



The Supreme Court confirms that the province of Quebec breached the requirements of good faith and the principle of the honour of the Crown in carrying out agreements on police services in an Indigenous community.

The Government of Canada, the Government of Quebec and Pekuakamiulnuatsh Takuhikan, a band council that represents the Pekuakamiulnuatsh First Nation, entered into successive tripartite agreements on police services in the community of Mashteuiatsh in Quebec. The agreements had three main purposes: to establish and maintain an Indigenous police force, Sécurité publique de Mashteuiatsh (“SPM”), providing services adapted to the Indigenous community of Mashteuiatsh; to set the maximum financial contribution by Canada and Quebec to the SPM’s operation; and to entrust the management of the SPM to the band council. The contracting parties included a clause permitting the renewal of the agreements to ensure the maintenance of the police force over time.

Between 2013 and 2017, the government funding provided for in the agreements proved to be inadequate on its own to ensure the maintenance of the SPM. The SPM had an operating deficit at the end of each fiscal year. As a result, the band council had to assume deficits totalling \$1,599,469.95. It brought legal proceedings claiming reimbursement of the accumulated deficits from the governments of Canada and Quebec. The band council rested its claim on two main bases: a contractual basis under private law, grounded in the provisions of the *Civil Code of Québec*, and a public law basis anchored in the principles of Aboriginal law. The band council alleged that Canada and Quebec had refused to genuinely negotiate the agreements’ funding clauses, which was a breach of both the requirements of good faith and the obligations flowing from the honour of the Crown.

The trial judge dismissed the band council’s application, holding that the contract was the law of the parties and that the honour of the Crown did not apply. The Court of Appeal set aside that judgment and ordered Canada and Quebec to pay their respective share of the total amount of the accumulated deficits, \$832,724.37 for Canada and \$767,745.58 for Quebec. In the Court of Appeal’s view, the governments’ refusal to provide enough funding to meet the SPM’s needs justified finding both a violation of the principle of good faith and a failure to uphold the honour of the Crown. Only Quebec appealed from the Court of Appeal’s decision, Canada having paid the amounts awarded against it by that court.

The Supreme Court has dismissed the appeal.

The Government of Quebec was subject to obligations relating to the renegotiation of the agreements.

Writing for the majority, Justice Kasirer concluded that Quebec’s refusal to renegotiate its financial contribution when the agreements were renewed was not in keeping with the principle of good faith, a source of private law obligations set out in article 1375 of the *Civil Code of Québec*, which requires parties to conduct themselves in good faith in the performance of a contract. It was also a breach of the obligation to act in a manner consistent with the honour of the Crown, an obligation under public law that Quebec had to fulfill in performing the tripartite agreements. As to the manner of remedying the breach of the requirements of good faith, the record does not make it possible to assess

compensatory damages in conformity with the principles of corrective justice. However, with regard to the remedy meant to restore the honour of the Crown, which is rooted in reconciliatory justice, an award of damages equal to the accumulated deficits is an appropriate measure that will enable the contracting parties to undertake future negotiations with equanimity.

Breakdown of the decision: *Majority:* Justice [Kasirer](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Rowe](#), [Martin](#), [Jamal](#), [O'Bonsawin](#) and [Moreau](#) agreed) | *Dissenting:* Justice [Côté](#) would have allowed the appeal.

More information: [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [Takuhikan v. Procureur général du Québec](#) (Superior Court of Quebec - in French only) | [Takuhikan v. Procureur général du Québec](#) (Court of Appeal of Quebec)
