

Cumulative Effects of Industrial Development and Treaty 8 Infringements in Northeastern British Columbia: The Litigation *Yahey v. BC (S151727)* – Case Comment

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Abstract

On June 29, 2021, the BC Supreme Court issued the verdict of the *Yahey v. British Columbia* litigation (S151727). For the first time in Canadian legal history, a First Nation Band (BRFN – BlueBerry River First Nation) sued a provincial Government for the cumulative effects of industrial development intertwined with Treaty 8 infringements. The proceeding lasted for six years (2015–2021), with more than 160 days of trials and dozens of hours of affidavits sworn, and it resulted in a ground-breaking verdict. The Court recognised that in authorising industrial development, the Province had been unable to consider and deal with the cumulative impacts that projects had on the traditional lifestyle of BRFN members, besides breaching its obligation to BRFN under Treaty 8.

This comment argues that by recognising that the Province cannot continue to authorise activities that breach Treaty 8 and Section 35 of the 1982 Constitution, the verdict may pave the way to a real implementation of the FPIC (Free, Prior and Informed Consent) in the BC legal framework. The ruling provides that the BC Government and the Band engage in meaningful consultation and negotiation to enforce mechanisms to assess and manage cumulative effects on the BRFN traditional territory. The parties were given six months to negotiate based on the litigation outcomes. On October 7, 2021, a preliminary agreement between the BRFN and the BC Province was signed. Important issues had been addressed throughout the trial. From confidentiality and the duty to consult in good faith to the constitutionality of Court hearing fees and the possibility to obtain other kinds of injunctions until the trial; the outcomes of this litigation may well be considered as a milestone to advance the Canadian legal framework, further recognising essential rights of Canadian Indigenous peoples in terms of Constitutional, social, and environmental justice.

Keywords: *cumulative effects, Treaty 8, extractivism, First Nations, 1982 Canadian Constitution, Section 35, Bill 41/DRIPA Act, FPIC*

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1 Introduction – The Notice of Civil Claim No. S151727

On March 3, 2015, Chief Marvin Yahey, on behalf of the BRFN, filed a Notice of Civil Claim before the Court of British Columbia. The litigation was started to “stop the consistent and accelerated degradation of the Nations’ traditional territory, and protect and enforce the Nations’ constitutionally protected rights under Treaty 8 against the cumulative impacts of Crown authorised activities on their traditional territory.”¹ According to BRFN, Treaty 8 created reciprocal rights and obligations. When their ancestors took it in 1900, they were promised that “they would be as free to hunt, trap, and fish throughout their traditional territory as they had been before entering Treaty 8.”² Moreover, they were ensured their right to access trap lines, trails, and cabins and practice spiritual activities in the traditional territory.³

BRFN argued that these promises had been infringed, as the Crown in Right of the Province of British Columbia (hereafter the Province) had allowed land alienation, resource extraction, and any type of industrial development within the BRFN traditional territory (such as oil and gas extraction, logging, mining, hydroelectric and wind power plants construction, roads and pipelines construction, together with other linear disturbances).⁴ Instead of protecting and ensuring the traditional way of life, the Crown had put its interests before those of the Band. This had resulted in Treaty and Constitutional infringements, besides breaching the fiduciary duty the Crown has towards Canadian Indigenous peoples while not meeting the minimum standards required by the legal doctrine of the honour of the Crown.⁵

By filing the application, BRFN had sought declaratory and adjudicative relief against the Province, intending to prevent further cumulative effects produced by development projects.⁶ Such remedies had been sought according to what had been established in Treaty 8 and Section 35 of the 1982 Constitution. Moreover, the legal doctrine of the honour of the Crown had been invoked, according to which the Crown must act in the interest of the Band while seeking to ensure the meaningful exercise of their Treaty rights.⁷

2 The issues, facts, and procedural history

2.1 The request for an injunction to prevent disposing TSLs – Yahey v. BC, 2015 BCSC 1302

In June 2015, BRFN (the Plaintiffs) filed a notice of application seeking an *interlocutory injunction* to prevent the Province (the Defendant) from disposing of timber sale licenses (TSLs) or from authorising the harvest of timber within the 2015 TSLs areas, pending the determination of Action No. S151727 on the merits.⁸ The relevance of this application lied on the Plaintiffs’ request for the *test for an interlocutory injunction*, which is based on *the principle of the balance of convenience*, as a tool to determine whether TSLs should be sold or not and, more importantly, to establish if the Plaintiffs’ rights had been infringed. As established in the RJR-MacDonald Case, for an interlocutory injunction to be issued, three conditions must be met: a

preliminary assessment must be made to ensure that there is a *serious question to be tried*; it must be determined whether the applicant would suffer irreparable harm if the application were rejected; an assessment, using the principle of the balance of convenience, must be made to determine which of the parties would suffer more significant harm from the granting or refusal of the remedy pending a decision on the merits.⁹

On July 27, 2015, Justice Smith issued his order, according to which the balance of convenience did not support granting the injunction and dismissed the application. As he explained:

BFRN may be able to persuade the Court that a more general and wide-ranging hold on industrial activity is needed to protect its treaty rights until trial. However, if the Court is to consider such a far-reaching order, it should be on an application that frankly seeks that result and allows the Court to fully appreciate the implications and effects of what it is being asked to do. The public interest will not be served by dealing with the matter on a piecemeal, project-by-project basis.¹⁰

2.2 The request for a broader injunction – *Yahey v. British Columbia*, 2017 BCSC 899

Following the decision of Justice Smith, the Plaintiffs filed a new notice of application, seeking a new, broader injunction to restrain the Defendant from permitting oil and gas activities, water use or its withdrawals for purposes related to oil and gas activities and granting rights to harvest Crown timber.¹¹ According to Madam Justice Burke, designated as the judicial management and the trial judge for the litigation; with this new request, it was necessary to establish whether and to what extent the Crown had compromised the ability of BRFN members to meaningfully enjoy their substantive Treaty rights by authorising industrial development in the Bands' traditional territory. There was a serious question to be tried, besides assessing whether the Crown's fiduciary duty towards BRFN had been breached.¹² Thus, it was necessary to examine whether the balance of convenience favoured an injunction, considering the concept of '*irreparable harm*' that BRFN could have suffered.

As established in *RJR – MacDonald Inc. v. Canada*, '*irreparable*' must refer to the nature of the harm that a party will suffer, not to the magnitude of it; furthermore, the harm must not be quantifiable in monetary terms or be curable.¹³ Justice Burke relied on the affidavits sworn by community members to determine whether the Plaintiffs had suffered irreparable harm.¹⁴ Once the examination was over, Justice Burke concluded that the balance of convenience weighed in favour of the Province, as the evidence established that economic harm was to be suffered (in terms of royalties, annual rent, and bonuses paid by the Province) if the injunction was granted.¹⁵ In her reasoning, Justice Burke argued that while the relief sought by the Plaintiffs was likely to prevent industrial activities in the traditional territory set out in the claim, it mainly focused on the oil and gas industry and forestry operations. Thus, it did not adequately address the cumulative effects of industrial development

in the BRFN traditional territory and the threat they posed to their traditional lifestyle and the ability to enjoy the guaranteed Treaty rights. Considering that the trial was due to commence in March 2018, the balance of convenience did not support granting such a wide-ranging injunction.

2.3 Confidentiality and the duty to consult in good faith, 2018 BCSC 123

On December 1, 2017, the Defendant filed a notice of application, seeking an order to make the Plaintiffs prepare and deliver to the Defendant's solicitors an amended *List of Documents*, which included a list of crucial hunting, trapping, gathering areas, as well as traditional spiritual and cultural sites (referred to as Traditional Areas Documents and Maps). Additionally, the Province asked to get access to all agreements, joint-ventures, payments, and donations (i.e., Benefit Sharing Agreements -BSAs-, revenue sharing, memorandum of understanding) that BRFN had signed with third parties operating in their traditional territory; also requesting a list of businesses, partnerships or joint ventures owned or controlled by BRFN Band or BRFN members.¹⁶

During the examination for discovery, BRFN Chief Marvin Yahey had confirmed that the Band had received donations from those industrial development proponents that had engaged in industrial activities in BRFN traditional territory and that the Band had concluded benefit agreements with TransCanada for two main pipeline projects (Coastal Gas Link and the Prince Rupert Gas Transmission).¹⁷ He also confirmed that several companies owned by the Band or Band members had been engaged in the oil, gas, and forestry sectors and had benefitted from this engagement (in terms of revenues, jobs, and business opportunities). In the Province's view, the fact that BRFN had signed BSAs with industrial development proponents was sufficient evidence that they had received adequate alternative remedies to a permanent injunction. By doing so, BRFN had been *acquiescent*, which was sufficient to prevent them from seeking equitable relief.¹⁸

On January 1, 2018, Justice Burke issued her decision. In her view, the application for further production of documents must be viewed considering the constitutional duty of the Crown to consult and honourably deal with First Nations. At the same time, confidentiality must be ensured to advance Reconciliation.¹⁹ Justice Burke ordered the production of a list of agreements and arrangements concluded between BRFN and industrial proponents. However, regarding those projects that had been realised notwithstanding the contrariety of BRFN, Justice Burke stated that documents were not supposed to be produced. Moreover, the request for documents related to companies owned or controlled by BRFN members was too broad, and the relevance of these documents was not mentioned in the pleading; thus, their production was denied.²⁰ As for other documents requested, Justice Burke ordered the production of all final Traditional Land Use Studies and maps, Band Council meeting minutes, bulletins and newsletters, with the condition that the Plaintiffs could vet them to make sure that they contained material relevant to the trial.²¹

2.4 The application for a stay of the hearing fees – *Yahey v. British Columbia*, 2018 BCSC 278

On the very same day (December 1, 2017), BRFN filed a notice of application seeking an order to refrain from the obligation to pay the Court hearing fees.²² Such an action was beyond the trial's aim, as it pursued the waiver of hearing fees when Indigenous peoples bring a case before a Court that seeks protection and enforcement of their Treaty and Constitutional rights. Taking as a reference a pending decision on a similar matter (the appeal of the judgement in *Cambie Surgeries Corp. v. British Columbia*, 2017),²³ the Court was asked to determine if the Band was supposed to pay the Court hearing fees. Thus, it was necessary to consider whether the court hearing fees applied to *meritorious constitutional cases*, whether the concept of 'undue hardship' was to be interpreted more broadly, whether the payment of court hearing fees, as established in the Supreme Court Civil Rules, was constitutional in those cases where Aboriginal peoples seek justice to see their rights recognised and enforced.²⁴ The Plaintiffs acknowledged that Reconciliation between the Crown and Indigenous peoples is best achieved through negotiations; however, in specific situations, litigation is necessary to advance Reconciliation. Having access to the Court is then essential, and charging a substantial fee to Indigenous peoples to access the Court to enforce their Treaty and Constitutional rights would be contrary to the spirit of Section 35(1) and the honour of the Crown. For these reasons, the Plaintiffs argued that Indigenous peoples should be constitutionally exempt from paying court fees when they demand access the Court to see their rights recognised.²⁵

To deal with this request, the Court needed to conduct a *Test for a Stay* to determine whether there was a serious question to be tried and if irreparable harm could be caused should such a stay not be granted. The Province was against granting the stay, arguing that Court hearing fees must be paid by the party who filed the Notice of Civil Claim (as established in the Supreme Court Civil Rules, BC Reg. 168/2009). Moreover, court hearing fees are calculated, invoiced and payable at the end of a proceeding; therefore, the application for a stay was premature. A fee waiver was to be ordered only if a party could not afford to pay them without undue hardship. To support its position, the Province referred to the case law *British Columbia (Minister of Forests) v. Okanagan Indian Band* (2003, SCC 71), in which the BC Court of Appeal established that Section 35 of the 1982 Constitution did not place an affirmative obligation on the government to provide funding for fees for those cases where a claim involved Section 35.²⁶

On February 26, 2018, Justice Burke issued her judgement. She argued that BRFN was required to allocate considerable resources to pay the fees if the stay was not granted. BRFN had raised a serious issue regarding the constitutional applicability of the hearing fees, based on what is enshrined in Section 35 of the 1982 Constitution. A perception of unfairness could arise from the fact that an Indigenous Band protected by Section 35 must pay fees to the Crown to access the Court and advance its case against the Crown. This was to be seen as irreparable harm, and such a loss

could not be recovered at the time of the decision on its merits.²⁷ Moreover, once the appeal was settled, BRFN was required to file an application for relief from the fees to obtain a legal exemption from paying the hearing fees. Thus, the delay in the payment of the fees could not affect the Province. Therefore, Justice Burke sentenced that the balance of convenience favoured granting the stay of the obligation to pay the hearing fees, pending the appeal in *Cambie Surgeries*.²⁸

2.5 The application to seek exemption from paying the Court hearing fees

On October 19, 2018, the appeal of the *Cambie Surgeries* case was dismissed. The Court found that the hearing fees regime was constitutional, meaning that the Plaintiffs had to pay them.²⁹ In such a context, on July 18, 2019, BRFN filed a new notice of application, seeking an order to be exempted from paying the court hearing fees. With this new application, the Plaintiffs sought an order requiring the Defendant to pay the hearing fees (based on the discretion of the Court and in the unique circumstances where Section 35 is at stake); or the granting of a constitutional exemption from paying the fees, always based on Section 35 and, if necessary, considering the declaration of constitutional inapplicability of hearing fees, as established in Section 52 of the 1982 Constitution.³⁰ For the first time in Canadian legal history, an application was filed to consider whether charging court hearing fees to Aboriginal people was constitutionally acceptable.

To deal with the issue, Justice Burke questioned whether the hearing fees that BRFN were supposed to pay were inconsistent with Section 35(1) of the 1982 Constitution, with the honour of the Crown and with the objective of Reconciliation. If that was the case, which appropriate remedies were to be proposed? A constitutional exemption from the payment of court hearing fees, based on Section 35 (1)? A declaration of inapplicability under Section 52 (1)? Or an order requiring the Defendant to pay the daily hearing fees?³¹ In Burke's view, BRFN was not seeking a privileged treatment or the recognition of a hierarchical view of rights; instead, they just wanted to see recognise the uniqueness of the rights protected under Section 35(1), which also meant recognising their substantial difference, in terms of source and purpose, in comparison to other Charter rights.³² Thus, Justice Burke sentenced that charging hearing fees to Indigenous Plaintiffs that start a trial to seek the protection of their Constitutional and Treaty rights was inconsistent, in and of itself, with the spirit of Section 35, the principle of the honour of the Crown and the ultimate goal of Reconciliation.³³

3 The trial *BRFN v. BC*, May 2019 – June 2021

The trial *Yahey v. BC* commenced on May 29, 2019, four years after BRFN filed the civil claim.³⁴ The Plaintiffs argued that the promise that their traditional and semi-nomadic lifestyle based on hunting, trapping, and fishing would be preserved by taking Treaty 8 was the *conditio sine qua non* that convinced their ancestors to

take Treaty 8.³⁵ This does not mean that changes to the Treaty are not accepted and permitted; however, there should be a limit to them, a threshold that should not be crossed.³⁶ Once Treaty 8 was taken, the ancestors found a way to carry out their Treaty rights in a mixed economy. What has been lost, mainly due to the relentless development of the last twenty years, is the *balance*.³⁷ BRFN argued that the interpretation of the Province was against the law and did not honour the promises made to the Plaintiffs' ancestors when they entered Treaty 8.³⁸ In the Plaintiffs' view, the continuous approval of projects in the traditional territory had not considered the minimal impairment of Treaty rights, as demonstrated by the fact that the OGC had never refused the approval of any application based on concerns raised by BRFN as regards their inability to enjoy their Treaty rights.³⁹ Additionally, a consultation process to address whether the Plaintiffs' traditional territory could have sustained any further development, considering the existing disturbances on the landscape, was never performed. Thus, the Plaintiffs asked the Court to enforce the Treaty's terms and identify whether and to what extent the spirit of the Treaty had been breached. The Plaintiffs still believe that solutions are available, and measures can be taken to slow down the development while protecting the ecosystem and traditional critical sites. To do so, the Crown may be demanded to act using higher standards and values than *what current political life and market forces allowed*.⁴⁰

To ascertain the infringement of certain Treaty rights, Treaty interpretation is a key issue. As stated in several case laws, Treaty rights should not be interpreted statically or rigidly; instead, the Court should interpret and update the meaning of Treaty rights to make sure they can be exercised in the modern world. This translates into the need to determine which current practices are incidental to core Treaty rights in a modern context. There is a relevant difference between Treaty rights and Aboriginal rights in this sense. The former is enshrined in official agreements that the Crown signed with native peoples; they have the same meaning of contracts and create enforceable obligations based on the mutual consent of the parties. The latter originates from the customs and traditions of native peoples, and they embody native peoples' rights to live according to their traditional lifestyle, as their ancestors lived.⁴¹

For its part, the Defendant argued that the clause regulating hunting, trapping, and fishing is limited by the 'taking up' right that the Crown has, in addition to the fact that Treaty 8 did not promise continuity with the ancestors' way of life or use of land. When Treaty 8 was signed, the Crown wanted to give First Nations the possibility to make a living by practising their traditional activities until the transition period was over. In the Crown's view, Treaty 8 was a *tool* to negotiate and help those Indians transition from a nomadic lifestyle based on hunting and gathering to a sedentary one based on agriculture and farming.⁴² The Defendant argued that BRFN had been consulted in the past and their needs accommodated, as demonstrated by the negotiation of the Economic Benefits Agreements with the Province, in which BRFN agreed that BC had fulfilled its duty to consult and avoid any potential infringement of Indigenous rights as established in Section 35(1).⁴³ Nevertheless, BRFN ended

the Agreements and, one year later, in March 2015, initiated the litigation against the Province. For all these reasons, the Defendant argued that the position of the BRFN as regards industrial development that took place between 2006 and 2014 is unclear, and it does not seem compatible with what the Band asserted by suing the Province of BC.⁴⁴

4 The verdict of Justice Burke, June 29, 2021

The verdict issued by Justice Burke ascertained that the Province breached its obligations towards BRFN, failing to act according to the honour of the Crown and to ensure that BRFN could keep living according to their traditional mode of life.⁴⁵ In this sense, the Province's power to take up land is not infinite because enough land must be available to allow BRFN to meaningful exercise their Treaty rights within their traditional territory. This is no longer the case due to the cumulative effects of industrial development.⁴⁶ The Province has a fiduciary duty towards BRFN. It must act with good faith when it comes to BRFN's concerns regarding the cumulative effects of industrial development on the exercise of its Treaty rights. This means that the Province should develop tools to assess, manage and mitigate the cumulative effects of industrial development, which had not been done.⁴⁷ As for the remedies sought, BRFN brought the case before the Court seeking recognition for their Treaty and Constitutional rights, as established in Treaty 8 and Section 35 of the 1982 Constitution. In this sense, when an infringement is found, the government should not perpetuate such infringement.⁴⁸

Justice Burke agreed that cumulative effects as a set of authorised industrial developments within the BRFN traditional territory have resulted in the infringement of BRFN Treaty rights; besides leaving BRFN members with no sufficient land where they can meaningfully exercise their rights.⁴⁹ Therefore, through the ruling, Justice Burke established that:

- By authorising industrial development, the Province breached its obligation to BRFN under Treaty 8, including its honourable and fiduciary obligations.
- The taking up of lands has been so extensive that it left BRFN members with no sufficient territory to meaningfully exercise their Treaty rights, which have been infringed.
- Thus, the Province cannot continue to authorise activities that breach Treaty 8 and its unwritten promises.

In light of the outcomes of the litigation, the Court awarded costs to BRFN.⁵⁰ Moreover, Justice Burke asked the parties to consult and negotiate to establish enforceable mechanisms to assess and manage the cumulative effects of industrial development on the BRFN traditional territory to ensure that Constitutional and Treaty rights are respected. To facilitate such negotiations, Declaration n. 3 had been suspended for six months.⁵¹

5 Concluding remarks

With this case note, I try to highlight the ground-breaking outcomes the BRFN v BC litigation has produced and the critical advancements that must be expected in terms of Constitutional and socio-environmental justice in the years to come. For the first time in Canadian legal history, cumulative effects and Treaty 8 infringements were addressed before the Court. Additionally, the constitutionality of hearing fees for Indigenous Plaintiffs was addressed, with Justice Burke sentencing that charging hearing fees to Indigenous Bands seeking protection for their Constitutional and Treaty rights was inconsistent, in and of itself, with the spirit of Section 35 of the Constitution, the principle of the honour of the Crown and the ultimate goal of Reconciliation (2020 BCSC 278). Such a historical decision, taken before the final verdict, added strength and significance to what was established in the final ruling, where Justice Burke awarded costs to the Band.

Furthermore, this ruling may help advance the Canadian legal system by paving the way for integrating into the provincial and federal framework, specific provisions established in international instruments, such as FPIC – Free, Prior and Informed Consent, established in UNDRIP. Although in the reasons for judgement Justice Burke did not make any specific reference to UNDRIP, this ruling may certainly facilitate the implementation of the Declaration within the provincial and federal framework, according to what has been established with the approval of Bill-41 by the BC Government (November 2019) and of Bill C-15 by the Federal Government (June 2021).⁵²

It is thus encouraging that the BC Province decided not to appeal the decision of the BC Supreme Court. As stated by BC Attorney General David Eby, the Province understood that its assessment and management of the cumulative effects of industrial development must be improved and will work with BRFN to achieve such an aim while ensuring that the Treaty and Constitutional rights of the BRFN are respected.⁵³ By refusing to appeal to the Supreme Court of Canada, the BC Province has put itself in the privileged position to move forward with the full implementation of UNDRIP within the provincial legal framework. Meanwhile, a first important step was reached with the preliminary agreement the Province signed with the BRFN on October 7, 2021. By signing it, the Province agreed to allocate a total amount of C\$ 65 million to the BRFN for land restoration activities and cultural practices revitalisation.

Finally, it must be considered that the verdict of this trial could set an important precedent for other trials. In fact, should the findings be allowed to stand as a precedent, it might strengthen the litigation on the Site C dam that West Moberly First Nation will start (March 2022) against the BC Province.⁵⁴ The first cumulative impacts case in Canadian history might substantially change how industrial development is authorised and managed in British Columbia while advancing the legal framework and providing First Nations with a real possibility to have a say in decision-making, as established in UNDRIP and according to community values, traditions and how members envision the future.⁵⁵

NOTES

1. *Yahey v. BC* – Notice of civil claim S151727 – March 3rd, 2015, at para. 1.
2. *Ibid.*, at para. 20.
3. *Ibid.*, at paras. 5–22.
4. *Ibid.*, at paras. 29–31.
5. *Ibid.*, p. 11.
6. *Ibid.*, p. 7.
7. *Ibid.*, pp. 10–11.
8. *Yahey v. BC* – Plaintiffs’ notice of application S151727 – June 19, 2015, at para. 1 [*Yahey v. BC* 2015].
9. *RJR – MacDonald Inc. v. Canada*, [1994] 1 SCR 331, at para. VI Analysis [MacDonald].
10. *Yahey v. BC*, 2015 BCSC 1302, at para. 64.
11. *Yahey v. BC* – Plaintiffs’ notice of application S151727 – August 8, 2016, at para. 1.
12. *Yahey v. BC*, 2017 BCSC 899, at paras. 20–21 [*Yahey v. BC* 2017a]
13. *MacDonald*, supra note 18, at para. 341.
14. *Ibid.*, at paras. 66–67.
15. *Ibid.*, at paras. 103–104.
16. *Yahey v. BC* – Defendant’s notice of application S151727 – December 1, 2017, at para. 1 [*Yahey v. BC* 2017b].
17. *Ibid.*, at para. 13.
18. *Ibid.*, at para. 12.
19. *Ibid.*, at paras. 22–24.
20. *Ibid.*, at paras. 39–48.
21. *Ibid.*, at para. 57.
22. The Supreme Court Civil Rules establishes that the Plaintiffs must pay the daily court hearing fees. Costs are relevant and increasing in proportion to the time that the parties spend in Court. Just for setting up a trial, the cost is C\$ 200, from the 4th to 10th day fees amount to C\$ 500 per day and after the 10th day, the cost skyrockets to C\$ 800 per day. In November 2017, BRFN Chief Marvin Yahey estimated that the hearing fees would amount to C\$ 67,000, based on a schedule that set the trial for 100 days. However, to February 2020, the trial was set for 160 days and the hearing fees that BRFN was supposed to pay had almost doubled to C\$ 120,000 (*Yahey v. BC*, 2018 BCSC 278, at paras. 3–4).
23. The *Cambie* case was about the Medicare Protection Act, with the Plaintiffs seeking an exemption from paying statutory court fees, arguing that it was unconstitutional to require a party with a prima facie meritorious constitutional challenge to pay court fees since they are a deterrent to the assertion of Charter rights.
24. *Yahey v. BC* 2017b, supra note 33, at paras. 35–36.
25. *Ibid.*, at paras. 47–53.
26. *Yahey v. BC* – Defendant’s application response S151727 – December 8, 2017, at para. 10.
27. *Yahey v. BC*, 2018 BCSC 278, at paras. 39–42 [*Yahey v. BC* 2018b].
28. *Ibid.*, at paras. 43–46.
29. *Cambie Surgeries Corporation v. British Columbia*, 2020 BCSC 1310, at para. 145.
30. *Yahey v. BC* – Plaintiffs’ notice of application S151727 – July 18, 2019, pp. 1, 5; at paras. 1–5, 29–30.
31. *Ibid.*, at para. 24.
32. *Yahey v. BC* 2018b, supra note 51, at paras. 51–52.
33. *Ibid.*, at paras. 38–43.
34. *Yahey v. BC* S151727 – Plaintiffs’ opening, May 27th, 2019, at paras. 15–20 [*Yahey v. BC* S151727].

35. *Ibid.*, at paras. 21–23.
36. *Ibid.*, at paras. 60–65.
37. *Ibid.*, at paras. 303–307.
38. *Ibid.*, at para. 81.
39. *Ibid.*, at paras. 280–282, 291–294.
40. *Ibid.*, at paras. 321–333.
41. *Ibid.*, at paras. 17–21.
42. *Ibid.*, at pp. 9–15.
43. *Ibid.*, at para. 112.
44. *Ibid.*, at para. 117.
45. *Yahey v. BC S151727 – Reasons for Judgement*, June 29, 2021, at paras. 1779–1786.
46. *Ibid.*, at para. 1809.
47. *Ibid.*, at paras. 1804–1805.
48. *Ibid.*, at paras. 1861–1862.
49. *Ibid.*, at paras. 1880–1881.
50. *Ibid.*, at paras. 1892–1895.
51. *Yahey v. BC S151727 – Reasons for Judgement*, June 29, 2021.
52. Bill-41, Declaration on the Rights of Indigenous Peoples Act, 4th Session, 41st Parliament, 2019, 3rd Reading; Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, 2nd Session, 43rd Parliament, 2020, 1st Reading. Bill-41, Declaration on the Rights of Indigenous Peoples Act, 4th Session, 41st Parliament, 2019, 3rd Reading. <https://www.bclaws.gov.bc.ca/civix/document/id/bills/billsprevious/4th-41st:gov41-3> (last accessed on November 24, 2021). Bill C-15, An Act respecting the UN Declaration on the Rights of Indigenous Peoples, 2nd Session, 43rd Parliament, 2020, 1st Reading. <https://parl.ca/DocumentViewer/en/43-2/bill/C-15/first-reading> (last accessed on November 24, 2021).
53. <https://www.cbc.ca/news/canada/british-columbia/treaty-8-province-appeal-1.6121474> (last accessed on August 12, 2021).
54. <https://energeticcity.ca/2021/05/12/west-moberly-first-nation-gains-court-ordered-site-c-information/> (last accessed on August 12, 2021).
55. <https://theconversation.com/what-a-landmark-court-victory-for-b-c-first-nation-means-for-indigenous-rights-and-resource-development-164892> (last accessed on August 16, 2021).