

# Court of King's Bench of Alberta

**Citation: Athabasca Chipewyan First Nation v Alberta (Chief Electoral Officer), 2026  
ABKB 375**

**Date:** 20260513

**Docket:** 2603 00155, 2603 01622

**Registry:** Edmonton

**Docket:** 2603 00155

Between:

**Athabasca Chipewyan First Nation**

Applicant

- and -

**Chief Electoral Officer of Alberta, Mitch Sylvestre  
and His Majesty the King in Right of Alberta**

Respondents

**Docket:** 2603 01622

Between:

**Piikani Nation, Siksika Nation and Blood Tribe**

Applicants

- and -

**Chief Electoral Officer of Alberta, Mitch Sylvestre  
and His Majesty the King in Right of Alberta**

Respondents

**Corrected judgment:** A corrigendum was issued on May 13, 2026; the corrections have been made to the text and the corrigendum is appended to this judgment.

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**Reasons for Decision  
of the  
Honourable Justice S. Leonard**

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**I. Introduction**

[1] The Athabasca Chipewyan First Nation (ACFN) and the Piikani Nation, Siksika Nation and Blood Tribe (Blackfoot Nations) (Blackfoot Nations and ACFN collectively being referred to as the Applicants) each filed Applications for Judicial Review of the decision of the Chief Electoral Officer of Alberta (the CEO) to issue an initiative petition to Mr. Mitch Sylvestre, (the Proponent) under the *Citizen Initiative Act*, SA 2021, c C-13.2 (the *CIA*) on January 2, 2026.

[2] Both Applicants also sought a stay of the CEO’s decision to issue an initiative petition; the stay was granted on April 10, 2026 (*Athabasca Chipewyan First Nation v Chief Electoral Officer of Alberta*, 2026 ABKB 278).

[3] In conjunction with Judicial Review Applications, the Applicants each filed Notices of Constitutional Question seeking declarations relating to the constitutionality of provisions of the *CIA*, including ss 1.1, 2, 2.2, 3, 71.1 and 71.2 of the *CIA* (the Impugned Provisions).

[4] The Applicants filed Affidavits in support of their Applications. Alberta filed Applications to Strike portions of the Affidavit Evidence in both Actions.

[5] The Applicants also provided formal notice pursuant to ss 23 and 28 of the *Canada Evidence Act*, RSC 1985, c C-5 seeking to rely on findings of fact for the truth of their contents in the Reasons for Decision cited as *Chief Electoral Officer of Alberta v Sylvestre*, 2025 ABKB 712 (*Sylvestre*).

[6] These Judicial Review Applications were heard in the same week as an application for an injunction relating to, amongst other things, the CEO’s approval of an initiative referendum proposal under the *CIA*, referred to below as the “Second Proposal”. The application for an injunction was brought by a party who is not a party to these Judicial Review Applications. Although there is some overlap in the factual background across the proceedings and the corresponding legislative framework, the issues, relief sought, and submissions differ. This decision is confined to the record and arguments on the Judicial Review Applications.

**1. Athabasca Chipewyan First Nation**

[7] ACFN is a band within the meaning of the *Indian Act*, RSC 1985, c I-5 and is an Aboriginal people for the purposes of s 35 of the *Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11 (*Constitution Act, 1982*). The ACFN and its members are descendants of the Dēnesų́łné, historically referred to as the *Etthen eldeli Dene*, and are the

successors to the Chipewyan Band that entered into Treaty 8 at Fort Chipewyan in 1899. The ACFN's traditional territory spans areas now located within Alberta, Saskatchewan, and the Northwest Territories.

## 2. Blackfoot Nations

[8] Piikani Nation, Siksika Nation and Blood Tribe make up the Blackfoot Nations. The Blackfoot Nations are bands within the meaning of the *Indian Act*, and an Aboriginal people within the meaning of s 35 of the *Constitution Act, 1982*.

[9] The Blackfoot Nations are three of four Blackfoot nations, known collectively as the *Siksikaitsiitapiwa* (also *Siksikaitapi*) or Blackfoot Confederacy. The fourth Blackfoot nation is the Amskapi Pikuni (South Peigan or Blackfeet Nation) and is based in the United States.

[10] The Blackfoot Nations entered into Treaty 7 in 1877. *Siksikaitsiitapiwa* oral history and traditional knowledge describe the longstanding use and occupation of a "Blackfoot Territory," the boundaries of which are described as having shifted over time. At the time of first contact with Europeans, this territory is described as extending from the North Saskatchewan River south beyond the Yellowstone River, and from what is now British Columbia east into what is now Saskatchewan, including the Great Sand Hills region. This description reflects shared history, culture, language, and kinship ties.

[11] Blackfoot Territory includes all the lands in what is now Southern Alberta. In 1877, a portion of the lands within Blackfoot Territory became Treaty lands subject to Treaty 7.

## II. Procedural Steps

[12] On July 4, 2025, the Proponent applied for the issuance of a petition for a constitutional referendum proposal as follows: "Do you agree that the Province of Alberta shall become a sovereign country and cease to be a province in Canada?" (the First Proposal). The First Proposal was made under the version of the *CIA* that was in force between July 4, 2025, and December 10, 2025 (the *Previous CIA*).

[13] The *Previous CIA* gave the CEO the ability to ask the Court, pursuant to his referral power in s 2.1(1), whether the referendum proposal met the requirements of s 2(4). At the time, s 2(4) required that the referendum proposal not contravene ss 1 to 35.1 of the *Constitution Act, 1982*.

[14] The CEO stated a question in the form of a special case seeking the Court's opinion as to whether the First Proposal conformed with s 2(4) of the *Previous CIA* (the Special Case). The Court heard the Special Case, and on December 5, 2025, released its decision in *Sylvestre*.

[15] On December 4, 2025, the day prior to the release of *Sylvestre*, amendments to the *Previous CIA* were introduced in the Legislative Assembly through Bill 14, *Justices Statutes Amendment Act, 2025*, 2<sup>nd</sup> Sess, 31<sup>st</sup> Leg, 2025 (Bill 14). Those amendments included, *inter alia*, the removal of s 2(4) prohibiting a referendum proposal that contravenes ss 1 to 35.1 of the *Constitution Act, 1982*, the discontinuance of any special cases stated under s 2.1, and the addition of transitional provisions, now ss 71.1 (1)-(4) (Transitional Provisions).

[16] On December 5<sup>th</sup>, the Court rendered its decision in the Special Case in *Sylvestre* and concluded that the First Proposal did not meet the requirements of s 2(4) of the *Previous CIA*.

[17] On December 8, 2025, pursuant to s 3(1) of the *Previous CIA*, the CEO formally rejected the First Proposal.

[18] On December 11, 2025, Bill 14 received Royal Assent and came into force (hereinafter referred to as the *Amended CIA*) and the Proponent submitted a Notice of Intent pursuant to s 1.1 of the *Amended CIA* for an initiative petition that was substantially identical to the First Proposal, the question being “Do you agree that the Province of Alberta should cease to be a part of Canada to become an independent state?”

[19] On December 12, 2025, the CEO confirmed that the Notice of Intent was received and filed. On the same day, the Proponent applied for the issuance of the initiative petition.

[20] On December 19, 2025, the CEO wrote to the Minister of Justice to inform him that the petition application for the Second Proposal met the requirements of s 2 of the *Amended CIA*.

[21] On December 22, 2025, the CEO approved the Second Proposal and issued a Notice of Initiative Petition (the “CEO Decision”).

[22] The CEO wrote an email to the Proponent to inform him that the application met the requirements of s 2 of the *Amended CIA*. The email also informed the Proponent that Elections Alberta would publish the Notice of Initiative Petition approval on their website and indicated that the petition would be issued following the end of the notice period.

[23] The CEO accepted the Second Proposal, relying on the Transitional Provisions contained in the *Amended CIA*. The fee prescribed in s 2(2)(h), which was paid by the Proponent for the First Proposal, was applied to the Second Proposal.

[24] On January 2, 2026, the CEO issued the initiative petition and provided signature sheets to the Proponent.

[25] The Proponent has 120 days to collect 177,732 signatures representing 10% of the total number of votes cast in the previous general election. The applicable signature collection period for the Second Proposal is January 3, 2026, to May 2, 2026 (ss 6 and 10 of the *Amended CIA*).

### III. Issues

[26] There are a number of issues before the Court. Alberta filed an Application to Strike all or portions of Affidavits filed by ACFN and Blackfoot Nations in this matter. Blackfoot Nations and the ACFN apply for judicial review of the CEO Decision. The Applicants also seek a declaration that the Impugned Provisions are unconstitutional. Although the Applicants articulate the issues in different terms, there is substantial overlap. I frame the issues for determination as follows:

1. Should the ACFN Affidavits or Blackfoot Nations Affidavits be struck in whole or in part?
2. Does the statutory framework in the *Amended CIA* and the *Referendum Act*, RSA 2000, c R-8.4 require the Government to implement the results of a binding referendum?
3. Should the CEO Decision be set aside on judicial review?

- a. Did the CEO err in law in interpreting and applying the Transitional Provisions, particularly s 71.1(1), by treating the First Proposal as one deemed not to have been made?
- b. Did the CEO err by not rejecting the Second Proposal in the face of *Sylvestre*?
- c. Is the CEO Decision reviewable on the basis that the Crown did not meet its duty to consult with the Applicants?
- d. Are the Impugned Provisions of the *Amended CIA* that mandated the CEO Decision inconsistent with s 35 of the *Constitution Act, 1982*, ss 92 and 96 of the *Constitution Act, 1867* or the unwritten constitutional principles?

**1. Should the ACFN Affidavits or Blackfoot Nations Affidavits be struck in whole or in part?**

[27] Alberta applied to strike, in whole or in part, certain affidavits filed by the ACFN and by the Blackfoot Nations in support of their Originating Application for Judicial Review and a Stay. Alberta did not pursue a preliminary ruling on admissibility and advised that its Application could be addressed as part of the full hearing. The Reasons for Decision cited as, 2026 ABKB 278, address some of the affidavit evidence in the context of addressing a stay. Nonetheless the Application for striking the evidence needs to be addressed in the broader context of the Originating Applications under the Judicial Review.

[28] Alberta seeks to strike the following evidence filed by ACFN:

1. The entirety of the **Affidavit of Lily Polenchuk**, filed January 30, 2026 (the “Polenchuk Affidavit”); and
2. Portions of the **Affidavit of Chief Allan Adam**, filed February 4, 2026 (the “Adam Affidavit”) (collectively the **ACFN Affidavits**).

[29] Alberta also seeks to strike the following evidence filed by Blackfoot Nations:

1. The entirety or portions of the **Affidavit of Dorothy First Rider**, filed February 9, 2026 (the “First Rider Affidavit”);
2. The entirety or portions of the **Affidavit of Kendall Panther Bone**, filed February 9, 2026 (the “Panther Bone Affidavit”); and
3. The entirety or portions of the **Affidavit of Herman Many Guns**, filed February 9, 2026 (the “Many Guns Affidavit”) (collectively the **Blackfoot Nations Affidavits**).

[30] *Rule 3.22* of the *Alberta Rules of Court*, Alta Reg 124/2010 addresses evidence on judicial review:

3.22 When making a decision about an originating application for judicial review, the Court may consider the following evidence only:

- (a) the certified copy of the record of proceedings of the person or body that is the subject of the application, if any;
- (b) if questioning was permitted under *rule 3.21*, a transcript of that questioning;

(b.1) if the originating application is for relief other than an order in the nature of *certiorari* or an order to set aside a decision or act, an affidavit from any party to the application;

- (c) anything permitted by any other rule or by an enactment;
- (d) any other evidence permitted by the Court.

[emphasis added]

[31] Affidavit evidence on judicial review is generally inadmissible with narrow exceptions for evidence adduced for the following purposes:

1. To show bias or a reasonable apprehension of bias, where the facts in support of the allegation do not appear on the record.
2. To demonstrate breaches of the rules of natural justice which are not apparent from the record.
3. Background information for other issues such as standing.
4. When the administrative decision maker makes no record, or an inadequate record.

*(Northern Air Charters (PR) Inc v Alberta Health Services*, 2023 ABCA 114 at paras 8-10 and 12 (*Northern Air*) citing *Alberta Liquor Store Association v Alberta (Gaming and Liquor Commission)*, 2006 ABQB 904 at paras 40-42) (the “Exceptions”)

[32] Courts may also allow supplementary evidence when it is essential for providing background and context, including related constitutional arguments or, in Aboriginal matters, information pertinent to the duty to consult (*Swan River First Nation v Alberta (Agriculture and Forestry)*, 2022 ABQB 194 at paras 19-20 (*Swan River*); *Clearview AI Inc v Alberta (Information and Privacy Commissioner)*, 2025 ABKB 287 at para 22 (*Clearview AI*). These additional exceptions are effectively subsets of the older established exceptions (*Northern Air* at paras 11-13).

[33] However, *Rule* 3.22(b.1) is not an exception. This *Rule* expressly permits “an affidavit from any party to the application” where the originating application seeks relief other than an order in the nature of *certiorari* or an order to set aside a decision or act. The traditional exceptions on affidavit evidence apply unless *Rule* 3.22(b.1) is engaged (*Shodunke v Alberta Human Rights Commission & Minister of Public Safety and Emergency Services*, 2024 ABKB 335 at para 4).

[34] Where *Rule* 3.22(b.1) applies, the Court nonetheless retains its ordinary gatekeeping function: the evidence must still be relevant and otherwise admissible, and the Court may assign little or no weight to material that is unreliable, unnecessary, or of minimal probative value.

[35] The Court may strike out all or part of an affidavit that contains frivolous, irrelevant and improper information (*Rule* 3.68(4) of the *Rules of Court*). Impermissible evidence can be grounded in the following categories: argument and/or conclusion, relevance, hearsay, and

opinion evidence (*ANC Timber Ltd v Alberta (Minister of Agriculture and Forestry)*, 2019 ABQB 653 at para 30 (*ANC Timber*)).

[36] Courts approach evidence that comes from hyperlinks to webpages with caution. This was explained in *CM v Alberta*, 2022 ABKB 716 at para 44:

Both the Applicants, in their affidavits, and the Crown, in the attachments to the First and Second Amended Records, include hyperlinks to webpages. The contents of those webpages are not admissible evidence because they may not be static. A YouTube video available today may change or be deleted tomorrow. The same is true for any webpage. For a document or a recording to be admissible as evidence, at a minimum I must be confident that what I am looking at is what the person who swore the affidavit or Dr. Hinshaw was looking at. Similarly, anyone reviewing the record of this action in the future, including potentially the Court of Appeal, must have the same confidence. That is simply not possible with a hyperlink to the internet.

[37] The defining features of hearsay evidence are the introduction of a statement for the proof of its contents and lack of a contemporaneous opportunity to cross-examine the declarant (*ANC Timber* at para 30 citing *R v Khelawon*, 2006 SCC 57 at para 35).

[38] Newspaper articles reproduced in an affidavit can be a form of hearsay. This is addressed in *ANC Timber*, where, at para 73, the Court cited from the Supreme Court of Canada decision in *Public School Boards' Ass. of Alberta v Alberta (Attorney General)*, 2000 SCC 2, where Justice Binnie raised serious concerns about the propriety of newspaper articles as evidence. However, at para 74 of *ANC Timber*, Topolniski J noted the following: "I do not read Justice Binnie's observation [in *Public School Boards'*] as meaning that all newspaper articles must always be rejected. Rather, the Court must always be alive to concerns about their relevance and accuracy."

[39] Affidavits must not contain argument or conclusions (*ANC Timber* at para 32, quoting *Alberta Treasury Branches v Leahy*, 1999 ABQB 185 at paras 84-85).

[40] Legal opinion evidence of a non-expert witness in Affidavit form is inadmissible (*Renfrew Insurance Ltd v Donald*, 2012 ABQB 228 at para 38).

[41] As stated in *Sahaluk v Alberta (Transportation Safety Board)*, 2013 ABQB 683 at para 35:

There is no dispute between the parties as to the nature of the general rule - affidavit evidence should not include argument or the opinion of lay persons. *Alberta (Human Rights Commission) v Alberta Blue Cross Plan* (1983), 48 AR 192 (Alta CA), 193 (CA 1983) ("affidavits ought to be confined to evidence"); *Alberta Treasury Branches v Leahy* (1999), 234 AR 201 (Alta QB), 228 (QB 1999) ("The purpose of affidavit evidence is to place the necessary facts before the court and should not contain argument, opinions or conclusions"); *Renfrew Insurance Ltd v Donald*, 2012 ABQB 228 (Alta QB), 36 ("while ... there is no absolute inadmissibility to lay opinions, admitting them would be ... exceptional and unusual as it will be rare for a lay person's opinion to be of any interest to a trial judge") & *Canalta Concrete Contractors v Camrose* (1985), 38 Alta. L.R. (2d) 153 (Alta. Master), 156 ("it is the function of

a witness to give evidence. Argument is for counsel, not witnesses"). The deponent who gives evidence of which he or she has personal knowledge and is restricted to the facts-in-issue provides the court with material which will assist it to discharge its fact-finding role. Seldom will it be the case that a layman in constitutional litigation can provide an opinion which will be reliable and assist the court.

[42] Alberta submits the impugned evidence is inadmissible because supplementary affidavit evidence on judicial review is limited by the exceptions noted in *Rule 3.22*. Alberta argues that the evidence wholly or predominantly does not fall under the exceptions, and, in any event, should be struck for issues of general admissibility including that the evidence contains hearsay, opinion, argument, irrelevant material, and unreliable material supported by internet hyperlinks.

[43] ACFN and Blackfoot Nations respond that *Rule 3.22*, specifically *Rule 3.22(b.1)* permits the affidavits in these proceedings. They argue that the issues of general admissibility raised by Alberta do not apply or if they do, any residual concerns go to weight rather than admissibility.

[44] In the Originating Applications, the Applicants sought:

- a. a declaration that the *Amended CIA* or parts of it is unconstitutional, including that it or parts of it are inconsistent with s 35 of the *Constitution Act, 1982*;
- b. a declaration that the *Amended CIA* or parts of it is inconsistent with s 92 and 96 of the *Constitution Act, 1867*;
- c. a declaration that Alberta by enacting the *Amended CIA* has improperly and illegally delegated its constitution-amending powers without restriction;
- d. a declaration on the existence of a duty to consult on the impact of a constitutional referendum proposal regarding the secession of Alberta from Canada;
- e. a declaration that Alberta has breached the honour of the Crown;
- f. a declaration that the *Amended CIA* must be interpreted to include the CEO's authority to exercise decision making powers in accordance with the Constitution and not to approve unconstitutional proposals and/or seek advice and direction from the Court where there is a concern with the constitutionality of a constitutional referendum proposal; and
- g. an Order staying the CEO's decision.

[45] The Applicants seek relief that goes beyond an order in the nature of *certiorari*. I reject Alberta's argument that the evidence is only admissible if one of the exceptions applies. *Rule 3.22(b.1)* is engaged and provides a statutory basis to tender affidavit evidence, however the ACFN Affidavits and Blackfoot Affidavits are subject to the general rule for admissibility as outlined above.

#### **a) ACFN Affidavits**

##### **(i) Polenchuk Affidavit**

[46] Alberta argues that the Polenchuk Affidavit should be struck in its entirety generally because it includes inadmissible hyperlinks, contains hearsay and does not present any relevant

or material information for assessing the CEO Decision or the constitutionality of the *Amended CIA*.

[47] ACFN states the impugned portions of the Polenchuk Affidavit are relevant to the constitutional argument that Bill 14 is inconsistent with the Crown's duty to diligently implement the Numbered Treaties and to the assessment of irreparable harm on the Stay Application.

[48] Alberta argues that Exhibits A, E, F, G, H and I should be struck generally as they include inadmissible hyperlinks, and the hyperlinks should be struck for unreliability.

[49] With regards to the hyperlinks, the Court must be satisfied that what it is looking at is what the person who swore the affidavit was looking at. Given that Exhibits A, E, F, G, H and I are verbatim transcripts of what the Affiant heard in video recordings the concerns with reliability are alleviated.

[50] In any event, I am not persuaded that the Polenchuk Affidavit is relevant to the constitutional issues raised in this Application, including the Crown's duty to diligently implement the Numbered Treaties. At this stage, public statements made by third parties do not meet the requisite threshold of relevance. Moreover, given the very limited and temporary nature of the Stay sought, any issue of foreign interference does not arise in a manner material to the disposition of this matter.

[51] The Polenchuk Affidavit is struck in its entirety.

**(ii) Adam Affidavit**

[52] Alberta seeks to strike paras 4-6 as being irrelevant to the CEO Decision, paras 7-11 also on the grounds of being irrelevant as it recounts events leading up to *Sylvestre* and paras 14-16 because they are arguments or legal conclusions.

[53] ACFN argues that paras 4-11 and the corresponding exhibits are relevant to the constitutional arguments relating to Bill 14, to the impact to the Treaty relationship and the honour of the Crown.

[54] I find that with respect to the Adam Affidavit, Chief Adam's evidence about the anticipated impacts on the Treaty relationship and on ACFN is, in significant part, factual in nature and grounded in his role and experience as a Treaty 8 Chief. Such evidence can assist the Court in understanding the claimed harm and the Indigenous perspective that forms part of the context for the issues raised. This evidence is permitted pursuant to *Rule 3.22(b.1) (Swan River and Clearview AI)*.

[55] With regards to paras 14-16 of the Adam Affidavit, the comments provide context for ACFN. To the extent any passages stray into pure legal submissions or conclusory argument, those portions will be given no weight.

[56] No portion of the Adam Affidavit shall be struck.

**b) Blackfoot Nations Affidavits**

[57] Alberta acknowledges that, to the extent portions of the Blackfoot Nations' Affidavits overlap with Alberta's admissions in its Response to the Notice to Admit, those portions may be treated as background. I decline to strike portions of the Affidavits that, as Alberta states, have

become unnecessary in light of the admissions of the same in Alberta's Response to the Notice to Admit facts.

[58] Alberta argues that the remaining portions of Affidavits should be struck on the bases of relevance, hearsay, argument or conclusion, and opinion evidence.

[59] Evidence bearing on the Stay Application and on irreparable harm, as well as evidence providing background and context relevant to Aboriginal claims, including the honour of the Crown and the duty to consult, may properly assist the Court.

[60] All three Affidavits attach as exhibits pleadings from existing court Actions (First Rider Affidavit, Exhibits C, D, E, and F; Panther Bone Affidavit, Exhibits C, D, and E; and Many Guns Affidavit, Exhibits A and B). Alberta admits only the existence of those Actions and limits its admissions to the contents of the commencement documents themselves. The court Actions are relevant to the extent they show that the Blackfoot Nations have asserted rights in a number of proceedings. To the extent the Affiants offer commentary on those Actions, I will provide little or no weight.

[61] Alberta seeks to strike paras 45- 50 of the First Rider Affidavit and corresponding exhibits (Exhibits H, I, J, K, L, M and N), all but Exhibit L being news articles. Alberta submits they constitute irrelevant hearsay. Applying *ANC Timber*, newspaper articles are not invariably inadmissible. In determining their admissibility, the Court must still concern itself with their relevance and accuracy. Here, the paragraphs and exhibits are tendered in support of the proposition that the Alberta Prosperity Project is likely to obtain sufficient signatures for a referendum and has already engaged in discussion with the United States Government concerning possible recognition of Alberta independence. Blackfoot Nations argue that asserted state of affairs is relevant to the question of irreparable harm.

[62] As with the Polenchuk Affidavit, I conclude at this stage, newspaper articles or public statements made by third parties do not meet the requisite threshold of relevance. Further, given the limited and temporary nature of the Stay sought, any steps taken by the Alberta Prosperity Project do not arise in a manner material to the disposition of this matter. Paragraphs 45-50 in the First Rider Affidavit are struck.

[63] As for the balance of the First Rider Affidavit and the Panther Bone and Many Guns Affidavit, I accept that, in proceedings concerning asserted Aboriginal and Treaty rights, and the existence and adequacy of consultation, affidavit evidence may be required to place the issues in their proper factual context. This also includes how they relate to the Constitutional issues raised. The Court must still ensure the Affidavits are confined to relevant matters and do not devolve into generalized political submissions. In my view, the impugned portions of the Blackfoot Nations Affidavits properly address, among other things, the asserted rights at issue, the Applicants' understanding of the initiative process, the decision under review, the absence or adequacy of consultation, and the anticipated impacts said to constitute irreparable harm.

[64] In summary, Alberta has not demonstrated a basis to strike the Blackfoot Nations' Affidavits in whole or in part. To the extent discrete passages amount to argument, legal conclusions, or inadmissible hearsay tendered for the truth of its contents, those portions will be given no weight in the Court's determination of the Originating Applications.

**2. Does the statutory framework in the *Amended CIA* and the *Referendum Act* require the Government to implement the results of a binding referendum?**

[65] The Applicants and Alberta agree that the legislative framework requires the Government to hold a binding referendum. However, Alberta argues that the *Amended CIA*, the *Referendum Act* and the *Act to Give Effect to the Requirement for Clarity as Set out in the Opinion of the Supreme Court of Canada in the Quebec Secession Reference*, SC 2000, c 26 (*Clarity Act*) place limits on Alberta's ability to implement the results of a binding referendum. The Proponent argues that under the legislative framework the Government is not required to hold or implement referendum results.

[66] As a threshold question, it is necessary to determine whether pursuant to the terms of the *Amended CIA*, the Government is required to hold and implement referendum results if the signature threshold is met.

[67] The *Amended CIA* and the *Referendum Act* work in tandem. They provide a framework for citizens to submit legislative and policy proposals to the Legislative Assembly for consideration and possible referral to the voters of Alberta in a referendum and to submit constitutional proposals to be put to voters of Alberta in a referendum (*Chief Electoral Officer of Alberta v Sylvestre*, 2025 ABKB 476 at para 5).

[68] The Second Proposal is a constitutional initiative petition; the *Amended CIA* sets out the process for how such proposals are treated.

[69] Under the *Amended CIA*, a proponent first submits a notice of intent to apply for the issuance of an initiative petition to the CEO (s 1.1). Section 1.1 sets out what the Notice of Intent must contain and specifies what is required of a legislative proposal, a policy proposal or a constitutional referendum proposal (ss 1.1(2)(e), (f), (g)).

[70] Once the Notice of Intent is filed, the CEO shall provide notice to the proponent confirming the Notice of Intent is filed (s 1.1(5) of the *Amended CIA*).

[71] No later than 30 days after receiving notice that the Notice of Intent is filed, the proponent may then apply to the CEO for the issuance of an initiative petition (s 2(1) of the *Amended CIA*). If the application meets the requirements of s 2 of the *Amended CIA*, the CEO notifies the proponent. The proponent must then appoint a chief financial officer, and then the CEO issues the initiative petition (s 3 of the *Amended CIA*).

[72] Once the initiative petition has been issued, the proponent has 120 days to collect signatures supporting the initiative petition (s 4(4) of the *Amended CIA*). The number of signatures must be equal to at least 10% of the total number of votes cast in the last provincial general election for the application to continue to the next stage. In this case, the signature threshold is 177,732.

[73] Upon the 120-day period elapsing or the depositing of the signatures with the CEO, the CEO must determine whether the initiative petition meets the signature threshold (ss 6 and 10 of the *Amended CIA*). If the answer is yes, the CEO shall submit a copy of the initiative petition to the Minister (s 12(1)(b) of the *Amended CIA*).

[74] The *Amended CIA* provides that if the Minister receives a copy of the Second Proposal, he shall refer the Second Proposal to the Lieutenant Governor in Council (LGIC) for the purpose

of a constitutional referendum (s 16(1) of the *Amended CIA*). A referendum must be held within the timelines prescribed (s 16 of the *Amended CIA*).

[75] The Proponent, however, maintains that s 1 of the *Referendum Act* vests the LGIC with the discretion to determine whether to proceed with a referendum. This section provides that the LGIC *may* order that a referendum be held on any question relating to the Constitution of Canada. The Proponent argues that this discretion would allow the LGIC to reject ridiculous proposals. As stated by counsel for the Proponent “Cabinet has the ability just to say no, you know, because, then under the *Referendum Act* as well, a constitutional question has to go forward as a stand-alone question. It’s a requirement of the Act. So again, like you said, why would they spend millions of dollars on a purely stupid question that’s offensive to the vast majority of the population?”

[76] Although pursuant to s 1 of the *Referendum Act*, the LGIC retains discretion over holding a referendum on any question relating to the Constitution of Canada or relating to or arising out of a possible change to the Constitution of Canada, that discretion is not applicable to referendum questions arising from the *Amended CIA*. Section 16(2) of the *Amended CIA* provides that s 16 of the *Amended CIA* is the operative section, not the *Referendum Act*. Section 16(3) makes it mandatory to hold a referendum.

[77] It follows that I do not agree with the Proponent’s interpretation of the legislative scheme. Section 1 of the *Referendum Act* does not give the LGIC the ability to stop or prevent a referendum on an initiative proposal initiated pursuant to the *Amended CIA*. Section 16 of the *Amended CIA* governs and makes it mandatory to hold a referendum.

[78] The Applicants and Alberta both interpret the legislative scheme in the same way. They agree that if the signature threshold is met, there must be referendum. If the referendum is successful, the result is binding on the Government.

[79] At this point in the process, Alberta and the Applicants dispute what steps are mandatory with regards to implementation.

[80] The *Referendum Act* provides that if a constitutional referendum is held and the majority of the ballots vote the same way on a question stated, the result is binding on the Government that initiated the referendum (s 4(1) of the *Referendum Act*). If the results are binding, the Government that initiated the referendum shall, as soon as practicable, take any steps within the competence of the Government of Alberta that it considers necessary or advisable to implement the results of the referendum (s 4(2) of the *Referendum Act*). If the results of a referendum are binding, the Government that initiated the referendum is not *required* to implement the results of the referendum if doing so would contravene s 1 to 35.1 of the *Constitution Act, 1982* (s 4(3) of the *Referendum Act*).

[81] Alberta argues that the ss 4(2) and 4(3) of the *Referendum Act* place limitations on the Government’s ability to implement the results of a binding referendum. Alberta argues that implementation is limited to taking steps that are “within the competence of the Government of Alberta” and to steps “that it considers necessary or advisable”. Alberta further argues that s 4(3) states that the Government is not required to implement the results if doing so would contravene ss 1 to 35.1 of the *Constitution Act, 1982*.

[82] Alberta further points to s 8.11(3) of the *Referendum Act* as a limitation to implementation which says that nothing in a referendum held under the *Act* is to be construed as

abrogating or derogating from the existing Aboriginal or Treaty Rights of aboriginal people of Canada that are recognized and affirmed by s 35 of the *Constitution Act, 1982*.

[83] Lastly, Alberta argues that an amendment to the Constitution would be required for any province to secede from Canada, which would require negotiations involving at least the governments of all of the provinces and the Government of Canada (s 3(1) of the *Clarity Act*).

[84] None of the limitations identified by Alberta operate before a referendum is held or before s 4(1) of the *Referendum Act* is engaged, which requires the Government to consider implementation of a binding result. I accept that ss 4(2), 4(3), and 8.11(3) of the *Referendum Act*, together with s 3(1) of the *Clarity Act*, may constrain implementation. However, the scope and practical effect of those constraints depend in significant measure on Alberta's own interpretation of them, including whether Alberta treats them as real legal limits on implementation.

[85] The *Amended CIA* requires that a constitutional referendum be held if the signature threshold is met. I find that nothing in the *Amended CIA* authorizes the LGIC or the Government, in general, to decline to proceed to a referendum once the signature threshold has been satisfied. It follows that once the CEO issues a citizen led initiative petition, it sets in motion a sequence of mandatory statutory steps that bind the Government to implement the results of a referendum.

### **3. Should the CEO Decision be set aside on judicial review?**

#### **a) Standard of review**

[86] The Applicants and Alberta agree that the standard of review is governed by the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*).

[87] The presumptive standard of review is reasonableness (*Vavilov* at para 16). To determine whether the decision as a whole is reasonable, the Court must consider whether the decision demonstrates the essential characteristics of reasonableness - justification, transparency, and intelligibility -- and whether it is justified with respect to the relevant factual and legal constraints that bear on the decision (*Vavilov* at para 99).

[88] The party challenging the decision bears the burden of demonstrating that the decision is unreasonable (*Vavilov* at para 100). There are two types of fundamental flaw: the first is a failure of rationality internal to the reasoning process; and the second arises when a decision is in some respect untenable in light of the relevant factual and legal constraints that bear on it (*Vavilov* at para 101).

[89] The standard of review is presumed to be reasonableness; however, this presumption may be displaced when the rule of law necessitates the application of the correctness standard. The standard of correctness applies for certain categories of questions, namely constitutional questions, general questions of law of central importance to the legal system as a whole, and questions related to the jurisdictional boundaries between two or more administrative bodies (*Vavilov* at para 17).

[90] In this case, the Applicants allege a breach of the duty to consult with First Nations, breaches of Aboriginal and Treaty rights under s 35 of the *Constitution Act, 1982*, and a breach of the duty of diligent implementation of Treaty rights.

[91] The existence, extent, and content of the duty to consult are legal questions reviewable on the standard of correctness (*Ermineskin Cree Nation v Canada (Environment and Climate Change)*, 2021 FC 758 at para 82).

[92] The standard of correctness also applies to constitutional questions including the scope of Aboriginal and Treaty rights under s 35 of the *Constitution Act, 1982 (Vavilov)* at para 55). The Applicants submit that the applicable standard of review is reasonableness for the CEO's interpretation and application of the *Amended CIA*, including s 71.1, and correctness for the existence and content of the duty to consult. The Applicants also submit that the standard of review is correctness on whether the Impugned Provisions (or portions thereof) that mandated the CEO Decision are unconstitutional, in particular they invoke s 35 of the *Constitution Act, 1982* and, additionally Blackfoot Nations invokes ss 92 and 96 of the *Constitution Act, 1867*.

[93] Alberta argues that the only standard of review applicable to the CEO Decision is reasonableness. While they agree that the standard of correctness applies to constitutional questions and whether the duty to consult is triggered, Alberta argues that the correctness standard is not engaged in a review of the CEO Decision because the CEO is not empowered by the *Amended CIA* to consider constitutional questions, is not a constitutional decision-maker, nor is the CEO the "Crown" for the purpose of consultation with First Nations.

**b) Did the CEO err in law in interpreting and applying the Transitional Provisions, particularly s 71.1(1), by treating the First Proposal as one deemed not to have been made?**

[94] The Applicants seek review of the CEO Decision on the basis that the CEO's interpretation and application of s 71.1(1) of the *Amended CIA* was unreasonable. ACFN and Blackfoot Nations argue that the CEO erred in law in interpreting and applying the Transitional Provisions, particularly s 71.1(1), by treating the First Proposal as one deemed not to have been made.

[95] Alberta and the Proponent's position is that the CEO's application of the Transitional Provisions was reasonable.

**(i) The Transitional Provisions**

[96] Section 71.1 of the *Amended CIA* states:

**Transitional Provisions**

71.1(1) An application for the issuance of an initiative petition made before the coming into force of this section for which an initiative petition has not been issued under section 3(3)(a) as of the coming into force of this section is deemed to have never been made.

(2) If an application is deemed to have never been made under subsection (1), the applicant may submit a notice of intent with the same subject-matter as the application deemed to have never been made, and if the applicant does so within 30 days of the coming into force of this section, the application fee required under section 2(2)(h) is waived in respect of a new application submitted in respect of the notice of intent.

(3) If the Chief Electoral Officer has stated a question in the form of a special case to the Court under section 2.1 as it read immediately before the coming into

force of this section, the special case is discontinued without costs to any party or any person granted status to intervene in the special case.

(4) Except as otherwise provided in this section, this *Act* as it read when an application for the issuance of an initiative petition was submitted shall apply in respect of that application and any resulting initiative petition. [emphasis added]

[97] Though the CEO did not provide reasons for the CEO Decision, I am satisfied based on the sequence of events and evidence before the Court that the CEO applied the Transitional Provisions to his decision to issue the Second Proposal. I have considered the following in arriving at this conclusion:

- a. There is no dispute that the First Proposal and the Second Proposal are substantially the same questions.
- b. On July 4, 2025, the Proponent submitted an application related to the First Proposal, along with the prescribed fee of \$500. A handwritten notation on a letter dated December 11, 2025, from counsel for Mr. Sylvestre to the CEO indicates that there was a request to apply the \$500 fee from the previous application to the second application.
- c. The evidence before the Court includes an admission by the CEO to the effect that he “applied the transitional provisions in Bill 14 to apply the application fee from Mr. Sylvestre’s first application to the Notice of Intent contained in the Certified Record in the present proceedings.”
- d. Absent the Transitional Provisions, the application fee was not otherwise refundable in these circumstances (*Citizen Initiative Regulation*, Alta Reg 54/2022 (in effect between 2022-04-05 and 2026-01-06), s 2(3)).

[98] Having relied on the Transitional Provisions, it is therefore evident that the CEO treated the First Proposal as an application that, by operation of s 71.1(1), was deemed never to have been made.

**(ii) Legal principles applicable to a review of the CEO’s interpretation of the Transitional Provisions**

[99] When an administrative decision maker interprets its enabling statute, the presumption of reasonableness applies (*Vavilov* at para 7). Matters of statutory interpretation are not treated uniquely and, as with other questions of law, may be evaluated on a reasonableness standard. This is because reviewing courts are accustomed to resolving questions of statutory interpretation in a context in which the issue is before them at first instance or on appeal, and where they are expected to perform their own independent analysis and come to their own conclusions (*Vavilov* at para 115).

[100] The reasonableness of an administrative decision maker’s interpretation of its enabling statute depends on the statutory context and language chosen by the legislature (*Vavilov* at para 110).

[101] The administrative decision maker’s interpretation must be consistent with the modern principle of statutory interpretation (*Vavilov* at para 120). A court interpreting a statutory provision does so by applying the “modern principle” of statutory interpretation, that is, that the words of a statute must be read “in their entire context and in their grammatical and ordinary

sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Vavilov* at para 117 quoting *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para 21 (*Rizzo*) and *Bell ExpressVu Ltd Partnership v Rex*, 2002 SCC 42, [2002] 2 SCR 559 at para 26).

[102] The court must examine the administrative decision as a whole, including the reasons provided by the decision maker and the outcome that was reached (*Vavilov* at para 116).

[103] Decision makers are not required "to explicitly address all possible shades of meaning" of a given provision, however, if it is clear that the administrative decision maker may well, had it considered a key element of a statutory provision's text, context or purpose, have arrived at a different result, its failure to consider that element would be indefensible, and unreasonable in the circumstances. A reviewing court must determine if an “omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker” (*Vavilov* at para 122).

[104] There may be other cases in which the administrative decision maker has not explicitly considered the meaning of a relevant provision in its reasons, but the reviewing court is able to discern the interpretation adopted by the decision maker from the record and determine whether that interpretation is reasonable (*Vavilov* at para 123).

[105] The Court in *Sylvestre* (relying on *Piekut v Canada (National Revenue)*), 2025 SCC 13 at para 45 (*Piekut*) stated that even if the words in the statute have a clear meaning, the court must still consider the context and purpose of a statute before settling upon the meaning.

[106] Words that appear clear and unambiguous may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity is a logical result of the modern approach to interpretation (*Montréal (Ville) v 2952-1366 Québec inc*, 2005 SCC 62 at para 10).

[107] The Courts have long rejected a literal approach to statutory interpretation, instead the section of the statute in question must be read in its entire context – the inquiry involves examining the history of the provision at issue, its place in the overall scheme of the Act, the object of the Act itself, and Parliament's intent both in enacting the Act as a whole, and in enacting the particular provision at issue (*Brick Protection Corporation v Alberta (Provincial Treasurer)*, 2011 ABCA 214 at paras 31-32 (*Brick Protection*) quoting the Supreme Court in *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at para 34).

**(iii) On a plain reading of the Transitional Provisions, is the First Proposal a proposal deemed never to have been made?**

[108] Blackfoot Nations and Alberta each argue s 71.1(1) of the *Amended CIA* should be interpreted based on its plain meaning. However, they disagree on whether, on that approach, s 71.1(1) applies to the First Proposal. The difference between the parties’ competing interpretations turns on the impact of the CEO’s rejection of the First Proposal. Alberta urges the Court to find that s 71.1(1) applies regardless of whether the First Proposal was rejected by the CEO.

[109] Alberta’s position is that the CEO’s interpretation of the Transitional Provisions was reasonable. Alberta argues that the CEO’s interpretation of s 71.1(1) is based on the plain meaning of the section: if an application has been made and a petition has not been issued under s 3(3)(a), regardless of whether or not it was previously rejected, then it is deemed never to have

been made. On that interpretation, the First Proposal falls within s 71.1(1) because it was made and no petition was issued. Therefore, upon satisfaction of the technical criteria contained in s 2 of the *Amended CIA*, the CEO had no discretion to refuse the application and was required to proceed to assess and authorize the Second Proposal. In short, Alberta's position is that approval of the Second Proposal was mandatory.

[110] In contrast, Blackfoot Nations argument is based on the language used in the Transitional Provisions and the interplay between the subsections of those provisions. Blackfoot Nations argue that the CEO erred in its interpretation of the *Amended CIA*. Blackfoot Nations argue the CEO's rejection of the First Proposal creates a category of proposal that is not captured by s 71.1(1). In short, the First Proposal is not an application deemed never made under s 71.1(1) of the *Amended CIA* because the CEO rejected the First Proposal pursuant to s 3(1) of the *Previous CIA*.

[111] Blackfoot Nations argue that the phrase "for which an initiative petition has not been issued" in s 71.1(1) must be interpreted as referring only to applications for which no decision was made under s 3(1) of the *Previous CIA* (i.e., for which a rejection did not occur). Section 71.1(1) only captures applications that were pending when the *Amended CIA* came into force. This interpretation is additionally supported by the lack of any clause in the *Amended CIA* that designates previous applications as compliant with the updated Notice of Intent requirements contained in s 1. As a result, the *Amended CIA* nullified all applications for which no s 2 compliance decision had been rendered, and s 71.1(1) deemed only *pending* applications as never having been made.

[112] The Blackfoot Nations argument finds further support in the following:

- a) The reference in s 71.1(1) to s 3(3)(a) must refer to the *Previous CIA* because s 71.1(1) addresses situations in which no initiative petition had been issued before it came into force. Under the *Previous CIA*, an initiative petition could only be issued if the CEO did not reject the application for non-compliance with s 2, was satisfied that s 2 was met, and the Chief Financial Officer requirements were satisfied.
- b) The Transitional Provisions do not refer to applications that did not meet the requirements of s 2 of the *Previous CIA*. As such they are not applications that are deemed never to have been made.
- c) Section 71.1(4) of the Transitional Provisions provides that the *Previous CIA*, as it read when the First Proposal was submitted, continues to apply. This preserves the requirement that the proposal comply with s 2, including s 2(4).
- d) The requirements of s 2 of the *Previous CIA* applied when the Court released its decision in *Sylvestre*. The CEO's decision rejecting the First Proposal for non-compliance with s 2(4) of the *Previous CIA* was neither set aside nor overturned. Section 71.1(1) cannot be interpreted as reviving the proposal or deeming it never to have been made. As such, the First Proposal is not an application deemed never to have been made.

[113] In my view, on a plain reading of the statute, s 71.1(1) does not capture the First Proposal. I reject Alberta's argument that a plain reading of the Transitional Provisions leads to the conclusion that s 71.1(1) applies regardless of whether a proposal has been rejected or not.

[114] On December 8, 2025, pursuant to s 3(1) of the *Previous CIA*, the CEO formally rejected the First Proposal. Section 3(1) is as follows:

If the Chief Electoral Officer is not satisfied that the requirements of section 2 have been met, the Chief Electoral Officer shall reject the application and notify the applicant of the rejection and the reasons for the rejection.

[115] The CEO's rejection brought the First Proposal to an end. Having been rejected, the First Proposal could not also be characterized as an initiative petition that "has not been issued under section 3(3)(a)". Section 3(3)(a) applies to initiative petitions that meet certain requirements. In the context of the Transitional Provisions, it applies to initiative petitions that were pending at the time the amendments to the *CIA* came into force. A plain reading of the legislation does not lead to the conclusion that a rejected proposal is also a pending proposal under s 3(3)(a). Simply put, the First Proposal was not pending when the amendments came into force. It had been rejected and had come to an end.

[116] In any event, the Supreme Court rejects a literal approach (*Brick Protection*). Even if the words in the statute have a clear meaning, the court must still consider the context and purpose of a statute before settling upon the meaning (*Piekut* at para 45). If the CEO fails to consider a key element of the statutory provision's text, context or purpose – and its consideration may have altered the outcome – the CEO Decision cannot be reasonable (*Vavilov* at para 122). That determination cannot be made on a plain meaning interpretation, the modern approach to statutory interpretation looking at the text, context and purpose is required.

**(iv) What is the context and legislative intent of the *Amended CIA*?**

[117] The CEO's interpretation must be consistent with the modern principle of statutory interpretation which requires the words of the *Amended CIA* to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme and object of the *Act* and the Legislature's intent (*Vavilov* at paras 117 and 120).

[118] The CEO cannot adopt an interpretation it knows to be inferior — albeit plausible — merely because the interpretation in question appears to be available and is expedient. The CEO's responsibility is to discern meaning and legislative intent, not to "reverse-engineer" a desired outcome (*Vavilov* at para 121).

[119] In the next sections I will consider the context in which the provisions of the *Amended CIA* operate and the legislative intent.

**(A) What is the context in which the legislative amendments to the *CIA* occurred?**

[120] The Proponent argues that the Transitional Provisions were *intended* to capture the First Proposal and should be interpreted as having done so. In other words, the Transitional Provisions are intended to operate retroactively.

[121] Alberta did not provide meaningful arguments relating to the modern approach of statutory interpretation. Rather, Alberta submits that the CEO Decision can be resolved by a plain reading of s 71.1(1) of the *Amended CIA*. Alberta argued that s 71.1(1) addresses the status of existing applications and removes any uncertainty about which statutory process applies. Absent this uncertainty no presumption of retroactive application applies. They further argue there was nothing improper in enacting transitional provisions to govern applications. Therefore,

although the *Sylvestre* action had been determined before the *Amended CIA* came into force, the Transitional Provisions nevertheless authorized the CEO to approve the Second Proposal, provided the requirements of s 2 of the *Amended CIA* were met.

[122] As indicated above, the Applicants both argue that s 71.1(1) should be interpreted as applying only to applications that remained pending before the CEO when the amendments came into force. They say the action in *Sylvestre* was not discontinued.

[123] The timing of both the *Sylvestre* decision and *CIA* amendments are crucial to understanding the context. Prior to the Court hearing final arguments in *Sylvestre* on December 5, 2025, Alberta sent a letter dated December 4, 2025, to the Court advising of Bill 14. Alberta advised the Court that the pending Special Case would be affected. It said: “once this legislation takes legal effect, this Action will be discontinued” (*Sylvestre* at para 250). Bill 14 contained the following amendment:

71.1(1)(3) If the Chief Electoral Officer has stated a question in the form of a special case to the Court under section 2.1 as it read immediately before the coming into force of this section, the special case is discontinued without costs to any party or any person granted status to intervene in the special case.

[124] The Proponent argues the amendments were introduced on December 4, 2025, because the Legislature could see that the Court in the Special Case was “heading down a path that could lead to an error in law that’s away from what we intended as a Legislature.” The amendments were drafted to intentionally capture the litigation that was then before the Court so that it could be discontinued. The letter sent to the Court in *Sylvestre* by Alberta supports the interpretation that the Legislature intended the Transitional Provisions to discontinue the litigation.

[125] While Alberta also advances the position that the Legislature intended to discontinue the Special Case, they say it is because there were concerns about delay. The Legislature was aware of the Special Case and wanted to give citizens the ability to bring forward proposals without them getting prematurely mired in Court processes. According to Alberta, the Legislature was aware of the possibility that the decision in *Sylvestre* might be released. Alberta asserts the amendments operated as they were contemplated.

[126] Considering the letter sent to the Court in *Sylvestre*, along with the amendments themselves, I accept that the amendments were intended to discontinue *Sylvestre*. Although I accept this was the intention, I must consider whether this is what occurred.

[127] The analysis begins with the temporal application of an amendment to legislation. First, where a change in law is purely procedural, in that applying it would not in any circumstances affect a substantive legal interest, such as a substantive right or liability, the new rule is presumed to apply immediately to all (*R v Archambault*, 2024 SCC 35 at para 204 (*Archambault*)).

[128] Second, there is a presumption against retroactivity meaning that a change to the law is presumed not to attach “new prejudicial consequences” to events that occurred before the change. If the new rule interferes with the legal consequences flowing from events that occurred before the change, the new rule is presumed not to apply (*Archambault* at para 206).

[129] The presumption against retroactivity is also codified in s 35 of the *Interpretation Act*, RSA 2000, c I-8:

35(1) When an enactment is repealed in whole or in part, the repeal does not  
[...]

(b) affect the previous operation of the enactment so repealed or anything done or suffered under it...

[130] Alberta's position is that the Legislature had authority to repeal the legislation, immunize itself from liability, and extinguish the action in *Sylvestre (Ontario Place Protectors v HMK in Right of Ontario)*, 2024 ONSC 4194 at paras 27 and 41). Alberta argues the present circumstances are similar to those found in *Alberta v Kingsway General Insurance Company*, 2005 ABQB 662 (*Kingsway*) where the Government passed legislation that extinguished *Kingsway's* cause of action against the Government. *Kingsway* argued it was *ultra vires* the Government to extinguish the cause of action.

[131] The Court in *Kingsway* found that the Legislature has the right to retroactively amend existing legislation, that retroactivity is valid if the Legislature acts within its own competence, and retroactive legislation can target pending actions, regardless of the stage reached in the proceedings (*Kingsway* at para 149).

[132] *Kingsway* is distinguishable from the circumstances of this case in that the impugned legislation in that case extinguished a cause of action with specific reference to all existing and future causes of action. It therefore applied both retroactively and prospectively to prevent a specific type of claim against the Crown. In contrast, the Transitional Provisions at issue in this case do not purport to extinguish a cause of action. Rather, they are intended to transition pending proposals for petitions that have not yet been approved from the *Previous CIA* to the *Amended CIA*.

[133] *Kingsway* is also unique in that it named a specific action, by Court file number, that was to be discontinued. Importantly, the action in that case had not yet been decided. The legislation at issue in *Kingsway* was therefore consistent with the principle that "statutes should not be given retrospective operation in the absence of an intention to do so that is either expressed in, or is necessarily implied by the statute" (*Angus v Sun Alliance Insurance Co*, [1988] 2 SCR 256 at para 28).

[134] In this case, the Transitional Provision that purported to discontinue actions is as follows:

71.1(3) If the Chief Electoral Officer has stated a question in the form of a special case to the Court under section 2.1 as it read immediately before the coming into force of this section, the special case is discontinued without costs to any party or any person granted status to intervene in the special case.

[135] Section 71.1(3) does not discontinue causes of action, as was the case in *Kingsway*, nor does it speak to retroactivity.

[136] Most significantly, the Court in *Sylvestre* heard the application and rendered its decision prior to the coming into force of the amendments set out in Bill 14. The Court stated, "Contrary to the pending *JSAA 2025 s 71.1(3)*, this case cannot be discontinued, and the Court cannot be silenced because the case has been decided" (*Sylvestre* at para 254).

[137] I agree with the Court's conclusion in *Sylvestre*. Having been decided by the Court, s 71.1(3) could not then discontinue the Special Case. To conclude otherwise would undermine the

rule of law. The only course of action available to the Respondents after the decision was rendered was an appeal.

[138] Further, following the release of the decision in *Sylvestre*, on December 8, 2025, the CEO rejected the First Proposal. Applying the presumption against retroactivity, the repeal of s 2(4) of the *Previous CIA* does not affect the prior operation of that provision or anything done under it. This includes the CEO's written rejection of the First Proposal.

[139] There is no section of the *Amended CIA* that explicitly speaks to how previously rejected applications should be dealt with. Section 71.1(2) of the *Amended CIA* is the only section of the *Amended CIA* that addresses applications that were previously submitted. It states:

If an application is deemed to have never been made under subsection (1), the applicant may submit a notice of intent with the same subject-matter as the application deemed to have never been made, and if the applicant does so within 30 days of the coming into force of this section, the application fee required under section 2(2)(h) is waived in respect of a new application submitted in respect of the notice of intent.

[140] This section allows only applications that are deemed never to have been made to be resubmitted. It follows that because the First Proposal was rejected, it cannot be resubmitted.

**(B) What is the legislative intent with respect to initiative proposals that impact ss 1 – 35.1 of the *Constitution Act, 1982*?**

[141] Were ss 2(4) and 2.1 removed from the *Previous CIA* for the purpose of allowing unconstitutional questions to proceed to a referendum? The answer to this question is no. As discussed below, I find that these sections were removed to expedite the process and ensure referendum proposals were not delayed by Court proceedings.

[142] ACFN argues that the CEO's ability to make decisions under the *Amended CIA* should be interpreted within the context of the *Amended CIA*'s legislative history. Amendments to a statute are to be “construed together with the original *Act* to which they relate as constituting one law and as part of a coherent system of legislation; the provisions of the amendatory and amended *Act* are to be harmonized, if possible, so as to give effect to each”: Ruth Sullivan, *Sullivan on the Construction of Statutes*, 7<sup>th</sup> ed (Markham, Ont: LexisNexis, 2022 at p 394.

[143] Several amendments were previously made to the *Amended CIA* via Bill 54, *Election Statutes Amendment Act, 2025*, 1<sup>st</sup> Sess, 31<sup>st</sup> Leg, 2025 (Bill 54) and Bill 14. ACFN contends ss 2(4) and 2.1 were key features of the prior scheme and relies on excerpts from Hansard to support this position.

[144] Alberta cautions the Court not to place too much reliance on Hansard debates, especially reliance on comments made by opposition members: the “intent of particular members of Parliament is not the same as the intent of Parliament as a whole” (*Reference re Impact Assessment Act*, 2023 SCC 23 at para 89 (*Impact Assessment*)). Frailties of Hansard evidence are many (*Rizzo* at para 35). Such evidence “can play a limited role in the interpretation of legislation... Courts must approach parliamentary debates with great care, acknowledging that the record will often be full of contradictory statements” (*Impact Assessment* at para 89).

[145] In their materials, ACFN relies on statements made by the Premier and the Minister of Justice including the following statements made in the Legislative Assembly in 2021:

The Minister of Justice, specifically referring to subsection 2(4) insisted the “Bill is clear that an initiative petition under Bill 51....would not contravene sections 1 to 35.1 of the Constitution Act”: see Alberta, Legislative Assembly, Hansard, 30<sup>th</sup> Legislature, 2<sup>nd</sup> Session, No 108 (2 June 2021 at 5163).

When further pressed about who would determine whether a petition contravened ss 2(4), the Minister of Justice stated: “[s]o all of those, you know, ramblings about section 2(4) and the desire for Bill 51 to strip the people of their Charter rights from sections 1- through 35.1 are completely not true and misleading” : see Alberta, Legislative Assembly, Hansard, 30<sup>th</sup> Legislature, 2<sup>nd</sup> Session, No 108 (2 June 2021 at 5163).

[146] Bill 14 removed ss 2(4) and 2.1 from the *Previous CIA*. Bill 14 was introduced in the Legislative Assembly on December 4, 2025, and it received Royal Assent on December 11, 2025. Three questions were asked about Bill 14 on December 8, 2025. In response to one of these questions, the Premier spoke to the purpose of the Bill:

Citizen initiative is meant to be permissive. It’s meant to allow for citizens to identify an issue that they can be a collection of their fellow citizens to come together to put it on a ballot so that it can be voted on. It is not meant to have gatekeepers. We don’t want to see a gatekeeper in the Chief Electoral Officer. We don’t want to see a gatekeeper in the court either. We are the elected representatives. We make the decisions. We are a parliamentary democracy. That’s in law 101. Maybe the former professor didn’t take that course. We do not have court supremacy, it’s parliamentary supremacy.

[147] The Premier’s statements are consistent with the arguments made by Alberta in Court to the effect that the purpose of Bill 14 was “to avoid delays, facilitate and streamline...”

[148] The record discloses that the Government of Alberta is committed to honouring Treaty rights. In the context of amendments to the *Referendum Act*, the Minister of Justice said the following on March 9, 2026:

...Alberta’s government is absolutely committed... to protecting and upholding and honouring the inherent rights of First Nations treaties in this province. Any and every single one of the referendum questions must be constitutional. It says so right in the act. That means that no question can breach the Constitution, and the reality is that we will honour treaties 6, 7, and 8 in this province. This is nonnegotiable.

[149] While I accept there is some ambiguity in what the Legislature intended by removing s 2(4) and 2.1 of the *Previous CIA*, the record suggests that the purpose of the amendments was to streamline the process and avoid delay. Concerns were expressed that the citizen initiative process was being prematurely slowed down by Court processes. It is clear from the statements by the Minister of Justice that Alberta remains committed to honouring Treaty rights.

[150] I note however that although there may have been concern that precipitated the amendments, the decision in *Sylvestre* was not delayed.

(v) **Conclusions – The CEO’s interpretation of the *Amended CIA* is a reviewable error**

[151] I find that based on a plain reading of the amendments, the Transitional Provisions do not capture the First Proposal. The Transitional Provisions are drafted to capture only those initiative petitions that remained pending. The First Proposal was rejected three days prior to the coming into force of the Transitional Provisions – it was not pending when the Transitional Provisions came into force.

[152] While the Government may have wished to discontinue the Action in *Sylvestre*, this is not what occurred. The legislative intent cannot override the factual sequence of events, nor can it operate retrospectively without explicit language to that effect.

[153] The Legislature’s amendments were driven by concerns for delay. There is nothing in the legislative intent to suggest the Government wished to pursue a referendum that was rejected by the CEO because it did not meet the constitutional requirements of s 2(4). Rather, Government wanted to ensure constitutional litigation occurred after the referendum was held. This was to avoid delay. Having received a timely answer on the Special Case, this concern was extinguished and there is nothing to suggest the intention was to proceed despite the CEO having concluded it did not meet the requirements of the *Previous CIA* because it violated ss 1 – 35.1 of the *Constitution Act, 1982*.

[154] The CEO did not provide reasons for his decision. Based on the sequence of events, the CEO relied on the Transitional Provisions. The First Proposal and the Second Proposal are largely the same question. The First Proposal could not be both finally rejected under the former statute and nevertheless capable of “transition” under the *Amended CIA* at s 71.1(1). The First Proposal was not an initiative that could be “deemed not to have been made.” It was rejected and had come to an end. Further, there is no basis to conclude that the amendments could operate retroactively to undo the CEO’s rejection of the First Proposal nor was there a basis for the CEO to conclude that the Legislature intended for this initiative proposal to proceed despite it having been rejected because it did not meet Constitutional pre-conditions.

[155] The CEO erred in law in applying the Transitional Provisions to the First Proposal. That error was central to the CEO Decision and undermines the rationality of the decision. The CEO did not interpret the Transitional Provisions in a manner consistent with the text, context and purpose which he was required to do. The Transitional Provisions, properly interpreted, did not permit the Transitional Provisions to apply to the First Proposal. The CEO’s failure to consider the text, context and purpose, key elements, affected the outcome and renders the CEO Decision unreasonable.

**c) Did the CEO err by not rejecting the Second Proposal in the face of *Sylvestre*?**

[156] Blackfoot Nations argues the CEO erred in failing to consider and apply *Sylvestre*, which required rejection of the Second Proposal on the basis that it contravened s 35 of the *Constitution Act, 1982*.

[157] Blackfoot Nations says that by approving the Second Proposal the CEO acted contrary to law, and the CEO Decision contravenes the Blackfoot Nations’ Treaty rights and thus, s 35 of the *Constitution Act, 1982*.

[158] Alberta argues there was no need for the CEO to consider *Sylvestre* because that case did not make broader pronouncements about the constitutionality of the First Proposal outside of the context of s 2(4). Rather, Alberta says, *Sylvestre* stands for the proposition that s 2(4) would be contravened by *unilateral* secession; seceding in a legal and constitutional manner would require negotiated constitutional amendments. Essentially, Alberta says the CEO did not need to consider whether a proposal contravenes ss 1-35.1 of the *Constitution Act, 1982*, and in fact had no discretion to reject a proposal once the statutory requirements in the *Amended CIA* were met.

[159] In order for the Court to accept the Blackfoot Nations' argument, I must find that *Sylvestre* clearly concluded that proposed constitutional referenda aimed at Alberta separation contravene s 35 of the *Constitution Act, 1982*.

[160] The First Proposal and Second Proposal asked substantially the same question – whether Alberta should cease to be part of Canada. The Court in *Sylvestre* specifically recognized that Alberta independence would fundamentally contravene the Numbered Treaties, including Treaty 7 and 8:

[214] Alberta independence would contravene the Numbered Treaties both as a matter of law and as a practical matter by removing Canada and substituting an independent Alberta as the entity responsible for fulfilling treaty obligations. As explained earlier, whether this contravention could be justified pursuant to *Sparrow* cannot be addressed in this case.

[...]

[231] The Numbered Treaties, as discussed earlier, confirm the right of First Nations to move around the Treaty tracts for the purpose of, among other things, hunting and fishing. As such, any constraint on mobility to pursue such activities imposed by an international border between an independent Alberta and Canada on First Nations' mobility rights would contravene the Numbered Treaties. The modest assumption that an independent Alberta and Canada, like typical independent sovereign countries, would control who crosses their borders, and taking notice of the negative impact of existing international borders on Indigenous people's ability to engage in activities are protected by the Numbered Treaties, leads to the inevitable conclusion that an independent Alberta would contravene the Numbered Treaties.

[...]

[245] Treaty rights are “recognized and affirmed,” not “guaranteed” and they are incorporated by reference, not specified. These are distinctions without a difference. Perhaps an independent Alberta would adopt a provision like *Constitution Act, 1982* s 35 and recognize and affirm Treaty rights but, for the reasons explained above, Alberta cannot succeed to the Numbered Treaties without the consent of First Nations. Moreover, this decision has concluded that the transformation of provincial and territorial borders into international borders would contravene the Numbered Treaties by significantly impairing the exercise of Treaty rights by First Nations.

(*Sylvestre* at paras 214, 231 and 245).

[161] Blackfoot Nations argues that, as a delegated decision-maker appointed pursuant to s 2 of the *Election Act*, the CEO must exercise his authority in a manner consistent with the Constitution and in accordance with the law, including *Sylvestre*. Blackfoot Nations cites the following from *Vavilov* at para 56:

The Constitution – both written and unwritten – dictates the limits of all state action. Legislatures and administrative decision makers are bound by the Constitution and must comply with it.

[162] Blackfoot Nations argues that, despite the purported removal of constitutional compliance from the initiative petition process through Bill 14, the CEO was not empowered to issue the Second Proposal. He continued to be bound by the Constitution and had an obligation to comply with it. The Constitution is the supreme law of Canada (*Constitution Act, 1982*, s 52(1)) and there is a presumption, based on constitutional supremacy, that legal decisions will consider the supreme law of Canada.

[163] Blackfoot Nations argues that the proper interpretation of the *Amended CIA* includes the CEO's authority to exercise decision-making powers in accordance with the Constitution and to either not approve unconstitutional proposals, or seek advice and direction from the Court if there is a concern about the constitutionality of a constitutional referendum proposal.

[164] I agree with Blackfoot Nations that the CEO erred in approving the Second Proposal in the face of *Sylvestre*. The same essential question had already been found to contravene s 35 of the *Constitution Act, 1982*. This is information that formed part of the context and record before the CEO, and that he, as an administrative decision-maker, had to consider. The omission of the CEO to consider *Sylvestre* and the findings within do not inspire confidence in the outcome reached by the CEO (*Vavilov* at para 122). Approving the Second Proposal, in the face of the findings in *Sylvestre*, was unreasonable and the CEO erred in granting the approval.

**d) Is the CEO Decision reviewable on the basis that the Crown did not meet its duty to consult with the Applicants?**

[165] The Applicants contend that the duty to consult was triggered by the CEO Decision, and Alberta's failure to undertake consultation results in the CEO Decision being deemed incorrect. ACFN raised this as a primary argument while Blackfoot Nations raised this as an alternative argument.

[166] The Respondents argue that the CEO has no jurisdiction to determine whether the duty to consult was triggered. While the CEO takes no position as to whether a duty to consult arises, the Proponent and Alberta also argue that no duty to consult was triggered.

**(i) Does the CEO have jurisdiction to determine whether the duty to consult arises?**

[167] The first question is whether the *Amended CIA* gives the CEO the mandate or ability to consider whether the duty to consult is triggered.

[168] The Applicants argue that the *Amended CIA* provides the CEO jurisdiction to consider whether the duty to consult is triggered.

[169] The Respondents argue that the CEO is not a decision maker that has the jurisdiction to determine whether the duty to consult is triggered, whether it has been satisfied, or to engage in consultation himself.

[170] The Proponent further argues the Applicants' argument is an attempt to transform a non-adjudicative administrative step into a constitutional decision, which the Proponent argues, it is not.

[171] The Applicants contend that this is an issue of jurisdiction and the standard of review at common law is therefore correctness (*Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 67 (*Rio Tinto*)).

[172] However, I note that the Supreme Court in *Vavilov* ceased to recognize jurisdictional questions as a distinct category attracting correctness review. The question of jurisdiction is reviewed on the reasonableness standard (*Vavilov* at paras 65-68 and 99).

[173] In *Rio Tinto* the Court stated:

[55] The duty on a tribunal to consider consultation and the scope of that inquiry depends on the mandate conferred by the legislation that creates the tribunal. Tribunals are confined to the powers conferred on them by their constituent legislation: *R v Conway*, 2010 SCC 22, [2010] 1 SCR 765. It follows that the role of particular tribunals in relation to consultation depends on the duties and powers the legislature has conferred on it.

[174] The absence of an explicit reference to the duty to consult in a statute is not determinative of the decision maker's jurisdiction with regards to the duty to consult. The legislation can expressly or *impliedly* confer to the tribunal the jurisdiction of the duty to consult, a duty to consider consultation, or no duty at all (*Rio Tinto* at paras 58 and 60).

[175] The Applicants maintain there is a distinction between the jurisdiction to engage in consultation and the duty to consider whether the duty to consult is engaged. The Applicants argue the *Amended CIA* provided the CEO with the implied jurisdiction to *consider* the duty to consult. They acknowledge that the CEO was not required to complete the consultation. As he lacked the jurisdiction to do so, that duty remained with Alberta.

[176] The Applicants' arguments are limited to the position that the *Amended CIA* provided the implied jurisdiction to the CEO to consider questions of law and therefore the CEO had the jurisdiction to determine whether a duty to consult exists.

[177] To determine that such implied or express jurisdiction to consider whether the duty to consult exists, the *Amended CIA* must empower the CEO to decide questions of law that are properly before it and be broad enough to include the duty to consult.

[178] Blackfoot Nations argues that ss 1.1(2)(g) and 2(2)(f) of the *Amended CIA* empower and require the CEO to decide questions of law. The two sections relate to the CEO's requirement to categorize the type of referendum proposal being put forward under the *Amended CIA*. The sections state:

1.1(2)(g) The notice of intent must be in a form acceptable to the Chief Electoral Officer and must include in the case of a constitutional referendum proposal, a proposed question relating to the Constitution of Canada or relating to or arising out of a possible change to the Constitution of Canada

... ..

2(2)(f) The application must include the following: in the case of a constitutional referendum proposal, a proposed question relating to the Constitution of Canada or arising out of a possible change to the Constitution of Canada, which must correspond to the proposed question in the notice of intent;

[emphasis added]

[179] The CEO must be able to identify and categorize referendum proposals that engage the Constitution because the process outlined in the *Amended CIA* for constitutional proposals is distinct from legislative and policy proposals. In other words, the CEO must be able to decide whether the proposal comes within s 1.1(2)(g) or whether it comes within ss 1.1(2)(e) or (f) because they are either legislative or policy proposals. Determining whether a proposal engages the Constitution of Canada is a legal question.

[180] I agree with the Applicants that the *Amended CIA* provides implied jurisdiction to the CEO to decide questions of law.

[181] Blackfoot Nations further argues that the implied jurisdiction to decide questions of law is broad enough to include consideration of the duty to consult.

[182] The *Amended CIA* does not define “Constitution of Canada”. Section 52(2) of the *Constitution Act, 1982* does. “Constitution of Canada” expressly includes the “*Constitution Act, 1982*”. Although the Second Proposal is framed as a question and does expressly refer to the Constitution, the CEO was required to determine how the proposal should be categorized and, in doing so, to consider whether and how it engaged the Constitution of Canada, including the *Constitution Act, 1982*. That inquiry could involve a range of relevant considerations. In the absence of reasons, it is impossible to know which considerations the CEO considered. Nothing in the *Amended CIA* expressly limits the matters he may consider for that purpose.

[183] The Supreme Court in *Rio Tinto* stated:

[69][...]The power to decide questions of law implies a power to decide constitutional issues that are properly before it, absent a clear demonstration that the legislature intended to exclude such jurisdiction from the tribunal's power (*Conway*, at para 81; *Paul v British Columbia (Forest Appeals Commission)*, 2003 SCC 55, [2003] 2 SCR 585 at para 39).

[184] The Respondents argue that the Legislature intended to exclude such jurisdiction from the CEO’s power. They state such exclusion can be found under the *Designation of Constitutional Decision Makers Regulation*, Alta Reg 69/2006, Schedule 1 and the *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A-3 (*APJA*) and therefore the CEO cannot determine questions of constitutional law.

[185] Section 11 of the *APJA* states:

11 Notwithstanding any other enactment, a decision maker has no jurisdiction to determine a question of constitutional law unless a regulation made under section 16 has conferred jurisdiction on that decision maker to do so.

[186] Section 10(d) of the *APJA* defines “question of constitutional law” as meaning:

(i) any challenge, by virtue of the Constitution of Canada or the *Alberta Bill of Rights*, to the applicability or validity of an enactment of the Parliament of Canada or an enactment of the Legislature of Alberta, or

(ii) a determination of any right under the Constitution of Canada or the *Alberta Bill of Rights*. [emphasis added]

[187] Blackfoot Nations argues that there is no clear indication that the Legislature wanted to exclude this jurisdiction from the CEO's power. They argue the *APJA* is too narrow to capture the duty to consult jurisdiction because a question of constitutional law is limited to "a determination of *any right* under the Constitution of Canada". Blackfoot Nation asserts the CEO has jurisdiction to consider whether there is a Crown duty; they do not assert that the CEO is making a determination as to the existence of a right. Determining whether there is a duty to consult does not require the CEO to make a final determination as to the existence of a right under s 35 of the *Constitution Act, 1982*.

[188] The definition in s 10(d) of the *APJA* is very narrow. Section 10(d)(i) is not applicable so we are left with only "a determination of any right under the Constitution of Canada". The duty to consult is not a determination of a right under the Constitution of Canada – the duty to consult is an obligation of the Crown and does not fit into the narrow definition of *APJA*. I am not satisfied that s 11 or s 10 are clear indications that the Legislature intended to exclude from the CEO's jurisdiction the ability to consider whether a duty to consult exists.

[189] In oral submissions, Blackfoot Nations also argues that the removal of s 2(4) of the *Previous CIA* does not amount to a clear indication of legislative intent. To the extent that the repeal of s 2(4) of the *Previous CIA* may have removed the statutory screening mechanism, Blackfoot Nations argues that it did not diminish or absolve Alberta of the obligation to act in accordance with the honour of the Crown, including Alberta's duty to consult.

[190] Section 2(4) of the *Previous CIA* stated that an initiative petition proposal must not contravene ss 1 to 35.1 of the *Constitution Act, 1982*.

[191] Section 2.1(1) of the *Previous CIA* expressly allowed the CEO to state a question in the form of a special case to the Court seeking the opinion of the Court as to whether the proposal conformed with the requirements of ss 2(3) and 2(4). Section 2.2(2) of the *Previous CIA* provided a 30 day determination period to the CEO after the Court provided its decision, if the requirements in s 2 had been met.

[192] In *Sylvestre*, Alberta argued that the Court's ability to answer the special case was derivative of the authority that the CEO had under the *Previous CIA*. The Court summarized this position as follows:

[25] Alberta raises a concern about the scope of what may be decided in this case. Alberta emphasizes that the Court's authority to answer the special case posed by the CEO is derivative of the authority that the CEO has under the *CIA*. Alberta submits that "[t]he CEO does not have the statutory authority to provide further advice on subsequent steps to implement a proposal or comment about the implications of a proposal. The CEO's role is limited to a bare determination that a proposal [does or] does not contravene ss 1 to 35.1 of the *Constitution Act, 1982*." Alberta goes on to submit that "[t]he Court is exercising a statutorily prescribed role and should not go beyond this 'just

because there is an interesting and significant issue to be considered”:  
quoting *Purolator Inc v Canadian Union of Postal Workers*, 2025 ONCA 565 at  
para 57. (emphasis added)

[193] Based on Alberta’s arguments in *Sylvestre*, the CEO had jurisdiction pursuant to the *Previous CIA* to decide questions of law. I agree. The removal of s 2(4) of the *Previous CIA* does not constitute clear demonstration that the Legislature intended to exclude such jurisdiction from the CEO’s power.

[194] Further, the repeal of s 2(4) of the *Previous CIA* cannot diminish the CEO’s obligation to act in accordance with the written and unwritten principles of the Constitution (*Vavilov* at para 56).

[195] In my view, ss 1.1(2)(g) and 2(2)(f) engage a question of law and are broad enough to include the consideration of the duty to consult. There is no clear demonstration that the legislature intended to exclude that jurisdiction from the CEO’s power.

[196] I find that the CEO had jurisdiction to consider whether the duty to consult was engaged. The CEO failed to recognize this jurisdiction and assess whether the duty to consult was triggered in this case. That said, if no duty of consultation is triggered, any error regarding the CEO’s jurisdiction does not affect the outcome of the CEO Decision regarding any alleged duty to consult by Alberta.

**(ii) Did the CEO Decision trigger a duty to consult: *Haida* Test for Duty to Consult**

[197] The Applicants contend that the duty to consult was triggered by the CEO Decision, and Alberta's failure to undertake consultation results in the CEO Decision being incorrect. ACFN raised this as a primary argument while Blackfoot Nations raised it as an alternative argument.

[198] The Proponent argues the CEO Decision does not trigger a duty to consult and contends the Applicants’ argument is an attempt to transform a non-adjudicative administrative step into a constitutional decision, which the Proponent argues, it is not.

[199] Similarly, Alberta argues that the CEO Decision does not give rise to a duty to consult as the CEO Decision is limited to allowing the Proponent to gather signatures to determine if there is enough support for the Second Proposal to move forward to a referendum. In fact, Alberta made oral submissions that the duty to consult would not be triggered until after the referendum.

[200] The Applicants dispute Alberta and the Proponent’s characterization of the limited scope and effect of the CEO Decision. The Applicants arguments are based on the legislative framework that requires that a referendum be held if the signature threshold is met.

[201] The duty to consult stems from the honour of the Crown. The honour of the Crown is “always at stake” in the Crown’s dealings with Aboriginal peoples (*Ontario (Attorney General) v Restoule*, 2024 SCC 27 (*Restoule*) at para 73 citing *R v Badger*, [1996] 1 SCR 771, at para 41; *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 (*Haida*), [2004] 3 SCR 511 at para 16; *Mikisew Cree 2018* at para 23).

[202] In *Fort McKay First Nation v Prosper Petroleum Ltd*, 2020 ABCA 163 at para 76 the Court stated:

...In implementing such obligations, the honour of the Crown requires that the Crown (1) take a broad purposive approach to the interpretation of the promise, and (2) act diligently to fulfill it: para 75. The latter duty was said to arise because “the honour of the Crown requires the Crown to endeavour to ensure its obligations are fulfilled” (para 79) and not leave the Aboriginal group “with an empty shell of a treaty promise” (para 80, citing *R v Marshall*, 1999 CanLII 665 (SCC), [1999] 3 SCR 456 at para 52).

[203] Grounded in the honour of the Crown, the Crown must consult (and if appropriate, accommodate) Aboriginal peoples before taking action that may adversely affect their asserted or established rights under s 35 of the *Constitution Act, 1982* (*Mikisew Cree 2018* at para 1 and paras 25-26).

[204] The standard of review on whether or not the duty to consult was triggered is correctness (*Mikisew Cree First Nation v Canadian Environmental Assessment Agency*, 2023 FCA 191 at para 16, *Vavilov* at para 55). The threshold to trigger the duty to consult is low (*Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69 at para 55 (*Mikisew Cree 2005*)).

[205] While the parties do not agree whether a duty to consult arises, they agree that the duty to consult is engaged where the following three elements, known as the *Haida* test, are satisfied:

1. Crown’s real or constructive knowledge of an Aboriginal or Treaty right;
2. Contemplated Crown conduct; and
3. Potential adverse effects on the right arising from the Crown conduct issue.

(*Haida* at para 35, *Rio Tinto* at para 31)

#### (A) Crown’s real or constructive knowledge

[206] Actual knowledge of an Aboriginal or Treaty right arises when a claim has been filed in court or advanced in the context of negotiations, or when a Treaty right may be impacted (*Haida* at para 35, *Mikisew Cree 2005* at para 34, *Rio Tinto* at para 40).

[207] As stated in *Rio Tinto* at para 40:

While the existence of a potential claim is essential, proof that the claim will succeed is not. What is required is a credible claim. Tenuous claims, for which a strong *prima facie* case is absent, may attract a mere duty of notice. As stated in *Haida Nation*, at para 37:

Knowledge of a credible but unproven claim suffices to trigger a duty to consult and accommodate. The content of the duty, however, varies with the circumstances, as discussed more fully below. A dubious or peripheral claim may attract a mere duty of notice, while a stronger claim may attract more stringent duties. The law is capable of differentiating between tenuous claims, claims possessing a strong *prima facie* case, and established claims.

[208] The threshold for real or constructive knowledge is not high (*Rio Tinto* at para 40).

[209] The ACFN and Blackfoot Nations assert that it is obvious the Crown has knowledge of an Aboriginal or Treaty right that would be implicated by the Second Proposal.

[210] While Alberta recognizes that Blackfoot Nations hold rights under Treaty 7 and that ACFN holds rights under Treaty 8, Alberta argues that no specific rights are engaged by the CEO Decision. The CEO Decision letting the Proponent collect signatures does not affect any Aboriginal or Treaty rights. As such, according to Alberta, the first element of the *Haida* test is not satisfied. In oral submissions, Alberta clarified that there are Treaty and Aboriginal rights that exist and have been asserted however there is no direct adverse effect to the Applicants from the collection of signatures.

[211] Alberta raised a concern that there is complex litigation that is ongoing on Treaty interpretation and referenced cases that had been ongoing for years. Alberta referenced the Actions that were appended to the Blackfoot Nations Affidavits as examples of this complex litigation. Alberta's position is that the Treaty litigation has such a high complexity that it requires a full discussion and full trial and that trying to do so in the context of this judicial review would not be appropriate.

[212] Blackfoot Nations asserts that the CEO Decision is an infringement of multiple Treaty rights. These rights include but are not limited to the substitution of an independent Alberta as the entity responsible for fulfilling Treaty obligations, a contravention of the right to move around the Treaty tracts, and the elimination of the continuity of constitutional obligations, including those that constitutionally guarantee the fulfillment of Treaty promises.

[213] The Applicants provided notice under ss 23 and 28 of the *Canada Evidence Act*, RSC 1985, c C-5 of their intention to rely on the findings of fact contained in *Sylvestre* for the truth of their contents. They rely on *British Columbia (Attorney General) v Malik*, 2011 SCC 18 (*Malik*) at para 7 for the proposition that this Court can rely on findings made in *Sylvestre*.

[214] Alberta argues that the Court's conclusions in *Sylvestre* should not be given much weight because the Court made those findings in a different context that involved different legislative provisions in the *Previous CIA*. A prejudiced party will have the opportunity to lead evidence to contradict or lessen its weight (*Malik* at para 7). While no such evidence was provided, Alberta did argue that in a different context, the Crown *may* take a different position, challenging evidence that was not challenged in *Sylvestre*.

[215] The parties in *Sylvestre* were the Proponent, the Minister of Justice of Alberta and the CEO. Various First Nations were granted intervenor status representing Treaties 6, 7 and 8. The First and Second Proposals are substantively the same. The Court in *Sylvestre* described and made findings regarding the rights and interests protected by the numbered Treaties. Those rights and interests are the same as those being invoked on this judicial review. Alberta's argument that little weight should be given to findings in *Sylvestre* is not persuasive.

[216] The Court in *Sylvestre* specifically recognized that Alberta independence would fundamentally contravene the Numbered Treaties, including Treaty 7 and 8:

[214] Alberta independence would contravene the Numbered Treaties both as a matter of law and as a practical matter by removing Canada and substituting an independent Alberta as the entity responsible for fulfilling treaty obligations. As explained earlier, whether this contravention could be justified pursuant to *Sparrow* cannot be addressed in this case.

[...]

[231] The Numbered Treaties, as discussed earlier, confirm the right of First Nations to move around the Treaty tracts for the purpose of, among other things, hunting and fishing. As such, any constraint on mobility to pursue such activities imposed by an international border between an independent Alberta and Canada on First Nations' mobility rights would contravene the Numbered Treaties. The modest assumption that an independent Alberta and Canada, like typical independent sovereign countries, would control who crosses their borders, and taking notice of the negative impact of existing international borders on Indigenous people's ability to engage in activities are protected by the Numbered Treaties, leads to the inevitable conclusion that an independent Alberta would contravene the Numbered Treaties.

[...]

[245] Treaty rights are “recognized and affirmed,” not “guaranteed” and they are incorporated by reference, not specified. These are distinctions without a difference. Perhaps an independent Alberta would adopt a provision like *Constitution Act, 1982* s 35 and recognize and affirm Treaty rights but, for the reasons explained above, Alberta cannot succeed to the Numbered Treaties without the consent of First Nations. Moreover, this decision has concluded that the transformation of provincial and territorial borders into international borders would contravene the Numbered Treaties by significantly impairing the exercise of Treaty rights by First Nations.

(*Sylvestre* at paras 214, 231 and 245).

[217] Following the release of the decision in *Sylvestre*, on December 19, 2025, the CEO wrote to the Minister of Justice, as required by s 2.2(2)(b) of the *Amended CIA*, providing a copy of the Proponent's application for the Second Proposal. The CEO's notice to this Minister constitutes notice to the Crown. Given that the Minister was a party to *Sylvestre* and the proposals are substantively identical, I reject Alberta's argument and find that the first part of the *Haida* test is met: the Crown had real knowledge of the existence of Aboriginal and Treaty rights.

[218] In addition to the Court's findings in *Sylvestre*, Blackfoot Nations bolsters its argument that Alberta had knowledge of Aboriginal and Treaty rights by listing a number of other cases in their Notice to Admit Facts wherein Blackfoot Nations (individually and collectively) have asserted Treaty and Aboriginal rights. Alberta admits the existence of the actions and admits that Blackfoot Nations have asserted Treaty and Aboriginal rights within those actions but denies the existence of Aboriginal rights as asserted in those actions. It is sufficient to show that Alberta had at the very least constructive knowledge that Blackfoot Nations assert Aboriginal or Treaty rights over the lands subject to the Second Proposal.

[219] There can be no doubt that the Crown has knowledge of Treaty rights.

**(B) Contemplated Crown conduct and potential adverse effect**

[220] The Applicants argue that the CEO Decision is Crown conduct that satisfies the second element of the *Haida* test.

[221] As stated in *Rio Tinto*, for a duty to consult to arise, there must be Crown conduct or a Crown decision that may adversely impact an Aboriginal claim or Treaty right (*Rio Tinto* at para 42 and *Mikisew Cree 2005* at para 34).

[222] In *Mikisew Cree 2005* the Court explained:

34 In the case of a treaty the Crown, as a party, will always have notice of its contents. The question in each case will therefore be to determine the degree to which conduct contemplated by the Crown would adversely affect those rights so as to trigger the duty to consult. *Haida Nation* and *Taku River* set a low threshold. The flexibility lies not in the trigger (“might adversely affect it”) but in the variable content of the duty once triggered. At the low end, “the only duty on the Crown may be to give notice, disclose information, and discuss any issues raised in response to the notice” (*Haida Nation*, at para 43).

[223] The duty to consult often arises when the Crown makes decisions that could adversely impact the lands and resources that affect the exercise of Aboriginal rights (*Rio Tinto* at paras 1, 44 and 47). A potential for adverse impact suffices. There does not need to be an immediate impact on land or resources for the duty to consult to arise, and in some cases, a strategic or high-level decision can trigger the duty to consult (*Rio Tinto* at para 44).

[224] Blackfoot Nations argues that the CEO Decision amounts to a “strategic higher-level decision” as contemplated in *Rio Tinto*.

[225] Alberta acknowledges that the duty to consult often arises when the Crown makes decisions that may adversely impact the lands and resources that affect the exercise of Aboriginal rights but argues that the CEO Decision is not akin to a “strategic, higher-level decision”. The CEO Decision was a nondiscretionary decision dealing with the approval of an application for an initiative petition. It simply allows signatures to be collected. In Alberta’s view the CEO Decision did not engage in governmental policy development, strategy, or resources approvals affecting Aboriginal or Treaty rights, that would elevate it to a strategic higher-level decision.

[226] Alberta acknowledges that the CEO Decision has a cascading effect, the statutory framework mandates action. However, in order to find that the CEO Decision satisfies the second element of the *Haida* test, it must be deemed to be “Crown conduct”.

[227] Does the CEO Decision constitute Crown conduct that engages the duty to consult? “Crown conduct” has only been found to include executive action or action taken on behalf of the executive (*Rio Tinto* at para 50).

[228] In *Clyde River (Hamlet) v Petroleum Geo-Services Inc*, 2017 SCC 40 the Supreme Court indicated:

[28] [...]The Crown also, however, denotes the sovereign in the exercise of her formal legislative role (in assenting, refusing assent to, or reserving legislative or parliamentary bills), and as the head of executive authority (*McAteer v. Canada (Attorney General)*, 2014 ONCA 578, 121 OR (3d) 1, at para 51; P. W. Hogg, P. J. Monahan and W. K. Wright, *Liability of the Crown* (4th ed 2011), at pp 11-12; but see *Carrier Sekani*, at para 44). For this reason, the term “Crown” is commonly used to symbolize and denote executive power.

[Emphasis added]

[229] The CEO is an officer of the Legislature (*Election Act*, RSA 2000, c E-1 at s 2(2)). The CEO, like all officers of the Legislature in Alberta, is independent from Crown control (*Anglin v Resler*, 2020 ABCA 184 at para 30).

[230] The importance of the separation of branches of government was explained by the Supreme Court as follows:

Our democratic government consists of several branches: the Crown, as represented by the Governor General and the provincial counterparts of that office; the legislative body; the executive; and the courts. It is fundamental to the working of government as a whole that all these parts play their proper role. It is equally fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other.

(*New Brunswick Broadcasting Co v Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 SCR 319)

[231] The distinction between the executive as the Crown, and the CEO as an officer of the legislature is an important one. As argued by the CEO, the distinction between the Crown and the CEO is not pedantry; it is an essential feature of the office of Elections Alberta. To ensure Albertans' trust in their elected officials, it is essential to maintain a clear separation; the CEO office has independence, and the Minister cannot influence the administration of Elections Alberta.

[232] Nevertheless, I have already found that the framework of the *Amended CIA* provides that upon the CEO verifying that the Second Proposal complies with statutory requirements, including verifying that the signature thresholds are met, it is mandatory for the executive to undertake the subsequent actions outlined in the *Amended CIA* and the *Referendum Act*. This means, once an initiative petition is approved and the required signatures are obtained, the executive must hold a referendum and must implement the results of the referendum.

[233] There are some situations in which the distinction between a statutory entity and the executive fall away. Actions by an independent statutory body can be considered Crown conduct. In *Clyde River* the Supreme Court stated:

[29] By this understanding, the NEB is not, strictly speaking, “the Crown”. Nor is it, strictly speaking, an agent of the Crown, since — as the NEB operates independently of the Crown’s ministers — no relationship of control exists between them (Hogg, Monahan and Wright, at p. 465). As a statutory body holding responsibility under s. 5(1)(b) of *COGOA*, however, the NEB acts on behalf of the Crown when making a final decision on a project application. Put plainly, once it is accepted that a regulatory agency exists to exercise executive power as authorized by legislatures, any distinction between its actions and Crown action quickly falls away. In this context, the NEB is the vehicle through which the Crown acts. Hence this Court’s interchangeable references in *Carrier Sekani* to “government action” and “Crown conduct” (paras. 42-44). It therefore does not matter whether the final decision maker on a resource project is Cabinet or the NEB. In either case, the decision constitutes Crown action that may trigger the duty to consult. As Rennie J.A. said in dissent at the Federal Court of Appeal in *Chippewas of the Thames*, “[t]he duty, like the honour of the Crown, does not

evaporate simply because a final decision has been made by a tribunal established by Parliament, as opposed to Cabinet” (para. 105). The action of the NEB, taken in furtherance of its statutory powers under s. 5(1)(b) of *COGOA* to make final decisions respecting such testing as was proposed here, clearly constitutes Crown action.

[234] As stated in *Clyde River*, the absence of a relationship of control is not determinative of Crown conduct. While I reiterate that it is of utmost importance for the CEO to remain independent, it is the CEO Decision that triggers the actions of the Crown as required under the *Amended CIA* and *Referendum Act*. The CEO Decision constitutes Crown conduct.

[235] I recognize that s 8.11(1) of the *Referendum Act* offers some protection to Aboriginal and Treaty rights. However, the case law suggests that once the referendum takes place we are in the realm of the non-justiciable. For example, in *Reference re Secession of Quebec*, [1998] 2 SCR 217 (*Secession Reference*) the Supreme Court noted as follows:

100 The Court has no supervisory role over the political aspects of constitutional negotiations. Equally, the initial impetus for negotiation, namely a clear majority on a clear question in favor of secession, is subject only to political evaluation, and properly so.

[236] The statutory framework only allows the Applicants to participate in secession once the process enters the realm of the political and is no longer justiciable. I conclude that the CEO Decision, i.e., the Crown conduct, has the potential to adversely affect Treaty rights.

**(C) Potential adverse effects on the right arising from the Crown conduct issue.**

[237] The third element of a duty to consult is the possibility that the Crown conduct may affect the Aboriginal claim or right. The claimant must show a causal relationship between the proposed government conduct or decision and a potential for adverse impacts on pending Aboriginal claims or rights (*Rio Tinto* at para 45).

[238] The Crown conduct, in this case the CEO Decision, triggers the subsequent steps that bind Government to implement the results of a referendum. For the purpose of this analysis, I must assume the Proponent will meet the signature threshold, a referendum will be held, and the results of that referendum are positive, from the perspective of the Proponent. In other words, the legislative scheme requires me to assume that the Government is required to implement the results of a referendum on secession. Given the findings in *Sylvestre*, and as a matter of logic and common sense, there can be no doubt that Alberta’s secession from Canada will have an impact on Treaties 7 and 8. I conclude there is a direct causal connection between the CEO Decision and the Treaty rights that are engaged. It follows that the CEO Decision has a potential adverse effect on those Treaty rights.

**(iii) Conclusions regarding the duty to consult**

[239] I conclude that the CEO Decision triggers a duty to consult. All three elements of the *Haida* test are satisfied. The Crown has actual knowledge of Treaty rights that are engaged by the Second Proposal. The CEO Decision triggers a binding referendum on secession. Because of the sequence of events that are triggered by the CEO Decision, the CEO Decision constitutes Crown conduct. A requirement to implement secession without prior involvement of the

Applicants has the potential to adversely affect Treaty rights. The CEO Decision therefore triggers a duty to consult.

[240] I hasten to add that while the Crown's duty to consult is triggered by the CEO Decision, there is no requirement on the part of the CEO to engage in consultation, nor does he have the ability to do so. The CEO does not represent the Crown for the purpose of fulfilling the duty to consult. It is Government, as the party that would implement secession that must engage in consultation.

[241] Following the CEO Decision, the *Amended CIA* put in motion a series of required steps that engaged the duty to consult with the Applicants. No consultation occurred. Alberta breached its duty to consult with the Applicants.

**e) Are the Impugned Provisions of the *Amended CIA* that mandated the CEO Decision inconsistent with s 35 of the *Constitution Act, 1982*, ss 92 and 96 of the *Constitution Act, 1867*?**

[242] Given my conclusions and findings on the earlier grounds of review, it is unnecessary to determine the constitutional validity of the Impugned Provisions at this time. As a matter of judicial restraint, constitutional issues should not be decided unless their determination is required to dispose of the case before the Court. This imperative is particularly important in this case.

[243] The *Amended CIA* is legislation of broad application and any ruling on the constitutional questions is likely to have broad application, beyond the issues raised between these parties. Should it become necessary to determine constitutional validity, there are likely other groups or entities with a sufficient interest in the constitutional validity of the Impugned Provisions that would seek to participate, either as parties or as intervenors in proceedings that are focused on the constitutionality of the Impugned Provisions. I have concluded the CEO Decision must be quashed. As my findings are dispositive, it is unnecessary to consider the constitutionality of the Impugned Provisions. I therefore decline to address the merits of the constitutional challenge.

#### **IV. Conclusions**

[244] Alberta's Applications to Strike Evidence are partially granted. The entire Polenchuk Affidavit and paras 45-50 (with related exhibits) of the First Rider Affidavit are struck.

[245] The CEO Decision is quashed on the following grounds:

- a. the CEO's interpretation and application of the Transitional Provisions, particularly s 71.1(1), was an error of law rendering the CEO Decision unreasonable;
- b. the CEO's decision not to reject the Second Proposal, in the face of *Sylvestre* was an error rendering the CEO Decision unreasonable; and
- c. the Crown failed to meet its duty to consult with the Applicants.

[246] Given the CEO Decision is quashed on three grounds, I decline to consider the constitutionality of the Impugned Provisions.

Heard on the 8<sup>th</sup> and 9<sup>th</sup> day of April, 2026.

**Dated** at the City of Edmonton, Alberta this 13<sup>th</sup> day of May, 2026.

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**S. Leonard**  
**J.C.K.B.A.**

**Appearances:**

Kevin Hille and James Shields  
Olthuis Kleer Townshend LLP  
for the Athabasca Chipewyan First Nation, Applicant

Paul Reid and Kiran Fatima  
Walsh LLP  
for Blood Tribe, Applicant

Caireen Hanert and Alison Gray  
Gowling WLG (Canada) LLP  
for Piikani Nation, Applicant

Mary Locke Macaulay and Kendra Shupe  
Mandell Pinder LLP  
for Siksika Nation, Applicant

Gwendolyn Stewart-Palmer, K.C. and Joseph Redman  
Shores Jardine LLP  
for the Chief Electoral Officer of Alberta, Respondent

Neil Dobson, Nicholas Trofimuk and Jennifer Keliher  
Alberta Justice  
for His Majesty the King in Right of Alberta, Respondent

Jeffrey Rath and Eva Chipiuk  
Rath and Company  
For Mitch Sylvestre, Respondent

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**Corrigendum of the Reasons for Decision  
of  
The Honourable Justice S. Leonard**

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- Amendment was made to the spelling of counsel for Applicant, Siksika Nation.
- Spelling correction was made to the word “succession” to “secession” in paras 238 and 240.