An Indigenous band council in Saskatchewan passed a bylaw banning the sale of alcohol on reserve land. A band member who operates a delivery service argues the bylaw is ultra vires because it conflicts with the federal Indian Act provisions on intoxicants and also violates their s. 2(b) Charter right to expression through commercial activity. Analyze (1) the scope of band council bylaw-making authority under the Indian Act and whether it extends to alcohol regulation, (2) whether there is a doctrine of federal paramountcy that would render the bylaw inoperative, and (3) whether a s. 2(b) challenge to a commercial restriction on reserve has any prospect of success. Address how the recent jurisprudence on Indigenous self-governance affects the traditional paramountcy analysis.

Overview

A properly enacted s. 85.1 Indian Act bylaw banning alcohol sales on reserve is intra vires, not rendered inoperative by federal paramountcy (which requires operational conflict, not mere field overlap), and survives a s. 2(b) Charter challenge because low-value commercial expression restrictions on harmful substances are readily justified under s. 1 — with s. 25 of the Charter and recent self-governance jurisprudence providing additional defences for the band council.

FACTS

A band council in Saskatchewan passed a bylaw banning the sale of alcohol on reserve land. A band member who operates a delivery service argues the bylaw is (1) ultra vires because it conflicts with federal *Indian Act* provisions on intoxicants, and (2) violates their s. 2(b) Charter right to freedom of expression through commercial activity. The delivery service operator likely engages in the commercial delivery of alcohol to reserve residents, making the prohibition directly applicable to their business activities.

ISSUES

1. Does the band council have authority under the *Indian Act* to enact a bylaw banning the sale of alcohol on reserve land?

2. Does the doctrine of federal paramountcy render the bylaw inoperative by reason of conflict with the *Indian Act*'s intoxicants provisions?

3. Does the bylaw infringe the delivery operator's s. 2(b) Charter right to freedom of expression through commercial activity, and if so, is the infringement justified under s. 1?

4. How does recent jurisprudence on Indigenous self-governance affect the traditional

paramountcy analysis?

BRIEF ANSWER

The bylaw is almost certainly intra vires. Section 85.1 of the *Indian Act*, RSC 1985, c I-5, grants band councils express authority to prohibit the sale, barter, supply or manufacture of intoxicants on reserve, subject to elector assent. Federal paramountcy does not render the bylaw inoperative: there is no impossibility of dual compliance between the bylaw and the *Indian Act*, and Parliament's non-prohibition of alcohol generally does not create a positive entitlement to sell it on reserve. The s. 2(b) Charter challenge faces three significant hurdles: (1) the Charter applies to the band council as a government by nature under *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10 ("*Dickson*"); (2) while commercial delivery constitutes protected expression, restrictions on alcohol-related commercial activity occupy the low-value end of the s. 2(b) spectrum, making s. 1 justification readily available; and (3) s. 25 of the Charter may shield the bylaw from individual Charter challenge if the band can demonstrate the prohibition reflects a collective Indigenous right. Recent self-governance jurisprudence strengthens the band's position by recognizing that band authority is not exclusively derived from the *Indian Act* and that s. 25 provides a substantive counterweight to individual rights claims.

LAW

A. Bylaw-Making Authority Under the Indian Act

Section 81(1) of the *Indian Act* grants band councils broad bylaw-making authority "for any or all of the following purposes," including the health of residents on the reserve (s. 81(1)(a)), the maintenance of order (s. 81(1)(c)), and zoning and business regulation (s. 81(1)(g)). However, the more specific and directly applicable provision is s. 85.1(1), which provides that "the council of a band may make by-laws (a) prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band." Section 85.1(2) requires prior assent by a majority of electors voting at a special meeting called for the purpose. Following 2014 amendments, the requirement for ministerial approval of intoxicant bylaws under former s. 85.1(3) was repealed, significantly increasing band autonomy in this area.

The threshold requirement is procedural compliance. In *Hiawatha First Nation v. Cowie*, 2023 ONCA 524, the Ontario Court of Appeal distinguished sharply between a Band Council Resolution (BCR) and a bylaw: "A band council's passage of a by-law is an act of law-making within carefully defined areas of jurisdiction, and a by-law has the force of law on the reserve

under the *Indian Act*" (at para 60). A BCR "cannot create rights and duties for band members or others, and does not have the force of a by-law" (at para 61). The court further held at para 41 that a bylaw enacted under the *Indian Act* "has the force and effect of a federal regulation."

This distinction was also recognized in *Gamblin v. Norway House Cree Nation Band*, 2000 CanLII 16761 (FC) ("*Gamblin*"), where the Federal Court held that a Band Council Resolution purporting to ban intoxicants was ultra vires precisely because the band had not enacted a formal bylaw under ss. 81 or 85.1: "in failing to enact a by-law, and in assuming that a by-law was not necessary, the Band Council clearly acted ultra vires the intended authority of their statutory jurisdiction" (at para 59). The court affirmed that ss. 81 and 85.1 do grant band councils the authority to make bylaws banning intoxicants; the problem was failure to follow the proper form.

In *Laforme v. Mississaugas of The New Credit First Nation Band Council*, 2000 CanLII 15488 (FCA) ("*Laforme*"), the Federal Court of Appeal confirmed that s. 85.1 grants band councils authority to prohibit intoxicants on reserve, but this authority is strictly bounded by the statutory language. A bylaw amendment that attempted to create exceptions to a prohibition on "supply" was ultra vires because s. 85.1(1)(d) only permits exceptions to paras. (b) and (c), not to the prohibition under para. (a) (at paras 11-12).

The authority is not unfettered. In *Osoyoos Indian Band v. Oliver (Town)*, 2001 SCC 85, [2001] 3 SCR 746, the SCC confirmed at para 74 that "the right of the Band to enact by-laws is not an unfettered one. The general by-law provision of the *Indian Act*, s. 81(1), reads: 'The council of a band may make by-laws not inconsistent with this Act…'" Bylaws inconsistent with the Act are prohibited. However, s. 85.1 itself expressly authorizes alcohol prohibition, so a properly enacted intoxicant bylaw is by definition "not inconsistent" with the Act.

The interpretive principle applicable to *Indian Act* provisions is generous and liberal. As the SCC confirmed in Osoyoos at para 49, "it is appropriate to interpret in a broad manner provisions that are aimed at maintaining Indian rights, and to interpret narrowly provisions aimed at limiting or abrogating them."

B. Federal Paramountcy

The doctrine of federal paramountcy provides that where federal and provincial (or, by analogy, federal and band bylaw) laws come into operational conflict, the federal law prevails. In *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 SCR 3, the SCC confirmed at para 75 the two-part paramountcy test: "the onus is on the party relying on the doctrine of federal paramountcy to demonstrate that the federal and provincial laws are in fact incompatible by establishing either that it is impossible to comply with both laws or that to apply the provincial law would frustrate the purpose of the federal law."

A finding of paramountcy requires more than overlap or duplication. In *R. v. Francis*, 1988 CanLII 31 (SCC), [1988] 1 SCR 1025 (“*Francis*”), the SCC at para 9 confirmed that "federal and provincial laws that merely duplicate one another but do not conflict can exist side by side." The Court further cautioned at para 10 that it "may be the better part of wisdom... to require the federal Parliament to speak clearly if it seeks... paramountcy for its policies."

The most directly applicable authority is *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13, [2005] 1 SCR 188 (“*Rothmans, Benson & Hedges*”), where the SCC held that a provincial tobacco display ban was not inoperative despite a federal permission to display. At para 18, the Court held that "in demarcating the scope of the s. 19 prohibition through s. 30, Parliament did not grant, and could not have granted, retailers a positive entitlement to display tobacco products." At para 21, the Court warned that "to impute to Parliament such an intention to 'occup[y] the field' in the absence of very clear statutory language to that effect would be to stray from the path of judicial restraint in questions of paramountcy."

The relevance to the band council's alcohol bylaw is direct: the *Indian Act* does not grant residents of a reserve a positive entitlement to sell or purchase alcohol. The absence of a complete federal prohibition on alcohol does not create a right to sell alcohol that the bylaw can then conflict with. *R. v. Blackbird*, 2005 CanLII 1624 (ON CA) (“*Blackbird*”), applied the same logic to band bylaws, holding at para 17 that "the proper question is not whether one is a 'comprehensive code' occupying the field and ousting the application of the other, but whether compliance with one requires breach of the other."

R. v. Gloade, 1986 CanLII 6946 (NS CA), further confirmed that a provincial liquor statute did not conflict with s. 94 of the *Indian Act* (the predecessor to s. 85.1) on the basis that "the word 'all' in s. 88 is telling but... Operational conflict would be required to this end" (at para 11).

C. Section 2(b) Charter Challenge — Commercial Expression

Section 2(b) of the Canadian Charter of Rights and Freedoms protects freedom of expression. The SCC has consistently held that commercial expression falls within s. 2(b)'s protection. In *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 SCR 712 (“*Ford*”), the Court held that "commercial expression, like political expression, is one of the forms of expression that is deserving of constitutional protection because it serves individual and societal values in a free and democratic society." This was affirmed in *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 SCR 927 (“*Irwin Toy*”), where the SCC confirmed that "there is no sound basis on which commercial expression can be excluded from the protection of s. 2(b) of the Charter," noting that commercial expression "plays a significant role in enabling individuals to make informed economic choices, an important aspect of individual self-fulfillment and personal autonomy."

The two-step s. 2(b) framework is: (1) does the activity have expressive content; and (2) does the government action restrict that expression in purpose or effect. As confirmed in *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 SCR 141, at para 56, expression is protected if it "has expressive content" and the government action restricts it. A delivery service operator communicating commercially about alcohol delivery conveys meaning with economic content — this falls within the protected sphere.

However, not all protected expression is equal. In *Reference re ss. 193 and 195.1(1)(C) of the Criminal Code (Man.)*, 1990 CanLII 105 (SCC), [1990] 1 SCR 1123, the Court held that "communications regarding an economic transaction... do not lie at, or even near, the core of the guarantee of freedom of expression." Expression with a purely economic or commercial purpose relating to a restricted product lies at the low-value periphery.

For s. 1 justification, the Oakes test requires: (1) a pressing and substantial objective; (2) rational connection; (3) minimal impairment; and (4) proportionality of effects. In *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30, [2007] 2 SCR 610 ("*JTI-Macdonald*"), the SCC confirmed at para 47 that "when commercial expression is used... for the purposes of inducing people to engage in harmful and addictive behaviour, its value becomes tenuous," making s. 1 justification correspondingly easier to establish.

In *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 SCR 199 ("*RJR-MacDonald*"), even the majority that struck down the tobacco advertising ban acknowledged that a complete ban on a form of expression is more difficult to justify than a partial ban. The band's alcohol bylaw, however, is not simply a prohibition on advertising — it is a prohibition on sale on reserve lands, with the expressive element being incidental to the commercial transaction. This distinction matters: the bylaw's pith and substance targets the harmful activity (sale of alcohol on reserve), not the expressive element of the commercial activity itself.

D. The Charter Applies to Band Councils

In *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10, the SCC majority held at paras 5 and 42 that the Charter applies to Indigenous governments by virtue of s. 32(1) because they are "governments by nature" exercising powers derived at least in part from Parliament. The Court confirmed that "at least one source of the VGFN's lawmaking authority flows from Parliament." This principle applies equally to a Saskatchewan band council whose bylaw-making authority is grounded in the *Indian Act*. The Charter therefore applies to the band council's intoxicant bylaw.

The subsequent Federal Court decision in *Houle v. Swan River First Nation*, 2025 FC 267 confirmed at para 99 that band council regulations are "not 'untethered' from federal law" and

therefore subject to Charter scrutiny. This forecloses any argument that a band council can legislate in a Charter-free zone.

E. Section 25 of the Charter — Collective Indigenous Rights Shield

Section 25 of the Charter provides that its guarantees "shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada." In *Dickson*, the SCC held that s. 25 "allows for the assertion of individual Charter rights except where they conflict with Aboriginal rights, treaty rights, or 'other rights or freedoms' that are shown to protect Indigenous difference" (at para 5).

For s. 25 to apply, the band must show: (1) an "other right" exists; (2) the right or its exercise protects interests associated with Indigenous difference; and (3) there is an irreconcilable conflict between the individual Charter right and the collective right. In *Houle v. Swan River First Nation*, 2025 FC 267, the Federal Court held at para 143 that "the lack of a formal constitution does not reduce protections afforded by s. 25 of the Charter," confirming that s. 25 protection is not limited to bands with formal self-government agreements.

A bylaw prohibiting alcohol sales could potentially qualify as an exercise of an "other right" under s. 25 if the band can demonstrate it reflects a collective governance right protecting community wellbeing and cultural integrity. However, this would require evidence that the prohibition reflects the band's distinctive cultural practices or governance traditions.

F. The Effect of Self-Governance Jurisprudence on the Paramountcy Analysis

Recent jurisprudence suggests that the traditional paramountcy analysis may not apply to Indigenous laws enacted pursuant to inherent self-governance rights rather than purely delegated statutory authority. In *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185, the Quebec Court of Appeal held at para 64 that "the doctrine of federal paramountcy... pertains only to federal laws validly enacted under s. 91 of the Constitution Act, 1867" and does not automatically apply to "enactments of Aboriginal governing bodies exercising the s. 35 Aboriginal right of self-government."

The corollary for this case is potentially significant: if the band's alcohol bylaw can be characterized as an exercise of an inherent right of self-government under s. 35 — rather than purely as a delegated power under s. 85.1 — the federal paramountcy doctrine may not apply to it at all. In *George v. Heiltsuk First Nation*, 2022 FC 1786, the Federal Court recognized at para 78 that "a band council does not depend upon Parliament for its existence, and that powers of band councils are not conferred exclusively by the *Indian Act*."

However, this argument faces a significant limitation. In *R. v. Pamajewon*, 1996 CanLII 161 (SCC), [1996] 2 SCR 821 (“*Pamajewon*”), the SCC held at para 24 that self-governance claims under s. 35 must be assessed using the *Van der Peet* test: "claims to self-government are no different from other claims to the enjoyment of aboriginal rights and must, as such, be measured against the same standard." The SCC further held at para 27 that such claims "must be looked at in light of the specific circumstances of each case and, in particular, in light of the specific history and culture of the aboriginal group claiming the right." The asserted right must be characterized specifically — not broadly as a general right to regulate community affairs.

For a Saskatchewan band to invoke the self-governance shield against paramountcy, it would need to demonstrate, under *R. v. Van der Peet*, 1996 CanLII 216 (SCC), [1996] 2 SCR 507 (“*Van der Peet*”), that prohibition or regulation of alcohol was a practice, custom, or tradition integral to the distinctive culture of that specific band prior to European contact — a significant evidentiary burden.

ANALYSIS

Issue 1: Bylaw-Making Authority

The band council's bylaw banning the sale of alcohol on reserve is almost certainly intra vires if it was enacted in procedural compliance with s. 85.1 of the *Indian Act*. Section 85.1(1)(a) expressly authorizes "prohibiting the sale, barter, supply or manufacture of intoxicants on the reserve of the band." This is precisely what the bylaw does. The sole procedural prerequisite is elector assent under s. 85.1(2) — a majority of electors must have voted in favour at a special meeting called for that purpose.

The delivery operator's argument that the bylaw is ultra vires because it conflicts with *Indian Act* provisions on intoxicants inverts the legal framework. Section 85.1 is the *Indian Act*'s provision on intoxicants, and it expressly authorizes exactly what the bylaw does. There is no conflict between the bylaw and the Act; the bylaw is an exercise of authority specifically conferred by the Act.

The *Gamblin* and *Laforme* decisions confirm this analysis. Both courts recognized s. 85.1 as conferring valid authority to ban intoxicants on reserve. The ultra vires findings in those cases arose from procedural failures (using a BCR instead of a bylaw in *Gamblin*; trying to create impermissible exceptions to the prohibition in *Laforme*) — neither of which applies to a straightforwardly enacted prohibition bylaw. The Hiawatha decision reinforces that a properly enacted bylaw under the *Indian Act* has the force of a federal regulation (at para 41), making it

presumptively valid.

Provided the elector-assent requirement under s. 85.1(2) was met, the bylaw is intra vires the *Indian Act*.

Issue 2: Federal Paramountcy

The delivery operator's paramountcy argument fails for two related reasons.

First, there is no impossibility of dual compliance between the band bylaw and any provision of the *Indian Act*. The *Indian Act* does not require that alcohol be available for sale on reserve. It neither mandates nor creates an entitlement to engage in the alcohol trade on reserves. A person can comply with both the *Indian Act* (which does not address commercial alcohol delivery on reserve) and the band bylaw (which prohibits it) by simply refraining from selling or delivering alcohol on reserve. This is precisely the logic of Rothmans: Parliament's non-prohibition of a commercial activity does not grant a positive entitlement to engage in that activity, and a more restrictive rule does not conflict with the less restrictive federal silence.

Second, the bylaw does not frustrate the purpose of the *Indian Act*'s intoxicant provisions. To the contrary, s. 85.1 was enacted to give effect to exactly the kind of community-level prohibition the bylaw represents. The purpose of s. 85.1 is to empower bands to exercise local control over intoxicants. A bylaw exercising that power advances, rather than frustrates, the federal legislative purpose.

The broader principle from *Canadian Western Bank* and *R. v. Francis* is controlling: courts require clear federal legislative intent to occupy the field before invalidating other legislation. There is no such clear intent here. Parliament deliberately chose in s. 85.1 to give bands the choice of prohibiting intoxicants — the provision presupposes that the default federal position is permissive, but the band's election to prohibit is itself authorized by federal law.

The "field occupation" argument also fails under *R. v. Blackbird*: the question is whether compliance with one regime requires breach of the other, not whether there is any overlap or comprehensiveness. There is no such conflict here.

Issue 3: Section 2(b) Charter Challenge

The s. 2(b) analysis proceeds in three stages: application, infringement, and justification.

Application of the Charter

The Charter applies to the band council's bylaw by operation of s. 32(1). As confirmed in

Dickson v. Vuntut Gwitchin First Nation, 2024 SCC 10, Indigenous governing bodies are governments by nature and their exercises of statutory authority are subject to Charter scrutiny. A bylaw enacted under the *Indian Act* is a governmental act; the band council cannot escape Charter review by invoking self-governance.

Section 2(b) Infringement

The delivery operator's argument begins with the threshold question under *Irwin Toy*: does the activity of commercially advertising and delivering alcohol have expressive content? The answer is yes — commercial communications about a delivery service, including price and availability, convey meaning and fall within the protected sphere as confirmed in *Ford* and *Irwin Toy*.

A total ban on the sale of alcohol on reserve restricts the operator's ability to engage in commercial expression associated with that activity. The prohibition therefore engages s. 2(b). However, the expression at issue lies at the low-value periphery of the guarantee. In Reference re ss. 193 and 195.1(1)(C) of the Criminal Code, the SCC confirmed that expression with a purely economic purpose "do[es] not lie at, or even near, the core of the guarantee of freedom of expression." Commercial delivery of alcohol is not political speech, artistic expression, or the communication of ideas central to democratic participation — it is a commercial transaction about a regulated and potentially harmful substance.

Section 1 Justification

Even if s. 2(b) is infringed, the bylaw is almost certainly justified under s. 1. The Oakes test applies, and the following analysis strongly favours the band council:

(i) Pressing and substantial objective: Protecting the health and safety of reserve residents, preventing alcohol-related social harms, and exercising Indigenous community self-determination over a harmful substance are unquestionably pressing and substantial objectives. Courts have consistently upheld regulatory objectives targeting alcohol and tobacco harms as compelling (*JTI-Macdonald* at para 47; *Irwin Toy* generally).

(ii) Rational connection: A prohibition on the sale of alcohol on reserve is directly connected to reducing alcohol availability and associated harms. The connection is self-evident.

(iii) Minimal impairment: The band member can still engage in their delivery service with respect to lawful goods. The restriction is geographically limited to the reserve. There is no absolute prohibition on the delivery operator's broader commercial activities. The restriction only prohibits a specific commercial activity involving a regulated substance on a specific territory.

(iv) Proportionality of effects: Given the low expressive value of commercial alcohol delivery communications compared to the significant community health and self-determination interests

at stake, the effects are proportionate.

The *Irwin Toy* framework also affords greater deference when the legislature is "mediating between competing groups" rather than targeting individuals. A band council acting to protect the health of its members from harms associated with alcohol occupies precisely this protective regulatory role.

Issue 4: Self-Governance Jurisprudence and Paramountcy

The most significant development in recent jurisprudence is the emerging recognition that Indigenous self-governance laws enacted under s. 35 rights may not be subject to federal paramountcy at all. The Quebec Court of Appeal's reasoning in the 2022 Reference confirms that the paramountcy doctrine was designed for conflicts between federal and provincial laws under ss. 91 and 92 — it was not designed for conflicts between federal law and Indigenous laws enacted under s. 35 inherent rights. This argument, if accepted, would entirely remove the bylaw from paramountcy analysis.

The *George v. Heiltsuk First Nation* decision (2022) further confirms that band councils do not derive all their authority from Parliament — they are not simply federal delegates, but holders of pre-existing inherent governance powers that the *Indian Act* partially codifies but does not exhaustively define.

The limitation on this argument, however, is *Pamajewon*'s insistence on specific characterization of the right. A Saskatchewan band invoking self-governance to justify an alcohol prohibition bylaw would need to characterize the right specifically (e.g., "the right of this specific band to regulate intoxicant use within its community as an integral part of its pre-contact governance tradition") and support it with evidence that such regulation was integral to the band's distinctive culture prior to European contact. This is a significant evidentiary undertaking that cannot be assumed.

The upshot is that self-governance jurisprudence strengthens the band's position in two ways: (1) it may altogether exclude the bylaw from paramountcy if it can be characterized as an exercise of inherent self-governance rights; and (2) through s. 25, it may shield the bylaw from the delivery operator's individual s. 2(b) Charter claim if the band can demonstrate the prohibition reflects a collective Indigenous right protecting community wellbeing. The *Houle* decision (2025 FC 267) confirms that s. 25 protection is available even without a formal self-government agreement or constitution.

CONCLUSION

The band council's alcohol prohibition bylaw is intra vires provided it was enacted in procedural compliance with s. 85.1(2) of the *Indian Act* (elector assent by majority at a special meeting). Section 85.1 expressly authorizes precisely this type of prohibition, and a properly enacted bylaw has the force of a federal regulation. The delivery operator's ultra vires argument based on conflict with the *Indian Act* fails because the bylaw does not conflict with — it exercises — the specific authority Parliament conferred.

The federal paramountcy argument is equally unmeritorious. There is no impossibility of dual compliance between the bylaw and any *Indian Act* provision, and Parliament's non-prohibition of alcohol on reserves does not create a positive entitlement to sell it. The bylaw advances rather than frustrates the purpose of s. 85.1.

The s. 2(b) Charter challenge is the most viable avenue for the delivery operator, but it faces substantial obstacles. While commercial delivery activity engages the protected sphere of expression under *Ford* and *Irwin Toy*, restrictions on alcohol-related commercial activity lie at the low-value periphery of the s. 2(b) guarantee. A total prohibition on the sale of alcohol on reserve serves pressing and substantial objectives, is rationally connected to those objectives, minimally impairs expression in the commercial sphere, and produces effects proportionate to the benefits sought. The bylaw would very likely survive s. 1 scrutiny.

The s. 25 Charter shield offers the band an additional defence. Under the *Dickson* framework, if the prohibition reflects a collective Indigenous right — such as the band's right to govern its own territory in accordance with its traditions — it may be shielded from the delivery operator's individual s. 2(b) claim, provided the conflict between the collective and individual rights is irreconcilable.

Recent self-governance jurisprudence, particularly the 2022 QCCA Reference and *George* v. Heiltsuk, suggests that the paramountcy analysis may not even apply to bylaw provisions that reflect inherent governance rights under s. 35 — a transformative development that, if extended to *Indian Act* bands in Saskatchewan, would foreclose the paramountcy challenge entirely. However, the band would need to meet the *Pamajewon*/*Van der Peet* evidentiary threshold to invoke this protection.

In sum, the band council's bylaw is defensible on all three grounds raised by the delivery operator: it is validly enacted under the *Indian Act*; it does not conflict with federal law in any paramountcy-triggering sense; and even if it infringes s. 2(b), it is justified under s. 1 and potentially shielded by s. 25.

Cases Cited:

Indian Act, RSC 1985, c I-5, ss. 81, 85.1, 86, 88

Dickson v. Vuntut Gwitchin First Nation, 2024 SCC 10

Rothmans, Benson & Hedges Inc. v. Saskatchewan, 2005 SCC 13, [2005] 1 SCR 188

Canadian Western Bank v. Alberta, 2007 SCC 22, [2007] 2 SCR 3

R. v. Sparrow, 1990 CanLII 104 (SCC), [1990] 1 SCR 1075

R. v. Van der Peet, 1996 CanLII 216 (SCC), [1996] 2 SCR 507

R. v. Pamajewon, 1996 CanLII 161 (SCC), [1996] 2 SCR 821

R. v. Francis, 1988 CanLII 31 (SCC), [1988] 1 SCR 1025

Ford v. Quebec (Attorney General), 1988 CanLII 19 (SCC), [1988] 2 SCR 712

Irwin Toy Ltd. v. Quebec (Attorney General), 1989 CanLII 87 (SCC), [1989] 1 SCR 927

Canada (Attorney General) v. JTI-Macdonald Corp., 2007 SCC 30, [2007] 2 SCR 610

RJR-MacDonald Inc. v. Canada (Attorney General), 1995 CanLII 64 (SCC), [1995] 3 SCR 199

Montréal (City) v. 2952-1366 Québec Inc., 2005 SCC 62, [2005] 3 SCR 141

Hiawatha First Nation v. Cowie, 2023 ONCA 524

Gamblin v. Norway House Cree Nation Band, 2000 CanLII 16761 (FC)

Laforme v. Mississaugas of The New Credit First Nation Band Council, 2000 CanLII 15488 (FCA)

R. v. Blackbird, 2005 CanLII 1624 (ON CA)

Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis, 2022 QCCA 185

Houle v. Swan River First Nation, 2025 FC 267

George v. Heiltsuk First Nation, 2022 FC 1786

Osoyoos Indian Band v. Oliver (Town), 2001 SCC 85, [2001] 3 SCR 746

Reference re ss. 193 and 195.1(1)(C) of the Criminal Code (Man.), 1990 CanLII 105 (SCC), [1990] 1 SCR 1123