THE SUPREME COURT OF THE STATE OF ALASKA

DOT LAKE VILLAGE, Appellant,	Supreme Court No. S-18599
v.	Superior Court No. 4FA-22-01388 CI
DENÁ NENÁ HENASH, d/b/a Tanana Chiefs Conference, Appellee.	O P I N I O N
	No. 7827 – August 14, 2026

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Patricia L. Haines, Judge.

Appearances: Michael J. Walleri, Jason Weiner & Associates, PC, Fairbanks, for Appellant. Rebecca Ann Patterson and Richard D. Monkman, Sonosky, Chambers, Sachse, Miller & Monkman, LLP, Anchorage, and Brewster H. Jamieson and Erika A. O'Sullivan, Lane Powell LLC, Anchorage, for Appellee.

Before: Carney, Chief Justice, and Borghesan, Henderson, Pate, and Oravec, Justices.

ORAVEC, Justice.

I. INTRODUCTION

An Alaska Native tribe brought suit against the intertribal organization to which it belongs, alleging that the organization had violated its own bylaws. The organization moved to dismiss the case under Alaska Civil Rule 12(b)(1), arguing that the suit was barred by sovereign immunity. The superior court agreed with the organization, dismissed the case for lack of subject matter jurisdiction, and awarded attorney's fees to the organization as the prevailing party.

The tribe appeals. It argues that the organization is not entitled to tribal sovereign immunity under our decision in *Ito v. Copper River Native Association*.[1] In the alternative, it contends that even if the organization possesses sovereign immunity, such immunity does not bar this lawsuit because the tribe is a superior sovereign, and the organization's actions were beyond the scope of the authority delegated to it by its member tribes. Finally, the tribe objects to the attorney's fee award on the basis that the award was barred by the tribe's own sovereign immunity.

We conclude that the organization possesses sovereign immunity as an arm of its member tribes under the test that we articulated in *Ito*, and no exception to sovereign immunity applies. We further conclude that the tribe waived its sovereign immunity as to the issue of attorney's fees when it filed suit. Therefore, we affirm the superior court's orders dismissing the case for lack of subject matter jurisdiction and awarding attorney's fees to the intertribal organization.

II. FACTS AND PROCEEDINGS

A. Facts

Dená Nená Henash — known in English as the Tanana Chiefs Conference (TCC) — is an intertribal consortium of 42 Alaska Native villages and "urban Native Groups," 37 of which are federally recognized tribes.[2] TCC incorporated under the

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[1] 547 P.3d 1003 (Alaska 2024).

[2] The five entities that are not federally recognized tribes include three villages that might be recognized as sovereign tribes by the United States in the future and two Alaska Native-affiliated organizations, Fairbanks Native Association and Tok Native Association.

Alaska Nonprofit Corporation Act[3] in 1971. Its articles of incorporation provide that it is "the historic successor to . . . the traditional consultive and governing assembly of the Athapascan[4] people of Interior Alaska, from time immemorial . . . [with] all of the rights, duties, powers, and privileges of this historic assembly." The articles define TCC's purpose as "[t]o secure to the Alaska Native people of the region of the Tanana Chiefs Conference the rights and benefits to which they are entitled under the United States and the State of Alaska."

TCC operates federal healthcare programs for tribal members, and it is authorized by its member tribes to receive federal healthcare funding as an intertribal consortium under the Indian Self-Determination and Education Assistance Act (ISDEAA).[5] To that end, TCC signed the Alaska Tribal Health Compact with the federal government on October 1, 1994 (amended and restated on October 1, 2010) and is authorized to utilize federal funding from the Indian Health Service and the Bureau of Indian Affairs to provide governmental services to its member entities.

TCC's governance structure includes a 45-member board of directors and a 9-member executive board. The board of directors holds the general authority to manage TCC's affairs. The executive board has more limited managerial powers: although it "shall have and exercise the authority of the Board of Directors in the management of [TCC]," it may not undertake certain specified actions, such as amending TCC's bylaws or removing a director or officer.

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[3] AS 10.20.005-.925.

[4] TCC's bylaws use the spelling "Athapascan" to refer to the indigenous peoples of Interior Alaska. Except to the extent we quote existing documentation, we defer to TCC in this respect.

[5] 25 U.S.C. §§ 5301-5423; *see* 25 U.S.C. § 5381(a)(5) ("The term 'inter-tribal consortium' means a coalition of two [or] more separate Indian tribes that join together for the purpose of participating in self-governance, including tribal organizations."); 25 U.S.C. § 5381(b) (providing that authorized intertribal consortium "shall have the rights and responsibilities of the authorizing Indian tribe").

Three elected officers — a president, vice president, and secretary-treasurer — serve on both the board of directors and the executive board. The other 42 members of the board of directors are each elected from one of TCC's member entities, and they "must be residents of the State of Alaska, and Alaska Native members of member villages of the corporation." The other six members of the executive board are selected by advisory board committees representing TCC's six subregions.

By a two-thirds vote of its members, the board of directors may remove an officer "whenever, in its judgment the best interests of the corporation would be served thereby." In December 2021, the board voted to recall Chief P.J. Simon, the TCC president. Dot Lake Village, a federally recognized tribe and a member of TCC, took issue with the recall vote and a series of meetings that preceded it contending that TCC and its officers had violated TCC's bylaws.

B. Proceedings

1. Complaint and motion to dismiss

In March 2022, Dot Lake filed a complaint in superior court for declaratory and injunctive relief against TCC. The tribe requested that the court declare the recall vote invalid and require TCC to observe certain procedural requirements in meetings of the executive board and board of directors. The tribe also requested an award of attorney's fees and costs.

A month later, TCC moved to dismiss the case with prejudice for lack of subject matter jurisdiction under Rule 12(b)(1).[6] TCC asserted that it was immune from suit on two bases: first, because it was an "arm" of its member tribes under the test

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[6] Alaska R. Civ. P. 12(b) ("[T]he following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter."); *see Douglas Indian Ass'n v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 403 P.3d 1172, 1179 (Alaska 2017) ("[A] motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction is 'a proper vehicle for invoking sovereign immunity from suit.' " (quoting *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015))).

outlined by the Court of Appeals for the Ninth Circuit in *White v. University of California*;[7] and second, because it was a statutorily defined intertribal consortium under ISDEAA.[8] TCC attached supporting affidavits and exhibits for the court to consider.

Four days after TCC filed the motion to dismiss, the Dot Lake Village Council issued a resolution proclaiming "that TCC is not a tribal agency for the purposes of exercising the Tribe's sovereign immunity" and that "in the event that TCC is determined to be a tribal agency for the purposes of exercising tribal sovereign immunity, Dot Lake Village hereby waives such immunity." Dot Lake then filed an opposition to the motion to dismiss. It argued that the correct standard for tribal entities' sovereign immunity in Alaska was the test we had articulated in *Runyon ex rel. B.R. v. Association of Village Council Presidents*, in which we held that an entity formed by one or more tribes "takes on tribal sovereign immunity only if the tribe or tribes, the sources of sovereign authority and privilege, are the real parties in interest."[9] Dot Lake asserted that TCC did not possess sovereign immunity under either *Runyon* or *White*. It then raised four additional arguments against dismissal: (1) that TCC could not assert sovereign immunity against Dot Lake because the tribe was a superior sovereign; (2) that dismissing the case would impair Dot Lake's constitutional right of access to state courts; (3) that the tribe waived any sovereign immunity that it may have delegated to TCC through its resolution; and (4) that TCC could not assert sovereign immunity in

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[7] 765 F.3d 1010, 1025 (9th Cir. 2014) (describing five factors to determine whether tribal-affiliated entity possesses sovereign immunity, including method of creation, purpose, amount of tribal control, tribal intent regarding delegation of sovereign immunity, and financial relationship between tribe and entity).

[8] *See* 25 U.S.C. § 5381(a)(5), (b).

[9] 84 P.3d 437, 440 (Alaska 2004), *overruled by Ito v. Copper River Native Ass'n*, 547 P.3d 1003 (Alaska 2024).

a case based on ultra vires actions, or actions outside of the authority delegated to it by its member tribes. The tribe attached supporting affidavits to the opposition.

In November of 2022, the superior court issued an order granting TCC's motion to dismiss. Considering the pleadings and the materials the parties had attached to their briefing, the court concluded that TCC was entitled to sovereign immunity as an arm of its member tribes under both the *White* and *Runyon* tests. The court considered each of the five factors that the Ninth Circuit identified in *White*:

> (1) the method of creation of the economic entities; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) the tribe's intent with respect to the sharing of its sovereign immunity; and (5) the financial relationship between the tribe and the entities.[10]

The court determined that the first, second, third, and fifth factors weighed in favor of TCC's sovereign immunity and that the fourth factor was neutral. Balancing the five factors, it reasoned that TCC was entitled to sovereign immunity under that test.

After examining the *White* factors, the court concluded that TCC also possessed sovereign immunity under *Runyon*. The court found that "TCC must be able to assert the tribal sovereign immunity of its member tribes to protect the tribal funds that flow to it on the tribes' behalf." The court then determined that it "lack[ed] jurisdiction to insert itself into a dispute that ultimately boils down to a self-governance disagreement within an intertribal consortium."

Finally, the court rejected Dot Lake's superior sovereign, ultra vires, and constitutional arguments. The court declined to decide whether TCC possessed

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[10] *White*, 765 F.3d at 1025 (quoting *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1187 (10th Cir. 2010)).

sovereign immunity under ISDEAA,[11] although it did find that TCC was an intertribal consortium organized under that law.

2. Attorney's fees

TCC filed a motion for attorney's fees under Alaska Civil Rule 82.[12] Dot Lake opposed the motion, arguing that TCC was barred from recovering attorney's fees because the tribe had not waived its own sovereign immunity simply by filing suit.

The superior court issued an order granting TCC's motion for attorney's fees. The court concluded that by requesting attorney's fees in the complaint, Dot Lake had waived its sovereign immunity against an adverse fees award. The court then entered a final judgment awarding TCC $11,888 in attorney's fees, or the presumptive 20% under Rule 82.

Dot Lake appeals the dismissal of the case and the attorney's fees award. We stayed this case until our decision in *Ito v. Copper River Native Association*, which the parties addressed in their briefing.[13] We now turn to this case in light of *Ito*.

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[11] *See* 25 U.S.C. §5381(b) (noting tribal consortiums acting on behalf of tribes under ISDEAA have "rights and responsibilities" of member tribes).

[12] *See* Alaska R. Civ. P. 82(b)(2) ("In cases in which the prevailing party recovers no money judgment, the court . . . shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred.").

[13] 547 P.3d 1003 (Alaska 2024).

III. STANDARD OF REVIEW

"The applicability of sovereign immunity presents a question of law that we review de novo."[14] We also apply de novo review to the question of "[w]hether the superior court applied the correct legal standard."[15]

We review an attorney's fee award for abuse of discretion, which "exists if the award was 'arbitrary, capricious, manifestly unreasonable, or [if it] stemmed from an improper motive.' "[16] But "[w]e review de novo whether the superior court correctly applied the law in awarding attorney's fees."[17]

IV. DISCUSSION

On appeal, Dot Lake argues that this suit may proceed because TCC lacks sovereign immunity. TCC counters that it may not move forward, both because TCC possesses sovereign immunity as an arm of its member tribes and because this case presents an intertribal dispute that is nonjusticiable in state court. We conclude that TCC is entitled to sovereign immunity as an arm of its member tribes, and no exception to sovereign immunity applies in this case. Because we resolve the appeal on those grounds, we do not reach the question of whether Dot Lake's suit presents a nonjusticiable intertribal dispute.

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[14] *McCrary v. Ivanof Bay Vill.*, 265 P.3d 337, 339 (Alaska 2011) (internal quotation marks omitted) (quoting *State v. Alaska State Emps. Ass'n, AFSCME, AFL-CIO*, 190 P.3d 720, 722 (Alaska 2008)).

[15] *Kaiser-Francis Oil Co. v. Deutsche Oel & Gas, S.A.*, 566 P.3d 252, 257 (Alaska 2025) (internal quotation marks omitted) (quoting *Rego v. Rego*, 259 P.3d 447, 452 (Alaska 2011)).

[16] *Aiken v. Alaska Addiction Pros. Ass'n*, 552 P.3d 454, 463 (Alaska 2024) (alteration in original) (internal quotation marks omitted) (quoting *Alaska Wildlife All. v. State*, 74 P.3d 201, 205 (Alaska 2003)).

[17] *Markham v. Kodiak Island Borough Bd. of Equalization*, 441 P.3d 943, 949 (Alaska 2019) (internal quotation marks omitted) (quoting *City of Kodiak v. Kodiak Pub. Broad. Corp.*, 426 P.3d 1089, 1093 (Alaska 2018)).

We also conclude that, by seeking relief in state court, Dot Lake waived sovereign immunity as to the award of attorney's fees.

A. TCC Is Entitled To Sovereign Immunity As An Arm Of Its Member Tribes.

Alaska Native tribes are sovereign nations possessing inherent self-governance powers that "exist unless divested" by the United States Congress.[18] Therefore, a federally recognized tribe is "entitled to tribal sovereign immunity in Alaska state court."[19] As an extension of a tribe's sovereign powers, a legal entity that is associated with but distinct from the tribe may be entitled to sovereign immunity if it is "so closely allied with and dependent upon the tribe that it is effectively an arm of the tribe."[20] This is known as "arm-of-the-tribe immunity."[21]

After the superior court granted TCC's motion to dismiss, we issued our decision in *Ito*, which overruled *Runyon* and partially adopted the multi-factor inquiry for arm-of-the-tribe immunity outlined by the Court of Appeals for the Tenth Circuit in *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino & Resort*.[22] The *Breakthrough* court identified six factors that guide the arm-of-the-tribe analysis.[23] In

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[18] *See John v. Baker*, 982 P.2d 738, 748-51 (Alaska 1999).

[19] *Ito*, 547 P.3d at 1010 (internal quotation marks omitted) (quoting *Douglas Indian Ass'n*, 403 P.3d at 1176); *see also McCrary v. Ivanof Bay Vill.*, 265 P.3d 337, 339 (Alaska 2011) ("Alaska Native tribes recognized by Congress or the Executive Branch are sovereign under federal law.").

[20] *Ito*, 547 P.3d at 1010 (internal quotation marks omitted) (quoting *Runyon ex rel. B.R. v. Ass'n of Vill. Council Presidents*, 84 P.3d 437, 439-40 (Alaska 2004), *overruled on other grounds by Ito*, 547 P.3d 1003); *see also Lewis v. Clarke*, 581 U.S. 155, 162 (2017) (recognizing that "an arm or instrumentality of the State generally enjoys the same immunity as the sovereign itself").

[21] *Id.* at 1008.

[22] *Id.* at 1020-22 (citing *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1181, 1186-87, 1191 (10th Cir. 2010)).

[23] *Breakthrough*, 629 F.3d at 1187-88.

Ito, we mandated that courts consider the first five *Breakthrough* factors — "(1) purpose, (2) method of creation, (3) control, (4) tribal intent, and (5) financial relationship"[24] — the same five factors that the Ninth Circuit adopted in *White* and that the superior court evaluated in ruling on TCC's motion to dismiss.[25] In *Ito*, we determined that the sixth factor "serves to focus the analysis of the individual factors on the purposes of tribal sovereign immunity and need not be considered separately."[26] This is so because the first five factors "properly account for the inherent sovereignty of tribes and the federal policies underlying tribal sovereign immunity."[27]

Dot Lake first argues that the superior court applied the wrong test for sovereign immunity because it failed to consider the sixth factor articulated in *Breakthrough*: "whether the purposes of tribal sovereign immunity are served by granting immunity."[28] It then argues that the remaining five factors weigh against TCC's sovereign immunity. We address each of these contentions below.

1. The superior court applied the correct test for sovereign immunity.

Dot Lake argues that the superior court's application of the five-factor *White* test was reversible error because courts must consider the sixth *Breakthrough* factor as part of the arm-of-the-tribe inquiry. Though the tribe concedes that under *Ito*, "[t]he sixth factor is not considered separately," it asserts that the superior court's consideration of the other five factors was deficient because the superior court did not

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[24] *Ito*, 547 P.3d at 1022.

[25] *Id.* at 1013 (explaining that Ninth Circuit in *White* "adopted the first five *Breakthrough* factors to guide its analysis"); *see White v. Univ. of Cal.*, 765 F.3d 1010, 1025 (9th Cir. 2014) (citing *Breakthrough*, 629 F.3d at 1187).

[26] *Ito*, 547 P.3d at 1022.

[27] *Id.*

[28] *Id.* 1022 (internal quotation marks omitted) (quoting *Breakthrough*, 629 F.3d at 1181).

use the sixth factor to "focus[] the analysis of the other five factors on the purpose of sovereign immunity."

After articulating the five primary factors in the arm-of-the-tribe inquiry, the *Breakthrough* court explained that the "analysis also is guided by a sixth factor: the policies underlying tribal sovereign immunity and its connection to tribal economic development, and whether those policies are served by granting immunity to the economic entities."[29] Such policies "include protection of the tribe's monies, as well as 'preservation of tribal cultural autonomy, preservation of tribal self-determination, and promotion of commercial dealings between Indians and non-Indians.' "[30]

In determining whether an entity is entitled to arm-of-the-tribe sovereign immunity, we reaffirm that a court must consider the five *Ito* factors: "(1) purpose, (2) method of creation, (3) control, (4) tribal intent, and (5) financial relationship."[31] However, the policies of tribal self-determination and cultural autonomy remain highly relevant to the arm-of-the-tribe inquiry. Therefore, in its overall analysis, the court should also consider whether these five factors, taken together, support the conclusion that recognizing the entity as an arm of its member tribes will further federal policies of tribal self-governance and autonomy.

Here, the superior court analyzed each of the five factors that we would later adopt in *Ito*. Then, in its discussion of *Runyon* — the governing law at the time — it considered the purposes of tribal sovereign immunity in state courts. Specifically, the court reasoned that "TCC must be able to assert the tribal sovereign immunity of its member tribes to protect the tribal funds that flow to it on the tribes' behalf." It further concluded that declining to hear the case would protect tribal autonomy because the

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[29] *Breakthrough*, 629 F.3d at 1187.

[30] *Id.* at 1188 (quoting *Dixon v. Picopa Const. Co.*, 772 P.2d 1104, 1111 (Ariz. 1989)).

[31] *Id.*

merits of the dispute "ultimately boil[ed] down to a self-governance disagreement" in which state courts should not interfere. This reasoning reflected proper consideration of whether the federal policies underlying tribal sovereignty supported sovereign immunity in this case. Though the superior court's order predated our decision in *Ito*, its analysis of the five *White* factors, coupled with its consideration of the purposes of sovereign immunity, constituted the correct approach to the arm-of-the-tribe inquiry.

In the alternative, Dot Lake argues that *Ito* is inapposite to this case because *Ito* did not "involve[] a Tribe seeking to maintain control of its subordinate 'arm.' " But our holding in *Ito* is not limited to suits brought by non-tribal plaintiffs,[32] and as explained above, thorough consideration of the *Ito* factors will properly account for the sovereign interests of the tribe bringing suit.

2. TCC possesses sovereign immunity under *Ito*.

We now apply the *Ito* framework to determine whether TCC possesses sovereign immunity as an arm of its member tribes. In conducting this inquiry, "[n]o single factor is dispositive."[33] Instead, we must look to the balance of the five factors to determine whether an entity is entitled to sovereign immunity.[34]

a. Method of creation

The first factor to consider is the method by which TCC was created. The superior court found that this factor favored sovereign immunity because "TCC was incorporated in 1962 as the 'historic successor of the Tanana Chiefs Conference, the traditional consultative and governing assembly of the Athabaskan[35] people of Interior Alaska.' "

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[32] *See id.*

[33] *Id.*

[34] *See id.* at 1026.

[35] We use the spelling that appears in the superior court's order.

The parties take differing views regarding TCC's formation. TCC traces its origins to the Traditional Chiefs of the Athapascan Tribes, noting that leaders have met "since time immemorial," including a 1915 meeting with Judge Wickersham. In 1962, the chiefs organized as an unincorporated association, Dená Nená Henash ("Our Land Speaks").

Dot Lake contends the 1962 organization was merely a "grassroots land claims advocacy and lobbying group," wholly separate from the non-profit corporation formed in 1971. But that assertion is contradicted by the record. The record demonstrates that TCC operated as Dená Nená Henash to protect customary land rights for nearly a decade before formally incorporating under state law to administer programs. Because the incorporation represented a change in legal form rather than the creation of a new, unrelated entity, Dot Lake's attempt to portray the 1962 organization as entirely separate is unavailing.

Next, Dot Lake argues that TCC could not have been created by tribes because the federal government did not recognize any Alaska Native villages as tribes until 1993, over two decades after TCC was incorporated.[36] Dot Lake correctly observes that TCC's original articles of incorporation listed three individuals as incorporators. However, as TCC suggests, this was likely a formality to comply with the Alaska Nonprofit Corporation Act, which requires "[t]hree or more natural persons" to act as incorporators of a nonprofit corporation.[37] The continuity between the original grassroots organization and the current TCC is evident, as its articles of incorporation provided that membership in TCC would include "Native villages of the region claimed by the Dená Nená Henash," and the articles listed 25 initial directors, each representing a different Alaska Native community. Of those 25 communities, 24 are now federally

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[36] *See John v. Baker*, 982 P.2d 738, 749 (Alaska 1999).

[37] AS 10.20.146.

recognized tribes.[38] We have recognized that Alaska Native tribes possess "inherent powers as sovereign nations."[39] Therefore, we reject Dot Lake's suggestion that TCC was not created by tribes simply because its member villages were not yet federally recognized at the time of TCC's incorporation. TCC was created by sovereign tribes.[40]

Finally, Dot Lake argues that TCC is not the "historic successor" to a traditional governing body but was rather created solely for the purpose of implementing the Alaska Native Claims Settlement Act (ANCSA),[41] which extinguished aboriginal land title in Alaska and provided for the formation of for-profit Alaska Native Corporations.[42] In response, TCC points to historic evidence of coordinated action between tribal chiefs in Interior Alaska.[43] It further asserts that its advocacy around land claims settlement "was entirely consistent with its tribal leadership role and its historic concerns." We agree with TCC that its involvement in land claims reflects coordinated action to further tribal sovereignty and self-determination. Indeed, we credit TCC's articles of incorporation, which describe it as the historic successor to the traditional governing assembly of the Alaska Native

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[38] *See* Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs, 89 Fed. Reg. 99899, 99902-03 (Dec. 11, 2024).

[39] *John*, 982 P.2d at 749; *see also Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831) (recognizing Indian tribes as "domestic dependent nations").

[40] *See Ito v. Copper River Native Ass'n*, 547 P.3d 1003, 1023 (Alaska 2024) (concluding that entity incorporated prior to federal recognition of Alaska tribes was created by "sovereign member tribes").

[41] 43 U.S.C. §§ 1601-1629h.

[42] 43 U.S.C. §§ 1603, 1606-1607.

[43] *See* WILLIAM SCHNEIDER ET AL., THE TANANA CHIEFS: NATIVE RIGHTS AND WESTERN LAW 34, 37-39 (2018) (discussing 1915 meeting between Alaska's congressional delegate and group of Tanana chiefs).

peoples in the Interior. Thus, contemporaneous organizational documents acknowledge history that bolsters TCC's assertion of sovereign immunity.

In *Ito*, we explained that formation of an entity under tribal law tends to weigh in favor of immunity, while formation under state law tends to weigh against immunity.[44] In addition, the method-of-creation factor may weigh in favor of immunity if an entity was created by sovereign member tribes to provide governmental services using tribal funds or if the entity is the historic successor to a traditional Alaska Native governing assembly.[45]

Here, some aspects of TCC's creation weigh against immunity, while others weigh in favor. TCC "is a nonprofit entity incorporated under Alaska law, which is not alone dispositive but tends to weigh against sovereign immunity."[46] But TCC has existed as an organization since at least 1962, nearly a decade prior to its incorporation as an Alaska nonprofit, and is the historic successor to a traditional governing assembly. Moreover, like Copper River Native Association (CRNA) in *Ito*, TCC was created by sovereign member tribes, which have since executed resolutions authorizing TCC to contract with the federal government on their behalf.[47] Viewing these circumstances as a whole, we conclude that this factor weighs slightly in favor of TCC's immunity.

b. Purpose of the entity

Next, we consider TCC's purpose. The superior court concluded that this factor favored sovereign immunity because TCC's purpose is to secure rights and benefits for Alaska Native people and "promote . . . their physical, economic, and social well-being," including "by providing health care and other services pursuant to

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[44] *Ito*, 547 P.3d at 1023.

[45] *See id.* at 1023-24.

[46] *Id.* at 1023.

[47] *Id.*

ISDEAA and the Alaska Tribal Health Compact." The court found that TCC "occupies a role quintessentially related to self-governance."[48]

In *Ito*, we explained that the purpose factor "incorporates both the stated purpose for which the [e]ntit[y] [was] created as well as evidence related to that purpose."[49] Therefore, we begin our analysis by examining TCC's stated purpose, as outlined in its articles of incorporation:

> a) To secure to the Alaska Native people of the region of the Tanana Chiefs Conference the rights and benefits to which they are entitled under the United States and the State of Alaska.
>
> b) To enlighten [the] public towards a better understanding of the Native People of Alaska.
>
> c) To preserve the customs, folklore, art and cultural values of the Native People of the region of the Tanana Chiefs Conference.
>
> d) To seek an equitable adjustment and settlement of Native affairs and land claims of the Native People of said region[.]
>
> e) To promote the common welfare of the Natives of Alaska and their physical, economic, and social well-being.
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> f) To foster continued loyalty and allegiance of the Natives of Alaska to the United States and the State of Alaska.
>
> g) To promote pride on the part of the Natives of Alaska in their heritage and traditions.
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> h) To discourage and overcome racial prejudice.
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> i) To promote good government.

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[48] *E.E.O.C. v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1080 (9th Cir. 2001).

[49] *Ito*, 547 P.3d at 1022 (alterations in original) (quoting *Great Plains Lending, LLC v. Dep't of Banking*, 259 A.3d 1128, 1143-44 (Conn. 2021)).

Dot Lake asserts that this purpose statement does not support immunity because it contains no "reference to tribes or tribal affiliation." At the time that TCC was incorporated, none of TCC's member villages had yet been federally recognized as Alaska Native tribes.[50] But TCC's stated goals — securing the rights of Alaska Native people, preserving Alaska Native culture, advocating for equitable settlement of land claims, and promoting the "physical, economic, and social well-being" of Alaska Native people — clearly relate to tribal self-governance and autonomy.[51] Because TCC's stated purpose pertains to tribal self-determination, it weighs in favor of immunity even though the articles of incorporation do not explicitly mention tribes.[52]

Next, we turn to other evidence of TCC's purpose. In this inquiry, we look for evidence that an entity performs "core tribal governmental function[s]."[53] Dot Lake contends that the superior court misapplied the purpose factor because it relied solely on statements of purpose by TCC officials and failed to consider additional relevant evidence to the organization's purpose. But as the superior court recognized, TCC is authorized by its member villages to provide healthcare services under ISDEAA

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[50] *See John v. Baker*, 982 P.2d 738, 749 (Alaska 1999) (explaining that federal government did not recognize Alaska Native villages as sovereign tribes until 1993).

[51] *See Great Plains Lending, LLC*, 259 A.3d at 1145 (concluding that purpose factor weighed in favor of immunity for entity with stated purpose of "advanc[ing] the tribe's 'economic development to aid in addressing issues of public health, safety, and welfare' "); *McCoy v. Salish Kootenai Coll., Inc.*, 334 F. Supp. 3d 1116, 1121 (D. Mont. 2018) (concluding that purpose of "provid[ing] post-secondary education opportunities for Native Americans on the Flathead Indian Reservation" related to tribal self-governance), *aff'd*, 785 F. App'x 414 (9th Cir. 2019).

[52] *See Williams v. Big Picture Loans, LLC*, 929 F.3d 170, 178 (4th Cir. 2019) ("The stated purpose need not be purely governmental to weigh in favor of immunity as long as it relates to broader goals of tribal self-governance.").

[53] *Ito*, 547 P.3d at 1026.

and the Alaska Tribal Health Compact — indisputably a core governmental function.[54] TCC also provides village governmental services, housing, health, and family service programs.[55] This additional evidence strongly suggests that TCC's purpose is to further tribal self-determination and autonomy.

In light of both TCC's stated purpose and other evidence related to its purpose, we conclude that this factor heavily favors immunity.[56]

c. Structure, ownership, management, and control

We now consider TCC's governance structure and the degree of control that its member tribes exercise over its operations. The superior court found that this factor favored sovereign immunity because TCC's governing structure includes a board of directors with elected representatives from each of its member villages.

Dot Lake argues that tribal control over TCC is limited because 5 of its 42 member communities are not federally recognized tribes, and the presence of their representatives on the board of directors dilutes the organizational control of TCC's federally recognized tribal members. It points out that the executive board, which exercises a large degree of operational control over TCC, could include members from these non-federally recognized Alaska Native communities. TCC counters that its federally recognized member tribes, which hold 37 of 42 seats on the board of directors, have "overwhelming control over the organization."

In *Ito*, we explained that when evaluating the control factor, courts should consider "the entit[y's] formal governance structure, the extent to which the entit[y] [is]

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54 *Id.* at 1023 (concluding that purpose factor "weigh[ed] heavily in favor of immunity" where entity's member tribes had authorized it to provide "medical, dental, and behavioral health services" pursuant to ISDEAA).

55 DAVID S. CASE & DAVID A. VOLUCK, ALASKA NATIVES AND AMERICAN LAWS 352 (3d ed. 2012).

56 *See Ito*, 547 P.3d at 1022-23.

owned by the tribe, and the day-to-day management of the entit[y]."[57] The control factor may weigh against immunity if a tribe does not own or control an entity, or if the tribe "relinquishes its authority to non-sovereign entities."[58] However, even when multiple tribes join together to create an entity, the control factor may still favor immunity "if the tribes retain significant control of the entity."[59] We concluded that the control factor favored immunity for CRNA because its membership was limited to five federally recognized tribes, each of which had equal representation on the organization's board of directors.[60]

Dot Lake highlights important distinctions between TCC and CRNA: First, CRNA is entirely controlled by federally recognized tribes, while TCC's membership includes other entities. Second, TCC has a greater number of members, so an individual tribe's degree of control is significantly less. Third, while each of TCC's members is entitled to elect one of the organization's directors, who are required to be "Alaska Native members of member villages of the corporation," the amount of direct tribal control over TCC's daily operations may shift depending on who is serving on TCC's executive board, although board control over substantive issues remains.[61] For these reasons, this factor does not weigh as strongly in TCC's favor as in CRNA's.

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[57] *Id.* at 1024 (alterations in original) (quoting *Williams*, 929 F.3d at 182).

[58] *Id.*; *see also People v. Miami Nation Enters.*, 386 P.3d 357, 373 (Cal. 2016) ("Evidence that the tribe actively directs or oversees the operation of the entity weighs in favor of immunity; evidence that the tribe is a passive owner, neglects its governance roles, or otherwise exercises little or no control or oversight weighs against immunity.").

[59] *Ito*, 547 P.3d at 1024.

[60] *Id.* at 1008, 1024.

[61] TCC's bylaws indicate that the executive board is limited in its authority to direct some organizational decisions, such as amending the bylaws, appointing or removing a director, and consolidating TCC with another organization; such control lies entirely with the board of directors.

Although we have not previously addressed the precise degree of tribal control required, we agree with federal courts that complete control is not a strict prerequisite for immunity to attach.[62] Here, 37 of 42 seats on TCC's board of directors certainly constitutes significant tribal control. And as TCC notes, although three of its 40 member villages have not yet been recognized by the federal government, they could be recognized as tribes at some future date.[63] On balance, this factor favors immunity.

d. Tribal intent

Next, we consider whether TCC's member tribes have manifested an intent to delegate their sovereign immunity to TCC. The superior court concluded that this factor was neutral. It acknowledged the Dot Lake Village Council's statement that it had not delegated sovereign immunity to TCC but also found that "Dot Lake did not expressly reserve its sovereign immunity until it objected to allegedly illegal actions taken by TCC's Board of Directors." It also recognized that other member tribes have explicitly delegated sovereign immunity to TCC. Finding that the parties' positions on the delegation of immunity were "conflicting and somewhat self-serving," the court concluded that the factor favored neither party.

On appeal, Dot Lake asks us to reconsider *Ito*'s analysis of the intent factor. In *Ito*, we explained that courts can discern tribal intent from direct statements by the tribe or within the entity's articles of incorporation, or infer such intent "from the tribe's actions or other sources."[64] We did not decide "whether ISDEAA could confer sovereign immunity to a consortium as a matter of federal statutory law" but

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[62] *See Wilson v. Alaska Native Tribal Health Consortium*, 399 F.Supp.3d 926, 934-35 (D. Alaska 2019) (concluding that control factor weighed in favor of immunity for Alaska Native Tribal Health Consortium even though 12 of its 15 directors were selected by regional health consortia rather than by tribes directly).

[63] *See supra* note 2.

[64] *Ito*, 547 P.3d at 1024 (internal quotation marks omitted) (quoting *Great Plains Lending, LLC v. Dep't of Banking*, 259 A.3d 1128, 1146 (Conn. 2021)).

concluded that "[w]hen CRNA's member tribes authorized CRNA to carry out services on their behalf under ISDEAA, they manifested their intent to share their sovereign rights and responsibilities with CRNA, including sovereign immunity."[65] Dot Lake urges us to reconsider this conclusion and to hold that a delegation of sovereign immunity constitutes a "modification" under 25 U.S.C. § 5332, which provides that ISDEAA should not be construed as "affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe."[66] We consider tribal delegation to deliver services under ISDEAA as an extension, not reduction or impairment, of sovereign immunity. We reaffirm our conclusion in *Ito* that when tribes authorize an entity to carry out services under ISDEAA, this constitutes relevant evidence of tribal intent to share sovereign immunity with that entity.[67]

We conclude that the intent factor weighs in favor of immunity. First, we consider the Dot Lake Village Council's resolution disclaiming any delegation of sovereign immunity to TCC. Although direct statements by an entity's tribal members are important for discerning tribal intent, we recognize that this statement was issued four days after TCC filed the motion to dismiss in this matter and seems to be directly connected to the instant litigation.[68] Moreover, we note that the Kaltag Tribal Council, another TCC member, issued a resolution at around the same time proclaiming the opposite that "as a matter of law and intent TCC is protected by the Tribe's sovereign

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[65] *Id.* at 1025.

[66] 25 U.S.C. § 5332(1).

[67] *See Wilson*, 399 F. Supp. 3d at 935-36 (concluding that Alaska Native Tribal Health Consortium's member tribes "showed their intent to share sovereign immunity" when they authorized it to provide health services under ISDEAA).

[68] *See People v. Miami Nation Enters.*, 386 P.3d 357, 379 (Cal. 2016) (suggesting that tribe's "self-interested and unsupported claim" regarding intent to delegate sovereign immunity should not be dispositive in court's analysis of fourth factor (quoting (internal quotation marks omitted) *White v. Univ. of Cal.*, 2012 WL 12335354, at *7 (N.D. Cal. Oct. 9, 2012), *aff'd*, 765 F.3d 1010 (9th Cir. 2014))).

immunity." While we accord appropriate weight to these direct statements by member tribes, we also acknowledge other evidence tending to demonstrate tribal intent to delegate immunity. TCC is authorized by its member villages to carry out health services under ISDEAA. And its articles of incorporation express an intent that it "shall have all of the rights, duties, powers, and privileges" of the historic governing body of Alaska Native peoples in the Interior. This language demonstrates "an implicit intent to extend immunity to . . ." TCC.[69] Taken together, this evidence of tribal intent favors immunity.

e. Financial relationship

Finally, we consider the financial relationship between TCC and its member tribes. The superior court found that this factor favored sovereign immunity because TCC is the recipient of "federal funding provided to tribes to carry out programs and services in furtherance of self-governance."

We explained in *Ito* that a "relevant consideration" in a court's analysis of the fifth factor is "whether a judgment against an entity would reach the tribe's assets."[70] Dot Lake points out that a judgment against TCC in this litigation would not reach its member tribes' assets because Dot Lake seeks only declaratory and injunctive relief. But the more relevant question in our consideration of the fifth factor is whether *any* money judgment against TCC could affect tribal funds, not whether the judgment in this particular case would have a financial impact.[71] This factor also depends on other considerations, including "how much revenue the entity provides" to its member tribes

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[69] *Ito*, 547 P.3d at 1025.

[70] *Id.* (quoting (internal quotation marks omitted) *Williams v. Big Picture Loans, LLC*, 929 F.3d 170, 184 (4th Cir. 2019)).

[71] *See Williams*, 929 F.3d at 184-85.

and "the source of the entity's funding."[72] In other words, the key inquiry is if and how tribes' financial resources flow through the affiliated entity.

TCC was incorporated under the Alaska Nonprofit Corporation Act and therefore maintains formal financial insulation from its member tribes.[73] But this is not dispositive because TCC is authorized to receive funding that would otherwise go directly to tribes, and a money judgment against TCC would divert funds from tribal healthcare services.[74] This would affect TCC's "resources and ability to provide services to tribal members, and undermine the policies of self-determination and self-governance."[75] We conclude that TCC's financial relationship with its member tribes is sufficiently close and direct to support sovereign immunity.

f. Overall analysis

Consideration of the *Ito* factors demonstrates that TCC is entitled to arm-of-the-tribe immunity. TCC serves the goals of tribal self-determination and autonomy by providing core government services to tribal members. Its member tribes have authorized it to receive federal healthcare funding and provide services pursuant to ISDEAA, which further bears on tribal intent and the financial relationship between TCC and its members. TCC was incorporated under state law, but it was organized by sovereign member tribes as the historic successor to a traditional governing body among Alaska Native people in Interior Alaska. Though a small number of TCC's member

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[72] *Ito*, 547 P.3d at 1025; *see also Miami Nation Enters.*, 386 P.3d at 371 ("[T]he financial relationship factor considers the degree to which the entity's liability could impact the tribe's revenue.").

[73] *See* AS 10.20.051(b).

[74] *Matyascik v. Arctic Slope Native Ass'n, Ltd.*, 2019 WL 3554687, at *5 (D. Alaska Aug. 5, 2019); *see also McCoy v. Salish Kootenai Coll., Inc.*, 334 F.Supp.3d 1116, 1123-1124 (D. Mont. 2018) (concluding that fifth factor favored immunity for tribal college because tribe had designated college as eligible to receive funding under ISDEAA), *aff'd*, 785 F. App'x 414 (9th Cir. 2019).

[75] *Ito*, 547 P.3d at 1026.

communities are not federally recognized tribes, TCC is still subject to significant tribal control. Dot Lake suggests that allowing TCC to assert sovereign immunity in a suit brought by a member tribe undermines the policies underlying tribal sovereignty by diminishing tribal control over the organization. But regardless of the governmental status of the party bringing suit, recognizing TCC's sovereign immunity promotes tribal autonomy by preventing state courts from interfering with the affairs of an organization that was created by tribes, is permitted to handle tribal funds, and is authorized to provide core governmental services to tribal members. We conclude that TCC possesses sovereign immunity under *Ito*.

B. No Exception To Sovereign Immunity Applies In This Case.

Dot Lake next argues that even if TCC is generally entitled to sovereign immunity as an arm of its member tribes, this litigation may still proceed for two reasons: first, because Dot Lake is a superior sovereign, and second, because the challenged actions by TCC board members were ultra vires. We conclude that neither exception applies.

1. Dot Lake is not a superior sovereign to TCC.

The superior court rejected Dot Lake's argument that the suit must proceed because Dot Lake is a superior sovereign to TCC. The court reasoned that the superior sovereign argument "must . . . fail, as TCC is comprised of individual Indian tribes that, if sued individually, could successfully assert sovereign immunity against TCC in state court."[76]

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[76] Dot Lake asserts that the superior court failed to address its superior sovereign argument. We disagree. The superior court's treatment of the issue was brief, but it was sufficient to permit meaningful appellate review. *See Simpson v. Murkowski*, 129 P.3d 435, 448 n.65 (Alaska 2006) ("[T]he superior court must provide findings sufficient to give a clear understanding of the grounds upon which it reached its decision.").

On appeal, Dot Lake argues that the superior sovereign doctrine bars TCC from asserting sovereign immunity in this case because TCC is an "instrumentality" of its member tribes, and as such, it "may not pre-empt the prerogatives" of its member tribes without an express delegation of authority. In making this novel argument, the tribe identifies no authority applying the superior sovereign doctrine to a suit by a tribe against an arm-of-the-tribe entity.

The superior sovereign doctrine applies to suits by the United States against tribes. Although tribes generally enjoy sovereign immunity from suit, that immunity was "passed to the United States to be held for the benefit of the tribes, much like the tribal lands,"[77] and is therefore "subject to the superior and plenary control of Congress."[78] This means that a tribe may not assert sovereign immunity to bar a suit by the United States government.[79] Dot Lake contends that TCC is similarly subordinate to its member tribes and "cannot assert immunity against the government that created it." But none of TCC's member tribes are entitled to unilaterally abrogate its sovereign immunity, nor does an individual tribe exert any sort of "plenary authority" over the organization. Moreover, because the tribes conferred their "rights and responsibilities" to TCC, its exercise of sovereign power is coextensive with that of its member tribes, not lesser or subordinate.[80] We agree with TCC that the relationship between the organization and its member tribes is unlike the unique

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77 *Miccosukee Tribe of Indians of Fla. v. United States*, 698 F.3d 1326, 1331 (11th Cir. 2012); *see also N.L.R.B. v. Pueblo of San Juan*, 276 F.3d 1186, 1192 n.6 (10th Cir. 2002) ("Indian tribes . . . are subordinate and dependent nations possessed of all powers [except] to the extent that they have expressly been required to surrender them by the superior sovereign, the United States." (alteration in original) (quoting *Native Am. Church of N. Am. v. Navajo Tribal Council*, 272 F.2d 131, 134 (10th Cir. 1959))).

78 *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978).

79 *E.E.O.C. v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1075 (9th Cir. 2001).

80 *See* 25 U.S.C. § 5381(b).

relationship between the United States and tribes, so the rationale underlying the superior sovereign exception is not applicable here.

Both parties cite our decision in *Native Village of Eklutna v. Alaska Railroad Corp.*[81] In *Native Village of Eklutna*, we considered whether the Municipality of Anchorage possessed the authority to enforce a local zoning ordinance against a state instrumentality.[82] We recognized that some courts apply a "superior sovereign" test to resolve land-use disputes between state and local governments, but we found the test "unduly rigid" and declined to apply it.[83] Because that case primarily concerned state immunity from local land use regulation, it has little application here.

We decline to apply the superior sovereign exception to a suit by a tribe against an arm-of-the-tribe entity where no plenary power exists.

2. TCC may not be sued for ultra vires acts.

The superior court rejected Dot Lake's argument that the suit could move forward because TCC's actions were ultra vires. The court determined that "if Dot Lake is proceeding under the theory that the actions of individual officials were ultra vires and therefore not protected by tribal sovereign immunity, Dot Lake must sue those officials in their official capacity." We agree.

An act is ultra vires if it is "beyond the scope of power allowed or granted by a corporate charter or by law."[84] When a tribal official acts "outside the scope" of the authority delegated to them by their tribe, they have acted ultra vires.[85] We have

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81 87 P.3d 41 (Alaska 2004).

82 *Id.* at 43, 45.

83 *Id.* at 52-56.

84 *Ultra Vires*, BLACK'S LAW DICTIONARY (1838) (12th ed. 2024).

85 *Douglas Indian Ass'n v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 403 P.3d 1172, 1181 (Alaska 2017); *see also In re J.M.*, 718 P.2d 150, 154 (Alaska 1986) (concluding that unilateral action by village chief on behalf of village

explained that under an ultra vires theory, a tribal official "acting 'without any authority whatever' is not protected by sovereign immunity."[86] Dot Lake urges us to apply this same principle here, contending that the actions giving rise to this lawsuit were ultra vires because they were alleged to be in violation of TCC's bylaws. However, this suit may not proceed under an ultra vires theory because Dot Lake did not name any individual official as a defendant.[87] The tribe asserts that TCC is a legal person that may be held accountable for ultra vires acts. But the crux of the ultra vires exception is that a government official may be sued *as an individual* for unlawful acts because that official was acting outside of the authority delegated by the sovereign.[88] As established above, TCC operates as an arm of its sovereign member tribes. TCC is not an individual for these purposes, and the ultra vires exception does not provide a means to abrogate its sovereign immunity.[89]

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council was ultra vires because village's constitution did not permit chief to act without council's approval).

[86] *Douglas Indian Ass'n*, 403 P.3d at 1181 (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101 n.11 (1984)).

[87] We note that Dot Lake initially filed suit against TCC vice-president Charlene Stern alleging that she had acted in violation of the Alaska Nonprofit Corporation Act, TCC's bylaws, and her fiduciary duties to TCC, but voluntarily dismissed that separate action after initiating this lawsuit.

[88] *See Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689 (1949) ("If the officer purports to act as an individual and not as an official, a suit directed against that action is not a suit against the sovereign. . . . His actions are ultra vires his authority and therefore may be made the object of specific relief."); *United States v. Yakima Tribal Ct.*, 806 F.2d 853, 859 (9th Cir. 1986) (concluding that claim against federal official committing unconstitutional and ultra vires act "may be made only against the official and not against the United States, as the official was acting individually and not in his capacity as a government agent").

[89] Because we decide this question on these grounds, we do not address the superior court's separate conclusion that Dot Lake's argument failed under the doctrine articulated by the United States Supreme Court in *Ex parte Young*, 209 U.S. 123 (1908).

C. Dot Lake Waived Its Sovereign Immunity As To Attorney's Fees.

Dot Lake argues that TCC is barred from recovering attorney's fees against it because the tribe did not waive its sovereign immunity as to that issue. It argues that the act of filing suit cannot be construed as a waiver and that TCC is not entitled to "assert a counterclaim seeking an affirmative money recovery."

We have held that a tribe's waiver of sovereign immunity "must be unequivocally expressed" and cannot be implied.[90] Determining whether such a waiver has occurred requires an understanding of tribal intent, as expressed by a tribe's own statements and other contextual information.[91] We have acknowledged that in some circumstances, waiver may be construed from a tribe's litigation conduct.[92]

The Ninth Circuit has also recognized that a tribe's litigation behavior may constitute a waiver in some instances, but those circumstances "must be viewed as very limited exceptions to the general rule that preserves tribal sovereign immunity absent an unequivocal expression of waiver in clear terms."[93] That court has explained that "the bare act of filing suit does not operate as a complete, automatic waiver that subjects a tribe to any counterclaims filed by the defendant."[94] However, "[i]nitiation of a

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[90] *Ito v. Copper River Native Ass'n*, 547 P.3d 1003, 1026 (Alaska 2024).

[91] *Id.* at 1028.

[92] *Douglas Indian Ass'n v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 403 P.3d 1172, 1178 n.32 (Alaska 2017) (citing *Bodi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1017-18 (9th Cir. 2016)).

[93] *Grondal v. United States*, 37 F.4th 610, 618 (9th Cir. 2022).

[94] *Quinault Indian Nation v. Pearson for Est. of Comenout*, 868 F.3d 1093, 1097 (9th Cir. 2017).

lawsuit necessarily establishes consent to the court's adjudication of the merits of that particular controversy."[95]

We begin our analysis with the recognition that a prevailing party's request for attorney's fees under Rule 82 is a rule of general applicability and a procedural motion, not a substantive claim.[96] Attorney's fees function as both a sword and a shield: They "run in favor of the prevailing party regardless of whether the prevailing party is the plaintiff or the defendant," and "prevailing parties are awarded partial fees regardless of the subject matter of their action or defense."[97] We are therefore not persuaded by Dot Lake's suggestion that TCC cannot seek fees in this case because the tribe's sovereign immunity insulates it from defending against counterclaims. Instead, we conclude that when Dot Lake filed suit against TCC, it voluntarily subjected itself to the Alaska Rules of Civil Procedure and necessarily consented to the superior court's jurisdiction to resolve the merits of the controversy between the parties — including a prevailing party determination and an award of attorney's fees. We further clarify that a superior court has jurisdiction to award attorney's fees in an action brought by a tribe, regardless of whether the tribe requests an award of fees and costs in the complaint. A tribe cannot avoid the procedural consequences of litigation simply by omitting a prayer for fees in its complaint.

Because Dot Lake waived its sovereign immunity as to the issue of Rule 82 attorney's fees and costs when it filed suit against TCC, the superior court had jurisdiction to award fees to TCC as the prevailing party.

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[95] *McClendon v. United States*, 885 F.2d 627, 630 (9th Cir. 1989); *see also In re White*, 139 F.3d 1268, 1271 (9th Cir. 1998) (stating that initiating lawsuit constitutes acceptance of "the risk of being bound by an adverse determination" on merits of issue that plaintiff placed in dispute).

[96] *See State v. Native Vill. of Nunapitchuk*, 156 P.3d 389, 402 (Alaska 2007) (concluding that Rule 82 is rule of practice and procedure rather than substantive law).

[97] *Id.* at 402-03.

V. CONCLUSION

We AFFIRM the superior court's orders.