metis Federation* at para [80](#).

<sup>24</sup> *Supreme Court Civil Rules*, [BC Reg 168/2009](#), r [6-2\(7\)\(b\)\(ii\)](#); *Nisga’a Nation v Malii*, [2024 BCCA 313](#) at para [23](#); *Malii v British Columbia*, [2024 BCCA 406](#) at paras [62-81](#).

completely on the issues in a proceeding shall be joined as a party to the proceeding.”<sup>25</sup> The *Federal Courts Rules* contain a similar provision.<sup>26</sup>

21. As Métis rights were not set out in Historical Treaties, they must be established through the courts as Aboriginal rights derived from the integral and distinctive practices of historical Métis communities.<sup>27</sup> By contrast, Historical Treaty rights flow from negotiated promises. Just as the Crown is presumed to know and honour those promises,<sup>28</sup> the judicial system must give full effect to them. Two distinctions follow:

- a) Content of the right: Historical Treaty rights reflect First Nations inherent rights as sovereign peoples and include additional positive obligations, such as promises to provide land, annuities, or services. The Crown’s honour requires it to respect those rights and implement those promises. Métis rights are negative constraints that limit Crown action; they protect practices that are integral to historic Métis communities but do not impose positive obligations.
- b) Proof and knowledge: The Crown is presumed to know the content of Treaties, but Métis rights must be proven. Per *Powley*, the Crown may not know the scope of Métis rights until a court establishes them.<sup>29</sup> Modern federal rights recognitions leading to potential section 35 rights conflicts are not final and are subject to judicial review.<sup>30</sup> Courts must therefore avoid assuming that any self-identified Métis groups hold rights without requisite proof.

22. Strengthening procedural safeguards for Historical Treaty rights promotes reconciliation by protecting settled obligations from encroachment by new, unproven claims. This is particularly

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<sup>25</sup> *Court of King’s Bench Rules*, [Man Reg 553/88](#), r [5.03\(1\)](#).

<sup>26</sup> *Federal Courts Rules*, [SOR/98-106](#), r [104\(1\)](#).

<sup>27</sup> *R v Powley*, [2003 SCC 43](#) at paras [15-18](#), [36-38](#) [*Powley*]; *R v Hirsekorn*, [2013 ABCA 242](#) at paras [47-49](#).

<sup>28</sup> *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005 SCC 69](#) at para [34](#) [*Mikisew Cree First Nation*].

<sup>29</sup> *Powley* at paras [11-18](#).

<sup>30</sup> *Metis Settlements* at paras [65](#), [75-77](#).

essential in Manitoba, where uncertainty persists regarding whether Historical Treaty signatories continue to hold residual Aboriginal title in lands not yet converted or surrendered.<sup>31</sup>

23. Misapplying section 35 by treating Historical Treaty rights and Métis rights as interchangeable in determining party status risks undermining both and creates unintended consequences. Equating Treaty rights to generic Aboriginal rights can erode the honour of the Crown by ignoring Treaty promises made to First Nations. This Court has emphasized that Historical Treaties are solemn, living agreements and must be interpreted liberally in favour of the First Nation.<sup>32</sup> Neglecting these promises undermines the Treaty relationship and reconciliation.

24. In determining principles underlying the grant of full party status in an overlapping rights claim, this Court may have regard to the law on the duty to consult. In *Haida Nation*, this Court established that the duty to consult is grounded in the honour of the Crown. It is triggered when the Crown has real or constructive knowledge of a potential Aboriginal claim or right and is contemplating conduct that may adversely affect that claim or right. The strength of the claim and the seriousness of the potential impact inform the content of the duty.<sup>33</sup>

25. In the context of consultation, the Crown is always on notice of Historical Treaty rights; therefore, the analysis considers the degree of potential adverse effect to determine the required level of consultation. Where rights are asserted but unproven, the Crown must still consult, but the duty varies and is generally less onerous than in cases involving established rights. The specific procedural requirements will be proportionate to the strength of the claim and the seriousness of the potential impact.<sup>34</sup> This Court has observed that “where there is a [T]reaty, the function of the common law duty to consult is so different from that of the duty to consult at issue in *Haida Nation* and *Taku River* that it would be misleading to consider these two duties to be one and the same.”<sup>35</sup>

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<sup>31</sup> Kent McNeil, “[Extinction of Aboriginal Title in Canada: Treaties, Legislation, and Judicial Discretion](#)” (2002) 33:2 Ottawa L Rev 301 at 304-308.

<sup>32</sup> *Restoule* at paras 78-81.

<sup>33</sup> *Haida Nation v British Columbia (Minister of Forests)*, [2004 SCC 73](#) at paras 18, 35, 39 [*Haida Nation*].

<sup>34</sup> *Mikisew Cree First Nation* at paras 34, 62-64; *Haida Nation* at para 39.

<sup>35</sup> *Beckman v Little Salmon/Carmacks First Nation*, [2010 SCC 53](#) at para 119 [*Little Salmon/Carmacks First Nation*].

26. Like duty to consult jurisprudence, party status determinations should consider whether the Indigenous rights or title claim at issue has been asserted but not defined or proven. A mere rights assertion should not obstruct established Historical Treaty rights. This principle applies even where a modern agreement exists between the Crown and a Métis group. A Métis group should not rely on a modern agreement to establish section 35 rights that could not reasonably be proven through litigation, particularly when doing so would undermine the Historical Treaty rights of First Nations.

27. When evaluating the duty to consult, if the Crown unilaterally limits a right granted under a Historical Treaty, the infringement is considered serious and the Crown must provide reasonable accommodation.<sup>36</sup> Historical Treaty rights should carry similar weight when determining party status in an overlapping rights claim. Courts must ensure that Historical Treaty partners can fully defend against potential impairment of their rights. Historical Treaty rights occupy the highest level of constitutional protection, as they are already clearly established and affirmed. By contrast, unproven Indigenous rights remain subject to evidentiary establishment and judicial recognition.

28. Section 35 and the objective of reconciliation require that Historical Treaty signatories be afforded meaningful participation in all proceedings concerning asserted section 35 rights within their Treaty territories. Modern Métis agreements should not attract equivalent procedural protection. These agreements represent asserted but not yet proven rights, which frequently overlap with established Historical Treaty territory. As asserted Métis rights necessarily arose after the inherent rights of the Historical Treaty Nations, and as affected First Nations were not consulted in the negotiation of modern Métis arrangements, granting Métis organizations party status in litigation concerning Treaty implementation would risk compromising the constitutional integrity of those Treaties.

29. Unfortunately, colonial constructs of land ownership underlying this Court's jurisprudence on Aboriginal rights and title have created a zero-sum game pitting potential rights holders against one another.<sup>37</sup> In this context, section 35 litigation in a First Nation's Historical Treaty territory necessarily implicates their Treaty rights. First Nations interests are at stake when litigants seek to

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<sup>36</sup> *Little Salmon/Carmacks First Nation* at para [120](#).

<sup>37</sup> *R v Marshall*; *R v Bernard*, [2005 SCC 43](#) at paras [48-54](#); *Thomas and Saik'uz First Nation v Rio Tinto Alcan Inc*, [2022 BCSC 15](#) at para [339](#); *Delgamuukw v British Columbia*, [\[1997\] 3 SCR 1010](#) at para [185](#).

establish section 35 rights in Historical Treaty territories.<sup>38</sup> First Nations must participate as parties in these claims to effectively and completely resolve them.

**D. Conclusion: Protecting the Integrity of Historical Treaties and Advancing Reconciliation**

30. The Historical Treaties reflect solemn Nation-to-Nation commitments intended to establish enduring relationships of mutual respect and shared stewardship, not subordination. First Nations in Manitoba never agreed to relinquish their laws, governance, or jurisdiction, nor to permit the erosion of their Treaty rights through unproven post-contact claims. The proper fulfilment of Canada's constitutional obligations under section 35 requires that Historical Treaties be given paramount protection as binding constitutional instruments.

31. This Court should exercise caution when defining the issues in this appeal. Any general guidance on party status in section 35 proceedings must adopt a distinctions-based approach that safeguards the unique constitutional status of Historical Treaties and prevents their dilution through the recognition of asserted but unproven rights. Only by affirming the primacy of Treaty rights within the constitutional order can reconciliation be advanced in a manner that honours the Crown's promises and restores balance to the Nation-to-Nation relationship envisioned by the Treaties.

**PART IV – COSTS**

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

**PART V – ORDER SOUGHT**

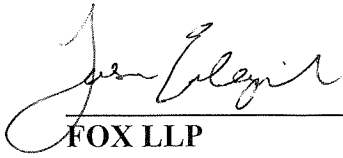
33. The AMC takes no position in this appeal's disposition.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

DATED this 7<sup>th</sup> day of November, 2025 at Calgary, in the Province of Alberta.

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<sup>38</sup> *Metis Settlements* at para [65](#).



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Counsel for the Intervener,  
Assembly of Manitoba Chiefs

## PART VI – TABLE OF AUTHORITIES

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2.	<i>Brunswick House First Nation v Canada (Attorney General)</i> , <a href="#">2023 CanLII 73071 (FC)</a>	15
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10.	<i>Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)</i> , <a href="#">2005 SCC 69</a>	21, 25
11.	<i>Nisga'a Nation v Malii</i> , <a href="#">2024 BCCA 313</a>	20
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15.	<i>R v Marshall; R v Bernard</i> , <a href="#">2005 SCC 43</a>	29
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17.	<i>R v Sparrow</i> , <a href="#">[1990] 1 SCR 1075</a>	7, 9
18.	<i>R v Van Der Peet</i> , <a href="#">[1996] 2 SCR 507</a>	8
19.	<i>Restoule v Canada (Attorney General)</i> , <a href="#">2020 ONSC 3932</a>	8
20.	<i>Thomas and Saik'uz First Nation v Rio Tinto Alcan Inc</i> , <a href="#">2022 BCSC 15</a>	29
21.	<i>Treaty Land Entitlement Committee Inc v Canada (Indigenous and Northern Affairs)</i> , <a href="#">2021 FC 329</a>	11, 16
22.	<i>Whiteduck v Ontario</i> , <a href="#">2023 ONCA 543</a>	15

Legislation			Paragraph References
23.	<i>Court of King's Bench Rules</i> , <a href="#">Man Reg 553/88</a> , r <a href="#">5.03(1)</a>	Règles de la Cour du Banc du Roi, <a href="#">Règl du Man 553/88</a> , r <a href="#">5.03(1)</a>	20
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26.	<i>The Constitution Act, 1982</i> , Schedule B to the <i>Canada Act 1982 (UK)</i> , <a href="#">1982, c 11</a> , s <a href="#">35</a>	<i>Loi constitutionnelle de 1982</i> , Annexe B de la <i>Loi de 1982 sur le Canada (R-U)</i> , <a href="#">1982, c 11</a> , art <a href="#">35</a>	2, 8

Secondary Sources			Paragraph References
27.	Hanna, Alan, " <a href="#">Reconciliation Through Relationality in Indigenous Legal Orders</a> " (2019) 56:3 <i>Alta L Rev</i> 817		7
28.	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)		6, 7, 8
29.	McNeil, Kent, " <a href="#">Extinguishment of Aboriginal Title in Canada: Treaties, Legislation, and Judicial Discretion</a> " (2002) 33:2 <i>Ottawa L Rev</i> 301		22
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