

Our Home and Native Land
An Indigenous Federalist Case Against Separation
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Abstract

Alberta's modern separation movement rests on an unexamined assumption: that the province holds clean, absolute title to its land and resources, and that this title would simply transfer intact to a newly sovereign Alberta. This paper argues that the assumption is legally false. Alberta's title runs, without interruption, through the *Alberta Act, 1905* and the *Natural Resources Transfer Agreement, 1930* back to the treaty relationship between Indigenous nations and the Crown, a relationship that is itself conditional on the continued existence of the federal partner Alberta proposes to leave. Reading the treaties and the NRTA through the lens of contract law, using both the standard Western formula (Offer + Acceptance + Consideration = Contract) and an Indigenous reframing developed in the author's own scholarship (Offer + Acceptance + Reliance on Relations = Indigenous Contract), the paper shows that the historical record supports a finding of *consensus ad idem* failure: the Crown and the treaty nations did not, in fact, agree to the same bargain. It then applies the doctrine of *sui generis* Aboriginal law, long used to bind Indigenous nations to Crown obligations without their full consent, back onto the province that has benefited from that doctrine, arguing that Alberta cannot invoke ordinary contract or property rules to exit a relationship the courts have never allowed Indigenous nations to exit on those same terms. Three legal landings follow from an Alberta separation: reversion of the land to the federal Crown, reversion to the treaty nations, or, more ambitiously, a *sui generis* reconstruction of the federation itself that gives Indigenous governments genuine legislative jurisdiction under section 35, rather than compensation, which the paper argues merely repeats the transactional error it is meant to correct. Contemporary events, including the 2025-26 Alberta separation litigation and the Government of Alberta's 2026 pause of its Protocol Agreement with the Blackfoot Confederacy, are offered as live evidence for the argument. The paper concludes that Alberta's future, and Canada's, depends on deepening the federation rather than dissolving it.

Preface: Where I Stand

Before I begin, I want the reader to know who is writing. I am a citizen of the Temiskaming First Nation, in the traditional territory of the Algonquin peoples on the Ontario-Quebec border. I have been adopted into the Nisga'a Nation on the northwest coast, and I carry a Blackfoot name given to me here in Treaty 7 territory, where I now live and teach. These belongings place me in more than one nation and in more than one part of Turtle Island, and each of them brings responsibilities I did not choose but that I honour. I do not write about the treaty relationship as an outsider looking in. I write about it as someone whose life and identity have been shaped, in specific and traceable ways, by relationships with three distinct Indigenous nations and by the treaty and adoption practices that make those relationships possible. I mention this so that the reader can weigh what follows in light of who I am, not only what I argue.

I am writing this paper as a scholar and as an Indigenous proponent of Canadian federalism. I stand with Canada. And here is why. I have spent most of my life fighting for a better, fairer, more just relationship with the Canadian Crown, but if Alberta leaves, there is no relationship with the Indigenous populations and nations that reside here. No relationship was established between these parties other than what was handed down from Britain and the federal government. Provincial governments in this country did not make treaty. Provinces did not sign at Fort Carlton, Blackfoot Crossing, or Lesser Slave Lake. The relationships that hold this land together (the ones that carry the honour of the Crown, the ones that give Alberta any legitimate title to anything within its borders) were built between Indigenous nations and a Crown that Alberta did not create and cannot inherit on its own. Take away the federal partner, and the relationship as we know it does not merely change. It disappears.

I believe Alberta should stay in Canada. I also believe that the reasons for staying are the same reasons we must change, and that if my province leaves the federation, it will do so on a foundation of law and history so unstable that the ground will move beneath us within a generation.

This paper is written for the whole Alberta community: for those who are seriously exploring separation, for those who oppose it, and for the many people in the middle who feel unsettled and are looking for a framework to think it through. My aim is not to persuade by rhetoric. It is to lay out, plainly, the story of how Alberta came to hold the lands it does, what obligations run with those lands, and what would actually happen (legally, historically, morally) if the province tried to detach itself from the federation.

The core of my argument is this: **the agreements that make Alberta possible are not agreements between Alberta and Canada. They are agreements between Indigenous nations and the Crown (first the Imperial Crown, then the federal Crown) that Alberta inherited only as a beneficiary and a subordinate.** If Alberta tears up its relationship with Canada, it does not simply “keep its land.” It ruptures the chain of title on which that land depends, and the doctrine that governs the unwinding of contracts sends the land back either to the federal Crown or, more fundamentally, to the Indigenous nations from whom the Crown obtained it.

I want Alberta to stay. I also want Alberta to understand that staying is the more Indigenous option, because it preserves the relationships and the language of relationship that make

reconciliation possible. Separation would not liberate Alberta. It would isolate it from the very partners with whom it must, one day, share this land honourably.

I write from within my own frameworks (the trans-systemic approach and the Related-World model), which position Indigenous and non-Indigenous knowledge on a spectrum of relationship rather than as two separate worlds to be walked in or bridged. I offer this paper in that spirit: not two arguments in tension, but one argument seen from different angles.

A Note on Terminology: “First Nation”

I use the term “First Nation” throughout this paper the way it is used in Canadian public life today: as the respectful, self-chosen term for the Indigenous nations who hold treaty with the Crown, and the term I use in my own teaching and my own writing. I want to be precise about it here, because the gap between what this term has come to mean and what it actually means in law is a live point of contention in my own classroom, and it deserves to be addressed directly rather than assumed away.

“First Nation” carries real political and social weight. It displaced “Indian” in ordinary and official usage because it asserts nationhood rather than a colonial administrative category, most visibly through the 1980 “Declaration of the First Nations” and the 1982 renaming of the National Indian Brotherhood as the Assembly of First Nations. I use the term in that spirit throughout this paper, and I think that political and social weight is earned.

But “First Nation” has never been given an independent legal definition, and it has never been constitutionally entrenched. Section 35(2) of the *Constitution Act, 1982* defines “aboriginal peoples of Canada” as including “the Indian, Inuit and Métis peoples of Canada”: the word the Constitution itself uses is “Indian,” not “First Nation.” Where federal statutes do use “First Nation” as an operative legal term, they define it by pointing straight back to the *Indian Act*. The *First Nations Fiscal Management Act*, S.C. 2005, c. 9, s. 2(1), currently in force, defines “First Nation” simply as “a band named in the schedule,” and section 2(2) of that same Act provides that any word it does not otherwise define carries the same meaning as in the *Indian Act*. The now-repealed *First Nations Land Management Act*, S.C. 1999, c. 24, defined the term the same way before it was replaced in 2022 by the *Framework Agreement on First Nation Land Management Act*. “Band,” in turn, has no meaning independent of the *Indian Act*’s own definition of who is registered, or entitled to be registered, as an “Indian” under section 2(1) of that Act, R.S.C. 1985, c. I-5, what is commonly called Status. “Non-status Indian” is not itself defined in any federal statute; it is a descriptive administrative term, used by Crown-Indigenous Relations and Northern Affairs Canada, for a person who identifies as Indigenous and is not registered or entitled to registration under the *Indian Act*, and who is neither Inuit nor Métis. The Supreme Court dealt with the jurisdictional status of non-status Indians and Métis in *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, [2016] 1 S.C.R. 99, holding that both fall within federal jurisdiction under section 91(24) of the *Constitution Act, 1867*, but that ruling settled a jurisdictional question, not a legal definition of “First Nation.”

So when I write “First Nation” in the pages that follow, I am using a term with real political and social weight, one I endorse and teach, but its legal content still runs back through the *Indian Act*’s registration provisions, the same provisions that produced Status and Non-status Indians in

the first place. That gap, between a term of nationhood and a definition built on colonial registration, is not incidental to this paper's argument. It is part of it: the treaty relationship this paper defends was made with peoples the Crown has never stopped defining on its own terms, even as those peoples have reclaimed the language used to describe themselves.

Part I. The Long Arc: Crown and Indigenous Nations in North America

The pre-contact political order

Before any European Crown reached this continent, the territory now called Alberta was the political and legal home of the Blackfoot Confederacy (Siksika, Kainai, Piikani), the Tsuut'ina, the Stoney Nakoda, the Plains and Woodland Cree, the Dene/Chipewyan, the Dane-zaa (Beaver), the Saulteaux, and the Métis nations, among others. Each of these peoples exercised what modern law calls **sovereignty** (governance, law, foreign relations, territorial control, spiritual authority), and each had a political order that was recognizable, to the Europeans who first met them, as legitimate. Fur traders, missionaries, and colonial officials did not deal with these nations as with wilderness. They dealt with them as counterparts.

This point is easy to lose in the modern conversation, because the Canadian legal system now treats Indigenous jurisdiction as something that must be *recognized* by the Crown. But the older reality (the reality that governed the first two centuries of contact) was the opposite. It was the Crown whose authority was contingent. The Crown needed treaties to enter, to trade, to build, to bring in settlers. The nations already here needed nothing from the Crown to exist.

When the Judicial Committee of the Privy Council said in *St. Catherine's Milling* (1888) that Indigenous title was “a personal and usufructuary right, dependent upon the good will of the Sovereign,” it inverted the historical relationship. The Supreme Court of Canada spent a century unwinding that inversion, first in *Calder* (1973), then in *Guerin* (1984), *Sparrow* (1990), *Delgamuukw* (1997), *Haida Nation* (2004), and finally in *Tsilhqot'in Nation v. British Columbia* (2014), where the Court declared for the first time that Aboriginal title exists as a burden on the Crown's underlying title and does not depend on Crown grant. The direction of dependency, in law, has been reversed back to something closer to the historical truth.

The Royal Proclamation of 1763

The first foundational Crown document that recognized this reality was the Royal Proclamation of 1763, issued by King George III at the end of the Seven Years' War. The Proclamation is often called the “Magna Carta of Indian rights” in Canada, and that is not hyperbole. It did four things that still structure the law:

First, it recognized that the Indigenous nations of the interior were “Nations or Tribes of Indians with whom We are connected, and who live under our Protection.” That language (nations, connection, protection) is diplomatic language, not colonial language.

Second, it reserved to those nations the lands west of the Appalachian divide (in the language of the day, the “Indian Territory”), and prohibited private purchase or settlement without Crown supervision.

Third, it established that any transfer of Indigenous land could occur only through **public treaty with the Crown**, made in council with the Indigenous nation concerned. Private conveyance was voided.

Fourth, it required that this treaty process be conducted with Indigenous nations as *nations* (collective political bodies) not as collections of individuals.

The Royal Proclamation is a British Imperial instrument. It has been carried forward in Canadian constitutional law, recognized in section 25 of the *Constitution Act, 1982*, and applied by the courts as a source of Crown obligation. It matters here because it establishes something fundamental: **Crown title to any land in Canada acquired after 1763 must be traceable to a treaty with, or a Crown-supervised transaction involving, an Indigenous nation.** No treaty, no clean title. That principle is the origin of every Numbered Treaty that follows.

The Imperial Crown as treaty partner

For more than a century after 1763, the Crown that made treaties with Indigenous nations across British North America was the *Imperial Crown*: the British Crown, acting through colonial governors and, later, through the Governor General of Canada under British authority. The peace and friendship treaties of the Maritimes (1725–1779), the Upper Canada land treaties (1781–1862), the Robinson Treaties (1850), and the Douglas Treaties on Vancouver Island (1850–1854) are all British Imperial treaties.

The Numbered Treaties of the West and North, signed between 1871 and 1921, appear on their face to be treaties with “Her Majesty the Queen.” But the Queen in question is Queen Victoria in her *Imperial* capacity, exercising sovereign authority over her Dominions. The Canadian government negotiated and executed the treaties as the Queen’s agent for that purpose. The distinction matters because it means the treaty relationship is not, at its origin, a *domestic Canadian* relationship. It is a relationship between Indigenous nations and the Crown itself: a Crown that Canada inherited only later, and imperfectly.

This is why treaty First Nations, to this day, use the phrase “our treaty is with the Crown.” They mean it literally. They do not mean their treaty is with the Prime Minister, or the current Cabinet, or the province. They mean it is with a continuous sovereign personhood that existed before Canada and is not the property of any Canadian government.

Part II. The Numbered Treaties in Alberta

Treaties 6, 7, and 8: who signed what

Three treaties cover the modern province of Alberta.

Treaty 6 was signed in 1876 at Fort Carlton and Fort Pitt (both in present-day Saskatchewan), with adhesions across central Alberta and Saskatchewan. Treaty 6 covers most of central Alberta including Edmonton and the North Saskatchewan River corridor. Its signatory nations include the Cree, Assiniboine, and Ojibwe peoples. Its distinctive terms include the “medicine chest” clause (a Crown promise of medical care), the famine clause (assistance in times of pestilence and famine), and the requirement to maintain reserves at the rate of one square mile per family of five.

Treaty 7 was signed in 1877 at Blackfoot Crossing on the Bow River. It covers southern Alberta from the Rocky Mountains east to the Cypress Hills and south to the international border. Its signatories include the Siksika, Kainai, Piikani (the Blackfoot Confederacy), the Tsuut’ina, and the Stoney Nakoda. Treaty 7 was negotiated in a context in which the Blackfoot Confederacy was militarily and economically dominant, though facing the collapse of the buffalo economy.

The oral record of the negotiations (preserved in the Blackfoot, Stoney, and Tsuut'ina traditions and confirmed in the 1996 book *The True Spirit and Original Intent of Treaty 7*) establishes that the Confederacy signed a peace and land-sharing agreement, not a surrender of jurisdiction or ownership.

Treaty 8 was signed in 1899 at Lesser Slave Lake, with adhesions collected across northern Alberta, northeastern British Columbia, the southern Northwest Territories, and northwestern Saskatchewan. Treaty 8 covers northern Alberta and its signatory nations include the Cree, Dene, and Beaver peoples. Treaty 8 was driven by the Klondike gold rush and the need for a Crown right of passage; its terms include unusually strong guarantees of continued hunting, fishing, and trapping across the whole treaty territory.

Between them, these three treaties cover every square mile of Alberta. There is no un-treated land in the province.

Two understandings, one text

The Crown and the Indigenous signatories understood the treaties differently at the time of signing, and they still understand them differently today. This is not a mystery to be solved by choosing sides. It is a structural feature of the treaty relationship, and it has been recognized by the Supreme Court of Canada.

The Crown's written text describes the treaties as **cessions**: the Indigenous signatories "cede, release, surrender and yield up" the described lands to the Queen "and Her successors forever." This is the language of common-law conveyance. If read on its own, it describes an extinguishment of Indigenous title in exchange for reserves, annuities, and other promises.

The Indigenous signatories, in every recorded oral history, describe the treaties as **agreements to share the land**: to allow the Crown and its settlers to use the land "to the depth of a plough," to live peaceably alongside Indigenous peoples, in exchange for perpetual guarantees of livelihood (hunting, fishing, trapping), education, health care, and mutual respect. In the Cree understanding, the treaties are "as long as the sun shines, the grass grows, and the rivers flow." In the Blackfoot understanding, the treaties are peace treaties between sovereigns, sealed with the pipe.

The Supreme Court has repeatedly held that where the written text and the oral record diverge, courts must consider both, must give weight to the Indigenous understanding, and must interpret ambiguities in favour of the Indigenous signatory. This is the doctrine set out in *R v. Badger* (1996), *R v. Marshall* (1999), and *Mikisew Cree First Nation v. Canada* (2005). The **honour of the Crown** (a constitutional principle articulated in *Haida Nation* and elaborated in *Manitoba Métis Federation v. Canada* (2013)) requires that the Crown act with integrity in fulfilling its treaty promises, and that it not use technical readings of the written text to defeat the spirit of the bargain.

This matters for what follows. When we ask what happens if the treaty relationship is unwound, we cannot answer only from the written cession clause. We must answer from the whole of the treaty as understood by both parties.

Part III. The Crown Passes to Canada

1867, 1870, and the change of treaty partner

Confederation in 1867 created a new legal person (the Dominion of Canada), but did not immediately affect the treaty relationship, because the Numbered Treaties had not yet been signed. What Confederation did was create the *federal* Crown as a distinct legal person from the *Imperial* Crown, and assign to the federal Parliament exclusive legislative authority over “Indians, and Lands reserved for the Indians” under section 91(24) of the *Constitution Act, 1867*.

Three years later, in 1870, the Imperial Crown transferred Rupert’s Land and the North-Western Territory to Canada under the *Rupert’s Land Act, 1868* and the *Rupert’s Land and North-Western Territory Order*. That transfer carried with it the Crown’s obligations, including the obligation to make treaty with the Indigenous nations of the transferred territory before opening it to settlement. The Numbered Treaties that followed (Treaty 1 in 1871 through Treaty 11 in 1921) were, in legal form, treaties with the Crown, negotiated and executed by Canadian officials acting as the Crown’s agents.

The change of treaty partner from Imperial Crown to Canadian Crown was not a change that the Indigenous signatories were asked about. They were told, at various points, that “the Great Mother” (Queen Victoria) was their treaty partner and would protect them; they were not told that after 1931 (Statute of Westminster) and 1982 (patriation), the sovereign personality on the other side of the treaty would be a wholly Canadian Crown legally separate from the British Crown, though occupied by the same person.

For our purposes, the important legal point is that **the treaty obligations follow the Crown, not the government of the day**. The Canadian Crown inherited the Imperial Crown’s treaty obligations by legal succession. The Supreme Court has treated this succession as unbroken. The honour of the Crown is a continuous duty across sovereign personalities.

The Alberta Act, 1905, and the Natural Resources Transfer Agreement, 1930

Alberta was created as a province on 1 September 1905 by the federal *Alberta Act*. The Act drew Alberta’s boundaries, established a provincial legislature, and (importantly) retained the public lands, mines, minerals, and royalties in the federal Crown under section 21. Alberta became a province without the resource base that the original provinces of Confederation had held under section 109 of the *Constitution Act, 1867*.

This asymmetry was corrected in 1930 by the **Natural Resources Transfer Agreement** (NRTA), signed by Canada and Alberta and given constitutional force by the *Constitution Act, 1930* (a UK statute passed at Canada’s request). The NRTA transferred administration and beneficial ownership of Crown lands, mines, minerals, and royalties from the federal Crown to the Crown in right of Alberta. It compensated Alberta for past federal administration. It preserved federally held lands (Indian reserves, national parks, military reserves) in the federal Crown.

And, critically for our argument, **paragraph 12 of the Alberta NRTA preserved Indigenous treaty rights**. The paragraph reads, in part, that Indigenous peoples “shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at

all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.”

This paragraph is not a gift. It is a condition of Alberta’s title. Alberta received its resource base *subject to* the pre-existing treaty rights of Indigenous peoples. The province cannot lawfully claim its lands free of that burden; and every subsequent Supreme Court decision on treaty rights in Alberta (*R v. Horseman* (1990), *R v. Badger* (1996), *R v. Marshall/Bernard, Mikisew, Grassy Narrows*) has confirmed and elaborated this qualification.

The NRTA is the constitutional hinge of Alberta’s modern land claim. Everything Alberta does today as proprietor (every oil sands lease, every forestry tenure, every grazing allotment, every mineral royalty) derives its authority from the NRTA. And the NRTA itself is expressly subordinate to treaty rights.

Section 35 and the constitutional recognition of Indigenous rights

The last major shift in the legal architecture came in 1982. Section 35 of the *Constitution Act, 1982* provides that “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.” Section 35 constitutionalized both Aboriginal rights (rights derived from prior occupation and Indigenous legal orders) and treaty rights (rights arising from the specific treaties, including the Numbered Treaties).

Section 35 is not subject to the *Charter*’s section 33 override. It cannot be overridden by federal or provincial legislation. It binds the Crown (both federal and provincial), and it entrenches a constitutional relationship that no ordinary legislature can alter.

For Alberta, the practical effect is that the province holds its NRTA-derived title *subject to* a constitutionally entrenched Indigenous burden. The province cannot dispose of, license, or develop Crown land in a way that infringes constitutionally protected treaty rights without justification under the *Sparrow / Tsilhqot’in* framework. The province owes the honour of the Crown to Indigenous peoples in the exercise of its own jurisdiction.

Part IV. How the Courts Frame Us: Bands as Political Bodies, Reserves as Land

The doctrinal split

Canadian courts have consistently treated **the band** and **the reserve** as two distinct legal concepts governed by different bodies of law. The distinction is not accidental. It reflects the architecture of the *Indian Act*, the division of legislative power under section 91(24), and (I would argue) a deep unwillingness of the settler legal system to acknowledge the full dimensionality of Indigenous political existence.

A band is a political entity. Section 2(1) of the *Indian Act* defines a band as a body of Indians for whose use and benefit in common lands have been set apart, or for whom money is held by the Crown, or that has been declared a band by the Governor in Council. A band has a membership list, a chief and council (elected under section 74 or by band custom), by-law making powers under sections 81–86, and standing to sue and be sued. In modern jurisprudence (*Corbiere v. Canada* (1999), *Mitchell v. Canada* (2001), *Ermineskin v. Canada* (2009)), bands

are treated as political-legal persons capable of holding rights, exercising governance, and entering into government-to-government relationships.

A reserve is land. Section 2(1) defines a reserve as a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band. A reserve is a property interest. The federal Crown holds title; the band holds a beneficial interest with rights of possession and use. Reserve land is governed by the land provisions of the *Indian Act* (sections 18–41, 53–60), by surrender and designation processes, by the Additions to Reserves policy, and by the framework of federal-Crown fiduciary duty.

The courts treat these as separate legal objects. Cases about band governance rarely engage the land provisions; cases about reserve land rarely engage the governance provisions. When bands attempt to argue that their political jurisdiction extends beyond their reserve boundaries (into traditional territory, into the broader treaty area), the courts have generally been cautious, requiring proof of the specific right under section 35 rather than accepting a general assertion of band jurisdiction.

Why the split matters

From an Indigenous perspective, this doctrinal split is a form of *misrecognition*. It disaggregates the person (the nation), the government (the band council), and the land (the reserve) into three separate legal categories, each governed by different rules, each capable of being addressed without reference to the others. It permits the Crown to negotiate with a band as a political body about matters that do not touch reserve land, and to administer reserve land as property without fully engaging with the political dimensions of Indigenous nationhood.

In the pre-contact and early treaty period, this split did not exist. A nation, its governance, and its territory were one integrated reality. The Numbered Treaties, as understood by the Indigenous signatories, were relationships between whole nations (people, governance, and land inseparable) and the Crown. The *Indian Act*'s later imposition of a band/reserve split was an administrative convenience for the Crown, not a description of Indigenous political reality.

From a trans-systemic perspective (the framework I have developed in my own scholarship), this split is what happens when one legal system attempts to translate another without acknowledging the terms of translation. The settler system needed categories that fit its own conceptual architecture (persons, corporations, property, jurisdiction), and so it produced a version of Indigenous existence that fit those categories. The result is legally coherent within the settler system, but it silences the Indigenous system that it purports to describe.

The stakes for the Alberta conversation

Why does this matter for Alberta separation? Because separatists sometimes assume that the “Indigenous question” can be handled through negotiation with existing band councils, as if the reserves would remain federal islands in a new Alberta, and the bands would remain political bodies with which the new Alberta could conduct government-to-government relations.

That assumption fundamentally misunderstands what the Numbered Treaties are. The treaties are not agreements about reserves. The reserves are one small element of the treaty package. The treaties are agreements about **the whole territory**: the land Alberta now claims to own, the

resources Alberta now claims to license, the surface Alberta now claims to develop. The treaty relationship is with the nation, not with the band council; it covers the traditional territory, not just the reserve; and it binds the Crown that succeeds to the treaty territory, not merely the government that happens to hold administrative authority at any given moment.

The band-versus-reserve split cannot contain the treaty relationship. If Alberta separates, it does not inherit a set of manageable reserve enclaves. It inherits a treaty burden that runs with the whole land, and it inherits it without the Crown that is the actual treaty partner.

Part V. The Contract Argument: What Unwinding Actually Returns

Treaties as *sui generis*, but contract-like

The Supreme Court of Canada has described treaties as *sui generis*, of their own kind. They are neither purely international treaties (though they have international-treaty elements), nor purely domestic contracts (though they have contract elements), nor purely constitutional instruments (though after 1982 they are constitutional). They are their own thing, and they must be interpreted according to their own principles: the honour of the Crown, the doctrine of interpretation in favour of Indigenous signatories, the inclusion of oral promises, and the requirement of good faith over time.

But the treaties do share one crucial feature with contracts: **they are agreements between parties, exchanged for consideration, that create ongoing obligations.** The Indigenous signatories agreed to permit Crown settlement and use of the land. The Crown agreed to provide reserves, annuities, education, health care, hunting and fishing rights, and (the ultimate underlying consideration) the ongoing peaceful relationship of nation to nation. Each side gave something; each side received something.

Two contracts, two formulas: $O + A + C = K$ and $O + A + R = K^i$

It is worth making the underlying contract doctrine explicit, because the informal language above (offer, acceptance, consideration) tracks a real and precise legal formula. Canadian contract law, following the common law generally, treats a contract as formed by an offer, an acceptance of that offer, and consideration moving between the parties, alongside an intention to create legal relations: **Offer + Acceptance + Consideration = Contract ($O + A + C = K$)**, the formulation set out in the leading Canadian treatise, G.H.L. Fridman, *The Law of Contract in Canada*. 7th ed. 2024 (Toronto: Thomson Reuters). Each element has its own settled case law: an offer is judged by how a reasonable person would understand it (*Carlill v. Carbolic Smoke Ball Co.*, [1893] 1 Q.B. 256 (C.A.)); acceptance must meet the offer in a genuine *consensus ad idem*, a meeting of the minds, judged objectively rather than by private and undisclosed intention (*Smith v. Hughes* (1871), L.R. 6 Q.B. 597); and consideration is “some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other” (*Currie v. Misa* (1875), L.R. 10 Ex. 153).

In my own scholarship I have argued that this formula, applied without modification to Indigenous agreements, mistakes the form of the bargain for its substance. In *Indigenous Governance and Business Management* (2nd ed., Kendall Hunt Publishing), ch. 5, “Contracting and the Meeting of the Minds,” pp. 67–75, I set out an Indigenous reframing of the same

structure: **Offer + Acceptance + Reliance on Relations = Indigenous Contract (O + A + R = Kⁱ)**. Where Western contract doctrine treats consideration (an exchange of quantifiable value) as the thing that binds the parties, the Indigenous reframing substitutes reliance on relationship: an ongoing, mutual obligation between the parties as kin, treaty partners, or nations-in-relation, rather than a closed, one-time transaction. This tracks the Related-World framework Murray Dion and I developed in *The Essential Leadership Model* (Kendall Hunt Publishing, 2023), which locates Indigenous and non-Indigenous systems on a spectrum of relationship rather than as two separate worlds.

The Numbered Treaties, read this way, were two different contracts wearing one text. On the Crown's own account, the written cession clause satisfies $O + A + C = K$: an offer of reserves, annuities, and other goods; an acceptance by Chiefs and Councils; consideration flowing both ways. But the oral record (confirmed, as noted above, in the Supreme Court's own treaty jurisprudence) shows the Indigenous signatories offering and accepting on $O + A + R = K^i$ terms: a relationship of ongoing mutual support and land-sharing, not a surrender priced in goods. Two genuinely different bargains were "accepted" by the two sides. That is not a minor interpretive gap. It is, in the vocabulary of contract law itself, a failure of *consensus ad idem*: there was no single set of terms both parties actually agreed to, which is precisely the condition under which a contract is void or voidable rather than merely imperfect.

The doctrine of contract law provides that when an agreement is repudiated, rescinded, or otherwise unwound (whether by material breach, by mutual dissolution, or by the fundamental change of one party's identity), the remedy is generally *restitutio in integrum*: the parties are returned, as far as possible, to the positions they occupied before the contract was made. The leading English authority is *Erlanger v. New Sombrero Phosphate Co.* (1878), 3 App. Cas. 1218 (H.L.), which both states the *restitutio in integrum* principle and marks its own limit: rescission becomes unavailable once genuine restitution is no longer possible, most often because a third party has since acquired rights in the subject matter (see also *Clarke v. Dickson* (1858), 6 C.B. (N.S.) 453). That limit deserves to be named honestly here, because it is the strongest objection a critical reader will raise against any "unwinding" remedy for Alberta: millions of people now live on, and governments now administer, this land. My answer, developed below, is that the *equitable logic* of restitution (one cannot keep the benefit of a bargain whose formation one cannot defend) supports reversion as the doctrinally correct baseline and the normative starting point for renegotiation, not a literal claim that anyone should be displaced.

This doctrine is imperfect when applied to treaties, because the historical positions cannot be literally restored. Nations cannot be un-signed. Settlements cannot be un-built. Generations of children born on treaty land cannot be un-born. But the *principle* of restitution (that the parties revert to their pre-agreement legal positions) is a live principle in Canadian law, and it has been discussed in the Indigenous context in cases like *Guerin v. The Queen* (1984) (fiduciary breach and restitution) and *Manitoba Métis Federation v. Canada* (2013) (unfulfilled constitutional promises).

What Alberta's pre-agreement position actually was

If we apply the restitution principle to Alberta separation, we must ask: what was Alberta's pre-agreement position?

The answer is that **Alberta had no pre-agreement position**. Alberta did not exist before 1905. There was no legal entity called “Alberta” that held land, made treaties, or exercised sovereignty. The land that would become Alberta was:

- Indigenous territory, held by the Blackfoot Confederacy, Cree, Dene, Stoney Nakoda, Tsuut’ina, Saulteaux, Dane-zaa, Métis, and others under their own legal orders (before 1670);
- Nominally within the HBC’s Rupert’s Land grant or the loosely claimed North-Western Territory (1670–1870);
- Federal Crown territory, held by the Dominion of Canada under the 1870 transfer (1870–1905);
- Provincial territory under federal resource control (1905–1930);
- Provincial territory with provincial resource control under the NRTA (1930–present).

Alberta as a landholder is a creature of the *Alberta Act, 1905* and the *NRTA, 1930*. Both are federal instruments. Both are given force by federal or Imperial statute. Both are conditional on the continued existence of the Canadian federation and the continued fulfillment of the underlying treaty relationships with Indigenous nations.

If Alberta separates and the agreements that constitute Alberta are unwound, the province does not revert to some prior position of sovereign landholding, because there was no such prior position. **The land reverts to whoever held it before Alberta did.** And whoever held it before Alberta did was either the federal Crown (under the 1870 transfer) or the Indigenous nations from whom the federal Crown was supposed to have acquired it by treaty.

The three possible landing points

There are three possible legal landings for Alberta’s land in a separation scenario, and none of them is good news for the separatist project:

Landing 1: Reversion to the federal Crown. If we treat the NRTA and the *Alberta Act* as ordinary federal-provincial agreements, then their termination on separation returns the land to the party from whom the province received it: the federal Crown. This is the “clean” contract-law reading. Under this reading, a separated Alberta would inherit administrative authority within its borders but not the underlying title to the public lands. The federal Crown would remain the underlying owner of every acre of former provincial Crown land, a claim it could then assert, license, or negotiate with Indigenous nations directly.

Landing 2: Reversion to Indigenous nations. If we take the deeper reading (the reading required by the honour of the Crown and by section 35) then the federal Crown’s title itself was always subject to the treaty relationship. The federal Crown did not acquire absolute ownership from Indigenous nations; it acquired the right to share the land under conditions set out in the treaties. If the Crown chain is broken by Alberta’s separation, and the federal Crown can no longer discharge its treaty obligations within Alberta, then the underlying treaty consideration fails. On restitutionary principles, the land reverts to the treaty nations: the Blackfoot Confederacy in the south, the Cree and Assiniboine in the centre, the Cree, Dene, and Beaver in the north.

Landing 3: Reconstruction, not reversion. Landings 1 and 2 both assume that the right remedy is to unwind the transaction and put someone back in the position they held before it: a federal Crown restored to underlying title, or Indigenous nations restored to theirs. That is the ordinary contract-law remedy, rescission, and it is a fair reading of what a court could order. But there is a harder question underneath it, and it is worth naming rather than papering over. A scholar sympathetic to the treaty argument, Michael Coyle, has proposed a different remedy again: compensation to the affected First Nations for the province's failure to secure adequate consent before entertaining separation. I think Coyle is right that something is owed, and wrong about what kind of thing it is. Compensation is itself an $O + A + C = K$ remedy. It treats the wrong as one that money can close out, which only makes sense if the underlying interest is the kind of fungible, transactable thing that consideration doctrine assumes it to be. If the real injury is a failure of $O + A + R = K^i$ (a relationship that was never actually offered or accepted on its own terms) then pricing it and paying it off reproduces the very category error that the *sui generis* doctrine was supposed to have corrected. You cannot settle a relationship with a cheque.

The remedy that actually fits an $O + A + R = K^i$ failure is closer to rectification than to rescission or damages. Rectification is the equitable doctrine that corrects an instrument to reflect what the parties actually agreed, rather than unwinding it or pricing the difference (*Performance Industries Ltd v Sylvan Lake Golf & Tennis Club Ltd*, 2002 SCC 19, [2002] 1 SCR 678). Its four-part test does not transpose cleanly from a commercial contract to a treaty relationship, and I want to be honest about that rather than pretend the analogy is tidier than it is. But the underlying logic transposes perfectly well: the instrument on the table (Confederation itself, and Alberta's place within it) gets corrected to reflect the relationship that was actually promised, rather than voided or bought out.

What would that correction look like? Section 91 through 93 of the *Constitution Act, 1867* are treated by the courts as an exhaustive division of legislative authority between Parliament and the provinces: there is no third category of power left over, because the division was built to be complete (*Reference re Same-Sex Marriage*, 2004 SCC 79, describing exhaustiveness as "an essential characteristic of the federal distribution of powers"). If a separation crisis forces the Constitution back open (and a serious secession attempt is one of the few things that could), the honest fix is not to leave Indigenous governments outside that division looking in, the way section 35 currently does as an interpretive shield rather than a grant of legislative jurisdiction. It is to give Indigenous governments a place inside the division, as something closer to a third order of government holding real legislative authority, not merely a right to be consulted about someone else's. A single trial-level decision has already tried to read section 35(1) itself as an independent source of that kind of jurisdiction, without waiting for a constitutional amendment (*Campbell v British Columbia (Attorney General)*, 2000 BCSC 1123, [2000] 4 CNLR 1). That reasoning was never affirmed on appeal (the Court of Appeal decided the successor case on narrower, delegated-authority grounds, and the Supreme Court refused leave (*Sga'nisim Sim'augit (Chief Mountain) v Canada*, 2013 BCCA 49)), so it remains persuasive rather than settled law. But the mechanism for getting there in a more durable way already exists in Canadian constitutional scholarship, and it was not invented for this argument. Peter Hogg, together with Mary Ellen Turpel, wrote the paper that mapped it out for the Royal Commission on Aboriginal Peoples itself (Peter W. Hogg & Mary Ellen Turpel, "Implementing Aboriginal Self-Government: Constitutional and Jurisdictional Issues" (1995) 74 *Canadian Bar Review* 187). Canada's own 1995 Inherent Right to Self-Government Policy, and the real self-

government agreements built under it (Nisga'a, Sechelt, the Yukon agreements, Tsawwassen, Westbank) are proof that this is not a theoretical structure. It is one Canada has already built, piece by piece, in specific places. A separation crisis is the occasion to build it properly, everywhere the treaty relationship requires it, instead of leaving it as a patchwork of negotiated exceptions to a division of powers that was never rewritten to include it.

None of these three landings gives Alberta absolute title to its own land base, and the third does not give Alberta a clean exit from the relationship either: it deepens it. All three expose the province to a claim that is bigger than the province, deeper than the *Alberta Act*, and older than the NRTA.

The mineral estate problem

The most economically consequential piece of this is the mineral estate. Alberta's oil, gas, coal, and bitumen wealth is administered under provincial law but held by the provincial Crown by virtue of the NRTA transfer. If the NRTA is unwound on separation, the mineral estate does not stay with Alberta as if it were the province's ancestral inheritance. It returns to the federal Crown (Landing 1) or, more fundamentally, to the treaty relationship (Landing 2), because the federal Crown's own claim to the mineral estate depends on the treaty acquisition of the underlying land.

This is not a theoretical point. It is a live question in the Aboriginal law jurisprudence. In *Grassy Narrows First Nation v. Ontario (Natural Resources)* (2014), the Supreme Court confirmed that provincial resource development can infringe treaty rights and must meet the justification standard under *Sparrow*. In *Beaver Lake Cree Nation v. Alberta*, the Beaver Lake Cree have brought a cumulative-effects challenge to the whole regime of oil sands development on their treaty lands. The treaty burden on Alberta's mineral wealth is real and it is growing. Under a separation scenario, that burden would not disappear; it would harden.

The response to the separatist argument

Separatist writers sometimes respond to this argument by saying that a new Alberta state would simply assume the Crown's treaty obligations: that Alberta could become the treaty partner in place of Canada. This response fails for three reasons.

First, treaty succession is a matter of Indigenous consent, not unilateral declaration. The nations that signed with the Imperial and then the federal Crown have never consented to a provincial treaty partner. Under the honour of the Crown and section 35, that consent cannot be presumed.

Second, the treaties were signed with a Crown that exercised specific powers (immigration, defence, foreign relations, currency, criminal law) that a separated Alberta might not possess or might exercise differently. The treaty promises were made in exchange for the whole of Crown protection, not for a specific subset of it. A partial-power successor is not a fair substitute.

Third, and most fundamentally, the Indigenous signatories have said, repeatedly and clearly, that they will not accept the transfer of their treaty relationship to a provincial or successor government. The Treaty 6, 7, and 8 First Nations have taken the consistent position that their treaties are with the Crown of Canada, not with any government that might carve itself out of Canada. On this point, the position of the Assembly of Treaty Chiefs in Alberta has been unambiguous.

The doctrine is not hypothetical: the courts have already applied it

Everything argued above (that Alberta's title is conditional, that Indigenous consent cannot be presumed, that the honour of the Crown constrains provincial as well as federal conduct) has already been tested in court, against this very referendum, in the months before this paper was written.

On 13 May 2026, the Court of King's Bench of Alberta quashed the Chief Electoral Officer's approval of the separatist petition organized by Mitch Sylvestre's Alberta Prosperity Project, in *Athabasca Chipewyan First Nation v. Alberta (Chief Electoral Officer)*, 2026 ABKB 375. Applying the three-part duty-to-consult test from *Haida Nation*, the court found that the Crown had knowledge of the Treaty rights at stake, that the Chief Electoral Officer's approval was Crown conduct, and that the "inexorable" statutory process that approval triggers (once signatures are certified, the executive must hold a referendum and must implement the results) created a real potential for adverse effects on those rights. No consultation had occurred. The court held, in terms that could almost serve as a summary of Parts V and VI of this paper, that Alberta's separation would fundamentally contravene Treaty 6, 7, and 8 by unilaterally removing Canada as the treaty partner, that an independent Alberta could not simply assume the Crown's treaty obligations, and that converting provincial boundaries into international borders would divide treaty territory and disrupt First Nations' ability to exercise treaty harvesting rights across it. This built on an earlier, related finding in *Chief Electoral Officer of Alberta v. Sylvestre*, 2025 ABKB 712, that Alberta independence would contravene both *Charter* rights and constitutionally protected treaty rights.

The Government of Alberta's response to this ruling is itself instructive, and it should be read alongside the Blackfoot Protocol pause discussed in Part VIII. Rather than pause the referendum to consult, Premier Danielle Smith announced, on 21 May 2026, a reframed ballot question (asking Albertans whether Alberta should hold a future binding vote on separation, rather than asking about separation directly) structured to route around the consultation requirement the court had just identified, while the government pursued an appeal of the underlying ruling. On 29 June 2026, Justice Woolley of the Court of Appeal of Alberta granted a partial stay in the same proceeding, 2026 ABCA 216: the Chief Electoral Officer could resume verifying and publicly reporting petition signatures, but could not advance the original petition toward a binding referendum while the appeal was pending. Justice Woolley did not disturb the chambers judge's finding that proceeding with secession "without prior involvement of the [First Nation] applicants has the potential to adversely affect Treaty rights"; she simply declined to decide the merits at the stay stage. As of this writing, that appeal has not been decided, and Albertans go to the polls on 19 October 2026 on the reframed, technically non-binding question, not the question the courts have actually ruled on.

I want to be precise about what this sequence does and does not establish. No court has yet ruled, on the merits and on appeal, that Alberta cannot separate, or that the land reverts in the way this Part argues. What the sequence does establish is that a court asked to look directly at this referendum has already found that separation, as such, adversely affects treaty rights protected by section 35, that the Crown's duty to consult was triggered and was not discharged, and that the provincial government's response to that finding was not to consult but to redraft the question to avoid the finding's legal effect while the substantive appeal is still pending. That is

the honour of the Crown being tested in real time, on the facts of this exact referendum, and (on the government's own conduct, not on my characterization of it) failing the test.

Part VI. The Crown Is Continuous, and the Land Cannot Leave

Governments are not silos

One of the most persistent misunderstandings in modern political conversation is the idea that governments are discrete four-year entities that begin fresh with each election. On this view, a new premier or prime minister inherits none of the obligations of the last one, and each administration is a clean slate on which the current majority may write whatever it pleases. Nothing could be further from the constitutional truth.

In Canadian law, **the Crown is a single continuous legal person**. It does not change when the government changes. It does not begin again with each election. The obligations undertaken by the Crown at Fort Carlton in 1876 are the obligations of the Crown today. The promises made by the Crown at Blackfoot Crossing in 1877 are enforceable against the Crown in 2026. The Crown does not have the option to say, “that was a previous government; we owe nothing.” The Crown *is* the continuous personhood of the state itself, and every government of the day is merely the current caretaker of the Crown's ongoing duties.

This principle is not a technicality. It is precisely what the “honour of the Crown” doctrine means. In *Haida Nation v. British Columbia* (2004), *Mikisew Cree v. Canada* (2005), and *Manitoba Métis Federation v. Canada* (2013), the Supreme Court has repeatedly held that Crown obligations are continuous across administrations and that the honour of the Crown requires the Crown to fulfil its promises in a diligent and purposive way over the long arc of time. In *Manitoba Métis Federation*, the Court held that the federal Crown had failed to implement, “in a diligent, purposive fashion,” a promise made in 1870 (143 years earlier) and that this failure remained a live constitutional breach in the present. The Crown that made the treaty is the same Crown that is bound today. The Crown that promised protection to First Nations under the Royal Proclamation is the same Crown that owes protection today.

This applies with equal force to the federal Crown, the provincial Crown, and the Imperial Crown whose obligations both have inherited. A change of premier does not release the provincial Crown from its NRTA-derived obligations. A change of prime minister does not release the federal Crown from its treaty obligations. A change of the sovereign personally (from Elizabeth II to Charles III, and eventually beyond) does not release either Crown from any obligation. **The Crown is one; its promises are one; its duty is one.** Every government is a temporary steward of a permanent commitment.

The single purpose: a unified sovereign nation

Every treaty, every constitutional document, every transfer of land and jurisdiction in this country's history was made with a single underlying purpose: **to build a unified sovereign nation on this land, jointly with the Indigenous nations who were here first.** This is the through-line that connects otherwise disparate legal moments:

- The Royal Proclamation of 1763 was issued to secure peace with the Indigenous nations of the interior so that a unified British North American realm could be governed.
- The Numbered Treaties were negotiated to create shared use of the western lands so that a unified Canadian nation could stretch from sea to sea.
- The *Constitution Act, 1867* united four British colonies into one federation for the express purpose of “peace, order, and good government” across a shared territory.
- The transfer of Rupert’s Land in 1870 brought the North-West under the umbrella of that unified nation.
- The *Alberta Act, 1905* created Alberta as a *member* of the federation, not as a stand-alone jurisdiction.
- The NRTA of 1930 completed Alberta’s participation in the federation as an equal province.
- Section 35 of the *Constitution Act, 1982* recognized that the unified nation includes, and cannot exist without, the Indigenous nations whose treaties made the whole enterprise possible.

Every one of these acts was directed toward the same end: a single, continuous sovereign nation, built through the joint efforts of Indigenous nations and the Crown, and enlarged over time through the addition of provinces as members. The Crown’s promises were promises of and for this unified nation. They were not promises to a series of temporary governments; they were promises to a permanent commonwealth of peoples. When we speak of the honour of the Crown, we are speaking of the honour of this whole enterprise (the honour of the nation-building project itself) carried by a single continuous sovereign personhood across the generations.

The family metaphor

To understand this properly, imagine a family, because in both Indigenous and non-Indigenous traditions, the family is where we first learn about the continuous nature of obligation and belonging.

In an Indigenous family (a Cree family, a Blackfoot family, a Dene family, a Stoney family, a Métis family), the family unit works to raise you up: to give you a name, a place, a status in the community, and the resources to live well. In exchange, you are expected to grow and, in your turn, to help maintain and build the family’s status. Elders sacrifice for children; children eventually care for elders. Wealth and knowledge flow through the family in both directions. Standing is inherited, and standing is passed on. You do not “leave the family” when times are hard, and you do not “leave the family” when times are good. The family is who you are.

Non-Indigenous families work the same way, even in a more individualistic culture. Parents work to give their children opportunities. Children are expected to make good on those opportunities and to be there when the family needs them. Family businesses pass wealth and obligation together. Names carry standing. Reputation is collective. You do not, in a healthy family, take your inheritance and walk away pretending you owe nothing to the people who made you.

Alberta is in exactly this position within the Canadian family. Alberta was created by the federation. Alberta was given its resource base by the federation, through a specific act of the federal Crown (the NRTA) that was passed for the express purpose of raising Alberta up to full

and equal status in Confederation. Alberta prospered (and continues to prosper) on the basis of this inheritance. The oil that funds our schools and hospitals is oil the federal Crown transferred to us in 1930. The Crown lands that anchor our forestry and grazing economies are lands the federal Crown transferred to us in 1930. The whole architecture of Alberta's prosperity is a family inheritance.

And now, some voices in the family are saying: we have done well; we no longer need our siblings; we will take our inheritance and go.

This is not what families do. This is not what Indigenous families do, and it is not what healthy non-Indigenous families do either. The point of receiving a family inheritance is to be able, in turn, to contribute back: to strengthen the whole. Alberta's oil wealth was never meant to make Alberta independent of the federation that gave it. It was meant to make Alberta strong enough to contribute to the federation's strength. That is what equalization is. That is what interprovincial fiscal transfers are. That is what labour mobility and internal trade are. Alberta's prosperity belongs to Alberta *and* to the federation, because the federation is the family within which Alberta grew; and by the same logic, the federation's obligations belong to the federation *and* to Alberta.

There is another dimension of the family analogy that matters here. Just as a family's promises to a grandparent do not disappear when the parents die and the children take over, the Crown's promises to Indigenous nations do not disappear when governments change. The family remembers what was promised. The family honours what was promised. A family member who says, "That was your grandfather's promise, not mine," is not exercising freedom; they are failing the family. Alberta separatism sometimes speaks as if today's Alberta owes nothing to promises made before today's premier was born. That is not how families work, and it is not how the Crown works.

The province is a political construct; the land is not

Even if Alberta insisted on leaving the family, here is what "leaving" would actually mean.

Alberta, in the legal sense, is a political construct. It is a jurisdiction created by federal statute, defined by boundaries drawn on a map, endowed with a legislature and an executive, and given the powers set out in the *Alberta Act, 1905* and the NRTA. Alberta is a name for a certain political-legal apparatus, sitting in a certain constitutional relationship to Canada, at a certain historical moment.

The land is not a political construct. The land was here before Alberta and will be here after Alberta. The Bow River flows through Blackfoot territory whether the province is called Alberta, Rupertsland, or something else entirely, and it would continue to do so even if a separated Alberta government decided, tomorrow, to rename it. Consider the parallel that Canadians know well. When American voices have floated the idea of unilaterally renaming Lake Ontario "Lake America," Canadians across the political spectrum have pushed back, not because the water in the lake would somehow change, but because a name imposed by one political power on a body of water shared with, and rooted in, another sovereign order is an act of political overreach, not a fact about the lake itself. The water knows where it is. The lake knows what it is. The name a political construct chooses for it is a claim, not a reality. The Bow River is in the same position. It is Blackfoot river country. A different provincial name, or no provincial name at all, cannot

change that. The Athabasca oil sands sit within Treaty 8 territory whether the current political jurisdiction is Alberta, the federal government, a successor state, or none of the above. The Rocky Mountains do not move because a legislature votes.

This distinction is not new to Canadian law. It is exactly the distinction the courts and the Crown have insisted upon, for more than a century, in the treatment of **Indian Bands and Indian Reserves**. A band is a political-legal construct: a corporate personality recognized under the *Indian Act*, with governance structures, membership rules, and legal standing. A reserve is a piece of land. The band can change; the reserve does not move. If a band amalgamates with another, the reserve remains. If a band is restructured or dissolved under federal legislation, the reserve remains: the underlying Crown title stays with the Crown, the beneficial interest passes according to law, and the land continues to be land.

For a hundred and fifty years, that framework has structured (and constrained) Indigenous political life in this country. Bands have not been permitted to simply detach their reserve land from federal supervision and go independent. Reserves cannot be sold to non-members without surrender to the Crown. The political entity and the land base are held separate by law, precisely so that the Crown can preserve its underlying interest and its supervisory obligations. That is the doctrine the Crown itself designed and applied.

The separatist argument turned inside out

Now consider what the Alberta separatist argument is asking for, in light of that doctrine.

The separatist argument is that the political entity “Alberta” wants to take its land base and go independent. It wants to detach the land from the federal Crown’s underlying interest and from the treaty relationships that bind that land. It wants to convert a beneficial provincial interest (held under a federal statutory framework, subject to treaty burdens and constitutional constraints) into an absolute sovereign claim severed from those constraints.

This is precisely what the Crown has spent a century and a half telling Indigenous peoples they cannot do.

There is a deep irony here that I want to name plainly. Alberta as a political entity is proposing, on its own behalf, exactly the move that Alberta as a member of the Canadian Crown has helped resist when Indigenous nations have suggested any equivalent step. If a band cannot simply take its reserve and secede (because the reserve is land held under a superior Crown interest for the benefit of the band, not property the band can carry away) then why should a province be able simply to take its Crown land base and secede? The province holds its land base under a superior Crown interest too. The NRTA is not a title deed to sovereign land. It is a transfer of administration and beneficial interest from one Crown to another, within a single federation, subject to treaty rights and constitutional obligations. Alberta’s provincial Crown title is structurally similar to a band’s beneficial interest in a reserve: both are held under a superior Crown interest, both are subject to statutory conditions, and neither exists independently of the constitutional order that created it.

I am not suggesting the answer is that bands should now be permitted to do what Alberta is proposing. That would open a door no one currently is prepared to walk through, and I say that as someone who could easily be sympathetic to the argument on the other side. What I am

suggesting is the reverse: **the same principle that has constrained bands must constrain Alberta.** Political entities do not carry their land with them when they change their political form. The land stays where it is, under the legal order that governs the land.

I call this the doctrine of goose and gander. For a century and a half, Canadian courts and governments have been willing to treat the Crown-Indigenous relationship as *sui generis* (not bound by the ordinary rules of contract or property law) whenever that characterization let the Crown, or a province acting under Crown authority, act without the Indigenous party's consent. The clearest example is the one this Part is built on: paragraph 12 of the NRTA modified Treaty 8 hunting rights, narrowing a commercial right to a subsistence right, in an agreement to which no Treaty 8 nation was a party (*R v. Horseman*, 1990); and the modification was upheld precisely because the relationship was treated as *sui generis* constitutional business between two Crowns, not an ordinary contract requiring the actual right-holder's agreement. If *sui generis* characterization is good enough to let governments bind Indigenous nations without their consent, it is equally good enough to prevent a province from *exiting* that same relationship without the same nations' consent. A relationship robust enough to survive being invoked against a party cannot, in the same breath, be treated as a mere administrative arrangement that party is free to walk away from unilaterally. Canadian law already has a name for the underlying principle against taking inconsistent legal positions to suit one's convenience: issue estoppel, whose preconditions (the same question, a final decision, the same parties or their privies) Justice Binnie set out in *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, alongside the courts' discretion to withhold the doctrine where applying it rigidly would work an injustice. Goose and gander is not itself a recognized term of art in Canadian jurisprudence, in the way it is in Scots and English law under the name "approbation and reprobation", but the underlying principle of consistency is thoroughly Canadian, and in this case it cuts in only one direction.

And in Alberta, that legal order is a triple layer: federal treaty land, provincial Crown land held under the NRTA, and Indigenous treaty territory. None of those layers was created by "Alberta" the political construct. None of them can be taken with "Alberta" the political construct if it leaves. If the political entity called Alberta chose to detach itself from Canada, what would leave would be the legislature, the flag, the borders as drawn on a map, and the name. The ground itself would not leave. The Bow River would not leave. The Athabasca would not leave. Treaty 6, 7, and 8 lands would not leave.

A separated "Alberta" (supposing such a thing could even come into being lawfully, which is a separate and serious question) would be a political construct floating above a piece of land it does not, in any deep legal sense, own. The land beneath it would still be treaty land: treaty land with the Canadian Crown. The reserves within it would still be federal Crown land held for the treaty First Nations. The national parks would still be federal Crown land. The mineral estate would revert as described in Part V, either to the federal Crown or to the treaty nations. What "Alberta" the political construct would take with it is the name and the map, but not the ground itself.

The band/reserve teaching, applied honestly

The band/reserve distinction is, in the end, a teaching. The Crown built the distinction into Canadian law for its own reasons: to keep control of Indigenous land while permitting a limited scope for Indigenous political life. But once the distinction exists in the law, it has a life of its

own, and it teaches us something we can apply back to the Crown's own political creations. That teaching is: **land and political entity are not the same thing. A political entity can change, be restructured, or dissolve; the land is what it is, and it belongs to a legal and moral order older than any single political arrangement placed on top of it.**

If we take that teaching seriously (the teaching the Crown itself insisted on) then Alberta separation reveals itself for what it is. It is a proposal by a temporary political construct to walk away from a continuous Crown, breaking faith with the treaty nations and with the federation, and pretending that the land will come along for the ride. The land will not come along. The land does not belong to a political construct. The land belongs to a continuous relationship (Crown and Indigenous nations, side by side) that was built to make a single sovereign nation and that has never been dissolved.

Families are continuous entities that hold their members accountable across generations. The Crown is a continuous entity that holds itself accountable across administrations. The land is a continuous physical reality that outlives every political arrangement humans place upon it. Alberta was born into the family, raised by the family, given a share in the family's inheritance, and asked to take its place at the family table. To walk out on that is to break faith with siblings, with a family, and with a Crown whose honour is measured across the long span of time, from 1670 to 1763 to 1876 to 1930 to 1982 to today and beyond.

And even if the political construct called Alberta chose to walk out, it would walk out alone. The land would stay. The treaties would stay. The Crown would stay. What would leave is only a name; and a name without land is not a country.

Part VII. The Case for Staying, and For a Renewed Federal Compact

Federalism as a shield

I am an Indigenous scholar and a federalist because federalism is, in the Canadian context, the constitutional structure that best preserves the space for Indigenous nationhood to grow. It is not perfect. It has been used against us. But it is more useful to us than any of the alternatives currently on the table.

Federalism preserves the treaty relationship at the level of the Crown that actually made the treaties. It preserves section 35 as a constitutional constraint on provincial power. It preserves the fiduciary duty of the federal Crown as the trustee of reserve lands. It preserves the *Indian Act* (with all its faults) as a federal instrument, not a provincial one, which means that reform can be pursued at the level of Parliament and the Supreme Court rather than at the level of ten different provincial legislatures each pursuing its own agenda.

A separated Alberta would not preserve any of this. It would either dissolve the federal treaty relationship (Landing 2) or force its renegotiation on terms Alberta could not dictate (Landing 1). It would end the federal fiduciary duty within Alberta and force a new, provincial-only fiduciary architecture that has never been tested and that Indigenous nations have not consented to. It would remove section 35 as an *interprovincial* baseline and expose Alberta's Indigenous communities to whatever the new Alberta constitution turned out to say about their rights.

The federalist position (from an Indigenous perspective) is not conservative. It is protective. It preserves the terms of a bargain we are still trying to enforce.

Federalism as a tool for renegotiation

Staying is not the same as accepting the status quo. My argument is not that Canada is well. It is that Canada is the frame within which we can most effectively pursue the reconciliation we need. Reconciliation is about balancing the books; restoring relations, making financial accounts match, or repairing deep social and historical divides. Separation would take the frame apart without giving us anything to build with. To borrow from Audre Lorde, Canada's tools may be necessary to dismantle this unreconciled house.

Within federalism, there are tools for renegotiation that a separated Alberta would not have:

- The **section 35 dialogue** between courts, legislatures, and Indigenous nations, which has produced the doctrines of consultation, accommodation, consent, and Aboriginal title.
- The **federal-Indigenous nation-to-nation relationship**, articulated by the current federal government and by the Truth and Reconciliation Commission's Calls to Action, which provides a policy framework (however imperfectly implemented) for renegotiating the terms of coexistence.
- The **UN Declaration on the Rights of Indigenous Peoples**, adopted by Canada in 2010 and implemented by the federal *UNDRIP Act* in 2021, which sets an international standard against which federal and provincial conduct can be measured.
- The **federal fiscal capacity** to support Indigenous self-government initiatives, land claims settlements, treaty land entitlement processes, and modern treaties.
- Section 91(24) of the Constitution Act, which places responsibility for Indians and lands reserved for Indians firmly in the hands of the federal branch of government. It is only through their relationship with Canada that the provincial Crown must face the treaty obligations accepted by the Crown.

None of these tools would survive Alberta separation in usable form. Separation would not "free" Alberta to pursue its own reconciliation on better terms. It would remove the constitutional architecture that makes reconciliation possible or necessary.

Related-World and trans-systemic reading

I have argued in my scholarship (most fully in the Related-World framework co-developed with Murray Dion in the Essential Leadership Model) that Indigenous and settler systems should not be understood as two separate worlds that must be walked in or bridged. They should be understood as positions on a spectrum of relationship, each with knowledge and use for the other, capable of conversation and mutual adjustment. The trans-systemic approach that runs through my other work extends this: it seeks space and voice for silenced systems within the encompassing structures of the settler system.

Federalism, at its best, is a Related-World structure. It holds together multiple orders (federal, provincial, and (in the emerging jurisprudence and policy) Indigenous) in a single constitutional conversation. It does not resolve their differences by absorbing one into another. It maintains their difference while requiring them to relate.

Separation is a two-worlds move. It says: we cannot relate to Ottawa; we will make our own world. It ends the conversation. And when a conversation ends, the party that ends it does not gain freedom: it loses the ability to shape what happens next in the party it left behind. A separated Alberta would have no seat at the federal table where the treaty relationship is renegotiated, where section 35 doctrine is developed, where Indigenous-federal fiscal arrangements are settled. Alberta's Indigenous nations would still have that seat (they hold it as of right, under their treaties), but Alberta as a province would not.

As a side note, Alberta would no longer have the opportunity to push for interprovincial projects. That power is held in ss. 91(10) (Navigation and Shipping), 91(12) (Sea Coast and Inland Fisheries), and 91(29) (Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces). Section 91(29) gives the federal Parliament explicit legislative authority over any of the classes of subjects explicitly excepted from the provincial lists. Because interprovincial railways and national highway infrastructure cross borders or serve national interests, they fall squarely into these federal exceptions. These exceptions are found in the provincial powers. 92(10), which excludes "Lines of Steam or other Ships, Railways... and other Works and Undertakings connecting the Province with any other or others of the Provinces or extend beyond the limits of the province...[s]uch Works as, wholly situated with the Province...declared by Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces". This is known as the declaratory power).

What reconciliation-focused federalism actually requires

If we stay, and if we take my argument seriously, the province has real work to do:

First, we must acknowledge in provincial law that Alberta's title to its Crown lands is subordinate to the treaty relationship and to section 35 rights. This means real, statutory recognition of the primacy of treaty rights in provincial land, resource, and environmental legislation, not just consultation processes that are procedurally satisfied and substantively empty.

Second, we must move from consultation to shared decision-making. The *Haida* duty to consult is a floor, not a ceiling. Modern Indigenous law scholarship, UNDRIP, and the emerging co-management practices in northern Canada all point toward a model in which Indigenous nations exercise genuine decision-making authority over resource development in their treaty territories.

Third, we must fund and support Indigenous governance capacity as a matter of provincial policy. Not federal transfers only: provincial commitment. The Métis Settlements in Alberta are a unique provincial-Indigenous land base in Canada; the province has more experience with Indigenous governance partnerships than it credits itself with. That experience should be extended.

Fourth, we must engage with the trans-systemic reality of Indigenous legal orders on their own terms. This means recognizing Indigenous law as law, not as culture. It means creating space in provincial courts, administrative tribunals, and regulatory processes for Cree, Blackfoot, Dene, Stoney, and Métis legal principles to speak. It means, at the university level, developing programs that train lawyers, administrators, and business leaders to work across systems.

Fifth, we must be honest with each other. Separation is a fantasy of clean title. There is no clean title in Alberta. There has not been clean title since 1876. The sooner we say that plainly in the public conversation, the sooner we can move to the harder and more productive work of building something honest on the land we are actually on.

Sixth, we should not assume the current three-way division of federal, provincial, and Indigenous authority is the final word. The Royal Commission on Aboriginal Peoples (RCAP) recommended, in 1996, recognizing Indigenous governments as a third order of government within the federation, alongside the federal and provincial orders, with jurisdiction flowing from an inherent right rather than from a delegation by Parliament or the legislatures (*Report of the Royal Commission on Aboriginal Peoples*, vol. 2, *Restructuring the Relationship* (Ottawa: Minister of Supply and Services Canada, 1996)). The *Charlottetown Accord* proposed a constitutional version of the same idea in 1992, and Canadians voted it down: 54.97 percent against, on a 74.59 percent turnout. I do not raise this to relitigate 1992. I raise it because what is forcing the treaty relationship back onto the Constitutional table in 2026 is not a government offering a reform package; it is a province trying to leave, and it is the courts, not a referendum committee, insisting the treaty relationship be dealt with directly rather than assumed away. That is a different, and in some ways more serious, kind of constitutional opening than 1992 was, and it deserves to be met with a serious proposal for what comes next, not only a defence of what came before. Part V's third landing point sketches what that proposal could look like in constitutional-mechanics terms: not compensation, which stays inside the transactional paradigm the treaty relationship was never actually built on, but a *Sylvan Lake Golf*-style rectification of Confederation itself, giving Indigenous governments real legislative jurisdiction inside the ss. 91–93 division of powers rather than a consultation right standing outside it. Peter Hogg and Mary Ellen Turpel worked out the constitutional mechanics of exactly this for the Royal Commission itself (Hogg & Turpel, "Implementing Aboriginal Self-Government," (1995) 74 *Canadian Bar Review* 187), and a single trial court has already tried reading section 35(1) as an independent source of that jurisdiction on its own, ahead of any amendment (*Campbell v British Columbia (Attorney General)*, 2000 BCSC 1123). That reasoning has not been affirmed on appeal, but the real self-government agreements Canada has negotiated since 1995 show the destination is achievable: what is missing is the constitutional floor under it.

Part VIII. A Case in Point: The Blackfoot Protocol Pause of September 2026

Everything I have argued in the preceding parts is not theoretical. It is playing out, in real time, in the weeks before this paper is being read. The pause described below did not happen in a vacuum. It follows five months of litigation, described in Part V, in which a court already found that Alberta's path to separation adversely affects treaty rights, and in which the province's considered response was to redraft the ballot question rather than to consult.

The Alberta–Blackfoot Confederacy Protocol Agreement

On 10 September 2026 (five weeks before Alberta's October 19 referendum), the Chiefs of the Blackfoot Confederacy issued a public statement seeking a written explanation from the Government of Alberta for its unilateral decision to pause all meetings, communications, and work under the Alberta–Blackfoot Confederacy Protocol Agreement until after the referendum.

The Protocol Agreement was established in 2017 as a government-to-government framework between the Blackfoot Confederacy (the Siksika, Kainai, and Piikani Nations of Treaty 7) and the Government of Alberta. It represents one of the most substantial and mature province-to-Nation relationships in Canada. Over nine years it grew into eleven active tables covering economic development and employment; culture, language, and education; social matters; environment and lands; political and legal matters; UNDRIP and Truth and Reconciliation; housing; and policing. Workplans had been established. Terms of Reference had been developed. Technicians had been engaged. Initiatives were progressing.

Then, during the summer of 2026, scheduled meetings between Blackfoot Confederacy and Alberta ministries were cancelled without explanation. Communication was discontinued. When the Blackfoot Confederacy sought clarification, they were told that direction had been given through the Ministry of Indigenous Relations for all provincial ministries to pause communication and development under the Protocol Agreement until after the October 19 referendum.

The Blackfoot Confederacy was not consulted on this decision. It received no advance notice. It received no written explanation. As of the date of the Chiefs' statement, no direct written response had been received from Premier Danielle Smith or from Indigenous Relations Minister Rajan Sawhney. The Chiefs are asking, publicly, for transparency: why the pause was ordered, who authorized the direction to provincial ministries, what work is affected, and when engagement under the Protocol Agreement will resume.

Naming what this is

I want to name what this is, plainly.

Alberta's pause is a bad-faith act. It is not neutral. It is not procedural. It is the provincial Crown (the government that holds its very land base subject to Blackfoot treaty rights) refusing to conduct government-to-government business with the Blackfoot Confederacy for months on end, precisely because the province is contemplating changes to its own political status that would fundamentally alter its relationship with the Confederacy. It is the province choosing to withdraw from an active treaty relationship at the moment that relationship most requires transparency, consultation, and good faith.

The pause is a violation of the honour of the Crown. The Government of Alberta is a Crown government. It holds its land, its resources, and its administrative authority as the Crown in right of Alberta. When it enters into a Protocol Agreement with the Blackfoot Confederacy, it does so in its Crown capacity. The honour of the Crown, as articulated in *Haida Nation* (2004), *Mikisew Cree* (2005), and *Manitoba Métis Federation* (2013), does not permit the Crown to walk away from an active government-to-government relationship because a political calculation makes engagement inconvenient. The doctrine requires diligent, purposive engagement, especially at moments when the relationship is under stress. What Alberta has done here is exactly what the honour of the Crown forbids: strategic silence, unilateral withdrawal, and refusal of communication with the very treaty partner whose land the province occupies.

The fiscal excuse does not survive first contact with the numbers. The Blackfoot Confederacy has pointed out that Alberta's first-quarter fiscal update projects a \$2-billion surplus for 2026–27. The province has the resources to continue its Protocol Agreement work. What it

has chosen not to have (during a window in which its resources permit exactly this work) is the political will to engage. That is a choice, not a constraint.

The pause proves the argument

This is not an isolated procedural mishap. It is a live demonstration of the core claim of this paper.

If Alberta were, as separatists claim, ready and able to inherit or continue the treaty relationships within its borders after separation, the province would use the pre-referendum period to demonstrate precisely that capacity: by strengthening its Protocol Agreement work, by expanding shared decision-making at the eleven tables, by opening rather than closing communication with the Confederacy. It would be showing the Blackfoot Nations, and every other treaty nation in Alberta, that a post-referendum province could be trusted to carry the treaty relationship forward.

Instead, the province is doing the opposite. It is signalling, in the most concrete way possible, that it does not intend to conduct government-to-government business with Blackfoot Confederacy nations during the very window in which the future shape of that government-to-government relationship is being decided. The province is not asking the Blackfoot Confederacy what a post-referendum Alberta should look like. It is refusing to talk to them at all.

The pre-referendum behaviour is the answer to the post-referendum question. If, before any vote has been taken, Alberta is willing to unilaterally pause established government-to-government agreements with the Blackfoot Confederacy for months without consultation, what will Alberta do after a Yes vote, when the political incentives to engage with treaty nations are further reduced? The answer, on the current evidence, is: not what the honour of the Crown requires.

The family metaphor tested against the facts

In Part VI, I argued that Alberta's relationship to Confederation is a family relationship, and that the family is what teaches us that inheritance carries obligation. The pause of September 2026 is what happens when a family member decides to leave without talking to the rest of the family first.

In a healthy family, when a decision affects everyone, you do not stop speaking to your siblings until you have decided what you want to do to them. You bring them to the table. You explain your thinking. You ask for theirs. You accept that the decision is not yours alone to make. Alberta's pre-referendum silence toward the Blackfoot Confederacy is not the behaviour of a family member preparing a hard conversation. It is the behaviour of someone who has already decided to leave and does not want to look the affected relatives in the eye.

And the affected relatives here are not distant cousins. They are the treaty nations of Alberta's southern half: the Siksika, Kainai, and Piikani Nations whose Treaty 7 land is the land beneath Calgary, beneath Lethbridge, beneath the ranches and irrigation districts and oil and gas fields of southern Alberta. Their treaty is with the Crown, and the Crown includes the Crown in right of Alberta. The province has chosen this moment to stop speaking with them. That choice is on the record.

Bands as governments, treaties as relationships

There is a further point that the Protocol Agreement itself illustrates, and it connects back to the argument I made in Part IV about the courts' framing of bands as political entities separate from reserves as land.

The Protocol Agreement is precisely the kind of instrument that treats the Blackfoot Confederacy as a **government** (a political-legal entity capable of entering into a nation-to-nation framework with a provincial Crown) rather than as a set of reserve administrators. The eleven tables are policy tables, not land-management tables. This is exactly the trans-systemic move I have argued for elsewhere in my scholarship: recognizing Indigenous political existence at its full dimensionality, not just as beneficial title-holders under the *Indian Act*'s land provisions.

For Alberta to have agreed to that framework in 2017 (and to have built nine years of infrastructure inside it) is to have recognized, in the province's own conduct, that the Blackfoot Confederacy is a government worthy of nation-to-nation engagement. To pause that framework in 2026 because a referendum is inconvenient is to un-recognize what the province itself established. It is to demote a partner from a nation-to-nation counterparty to a political inconvenience.

That is not something a Crown that respects its own honour is permitted to do.

What this means for the reader

For the reader of this paper, the September 2026 pause is important for two reasons.

First, it means the abstract legal arguments I have made in Parts I through VII are not abstract at all. They are concrete. They describe a live situation that is unfolding in the Alberta political landscape right now, and the conduct of the Alberta government provides direct evidence for what a separation trajectory looks like in practice: unilateral, non-transparent, and disengaged from the treaty relationships that give the province its legitimacy.

Second, it means every Albertan going to the polls on October 19 needs to see clearly what their provincial government's approach to the treaty relationship actually is when the political stakes rise. The pause is not a marginal detail. It is the province's own answer to the question "how would Alberta treat the treaty nations if it decided to leave?" The answer is on paper, in the Blackfoot Confederacy's September 10 statement, and it deserves the attention of every voter.

The Blackfoot Confederacy (my Treaty 7 relations, in the territory where I carry my name, Makóyi mahkaa) deserves better than this. So does every treaty nation in Alberta. So do Alberta voters, who deserve to see, in plain terms, how their provincial government behaves toward its treaty partners when a difficult political choice is on the horizon.

That is how the argument of this paper touches ground in September 2026. It is one more reason (a concrete, current, undeniable reason) that Alberta should stay, and that in staying, it must restore the honour of its own Crown at the tables it has abandoned.

Conclusion: A Renewed Federal Compact

The strongest argument against Alberta separation is not the economic argument, though the economic argument is strong. It is not the political argument, though the political argument is compelling. It is the argument from the land itself, and from the continuity of the Crown that governs it.

The land does not belong to Alberta. It never has. It is a gift, in the deepest legal and moral sense, to the Indigenous nations who have lived here for thousands of years and who signed treaties with the Crown to permit shared use of it. Alberta holds administrative authority over the land as a beneficiary of a chain of Crown title that begins with those treaties, passes through the *Alberta Act*, and is completed by the NRTA. That chain is contingent on the continued existence of the federal Crown as the treaty partner, on the continuous honouring of the treaty relationship, and on the continued participation of Alberta in the federation that gave it its resource base.

The Crown is continuous. Its promises are continuous. The land is continuous. Only the political constructs on top of the land are temporary, and a temporary political construct does not have the constitutional standing to carry the land, the treaties, or the Crown obligations away with it when it decides to change its form.

If Alberta separates, the chain of Crown title breaks. When the chain breaks, the land does not fall into Alberta's hands. It reverts: either to the federal Crown or to the Indigenous nations from whom the Crown was to have obtained it. In either case, Alberta as a would-be sovereign state would begin its existence with no unambiguous claim to the land beneath its feet. What it would carry away is the name, the borders on a map, and the political apparatus of the legislature, not the ground, not the resources, not the treaty relationships that give the ground and the resources their legal meaning.

I do not offer this as a threat. I offer it as a description. The separatist argument, followed to its legal conclusion, unravels itself. And the unravelling reveals the truth that has always been there: the treaty relationship is the foundation of Alberta's existence, and the treaty relationship is with the Crown of Canada.

For Indigenous peoples in this province, the practical implication is clear. Our interest is in preserving and strengthening the treaty relationship, which means preserving and strengthening the federation within which the treaty relationship lives. For non-Indigenous Albertans, the implication is equally clear, though it may be harder to accept: the province's stability, prosperity, and future depend on a relationship it did not create and cannot control on its own. That relationship is with the treaty nations and through us with the Crown of Canada.

We should stay. And in staying, we should commit to a renewed federal compact: one that finally takes seriously what the treaties promised, what section 35 requires, what UNDRIP demands, and what the honour of the Crown implies. That work is the work of a generation. It cannot be done from outside the federation. It can only be done from within.

I am an Indigenous scholar. I am a federalist. I am asking my province (my whole province, on all sides of this argument) to stay, and to build.

Appendix A: A Community Q&A

This paper is meant to be read and discussed. The following questions and short answers are provided for community groups, classrooms, kitchen-table conversations, and public forums. They summarize the arguments above in plain language.

1. Doesn't Alberta own its own natural resources? Why should Indigenous treaties limit what the province can do with them?

Alberta does hold the underlying provincial Crown title to most of its lands and minerals, but only because the federal Crown transferred that title to the province in 1930, and only subject to the pre-existing treaty rights that the federal Crown had promised to protect. Paragraph 12 of the *Alberta Natural Resources Transfer Agreement* (a constitutional document) explicitly preserved Indigenous hunting, trapping, and fishing rights on all unoccupied Crown land. Section 35 of the *Constitution Act, 1982* went further, entrenching Indigenous and treaty rights as constitutional limits on both federal and provincial power. So, Alberta's resource ownership is real, but it is not absolute. It is qualified by a set of promises that pre-date the province.

2. If the treaties were signed with the British Crown, why isn't the UK responsible for them today?

Because the Crown's obligations were transferred to Canada in stages between 1867 and 1982. The 1867 Constitution created a Canadian Crown as a distinct legal person; the 1931 Statute of Westminster removed British authority over Canadian legislation; and the 1982 patriation completed the separation. Throughout that process, the Canadian courts have treated the treaty obligations as continuous: the Crown that owes the duty is the same Crown, wearing different clothes. Today, the treaty relationship is with the Canadian Crown, exercised primarily through the federal government but binding on the provincial Crown too.

3. What is the difference between a "band" and a "reserve", and why does it matter here?

A band is a group of people organized as a political-legal entity under the *Indian Act*. A reserve is a specific piece of land held by the federal Crown for the use and benefit of a band. The courts treat them as distinct concepts. This matters for the separation conversation because the treaties are not about reserves: they are about whole territories, made with whole nations. And it matters for a second reason: the same distinction between political entity and land should apply to Alberta itself. Alberta is a political construct; the land it sits on is not. If a band cannot detach its reserve and take it away, a province cannot detach its Crown land base and take it away either.

4. Could Alberta just take over the treaty obligations from Canada?

Only with Indigenous consent. Treaty succession is not something one party can declare unilaterally: the treaty is a relationship, and the other party has to agree to the substitution. The Treaty 6, 7, and 8 First Nations have consistently stated that their treaties are with the Crown of Canada and cannot be transferred to a successor provincial government without their consent. That consent is not currently on offer.

5. What does “the land reverts” mean in practical terms? Would people lose their homes?

No, private title held in fee simple by individual Albertans would not directly disappear. But the underlying Crown title on which the fee simple system rests would be thrown into legal uncertainty. Every land title, mortgage, oil-and-gas lease, forestry tenure, and mineral claim in Alberta is registered against a chain that traces back to the provincial Crown, then to the federal Crown, then to the treaty. If that chain is broken by separation, the *validity* of the underlying title becomes a live question, even if the surface titles are not immediately extinguished. This is the kind of uncertainty that shuts down investment, insurance, and lending markets, and that produces years of litigation.

6. Doesn’t a new government have the right to change what the last government did?

Yes, a new government can change ordinary laws, budgets, and policies. But the Crown’s constitutional and treaty obligations do not belong to any one government. They belong to the Crown itself, which is a single continuous legal person across every government that has ever held office. A change of premier or prime minister cannot release the Crown from its treaty promises. This is what the “honour of the Crown” doctrine means, and it has been affirmed repeatedly by the Supreme Court, most fully in *Manitoba Métis Federation v. Canada* (2013), where the Court found that a Crown promise made in 1870 was still binding and still unfulfilled 143 years later.

7. Isn’t this all just theoretical? Would any court really rule this way?

The relevant doctrines are not theoretical. The honour of the Crown, the doctrine of treaty interpretation, the constitutional entrenchment of Indigenous rights, and the fiduciary duty of the Crown are all live, applied law. The Supreme Court has ruled on them repeatedly in cases from *Sparrow* to *Tsilhqot’in* to *Grassy Narrows* to *Manitoba Métis Federation*. And the application of these doctrines to a separation scenario specifically is no longer hypothetical either. On 13 May 2026, the Court of King’s Bench of Alberta quashed approval of the very petition behind this referendum because Alberta had not consulted First Nations before proceeding, and found that separation would adversely affect Treaty 6, 7, and 8 rights. That ruling is under appeal, and I set out the full sequence, including the province’s response, in Part V. But the honest answer to “would any court really rule this way” is: one already has.

8. Doesn’t Quebec’s history show that separation is possible without collapse?

Quebec’s two referenda (1980, 1995) produced No votes, so we do not actually have a live example of a Canadian province separating. The Supreme Court’s *Reference re Secession of Quebec* (1998) established that unilateral secession is not permitted, that a clear majority on a clear question would produce a duty to negotiate, and that negotiations would have to address (among other things) the rights of Indigenous peoples and minorities. Alberta’s situation is materially different from Quebec’s in one crucial respect: Alberta is entirely covered by numbered treaties negotiated with a federal Crown that Alberta did not create. Quebec has a much more complex treaty geography and a different constitutional history.

9. If Alberta left, what would actually go with it, and what would stay?

What would go with the political construct called “Alberta” (assuming such a departure could even be lawfully accomplished) is a name, a legislature, an executive, a flag, and the borders as currently drawn on a map. What would stay is: the land itself; the Crown title underlying the land; the treaty relationships between the Crown and the treaty nations; the reserves held by the federal Crown for the First Nations; the national parks; the Aboriginal rights that burden the land; and the constitutional order that governs all of the above. In other words, a separated Alberta would be a political label sitting on top of a legal landscape it does not own.

10. What is the “trans-systemic” approach you mention, and why is it relevant here?

Trans-systemics is a framework I have developed in my own scholarship. It refers to the practice of finding space and voice for silenced systems (particularly Indigenous legal, governance, and knowledge systems) within the encompassing structures of a dominant system, without forcing either into the other’s terms. It is related to my Related-World model (co-developed with Murray Dion), which positions Indigenous and settler knowledge on a spectrum of relationship rather than as two separate worlds. These frameworks are relevant to the separation conversation because they suggest that the answer to Alberta’s frustrations is not to sever a relationship, but to renegotiate it on terms that acknowledge the presence and legitimacy of multiple systems. Federalism, done well, is a trans-systemic structure. Separation is not.

11. What can I do, as an Albertan, if I find this argument persuasive?

Talk about it. Bring it into the conversations you are already having about Alberta’s future. Ask your MLA, your MP, your municipal council, and your Indigenous neighbours what they think a renewed federal compact would look like. Read the treaties themselves: Treaty 6, Treaty 7, and Treaty 8 are all freely available in full text online. Read the Truth and Reconciliation Commission’s Calls to Action. Read *The True Spirit and Original Intent of Treaty 7*. Sit with the idea that Alberta’s stability depends on relationships older than the province, and think about what your part in maintaining those relationships might be.

12. What is the significance of Alberta’s pause of the Blackfoot Confederacy Protocol Agreement in September 2026?

On 10 September 2026, the Chiefs of the Blackfoot Confederacy publicly asked the Government of Alberta to explain why it had unilaterally paused all meetings, communications, and work under the 2017 Alberta–Blackfoot Confederacy Protocol Agreement until after the October 19 referendum. The Blackfoot Confederacy was not consulted; no written explanation has been provided; and the pause was ordered despite a projected \$2-billion provincial surplus for 2026–27. In this paper I treat that pause as a live demonstration of the argument I am making: that a province willing to walk away from an active nation-to-nation treaty framework in the weeks before a separation vote is a province giving voters their answer, on paper, about how it would treat treaty relationships after such a vote. It is also, on its own terms, a violation of the honour of the Crown. Part VIII of the paper addresses this in detail.

13. What if I disagree with this argument?

I welcome the disagreement. This paper is offered as a contribution to a conversation the whole province needs to have, and honest disagreement is part of that conversation. My only request is that any response engage with the specific legal and historical claims made here (the treaties, the NRTA, section 35, the restitution doctrine, the continuity of the Crown, the distinction between political entity and land) rather than treating the Indigenous position as an obstacle to be worked around. If you disagree with my conclusion, tell me where in the chain of title, the treaty history, or the constitutional architecture you think the argument fails. That is the conversation Alberta should be having.

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