

Court File No.: DC-24-00000016-00JR

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

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

**THE CORPORATION OF THE TOWNSHIP OF EMO and HAROLD MCQUAKER**

Applicants

- and -

**BORDERLAND PRIDE, the NORTHERN ONTARIO PRIDE NETWORK, DOUGLAS  
W. JUDSON, KATHRYN L. SHOEMAKER, the HUMAN RIGHTS TRIBUNAL OF  
ONTARIO, HARROLD BOVEN, and WARREN TOLES**

Respondents

---

**FACTUM OF THE INTERVENER  
JUSTICE FOR CHILDREN AND YOUTH**

---

May 14, 2026

**JUSTICE FOR CHILDREN AND YOUTH**  
**55 University Avenue, Suite 1500**  
Toronto, ON M5J 2H7  
Tel.: (416) 920-1633  
Fax: (416) 920-5855

**Emily Chan (LSO #45352P)**  
E: [emily.chan@jfcy.clcj.ca](mailto:emily.chan@jfcy.clcj.ca)

**Allie McMillan (LSO #92728R)**  
E: [allie.mcmillan@jfcy.clcj.ca](mailto:allie.mcmillan@jfcy.clcj.ca)

**Counsel for the Intervener, JFCY**

**TO: THIS HONOURABLE COURT**

**AND TO: MCKITRICKS LAW OFFICE**  
17 Cumberland St. S.  
Thunder Bay, Ontario, P7B 2T3

Allan D. McKitrick (LSO #31974W)  
Tel: 807-345-1251  
[mckits@tbaytel.net](mailto:mckits@tbaytel.net)

Candace L. Hilchuk (LSO #83317C)  
Tel: 807-345-1251  
[mckits@tbaytel.net](mailto:mckits@tbaytel.net)

**Counsel for the Applicant, the Corporation of the Township of Emo**

**AND TO: WISHART LAW FIRM LLP**  
390 Bay Street., Suite 500  
Sault Ste. Marie, ON P6A 1X2

J.Paul R. Cassan (LSO #38820R)  
Tel: 705-949-6700  
[Pcassan@wishartlaw.com](mailto:Pcassan@wishartlaw.com)

Brittany Hollingsworth (LSO #84912T)  
Tel: 705-949-6700  
[bhollingsworth@wishartlaw.com](mailto:bhollingsworth@wishartlaw.com)

**Counsel for the Applicant, Harold McQuaker**

**AND TO: GOLDBLATT PARTNERS LLP**  
20 Dundas Street West, Suite 1039  
Toronto, Ontario  
M5G 2C2

Melanie Anderson (LSO #79238J)  
Tel: 416-977-6070  
[manderson@goldblattpartners.com](mailto:manderson@goldblattpartners.com)

**Counsel for the Respondent, Borderland Pride**

**AND TO:**

**CAMBRIDGE LLP**

31 Nova Scotia Walk, Unit 307  
Elliot Lake, ON P5A 1Y9

Tracey Rynard (LSO #49664P)

[trynard@cambridgellp.com](mailto:trynard@cambridgellp.com)

Tel: 705-300-7834

Timothy Phelan (LSO #81550K)

[tphelan@cambridgellp.com](mailto:tphelan@cambridgellp.com)

Tel: 705-587-5080 ext. 203

**Counsel for the Respondent, Douglas W. Judson and Northern Ontario Pride Network**

**AND TO:**

**TRIBUNALS ONTARIO LEGAL SERVICES**

15 Grosvenor Street, Ground Floor  
Toronto, ON M7A 2G6

Maija-lisa Robinson (LSO #70734O)

Tel: 437-980-8774

[Maija-lisa.Robinson@ontario.ca](mailto:Maija-lisa.Robinson@ontario.ca)

**Counsel for the Human Rights Tribunal of Ontario**

**AND TO:**

**CANADIAN CONSTITUTION FOUNDATION**

99 Yorkville Ave  
Toronto, Ontario M5R 3K5

Joshua Dehaas (LSO #86888I)

Tel: 1-888-695-9105 Ext. 106

[jdehaas@theccf.ca](mailto:jdehaas@theccf.ca)

**Counsel for the Intervener, Canadian Constitution Foundation**

**AND TO:**

**KASTNER KO LLP**

55 University Ave, Suite 1800  
Toronto, ON M5J 2H7

Gregory Ko (LSO# 62244E)

Tel: 416-655-3044 Ext. 809

[gko@kastnerko.com](mailto:gko@kastnerko.com)

**Counsel for the Intervener, Fierté Canada Pride**

## Table of Contents

<b>PART I – OVERVIEW</b> .....	<b>1</b>
<b>PART II - THE FACTS</b> .....	<b>1</b>
<b>PART III – THE LAW</b> .....	<b>1</b>
Centering Children in the Analysis.....	2
Application of International Law.....	4
The Best Interests of the Child is the Primary Consideration.....	4
The UNCRC’s Four Guiding Principles Provide a Cohesive Framework.....	6
Intersection of Childhood and 2SLGBTQIA+ Vulnerability.....	7
Intersectional Vulnerability of Two-Spirit and LGBTQIA+ Children.....	11
<b>PART IV - ORDER REQUESTED</b> .....	<b>15</b>
<b>CERTIFICATION OF AUTHORITIES</b> .....	<b>16</b>
<b>SCHEDULE “A” - LIST OF AUTHORITIES</b> .....	<b>17</b>
<b>SCHEDULE “B”- RELEVANT PROVISIONS OF STATUTES, REGULATIONS, AND BY-LAWS</b> .....	<b>21</b>

## **PART I – OVERVIEW**

1. JFCY is a specialty legal aid clinic in Ontario dedicated to protecting and advancing the human rights of children as an equity-seeking group; through individual representation, public interest advocacy, and law reform.
2. By Order of the Honourable Justice Newton, dated July 21, 2025, Justice for Children and Youth (“JFCY”) was granted Leave to Intervene in this application for judicial review.
3. JFCY seeks to assist this Honourable Court by providing a distinct, child and youth centered perspective that is consistent with domestic and international law obligations.

## **PART II - THE FACTS**

4. JFCY accepts the facts as presented by the parties, and takes no position if there are points of disagreement. Generally, JFCY relies on the facts as presented by the Respondent Borderland Pride.
5. This judicial review is brought by the Applicants, the Township of Emo (“the Township”) and the Mayor Harold McQuaker (“the Mayor”), from the decision of the Human Rights Tribunal of Ontario (“the HRTO”) dated November 20, 2024.

## **PART III – THE LAW**

6. JFCY supports and adopts the position of Borderland Pride on all of the issues before this Honourable Court.
7. JFCY’s intervention will focus on further submissions on the issues of:
  - (a) whether the HRTO erred in finding that Borderland Pride had standing to bring the Application; and

(b) whether the HRTO erred in finding that the Applicants discriminated against Borderland Pride.

8. JFCY submits that in addressing these issues before it, this Honourable Court, must incorporate a child-rights informed analysis in reaching its determination. As a signatory to the United Nations Convention on the Rights of the Child (“UNCRC”) and the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”), Canada has specific legal obligations, including a mandate to ensure special protections, and to consider the best interests and dignity of children in any and all decisions that affect them. This is specifically relevant to both the procedural and substantive rights considerations and analysis of the issues before this Honourable Court.

9. JFCY submits that:

- (a) Children must be centered in the analysis,
- (b) International law applies,
- (c) The Best Interests of the Child (“BIOC”) principle is the primary consideration,
- (d) The UNCRC’s three other guiding principles apply (non-discrimination, child’s inherent right to life, and the right to express their views),
- (e) 2SLGBTQIA+ children are vulnerable, and
- (f) Two-Spirit and LGBTQIA+ Indigenous children have multiple intersectional vulnerabilities.

### **Centering Children in the Analysis**

10. This Honourable Court’s analysis must evaluate the rights and interests at stake from the vantage point of the groups of children whose interests are engaged, placing children at the

centre of the issues under consideration. Its analysis must provide for special protection, and the use of the best interests of the child principle (“BIOC”) as its foundation, with interpretive guidance from the tools most relevant to evaluating children’s rights, including the *United Nations Convention on the Rights of the Child* (“UNCRC”)<sup>1</sup> and the General Comments developed thereunder.

11. Children are uniquely vulnerable, marginalized, and disenfranchised members of society, and their rights and interests are entitled to special or enhanced protection. The UNCRC provides that “childhood is entitled to special care and assistance” and “special safeguards and care, including appropriate legal protection”.<sup>2</sup>

12. Children are an equity-seeking group who experience ongoing and historical personal, social, and political marginalization, exclusion, and dispossession just as other equity-seeking groups. As uniquely vulnerable people, children are entitled to greater attention to their dignity, rights, and security.

13. Further, this Court’s analysis must carefully attend to the intersecting vulnerabilities of 2SLGBTQIA+ children and Indigenous 2SLGBTQIA+ children in particular. This is especially true where the human rights interests of children are directly engaged, as they are in this judicial review.

---

<sup>1</sup> *United Nations Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), at the [Preamble and Art 2](#) [UNCRC]; ratified by the government of Canada on [December 12, 1991](#).

<sup>2</sup> *Ibid* at the [Preamble](#).

## Application of International Law

14. It is a well-established principle that Canadian law must be interpreted to comply with Canada’s international treaty obligations. As stated by the Supreme Court of Canada in *R v Hape*:

It is a well-established principle of statutory interpretation that legislation will be presumed to conform to international law. The presumption of conformity is based on the rule of judicial policy that, as a matter of law, courts will strive to avoid constructions of domestic law pursuant to which the state would be in violation of its international obligations, unless the wording of the statute clearly compels that result.<sup>3</sup>

15. The Supreme Court has also recognized that Canada’s international obligations inform the boundaries of whether a decision is reasonable.<sup>4</sup> For example, in *Baker*, the Court stated that “the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review”,<sup>5</sup> and in *Mason* the Court found that a decision that fails to consider “the legal constraints imposed by international law” is “unreasonable.”<sup>6</sup> Canada’s international human rights commitments are therefore legally relevant considerations for the review of the HRTO’s decision.

## The Best Interests of the Child is the Primary Consideration

16. “Protecting children through the “best interests of the child” principle is widely understood and accepted in Canada’s legal system”.<sup>7</sup>

---

<sup>3</sup> *R v Hape*, 2007 SCC 26 at [para 53](#).

<sup>4</sup> *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*, 2004 SCC 4 at [para 31](#); *R v Sharpe*, 2001 SCC 2 at [para 175](#) [*Sharpe*]; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at [para 70](#) [*Baker*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at [paras 72](#) and [105](#) [*Mason*].

<sup>5</sup> *Baker*, *supra* note 4 at [para 70](#).

<sup>6</sup> *Mason*, *supra* note 4 at [paras 72](#) and [105](#).

<sup>7</sup> *Kanhasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at [para 36-37](#).

17. The UNCRC and General Comments developed under it provide essential guidance.<sup>8</sup> Article 3 of the UNCRC states that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”<sup>9</sup> This obligation must be systemically integrated, consistently applied, and “concerning” must be understood in a very broad sense.<sup>10</sup>

18. In applying a BIOC analysis to the questions at issue there is helpful normative guidance in *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration*, noting that the “best interests” is a “threefold concept”:

- (a) a substantive right: whenever a decision is to be made concerning a child, a group of identified or unidentified children, or children in general, the BIOC be the primary consideration when different interests are at stake;
- (b) a fundamental, interpretative legal principle: if there is more than one interpretation to a legal provision, the one that most effectively services the BIOC should be chosen; and
- (c) a rule of procedure: decision-making processes must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned.<sup>11</sup>

---

<sup>8</sup> See for example *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at [paras 66-67](#); *JESD v YEP*, 2018 BCCA 286 at [para 38](#); and *Justice for Children and Youth v JG*, 2020 ONSC 4716 at [para 61-62](#).

<sup>9</sup> *UNCRC*, *supra* note 1 at [Art 3.1](#).

<sup>10</sup> United Nations Committee on the Rights of the Child, *General Comment No. 14, (2013) on the right of the child to have his or her best interests taken as a primary consideration*, CRC/C/GC/14, 29 May 2013 at [para 19](#) [*General Comment No 14*].

<sup>11</sup> *Ibid* at [para 6](#).

19. Each of the substantive, procedural, and interpretative approaches to safeguarding the rights and interests of children militate in favour of this Court upholding the decision of the HRTO and dismissing this judicial review.

### **The UNCRC's Four Guiding Principles Provide a Cohesive Framework**

20. All of the articles of the UNCRC are inherent, interconnected and indivisible; and cannot be separated or selectively applied. The BIOC principle must be read holistically and interdependently, with the UNCRC's three other guiding principles: non-discrimination, a child's inherent right to life, and the right to express their views. Taken together, these provide a framework to guide the interpretation and implementation of the substantive rights provided for in the UNCRC.

21. Article 2 of the UNCRC is a foundational obligation to ensure that all children have the right to be protected from all forms of discrimination; a fundamental human right also guaranteed under Canadian law<sup>12</sup> and in other international human rights treaties and covenants.<sup>13</sup>

22. Article 6 looks at what children need to thrive, recognizing that every child has the inherent right to life and that State Parties have an obligation to ensure to the maximum extent possible the survival and development of children. In decision-making, this requires state actors to consider the short-, medium-, and long-term consequences of actions on children;<sup>14</sup> while

---

<sup>12</sup> *Canadian Human Rights Act*, RSC 1985, c H-6, [s 2](#) [CHRA]; *Human Rights Code*, RSO 1990, c H.19, [Part I](#) [the Code]; *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 at [s 15](#) [Charter].

<sup>13</sup> *UNCRC*, *supra* note 1, at [Art 2](#); *International Covenant on Economic, Social and Cultural Rights*, GA Res 2200A(XXI), UNGA-RO, Supp No 16, UN Doc A/6316 (1996) at [Art 2](#); *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) at [Articles 6 and 7](#); *Universal Declaration of Human Rights*, UNGA, 3rd Sess, UN Doc A/810 (1948) GA Res 217A (III) at [Articles 7, 8, and 22](#). See also: Committee on the Rights of the Child, UNCRC, 34th Sess, *Day of General Discussion on the Rights of Indigenous Children: Recommendations*, at [Preamble, para 2, 9](#) [UNCRC Day of General Discussions].

<sup>14</sup> *General Comment No 14*, *supra* note 10 at [para 16\(e\)](#); *BCS v CLJ*, 2007 ABCA 42 at [para 17](#).

remaining acutely aware of the transience of childhood that is marked by a child's heightened vulnerability and increased dependence on adults. Further, children have a unique perception of the passage of time that is different from and faster than adults, where a few months in the life of a child can hold immense significance; and the passing years crystallize temporary situations into irreversible realities.<sup>15</sup>

23. Article 12 ensures a child's involvement in decision-making by providing that children have the right to express their views and to be provided the opportunity to be heard in any judicial and administrative proceedings that affect them, either directly, or through a representative or an appropriate body.<sup>16</sup> The Supreme Court has found that this consideration must be robust and utilized to protect a child's autonomy and identity as they mature.<sup>17</sup>

### **Intersection of Childhood and 2SLGBTQIA+ Vulnerability**

24. This is a matter that concerns discrimination against distinct groups of vulnerable children. Municipal government is the closest level to young people, their decisions shape the social environment of the municipality, directly influencing the well-being of young people living in or near a community.

25. The recognition of the inherent and unique vulnerability of children has “consistent and deep roots in Canadian law”<sup>18</sup> and has been repeatedly recognized by the Supreme Court.<sup>19</sup> Due

---

<sup>15</sup> *Catholic Children's Aid Society of Metropolitan Toronto v CM*, [1994] 2 SCR 165 at [p 206](#); *General Comment No 14*, *supra* note 10 at [para 93](#).

<sup>16</sup> *UNCRC*, *supra* note 1 at [Art 12](#).

<sup>17</sup> *AC v Manitoba (Director of Child and Family Services)*, [2009] 2 SCR 181, at [paras 46, 87, 93](#) [AC].

<sup>18</sup> *AB v Bragg Communications Inc.*, 2012 SCC 46 at [para 17](#).

<sup>19</sup> *R v DB*, 2008 SCC 25 at [para 48](#); *AC*, *supra* note 17 at [para 151](#), 2 SCR 181; *Baker*, *supra* note 4 at [para 67](#); *Gordon v Goertz*, [1996] 2 SCR 27 at [para 44](#)

to the inherent vulnerability of young people, they are entitled to enhanced protections of their rights and interests, and greater attention to their dignity, rights, and security.<sup>20</sup>

26. 2SLGBTQIA+ children and youth are further uniquely vulnerable due to their overlapping and intersecting experiences of marginalization. 2SLGBTQIA+ youth experience higher rates of violence and negative mental health outcomes.<sup>21</sup> 2024 data from Statistics Canada highlights a significant mental health gap, with 56% of 2SLGBTQIA+ youth (ages 15–24) meeting criteria for a mental health disorder, compared to 29% of their cisgender heterosexual peers.<sup>22</sup> Further, 25% of 2SLGBTQIA+ youth reported suicidal ideation in the past year, representing a fivefold increase over the 5% reported by their cisgender heterosexual counterparts.<sup>23</sup>

27. Additionally, the Supreme Court has recognized the unique challenges and vulnerabilities of 2SLGBTQIA+ individuals;<sup>24</sup> and the specific vulnerabilities of transgender and non-binary individuals are a growing area of recognition in Canadian law.<sup>25</sup>

28. These outcomes and struggles are not because their identities create an inherent proclivity to victimization and mental health difficulties, it is a result of mistreatment and stigmatization in society.<sup>26</sup> Public figures making anti-2SLGBTQIA+ statements,<sup>27</sup> a young person's community

---

<sup>20</sup> *R v CP*, 2021 SCC 19 at [para 85](#); *Sharpe*, *supra* note 4 at [para 170](#); *Ontario (Children's Lawyer) v Ontario (Information and Privacy Commissioner)*, 2018 ONCA 559 at [para 64](#)

<sup>21</sup> Affidavit of Dr. Elizabeth Saewyc, affirmed April 19, 2024, [“*Saewyc Affidavit*”] at paras 21, Application Record [“AR”], Vol. 3, Tab D, p 438 (457 PDF); Ronita Nath et al, [USA study on Mental Health of LGBTQ+ Young People, 2024](#) (West Hollywood, California: The Trevor Project, 2025) at 2 [Ronita Nath et al].

<sup>22</sup> Mila Kingsbury & Leanne Findlay, “[Mental Health and Access to Support among 2SLGBTQIA+ Youth](#)” (2024) 35:11 Health Reports at 15-16 [Mila Kingsbury & Leanne Findlay].

<sup>23</sup> *Ibid* at 17.

<sup>24</sup> *Egan v Canada*, [1995] 2 SCR 513 at 565-567, 600-603; *Vriend v Alberta* [1998 1 S.C.R. 493] at [para 84](#) [*Vriend*].

<sup>25</sup> *Hansman v Neufeld*, 2023 SCC 14 at [para 85](#) quoting *Oger v Whatcott (No. 7)*, 2019 BCHRT 58 at [para 61](#); *CF v Alberta (Vital Statistics)*, 2014 ABQB 237 at [para 58](#).

<sup>26</sup> Ronita Nath et al, *supra* note 21 at 2.

<sup>27</sup> *Saewyc Affidavit* at paras 30-32, AR, Vol. 3, Tab D, p 438-440 (462-464 PDF); Ronita Nath et al, *supra* note 21 at 11.

being unaccepting,<sup>28</sup> and an absence of supportive community members are all documented contributors to these negative outcomes.<sup>29</sup>

29. Importantly however, there is significant evidence that affirming environments and the use of outward signals that identify a space as 2SLGBTQIA+ friendly serve a protective function against this heightened vulnerability. Where young people are exposed to supportive community members, pride flags are displayed, and community members make statements that are explicitly supportive of the 2SLGBTQIA+ community, young people experience lower rates of victimization and negative mental health outcomes.<sup>30</sup> This evidence indicates that substantive decisions and procedural measures that recognize and validate affirmation and outward signals of support will bolster the well-being, survival, and development of 2SLGBTQIA+ children, and be in the best interest of children.

30. When a municipality refuses to acknowledge Pride and outwardly show support for the 2SLGBTQIA+ community, it is choosing to maintain an environment that the expert evidence and data presented to the HRTO identifies as high-risk. This must be considered in conjunction with the Supreme Court's statement in *Vriend*, that identical treatment will not always constitute equal treatment.<sup>31</sup> And that, by nature of their developmental processes, the immediate short-term impact of discrimination will have enduring consequences for a child's long-term well-being.

---

<sup>28</sup> *Saewyc Affidavit* at paras 28-29, AR, Vol. 3, Tab D, p 437-438 (461-462 PDF); Ronita Nath et al, *supra* note 21 at 24, 25

<sup>29</sup> Ronita Nath et al, *supra* note 21 at 22; Tracey Peter et al, [\*Still in every class in every school: Final report on the second climate survey on homophobia, biphobia, and transphobia in Canadian schools\*](#) (Toronto: Eagle Canada Human Rights Trust, 2021) at 15, 104, and 114 [Tracey Peter et al].

<sup>30</sup> Ronita Nath et al, *supra* note 21 at 21 and 22; Tracey Peter et al, *supra* note 29 at 9, 17; 114; *Saewyc Affidavit* at paras 26-28, AR, Vol. 3, Tab D, p 435-437 (459-461 PDF).

<sup>31</sup> *Vriend*, *supra* note 24 at [para 76](#).

31. This Court must further consider that children, as individuals and as a group, have limited capacity to organize and protest against oppressive or discriminatory actions, and they are specifically barred from democratic participation in elections as a result of their age. This must be viewed alongside the reality that some individual 2SLGBTQIA+ children and youth are not in a position to “out” themselves in an otherwise hostile environment, to express their individual experiences, and to bring their own claims of discrimination. This is further complicated by the HRTO’s Practice Direction that deems children under 18 to be minors and legally incapable, and asking for a litigation guardian.<sup>32</sup> This manifestation of the intersecting vulnerabilities of 2SLGBTQIA+ children highlights the importance of considering children’s right to be heard under Article 12 of the UNCRC in this judicial review.

32. In considering the above lived reality of 2SLGBTQIA+ children, this Court must also consider that the BIOC analysis is highly contextual, and must be responsive to the specific vulnerabilities of a child, including their emotional well-being.<sup>33</sup> Procedurally, the BIOC requires that children's interests be given high priority, and any administrative action that restricts symbols of inclusion for 2SLGBTQIA+ individuals fails this test if it fosters a climate of exclusion. Substantively, decision-makers are obligated to ensure municipal environments support and validate, rather than marginalize a child’s identity. In this matter, the HRTO’s finding of discrimination was in accordance with the procedural and substantive requirements under the BIOC principle.

---

<sup>32</sup> Human Rights Tribunal of Ontario, [Practice Direction on Litigation Guardians](#) at para 2.

<sup>33</sup> *Kanhasamy*, *supra* note 7 at [para 35-39](#).

## **Intersectional Vulnerability of Two-Spirit and LGBTQIA+ Children**

33. The Township is located in lands covered by Treaty #3 of the Numbered Treaties, an area which is the traditional territory of the Anishinaabe and Metis and is currently home to many Indigenous children and young people. For example, Rainy River First Nation (RRFN) is approximately 6kms from the Township; and the closest elementary (JK-8) school is in the Township.

34. The vulnerability and marginalization of Indigenous peoples in Canada is well documented and has been consistently recognized by the Supreme Court.<sup>34</sup> Indigenous 2SLGBTQIA+ people sit at the intersection of race, gender, and sexuality, causing them to have been uniquely harmed and marginalized by colonialism.<sup>35</sup>

35. Indigenous children are among the most vulnerable children in Canada.<sup>36</sup> This combination of marginalization and vulnerability leads Indigenous 2SLGBTQIA+ children to be distinctly vulnerable.

36. The *United Nations Declaration on the Rights of Indigenous Peoples* (“UNDRIP”) requires State Parties, in conjunction with Indigenous peoples, to ensure that Indigenous children enjoy the full protection and guarantees against all forms of violence and discrimination.<sup>37</sup> In addition to the international human rights instruments, listed at footnote 13, freedom from

---

<sup>34</sup> *R v Hussein*, 2026 SCC 2 at paras [98-99](#).

<sup>35</sup> Canada, Crown Indigenous Relations and Northern Affairs Canada, [2024-2025 Federal Pathway Annual Progress Report: 2SLGBTQI+ Highlight Report](#), at p 2.

<sup>36</sup> UN Committee on the Rights of the Child, [Concluding observations on the combined fifth and sixth periodic reports of Canada](#), 90th Sess, CRC/C/CAN/CO/5-6, (2022), at paras 10(c), 17(a), 18, 20, 23, 26, and 31; Canadian UNICEF Committee, [Canada's Supplement to the State of the World's Children 2009, Aboriginal Children's Health: Leaving No Child Behind](#) (2009) at p 3; *First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 at [paras 406-427](#), [467](#); UN, Human Rights Council, [Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: The situation of indigenous peoples in Canada](#), 27th Sess, UN Doc A/HRC/27/52/Add.2, (2014).

<sup>37</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 53, UN Doc A/RES/61/295 (2007) 1 at [Art 22](#) [UNDRIP].

discrimination for Indigenous children is also a fundamental right guaranteed under Canadian law<sup>38</sup> and concerns for the rights of Indigenous children have been raised by the Canadian Human Rights Senate Committee and the UNCRC Committee.<sup>39</sup>

37. Following Canada's enactment of legislation to ensure that Canadian federal laws are consistent with UNDRIP, the Supreme Court, in *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, affirmed that UNDRIP has been incorporated into Canadian domestic law, and emphasized that cultural continuity and the BIOC are paramount in any state action affecting Indigenous children.<sup>40</sup>

38. UNDRIP establishes fundamental protections for safeguarding the individual and collective safety of Indigenous peoples. Under Article 7, Indigenous individuals are guaranteed the fundamental right to life, physical and mental integrity, and personal security, ensuring they can live in freedom from violence.<sup>41</sup> This is complemented by Article 22, which compels state actors to prioritize the unique needs of vulnerable groups within Indigenous communities, specifically including “children and youth”, by taking proactive measures to ensure they enjoy full protection against all forms of discrimination.<sup>42</sup>

39. The UNCRC Committee also makes it clear that the unique cultural identity of Indigenous children requires particular attention and is a significant factor in the BIOC

---

<sup>38</sup> CHRA, *supra* note 12 at [s 2](#); *the Code*, *supra* note 12, Part I; *Charter*, *supra* note 12 at [s 15](#).

<sup>39</sup> Standing Senate Committee on Human Rights, *Children: The Silenced Citizens. Effective Implementation of Canada's Obligations with Respect of Children* (April 2007) at 172 and 179; UNCRC Day of General Discussions, *supra* note 13 at [paras 2, 9](#).

<sup>40</sup> *United Nations Declaration on the Rights of Indigenous Peoples Act*, [SC 2021, c 14](#); *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at [para 19](#).

<sup>41</sup> UNDRIP, *supra* note 37 at [art 7](#).

<sup>42</sup> *Ibid* at [art 22](#).

analysis.<sup>43</sup> The importance of recognizing the unique cultural identity and rights of Indigenous children is also embedded into other provincial and federal legislation that relate to children.<sup>44</sup>

40. Discriminatory remarks against the Indigenous 2SLGBTQIA+ community and refusals to affirm and recognize the community contributes to structural stigma, and denies safety and belonging for Indigenous 2SLGBTQIA+ children. Data indicates that Indigenous 2SLGBTQIA+ children and youth seriously contemplate suicide at a significantly higher rate than the already elevated rate amongst the broader 2SLGBTQIA+ community.<sup>45</sup> Indigenous 2SLGBTQIA+ children and youth also experience higher rates of homelessness than cisgender heterosexual Indigenous youth.<sup>46</sup> This is a continuation of colonial harm.

41. This colonial harm is especially impactful when considering Two-Spirit children. Two-Spirit is an expansive term many Indigenous people use to describe their gender identity and/or sexual orientation.<sup>47</sup> While modern in origin, the term refers to practices that have existed in Indigenous communities for millennia.<sup>48</sup> Colonization targeted these practices for erasure

---

<sup>43</sup> *General Comment No. 11: Indigenous children and their rights under the Convention [on the Rights of the Child]* (2009), UN CRC, 50th Sess, UN DOC CRC/C/GC/11 at [para 1-5](#) [*General Comment No. 11*].

<sup>44</sup> *Youth Criminal Justice Act*, SC 2002, c 1, [s 3\(c\)\(iv\)](#); *Child, Youth and Family Enhancement Act*, RSA 2000, Alberta, c C-12 at [s 2\(j\)\(iii\)](#); *Child, Family and Community Service Act*, RSBC 1996, British Columbia, c 46 at [ss 2\(f\), 4\(2\)](#); *Adoption Act*, RSBC 1996, British Columbia, c 5 at [ss 3.1 and 3.2](#); *The Child and Family Services Act*, CCSM, Manitoba, c C80 at [s 1.1\(d\)](#); *Adoption Act*, SNWT (Nu) 1998, Nunavut, c 9 at [s 7\(7\)](#); *Children's Law Act*, SNWT 1997, c 14 at [ss 17\(1\) and 17\(2\)\(c\)](#); *Child and Family Services Act*, R.S.O. 1990, Ontario, C.11 at [ss 1\(1\), 37\(4\)](#); *Child Protection Act*, RSPEI 1988, Prince Edward Island, c C-5.1 at [s 2\(2\)\(j\)](#); *Youth Protection Act*, CQLR, Quebec, c P-34.1 at [s 131.3](#); *The Child and Family Services Act*, SS 1989-90, Saskatchewan, c C 7.2 at [61\(1\)](#); *Child and Family Services Act*, SY 2008, Yukon, c 1 at [ss 2\(d\), 4\(2\)](#).

<sup>45</sup> *The Trevor Project*, “The Mental Health and Well-Being of Indigenous LGBTQ Young People” (November 30, 2023) at p. 3.

<sup>46</sup> Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a* at pp 456 online: <[https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final\\_Report\\_Vol\\_1a-1.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf)> [MMIWG Final Report].

<sup>47</sup> Jenny L Davis, “REFUSING (MIS)RECOGNITION: Navigating Multiple Marginalization in the U.S. Two Spirit Movement” (2019) 12:1 *Review of International American Studies* 65 at p. 66. Online: ([PDF](#)) [Refusing \(Mis\)Recognition: Navigating Multiple Marginalization in the U.S. Two Spirit Movement](#) [Jenny L Davis].

<sup>48</sup> *Ibid* at [p. 69-70](#).

through the imposition of Christian marital structures by the *Indian Act* and the suppression of non-normative gender expression and sexuality at residential schools.<sup>49</sup> The pervasive effects of this colonial violence now result in many Two-Spirit individuals facing discrimination, encountering barriers to accessing services, and leaving their communities.<sup>50</sup>

42. To properly recognize, respect, and preserve Indigenous cultures, histories, languages, and ways of life, historic discrimination must be analyzed and proactive measures may be required to diminish or eliminate the conditions that cause discrimination.<sup>51</sup> For Indigenous 2SLGBTQIA+ children, the right to physical and mental integrity goes beyond basic safety; it requires states to protect their specific gender identities and spiritual roles from the violence of colonial erasure and prejudice. For Indigenous 2SLGBTQIA+ children, the declaration and symbols of the 2SLGBTQIA+ community are not just gestures of support, they are beacons of safety in the face of historical erasure. A refusal or failure to recognize Two-Spirit and LGBTQIA+ Indigenous identities reinforces colonial structures of exclusion which UNDRIP specifically seeks to dismantle.

43. UNDRIP, alongside the UNCRC, clearly creates an obligation for municipal decision-makers to create safe environments where Indigenous 2SLGBTQIA+ children can flourish, and be free from the threat of violence and discrimination. This must be considered in the present review alongside the reality that municipalities making decisions that erase the identities of Indigenous 2SLGBTQIA+ children exacerbates the risk of homelessness, social

---

<sup>49</sup> Julie Depelteau & Dalie Giroux, “LGBTQ Issues as Indigenous Politics: Two-Spirit Mobilization in Canada” in Scott Rayter & Layne Halpern-Zisman, eds, *Queerly Canadian* (Canada: Women’s Press) 222 at p. 226-227, Book of Authorities of the Intervener (JFCY), Tab 1.

<sup>50</sup> MMIWG Final Report, *supra* note 46 at [pp 448-453](#). Online:

<sup>51</sup> *General Comment No. 11*, note 43 at [paras 18, 25, 41](#); *UNCRC*, *supra* note 1 at art 3.

isolation, and the empirical reality of heightened lethal risks for Indigenous 2SLGBTQIA+ youth.

44. JFCY respectfully submits that the HRTO's findings are consistent with the domestic and international human rights of children. Municipal decision-making, especially in Northwestern Ontario, must comply with legal standards that account for the psychological safety and social inclusion of all 2SLGBTQIA+ children, rather than failing to engage with binding legal obligations. The best interests of 2SLGBTQIA+ children are inextricably tied to their need for inclusive, identity-affirming social environments.

#### **PART IV - ORDER REQUESTED**

45. JFCY asks that this judicial review be dismissed.

46. JFCY does not seek costs and requests that no costs be awarded against it.

47. Pursuant to the Order of the Honourable Justice Newton, dated July 21, 2025, The Intervener JFCY requests 10 minutes for oral argument at the judicial review hearing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of May, 2026.



---

**JUSTICE FOR CHILDREN AND YOUTH**

**55 University Avenue, Suite 1500**

Toronto, ON M5J 2H7

Tel.: (416) 920-1633

Fax: (416) 920-5855

**Emily Chan (LSO #45352P)**

E: [emily.chan@jfcy.clcj.ca](mailto:emily.chan@jfcy.clcj.ca)

**Allie McMillan (LSO #92728R)**

E: [allie.mcmillan@jfcy.clcj.ca](mailto:allie.mcmillan@jfcy.clcj.ca)

**Counsel for the Intervener, JFCY**

**CERTIFICATION OF AUTHORITIES**

I, Emily Chan, certify that I am satisfied as to the authenticity of every authority cited in this factum.



---

Emily Chan

Date: May 14, 2026

*Emily Chan*

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

## SCHEDULE “A” - LIST OF AUTHORITIES

### Jurisprudence

1. *AB v Bragg Communications Inc.*, [2012 SCC 46](#)
2. *AC v Manitoba (Director of Child and Family Services)*, [\[2009\] 2 SCR 181](#)
3. *Baker v Canada (Minister of Citizenship and Immigration)*, [\[1999\] 2 SCR 817](#)
4. *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)*,  
[2004 SCC 4](#)
5. *Catholic Children’s Aid Society of Metropolitan Toronto v CM*, [\[1994\] 2 SCR 165](#)
6. *CF v Alberta (Vital Statistics)*, [2014 ABQB 237](#)
7. *First Nations Child and Family Caring Society of Canada et al. v Attorney General of  
Canada (for the Minister of Indian and Northern Affairs Canada)*, [2016 CHRT 2](#)
8. *Gordon v Goertz*, [\[1996\] 2 SCR 27](#)
9. *Hansman v Neufeld*, [2023 SCC 14](#)
10. *JESD v YEP*, [2018 BCCA 286](#)
11. *Justice for Children and Youth v JG*, [2020 ONSC 4716](#)
12. *Kanthasamy v Canada (Citizenship and Immigration)*, [2015 SCC 61](#)
13. *Mason v Canada (Citizenship and Immigration)*, [2023 SCC 21](#)
14. *Ontario (Children's Lawyer) v Ontario (Information and Privacy Commissioner)*, [2018  
ONCA 559](#)
15. *R v CP*, [2021 SCC 19](#)
16. *R v DB*, [2008 SCC 25](#)
17. *R v Hape*, [2007 SCC 26](#)

18. *R v Hussein*, [2026 SCC 2](#)
19. *R v Sharpe*, [2001 SCC 2](#)
20. *Vriend v Alberta*, [\[1998\] 1 SCR 49](#)

## **Legislation**

1. *Adoption Act*, [RSBC 1996, c 5](#)
2. *Adoption Act*, [SNWT \(Nu\) 1998, c 9](#)
3. *Canadian Charter of Rights and Freedoms*, s 7, [Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#)
4. *Canadian Human Rights Act*, [RSC 1985, c H-6](#)
5. *Child and Family Services Act*, [RSO 1990, C.11](#)
6. *Child and Family Services Act*, [SNWT 1997, c 13](#)
7. *Child and Family Services Act*, [SY 2008, c 1](#)
8. *Child Protection Act*, [RSPEI 1988, c C-5.1](#)
9. *Child, Family and Community Service Act*, [RSBC 1996, c 46](#)
10. *Child, Youth and Family Enhancement Act*, [RSA 2000, c C-12](#)
11. *Human Rights Code*, [RSO 1990, c H.19](#)
12. *The Child and Family Services Act*, [CCSM, c C80](#)
13. *The Child and Family Services Act*, [SS 1989-90, c C 7.2](#)
14. *United Nations Declaration on the Rights of Indigenous Peoples Act*, [SC 2021, c 14](#)
15. *Youth Criminal Justice Act*, [SC 2002, c 1](#)
16. *Youth Protection Act*, [CQLR, c P-34.1](#)

## Secondary Sources

1. Canada, Crown Indigenous Relations and Northern Affairs Canada, [\*2024-2025 Federal Pathway Annual Progress Report: 2SLGBTQI+ Highlight Report\*](#).
2. Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, [\*Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a\*](#).
3. Canadian UNICEF Committee, [\*Canada's Supplement to the State of the World's Children 2009, Aboriginal Children's Health: Leaving No Child Behind \(2009\)\*](#).
4. Committee on the Rights of the Child, UNCRC, 34th Sess, [\*Day of General Discussion on the Rights of Indigenous Children: Recommendations\*](#).
5. [\*Convention on the Rights of the Child\*](#), 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990)
6. [\*General Comment No. 11: Indigenous children and their rights under the Convention \[on the Rights of the Child\]\*](#), (2009), UN CRC, 50th Sess, UN DOC CRC/C/GC/11 at para 18, 25, 41.;
7. Human Rights Tribunal of Ontario, [\*Practice Direction on Litigation Guardians\*](#)
8. [\*International Convention on the Elimination of All Forms of Racial Discrimination\*](#), 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969)
9. [\*International Covenant on Economic, Social and Cultural Rights\*](#), GA Res 2200A(XXI), UNGA-RO, Supp No 16, UN Doc A/6316 (1996)
10. Jenny L Davis, "[\*REFUSING \(MIS\)RECOGNITION: Navigating Multiple Marginalization in the U.S. Two Spirit Movement\*](#)" (2019) 12:1 *Review of International American Studies* 65
11. Julie Delpelteau & Dalie Giroux, "LGBTQ Issues as Indigenous Politics: Two-Spirit Mobilization in Canada" in Scott Rayter & Layne Halpern-Zisman, eds, *Queerly Canadian* (Canada: Women's Press) 222
12. Mila Kingsbury & Leanne Findlay, "[\*Mental Health and Access to Support among 2SLGBTQIA+ Youth\*](#)" (2024) 35:11 *Health Reports* at 17.
13. Ronita Nath et al, [\*USA study on Mental Health of LGBTQ+ Young People, 2024\*](#) (West Hollywood, California: The Trevor Project, 2025) at 21; 22

14. Standing Senate Committee on Human Rights, [Children: The Silenced Citizens, Effective Implementation of Canada's Obligations with Respect of Children](#) (April 2007)
15. *The Trevor Project*, "[The Mental Health and Well-Being of Indigenous LGBTQ Young People](#)" (November 30, 2023)
16. Tracey Peter, Christopher P Campbell & Catherine Taylor [Still in every class in every school: Final report on the second climate survey on homophobia, biphobia, and transphobia in Canadian schools](#) (Toronto: EGALE Canada Human Rights Trust, 2021) at 9, 17; 114; *Saewyc Affidavit* at paras 26-28, AR, Vol. 3, Tab D, p 435-437 (459-461 PDF)
17. UN Committee on the Rights of the Child, [Concluding observations on the combined fifth and sixth periodic reports of Canada](#), 90th Sess, CRC/C/CAN/CO/5-6, (2022)
18. [United Nations Declaration on the Rights of Indigenous Peoples](#), GA Res 61/295, UNGAOR, 61st Sess, Supp No 53, UN Doc A/RES/61/295 (2007) 1
19. UN, Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: The situation of indigenous peoples in Canada*, 27th Sess, UN Doc A/HRC/27/52/Add.2, (2014).
20. [Universal Declaration of Human Rights](#), UNGA, 3rd Sess, UN Doc A/810 (1948) GA Res 217A (III)

## SCHEDULE “B”- RELEVANT PROVISIONS OF STATUTES, REGULATIONS, AND BY-LAWS

---

### *Adoption Act, [RSBC 1996, c 5](#)*

...

#### **Best interests of child — Indigenous children**

3.1 (1) If the child is an Indigenous child, in addition to the relevant factors that must be considered under section 3 (1), the following factors must be considered in determining the child's best interests:

- (a) cultural continuity, including the transmission of languages, cultures, practices, customs, traditions, ceremonies and knowledge of the child's Indigenous community;
- (b) the development of the child's Indigenous cultural identity, including the child being able to practise the child's Indigenous traditions, customs and language;
- (c) the preservation of the child's connections to the child's Indigenous community and the region where the child's family and Indigenous community is located;
- (d) the child being connected to family;
- (e) any plans for the child's care, including care in accordance with the customs and traditions of the child's Indigenous community.

(2) In this section, "family", in relation to an Indigenous child, includes the child's relatives.

#### **Self-government principle**

3.2 This Act, to the extent the provisions of this Act relate to the adoption of Indigenous children

(a) who are in the continuing custody of a director of child protection, or

(b) in respect of whom a director of child protection is the personal guardian under section 51 of the Infants Act,

must be interpreted and administered in accordance with the principle that Indigenous peoples have an inherent right of self-government, including self-determination, that is recognized and affirmed by section 35 of the Constitution Act, 1982 and by the United Nations Declaration on the Rights of Indigenous Peoples.

...

---

*Adoption Act, [SNWT \(Nu\) 1998, c 9](#)*

...

**Consultation in respect of aboriginal child**

7 (7) Subject to subsection (8), where the Director has reason to believe that the child who is to be placed is or will be an aboriginal child, the Director shall, before making a decision in respect of the proposed placement, consult with the aboriginal organization that would be the applicable aboriginal organization for the child in the circumstances described in section 25 of the Child and Family Services Act.

...

*Canadian Charter of Rights and Freedoms, s 7, [Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 \(UK\), 1982, c 11](#)*

...

**Equality Rights**

Equality before and under law and equal protection and benefit of law

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

...

---

*Canadian Human Rights Act, [RSC 1985, c H-6](#)*

...

**Purpose of Act**

**Purpose**

2 The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

...

---

***Child and Family Services Act, [RSO 1990, C.11](#)***

**Paramount purpose and other purposes**

**Paramount purpose**

1 (1) The paramount purpose of this Act is to promote the best interests, protection and well being of children.

...

**Where child an Indian or native person**

37 (4) Where a person is directed in this Part to make an order or determination in the best interests of a child and the child is an Indian or native person, the person shall take

into consideration the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity.

...

---

***Children's Law Act, [SNWT 1997, c 14](#)***

...

17. (1) The merits of an application under this Division in respect of custody of or access to a child shall be determined in accordance with the best interests of the child, with a recognition that differing cultural values and practices must be respected in that determination.

(2) In determining the best interests of a child for the purposes of an application under this Division in respect of custody of or access to a child, the court shall consider all the needs and circumstances of the child including

(a) the love, affection and emotional ties between the child and

- (i) each person entitled to or seeking custody or access,
- (ii) other members of the child's family, and
- (iii) persons involved in the care and upbringing of the child;

(b) the child's views and preferences if they can be reasonably ascertained;

(c) the child's cultural, linguistic and spiritual or religious upbringing and ties;

(d) the ability and willingness of each person seeking custody to, directly or indirectly, provide the child with guidance, education and necessities of life and provide for any special needs of the child;

...

---

*Child and Family Services Act, [SY 2008, c 1](#)*

...

**Guiding principles**

2 This Act shall be interpreted and administered in accordance with the following principles:

(a) the best interests of the child shall be given paramount consideration in making decisions or taking any action under this Act;

(b) a child has a right to be protected from harm or threat of harm;

(c) knowledge about family origins is important to the development of a child's sense of identity;

(d) the cultural identity of a child, including a child who is a member of a First Nation, should be preserved;

...

**Best interests of the child**

4(1) In determining the best interests of the child all relevant factors shall be considered, including

(a) the child's safety, health and well-being;

(b) the attachment and emotional ties between the child and significant individuals in the child's life;

(c) the views and preferences of the child;

(d) the child's physical, cognitive emotional needs and level of development;

and

(e) the importance of continuity and the resulting stability to the child, and the effect of any disruption in that continuity;

(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage;

(g) the importance to the child of an on-going, positive relationship with their parents and with members of their extended family;

(h) the ability of a proposed care provider for the child to fulfill parental responsibilities;

(i) the role assumed by a proposed care provider during the child's life; and

(j) any history of family violence or child maltreatment perpetrated by a prospective care provider, and the effect on the child of any past experiences of family violence or maltreatment.

(2) If a child is a member of a First Nation, the importance of preserving the child's cultural identity shall also be considered in determining the best interests of the child.

...

---

*Child Protection Act*, [RSPEI 1988, c C-5.1](#)

...

**Best interests of the child**

2 (2) The best interests of the child means the interests that appear, to the Director, or to a court, to be best for the child under the circumstances, having regard to all relevant considerations, including

- (a) the safety of the child;
- (b) the capacity of a parent to properly discharge parental obligations;
- (c) the physical, mental and emotional needs of the child, and the appropriate care or treatment to meet those needs;
- (d) the physical, mental and emotional level of development of the child;
- (e) the views of the child, where appropriate;
- (f) a secure place for the child and the development of a positive relationship as a member of a family;
- (g) the love, affection and ties between the child and persons who have had custody of the child;
- (h) the love, affection and ties between the child and other persons in the life of the child;
- (i) the cultural, racial, linguistic and religious heritage of the child;
- (j) if the child is aboriginal, the importance of preserving the cultural identity of the child;
- (k) the capacity of persons other than a parent to exercise custody rights and duties respecting a child;

(l) the continuity of care for the child and the possible effect of disruption of that care on the child; and

(m) the difference in the concept of time, and the developmental capacity of a child.

...

---

*Child, Family and Community Service Act*, [RSBC 1996, c 46](#)

...

**Guiding principles**

2 This Act must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with the following principles:

(a) children are entitled to be protected from abuse, neglect and harm or threat of harm;

(b) a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with the parents;

(b.1) Indigenous families and Indigenous communities share responsibility for the upbringing and well-being of Indigenous children;

(c) if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;

(d) the child's views should be taken into account when decisions relating to a child are made;

(e) kinship ties and a child's attachment to the extended family should be preserved if possible;

(f) Indigenous children are entitled to

(i) learn about and practise their Indigenous traditions, customs and languages,  
and

(ii) belong to their Indigenous communities;

(g) decisions relating to children should be made and implemented in a timely manner.

...

**Best interests of child**

4 (1) Where there is a reference in this Act to the best interests of a child, all relevant factors must be considered in determining the child's best interests, including for example:

(a) the child's safety;

(b) the child's physical and emotional needs and level of development;

(c) the importance of continuity in the child's care;

(d) the quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship;

(e) the child's cultural, racial, linguistic and religious heritage;

(f) the child's views;

(g) the effect on the child if there is delay in making a decision.

(2) If the child is an Indigenous child, in addition to the relevant factors that must be considered under subsection (1), the following factors must be considered in determining the child's best interests:

- (a) the importance of the child being able to learn about and practise the child's Indigenous traditions, customs and language;
  - (b) the importance of the child belonging to the child's Indigenous community.
- ...

---

*Child, Youth and Family Enhancement Act, [RSA 2000, c C-12](#)*

...

**Matters to be considered**

**2(1)** If a child is in need of intervention, a court, an Appeal Panel and all persons who exercise any authority or make any decision under this Act relating to the child must do so in the best interests of the child and must consider the following as well as any other relevant matter:

- (a) the child's family has the primary responsibility for the safety and well-being of the child and the family's well-being should be supported and preserved;
- (b) if the child is capable of forming an opinion, the child's opinion should be taken into account;
- (c) in the case of an Indigenous child, the importance of respecting, supporting and preserving the child's Indigenous identity, culture, heritage, spirituality, language and traditions;
- (d) the benefits to the child of lasting relationships with the people with whom the child is connected, including family, friends, caregivers and other significant individuals;

(e) the benefits to the child of connections with the child's culture and cultural communities and opportunities to form those connections;

(f) the child's race, spiritual beliefs, colour, gender, gender identity, gender expression, age, ancestry, place of origin, family status, sexual orientation and any disability the child may have;

(g) the importance of stability, permanence and continuity of care and relationships to the child's long-term safety and well-being;

(h) any decision concerning the removal of the child from the child's family should take into account the risk to the safety, security or development of the child if the child remains with the family, is removed from the family or is returned to the family;

(i) subject to clause (h), if the child has been exposed to family violence within the child's family, intervention services should be provided to the family in a manner that supports family members and prevents the need to remove the child from the custody of an abused family member;

(j) any decision concerning the placement of the child outside the child's family must include a plan to address the child's need for permanent, formalized ties to people who care about the child and must take into account

(i) the benefits to the child of a placement within the child's extended family, or with persons who have a significant relationship with the child,

(ii) the benefits to the child of a placement within or as close as possible to the child's home community,

(iii) in the case of an Indigenous child, the benefits to the child of a placement where the child's Indigenous identity, culture, heritage, spirituality, language and traditions will be respected, supported and preserved,

(iv) the benefits to the child of a placement where the child's familial, cultural, social, linguistic and spiritual heritage are valued as central to the child's safety, security and development, and

(v) the mental, emotional, spiritual and physical needs of the child and the child's mental, emotional and physical stage of development;

(k) in the case of a child who has a disability, planning for the care of the child should address the need for resources and supports adequate to the unique needs of the child;

(l) in the case of a youth who is being provided with care under this Act, the plan for the care of the youth should address the youth's need for preparation for the transition to independence and adulthood;

(m) there should be no unreasonable delay in making or implementing a decision respecting the child.

...

---

*Human Rights Code, [RSO 1990, c H.19](#)*

...

## **PART I**

### **FREEDOM FROM DISCRIMINATION**

#### **Services**

**1** Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 1; 1999, c. 6, s. 28 (1); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (1); 2012, c. 7, s. 1.

#### **Accommodation**

**2** (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (1); 1999, c. 6, s. 28 (2); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (2); 2012, c. 7, s. 2 (1).

#### **Harassment in accommodation**

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (2); 1999, c. 6, s. 28 (3); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (3); 2012, c. 7, s. 2 (2).

#### **Contracts**

**3** Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 3; 1999, c. 6, s. 28 (4); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (4); 2012, c. 7, s. 3.

### **Accommodation of person under eighteen**

4 (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old. R.S.O. 1990, c. H.19, s. 4 (1).

### **Idem**

(2) A contract for accommodation entered into by a sixteen or seventeen year old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old. R.S.O. 1990, c. H.19, s. 4 (2).

### **Employment**

5 (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (1); 1999, c. 6, s. 28 (5); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (5); 2012, c. 7, s. 4 (1).

### **Harassment in employment**

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (2); 1999, c. 6, s. 28 (6); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (6); 2012, c. 7, s. 4 (2).

### **Vocational associations**

6 Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status,

family status or disability. R.S.O. 1990, c. H.19, s. 6; 1999, c. 6, s. 28 (7); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (7); 2012, c. 7, s. 5.

### **Sexual harassment**

#### **Harassment because of sex in accommodation**

7 (1) Every person who occupies accommodation has a right to freedom from harassment because of sex, sexual orientation, gender identity or gender expression by the landlord or agent of the landlord or by an occupant of the same building. R.S.O. 1990, c. H.19, s. 7 (1); 2012, c. 7, s. 6 (1).

#### **Harassment because of sex in workplaces**

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee. R.S.O. 1990, c. H.19, s. 7 (2); 2012, c. 7, s. 6 (2).

#### **Sexual solicitation by a person in position to confer benefit, etc.**

(3) Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person. R.S.O. 1990, c. H.19, s. 7 (3).

### **Reprisals**

8 Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. R.S.O. 1990, c. H.19, s. 8.

### **Infringement prohibited**

9 No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. R.S.O. 1990, c. H.19, s. 9.

...

---

### ***The Child and Family Services Act, [CCSM, c C80](#)***

...

### **Guiding principles**

1.1 This Act must be interpreted and administered in accordance with the following principles:

- (a) the best interests, safety and well-being of children are paramount;
- (b) the well-being of families and communities is crucial to the well-being of children;
- (c) children benefit from
  - (i) lasting relationships with people with whom they have connections, including family, friends, caregivers and other significant individuals,
  - (ii) connections with their culture and cultural communities and opportunities to form those connections, and
  - (iii) permanent, formalized ties with people who care about them;
- (d) Indigenous people should be involved with respect to the planning and provision of services to and decisions respecting Indigenous families and their children.

...

---

*The Child and Family Services Act*, [SS 1989-90, c C 7.2](#)

...

**Aboriginal child welfare agreements**

61(1) The minister may, having regard to the aspirations of Indigenous people to provide services to their communities, enter into an agreement with a band or any other legal entity in accordance with the regulations:

(a) for the provision of services or the administration of all or any part of this Act by the band or legal entity as an agency; or

(b) for the exercise by the agency of those powers of the minister pursuant to this Act to the extent to which those powers are specified in the agreement.

(2) An agency that enters into an agreement pursuant to subsection (1) is responsible for the exercise of the powers of the minister to the extent to which those powers are specified in the agreement.

...

---

*Youth Criminal Justice Act*, [SC 2002, c 1](#)

...

**Declaration of Principle**

**Policy for Canada with respect to young persons**

3 (1) The following principles apply in this Act:

(a) the youth criminal justice system is intended to protect the public by

(i) holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person,

(ii) promoting the rehabilitation and reintegration of young persons who have committed offences, and

(iii) supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour;

(b) the criminal justice system for young persons must be separate from that of adults, must be based on the principle of diminished moral blameworthiness or culpability and must emphasize the following:

(i) rehabilitation and reintegration,

(ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,

(iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,

(iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and

(v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;

(c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should

- (i) reinforce respect for societal values,
- (ii) encourage the repair of harm done to victims and the community,
- (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and
- (iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

(d) special considerations apply in respect of proceedings against young persons and, in particular,

- (i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,
- (ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,
- (iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and

(iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

...

---

***Youth Protection Act, [COLR, c P-34.1](#)***

...

**131.3.** Every decision made under this Act in respect of an Indigenous child and any other intervention concerning him made under this Act must foster the cultural continuity of that child.

Institutions, bodies and persons having responsibilities towards a child under this Act and persons called upon to make such decisions shall consider, as one of the possible interventions to be made in respect of the child and his parents, having recourse to the available customary and traditional care, if made aware of it.

...

Court File No. DC-24-00000016-00JR

**THE CORPORATION OF THE TOWNSHIP  
OF EMO and HAROLD MCQUAKER**  
Applicants

and

**BORDERLAND PRIDE, the NORTHERN  
ONTARIO PRIDE NETWORK,  
DOUGLAS W. JUDSON. KATHRYN L.  
SHOEMAKER, HUMAN RIGHTS  
TRIBUNAL OF ONTARIO, HARROLD  
BOVEN, and WARREN TOLES**  
Respondents

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Divisional Court)**

Proceeding commenced at Thunder Bay

---

**FACTUM OF THE INTERVENER  
JUSTICE FOR CHILDREN AND YOUTH**

---

**Emily Chan and Allie McMillan  
Justice for Children and Youth**  
55 University Ave., Suite 1500  
Toronto, ON M5J 2H7  
T: 416-920-1633  
F: 416-920-5855  
E: [emily.chan@jfcy.clcj.ca](mailto:emily.chan@jfcy.clcj.ca)  
[allie.mcmillan@jfcy.clcj.ca](mailto:allie.mcmillan@jfcy.clcj.ca)

**Counsel for the Intervener, JFCY**