

Federal Court



Cour fédérale

Date: 20230411

Docket: T-680-20

Citation: 2023 FC 509

Ottawa, Ontario, April 11, 2023

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

LILIANA KOSTIC

Plaintiff

and

HIS MAJESTY THE KING IN RIGHT OF CANADA, AND ALBERTA THE ATTORNEY GENERAL OF CANADA (“CANADA” or “INAC”); THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT CANADA; AND ITS AGENTS

Defendants

and

PIIKANI NATION AND THE BAND NATION AS REPRESENTED BY THE CHIEF AND COUNCIL (“C and C”); ~~ROD NORTH PEIGAN; JANET POTTS; DANIEL NORTH MAN;~~ (TERMS OF THE CHIEF AND COUNCIL 2001-2021 ONWARDS)

Defendants

and

~~STANLEY GRIER; DOANE K CROWSHOE (“DCS”); ERWIN BASTIEN (“EB”);
TROY KNOWLTON; WESLEY CROWSHOE; RIEL PROVOST-HOULE;
THEODORE PROVOST; CHE LITTLE LEAF-MATUSIAK~~

Defendants

and

MICHAEL PFLEUGEUR [(“M. PFLEUGEUR”) BAND EMPLOYEE TERM 2010-
2017]

Defendant

and

PIIKANI INVESTMENT CORPORATION (“PIC”); AND ITS DIRECTORS (
Directors terms 2003-2021 onwards) And DIRECTORS & ITS LEGAL COUNSEL (
2003 ON WARDS) CHIEF STANLEY GRIER [(“SG”) SHAREHOLDER TRUSTEE
2015-22]; ERWIN BASTIEN; TROY KNOWLTON; WESLEY CROWSHOE;
THEODORE PROVOST; CHE LITTLE LEAF-MATUSIAK ~~CHIEF REGGIE~~
~~CROW SHOE [SHAREHOLDER TRUSTEE 2007-11]; FABIAN NORTH PEIGAN;~~
KAREN CROW SHOE; SAM KHAJEEI; PIERRE-GILLES BETTINA; VERONA
WHITE COW; EMILY GRIER & RANA LAW; BLAKE CASSELS & GRAYDON
LLP; RICK YELLOW
HORN;DALE MCMULLEN;

Defendants

and

PIIKANI RESOURCE DEVELOPMENT LIMITED (“PRDL”); & ITS DIRECTORS
2008 – ONWARDS PRESIDENT- DOANE K CROW SHOE (“DCS”); CHIEF
STANLEY GRIER [(“SG”) SHAREHOLDER TRUSTEES 2015-22]; TROY
KNOWLTON; RIEL PROVOST-HOULE; ERWIN BASTIEN (“EB”); THEODORE
PROVOST; CHE LITTLE LEAF-MATUSIAK; PAUL BLAHA; JASON
EDWORTHY; SHAWNA MORNING BULL; MIKE ZUBACH

Defendants

and

CANADIAN IMPERIAL BANK OF COMMERCE (“CIBC”); CIBC TRUST CORPORATION (“CIBC TRUST”) and CIBC WOOD GUNDY/CIBC WORLD MARKETS AND ITS AGENTS (“CIBC WG”)

Defendants

and

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP.; ROBERT HAWKES; GLEN SOLOMON (JSS BARRISTERS, “JSS”)

Defendants

and

BRUCE ALGER (“ALGER”); ALGER & ASSOCIATES INC.; ~~THE GRANT THORNTON GROUP OF COMPANIES; GRANT THORNTON LTD.; GRANT THORNTON INC.~~; AND ALGER INC.

Defendants

and

CARON AND PARTNERS LLP; RICHARD GILBORN; DANIEL GILBORN (“CP”)

Defendants

and

MILLER THOMPSON LLP; JEFFREY THOM

Defendants

and

GOWLING WLG (CANADA) LLP; CAIREEN HANERT (“CH”)

Defendants

and

MCLENNAN ROSS LLP; (“MR”)

Defendants

and

JOHN DOES 1-10

Defendants

AND BETWEEN

DALE MCMULLEN

Plaintiff by Counterclaim

and

**CANADIAN IMPERIAL BANK OF COMMERCE, CIBC TRUST CORPORATION,
CIBC WORLD MARKETS, and BLAKE CASSELS & GRAYDON LLP**

Defendants by Counterclaim

and

PIKANI NATION and PIKANI NATION CHIEF & COUNCIL

Defendants by Counterclaim

ORDER AND REASONS

[1] This is an appeal by Mr. Dale McMullen, Defendant and Plaintiff by Counterclaim [McMullen], of an order of an Associate Judge, dated January 5, 2023. The appeal is brought pursuant to Rule 51(1) of the *Federal Courts Rules*, SOR/98-106 [Rules].

Procedural Background

[2] On June 30, 2020, this Court ordered that the underlying action [Action] would proceed as a specially managed proceeding and, by Order dated July 6, 2020, Associate Judge Molgat was assigned as the Case Management Judge [CMJ] for the Action.

[3] On September 9, 2020, the CMJ issued an Oral Direction suspending all timelines prescribed by the Rules for the conduct of this Action until the establishment of a timetable by direction or order of the Court.

[4] Following submissions from some of the parties as to proposed agendas and timelines, a case management meeting was held on May 19, 2021. On May 21, 2021, the CMJ ordered that the timelines for the procedural steps pertaining to the motions by some 30 defendants to strike

the Amended Amended Statement of Claim [AASOC] or Counterclaim, or to stay the proceedings, would be as specified in that Order [May 21, 2021 Order].

[5] In accordance with the May 21, 2021 Order, McMullen served and filed his Notice of Motion seeking to strike the AASOC, together with his supporting affidavit, on June 29, 2021.

[6] On July 29, 2021, Ms. Liliana Kostic, the Plaintiff, [Kostic] cross-examined McMullen on his affidavit.

[7] By Order dated November 29, 2022, the CMJ considered that some 30 of the defendants who were represented by counsel [Represented Defendants] had served and filed their motions to strike, in writing, pursuant to Rule 369 [November 29, 2022 Order]. However, that McMullen sought an oral hearing of his motion to strike and that a dispute had arisen between McMullen and Kostic concerning cross-examinations and, in that regard, McMullen sought to file a motion pursuant to Rules 86 and 97. Considering that this proposed motion by McMullen could further delay the disposition of the motions to strike brought by the Represented Defendants, the CMJ set out differing timelines for the McMullen and the Represented Defendants' motions to strike. The CMJ granted McMullen leave to file a motion in writing pursuant to Rules 86 and/or 97, without need for a case management conference. She also ordered that he was to file and serve his motion record by December 9, 2022, Kostic was to serve and file her responding motion record by December 16, 2022, and McMullen was to serve and file any reply by December 20, 2022. The CMJ ordered that, following the disposition of McMullen's Rule 86 and/or 97 motion, the Court would fix dates for the service and filing of McMullen's complete motion to strike and

Kostic's responding motion record. As to the motions to strike brought in writing by the Represented Defendants, the CMJ required McMullen and Kostic to serve and file their responding motion records by February 15, 2023. Any replies by the Represented Defendants were to be served and filed by February 28, 2023.

[8] In accordance with the November 29, 2022 Order, on December 9, 2022, McMullen brought a motion in writing pursuant to Rules 86 and 369 seeking an order requiring Kostic to order, pay for, and send the transcript of his cross-examination held on July 29, 2021 [Transcript] to McMullen, and full indemnity for the costs of the motion based on asserted contractual rights of McMullen under an indemnity agreement dated April 28, 2021 with Piikani Nation.

[9] By Order dated December 22, 2022, the CMJ granted McMullen's Rule 86 motion and ordered Kostic to order and pay for the Transcript and to send a copy to McMullen by no later than January 31, 2023 [December 22, 2022 Order]. As there was no evidence before the Court as to any entitlement pertaining to the asserted indemnity agreement, the CMJ declined to exercise her discretion to make any order as to costs.

[10] By Order dated January 5, 2023 the CMJ set out the timelines relating to McMullen's motion to strike [January 5, 2023 Order]. As it is the January 5, 2023 Order which is challenged by McMullen in this appeal, I set it out here in whole:

UPON the Order dated November 29, 2022

AND UPON the Court's Direction dated December 1, 2022;

AND UPON the Order dated December 22, 2022;

THIS COURT ORDERS that:

1. The Defendant/Plaintiff by Counterclaim, Dale McMullen, shall serve and file his complete motion record to include his supporting affidavit sworn June 29, 2021, by no later than **January 13, 2023**.
2. The Plaintiff shall serve and file her responding motion record, including written representations, by no later than **February 15, 2023**.
3. The Defendant/Plaintiff by Counterclaim, Dale McMullen, shall consult with the Plaintiff and provide the Court, by no later than **February 28, 2023**, their available dates in the following 90-day period for the hearing of the motion at General Sittings in Calgary.

[11] On January 13, 2023, McMullen filed his motion record pertaining to his motion to strike, as required by the January 5, 2023 Order.

[12] On January 16, 2023, McMullen filed a Notice of Motion appealing the January 5, 2023 Order. This indicated, among other things, that the January 5, 2023 Order required him to serve and file his complete motion record by January 13, 2023, but that this was in conflict with the prior, December 22, 2022 Order, which did not require Kostic to provide the Transcript to McMullen until January 31, 2023. The result was that McMullen was forced to file his motion to strike without the Transcript.

[13] Kostic did not provide the Transcript on January 31, 2023 as required by the December 22, 2023 Order.

[14] Instead, on January 31, 2023, she wrote to the Court stating that “the transcripts have been ordered through counsel, however, they will not be ready for 3 weeks as of this morning. I, therefore, will be unable to deliver same by today”. Kostic, in fact, is not represented by counsel in this Action. She sought an extension of time to provide the Transcript and stated that she “takes no issue” with providing it to McMullen (which she had previously been ordered to do).

[15] On February 1, 2023, CMJ issued the following oral direction:

Regarding the Plaintiff’s letter of January 31, 2023, the Court has repeatedly directed that it will not consider unilateral requests for extensions of time communicated to the Court by way of letter. The Plaintiff is referred to Directions previously issued, including the Directions dated July 26, 2021 and January 4, 2023. As to the Order dated December 22, 2022, in the event of default by the Plaintiff, all rights of the Defendant Dale McMullen are reserved and any objections or requests for relief may be raised in the context of the motion to strike.

[16] I note here in passing that when appearing before me in this appeal, Kostic advised that she is now in possession of the Transcript. However, that she now refuses, for a variety of reasons, to comply with the December 22, 2022 Order requiring her to provide it to McMullen. These include her view that the CMJ was “functus” when the order was issued, that McMullen’s claim is a “nullity”, and that if she complies with the Order then she will be seen to have “waived” her rights under a purported indemnity and save harmless agreement.

[17] By Direction dated February 6, 2023, I outlined many of the above facts. I indicated that it appeared that both McMullen and Kostic were seeking abridgment of the time for filing related to the Transcript, albeit for different reasons. And:

Further, that the remedy sought in the McMullen Appeal is simply to be permitted to file the Transcript when it is received. If so, this remedy can be achieved by a request, in the appropriate form, that the filing deadline in the January 5, 2023 Order be abridged by the Associate Judge. If such a request were made and granted, this would negate the need for the McMullen Appeal as the desired relief will have been granted.

Given this state of affairs, the Court points out that it is open to McMullen and Kostic to request the mutually desired extension of time pertaining to the Transcript by way of informal request to the Court. Any resultant further abridgment of the time line set by the Associate Judge can be dealt with by the Associate Judge in responding to that request.

[18] I also indicated that, in the absence of consent or non-opposition, a formal motion to extend could be brought by McMullen and/or Kostic, should they choose to do so.

[19] McMullen did not seek an extension of time informally, or by motion, with respect to the Transcript and related filing deadlines. Nor did Kostic.

Order Under Appeal

[20] The Order under appeal is the January 5, 2023 Order set out above. This was a scheduling order issued by the Associate Judge in her role as the CMJ. While McMullen and Kostic in their respective submissions raised a variety of other issues arising from other orders and directions, it is only the January 5, 2023 Order that is the subject of the appeal before me. My decision will address only that Order as that is the scope of the appeal. Similarly, McMullen's views on what

else should have been included in the January 5, 2023 Order and on case management generally fall outside the scope of this appeal.

[21] In his Notice of Motion, the relief sought by McMullen in this appeal is to stay, suspend the operation of, and to set aside the January 5, 2013 Order. He also seeks “all costs, charges and expenses on a full indemnity basis, as contractually set out in the Indemnity Agreement between McMullen and Respondent [Piikani Nation]”.

[22] As to the grounds for the appeal, McMullen asserts that the January 5, 2023 Order was unreasonable and in breach of: the Rules; the rules of procedural fairness; his right to a fair hearing as protected under s 7 of the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* as well as the *International Covenant on Civil and Political Rights, 1966*, CTS 1976/47 Articles 2-5, 7, 9 and 14; and, the *United Nations Declaration On the Rights of Indigenous Peoples*, GA Res 61/295 Articles 39 and 40 “amongst other UN instruments”.

Standard of Review

[23] The standard of review applicable to the appeal of a discretionary decision of an Associate Judge (formerly called prothonotaries) is well settled. It is the appellate standard of “palpable and overriding error”, as identified in *Housen v Nikolaisen*, 2002 SCC 33 [*Housen*], for questions of fact, or mixed fact and law. Questions of law, and mixed questions where there is an extricable question of law, are to be reviewed on the standard of correctness (*Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, 2016 FCA 215 at para 79;

Worldspan Marine Inc v Sargeant III, 2021 FCA 130 at para 48; *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at para 33).

[24] Legal questions are questions about what the correct legal test is; factual questions are questions about what actually took place between the parties; and, mixed questions are questions about whether the facts satisfy the legal tests, or, put otherwise, whether they involve applying a legal standard to a set of facts (*Teal Cedar Products Ltd v British Columbia*, 2017 SCC 32 at para 43).

[25] As McMullen submits, an appeal of a Associate Judge's decision that asserts a breach of natural and fundamental justice or a reasonable apprehension of bias involves issues that are reviewable on a standard of correctness (*Lessard-Gauvin v Canada (Attorney General)*, 2020 FC 730 at para 47; citing *Forefront Placement Ltd v Canada (Employment and Social Development)*, 2018 FC 692 at para 41, citing *Pembina County Water Resource District v Manitoba (Government)*, 2017 FCA 92 at para 35 and *Coombs v Canada (Attorney General)*, 2014 FCA 222 at para 12; see also *Rodney Brass v Papequash*, 2019 FCA 245).

Analysis

[26] Here the Order challenged by McMullen is a bare Order, absent any reasons, which was made by the CMJ in the case management of the Action, a specially managed proceeding (Rules 383 and 384). It is concerned solely with the scheduling of next steps in one aspect of the Action.

[27] Case management judges so assigned deal with all manner of matters that arise prior to the trial of the specially managed proceeding, including giving any directions or making any orders that are necessary for the just, most expeditious and least expensive determination of the proceeding on its merits and, notwithstanding any period provided for in the Rules, may fix the period for completion of subsequent steps in the proceeding (Rule 385).

[28] Scheduling orders of case management judges are discretionary decisions to which the applicable standard of review is palpable and overriding error (*Kostic-Natioyiiputakki v Canada*, 2022 FC 1702 at paras 13-14 citing *Housen* and *David Suzuki Foundation v Canada (Health)*, 2018 FC 380 at para 126). In this case, however, it is difficult to see how the bare January 5, 2023 Order can give rise to a legal, factual or mixed question of fact and law error. Indeed, McMullen does not assert this.

[29] To the extent that McMullen alleges that the effect of the Order denied him procedural fairness because it precluded him from including the Transcript in his motion to strike record, and therefore potentially deprived him of a full and fair opportunity to be heard and/or to respond to the Action by way of his motion to strike, I agree.

[30] Pursuant to Rule 364(2), which sets out the required content of motion records, the portions of any transcripts on which the moving party intends to rely are to be included in its motion record. The December 22, 2022 Order required Kostic to order and pay for the Transcript and to send a copy to McMullen by no later than January 31, 2023. The January 5, 2023 Order required McMullen to file his complete motion record pertaining to his motion to

strike by January 13, 2023 – before the Transcript had to be provided. Thus, if McMullen intended to rely on the Transcript in his motion to strike, the January 5, 2023 Order had the effect of prevented him from doing so.

[31] This is sufficient to set aside the January 5, 2023 Order.

[32] However, McMullen also alleges that the CMJ has demonstrated a reasonable apprehension of bias by not responding to his letters in which he alerted the Court to the failure of Kostic to order and pay for the Transcript and by a delay, until November 29, 2022, in addressing his concerns.

[33] McMullen wrote to the CMJ on October 4, 2021. This 25-page letter included, among many other things, his belief that the Court should order Kostic to comply with Rule 86 and order Kostic to pay for and provide the Transcript. He repeated and maintained this view in his October 6, 7 and 13, 2021 letters, along with addressing other matters and responding to correspondence of other parties. In his November 29, 2021 letter, he advised that he proposed to bring a motion in writing in this regard and sought leave to file his motion record without need to convene a case management conference. He wrote again on November 30, 2021 noting, among other things, that he had not received a reply to his request from the CMJ. One year later, leave was granted by Order dated November 29, 2022. McMullen brought the motion in writing on December 9, 2022 and the CMJ granted the motion by her December 22, 2022 Order.

[34] The test for bias is well established and stems from the dissenting reasons of de Grandpré J. in *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369, at p 394:

[T]he apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. ... [The] test is “what would an informed person, viewing the matter realistically and practically -- and having thought the matter through -- conclude....”

[35] The onus is on the party alleging bias and is fact driven (*R v S (RD)*, [1997] 3 SCR 484 at paras 111, 113).

[36] The CMJ was unresponsive to McMullen’s letters and, from the Court’s record, I am unable to ascertain any reason for the one-year delay in granting leave to bring the Rule 86 motion. When the Rule 86 motion was filed, it was promptly determined and Kostic was ordered to produce the Transcript by January 31, 2023. And, in any event, McMullen’s complaint and this appeal lies not with the delayed December 22, 2022 Order but with the *subsequent* January 5, 2023 Order, which compelled him to file his motion to strike by January 13, 2023 – before the date by which Kostic had been ordered to provide him with the Transcript.

[37] In my view, McMullen has not established that the CMJ’s delay in response gives rise to a reasonable apprehension of bias. Rather, the conflict between the December 22, 2022 and January 5, 2023 Orders appears to be an inadvertent scheduling error. Indeed, one that could and should have been resolved without need to resort to an appeal.

[38] In any event, as Justice Grammond found in *Onischuk v Canada (Revenue Agency)*, 2021 FC 486:

42 ... There is a presumption that judges act impartially: *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at paragraph 25, [2015] 2 SCR 282. For this reason, “the threshold for a finding of real or perceived bias is high”: *R v S (RD)*, [1997] 3 SCR 484 at paragraph 113.

43 There is no bias, real or perceived, solely because a judge makes a decision unfavourable to a party: *Bruzzese v Canada (Public Safety and Emergency Preparedness)*, 2016 FC 1119 at paragraphs 27-37, [2017] 3 FCR 272. Even where a judge makes an error, “such an error might be a basis to allow the appeal, but it would not, without more, suggest bias”: *Ahamed v Canada*, 2020 FCA 213 at paragraph 7.

[39] In my view, this is the latter circumstance. The CMJ erred by setting the January 13, 2023 date for the filing of McMullen’s motion to strike in her January 5, 2023 Order which conflicted with her earlier December 22, 2022 Order which did not compel Kostic to produce the Transcript until January 31, 2023. The evidence before me does not establish that McMullen advised the CMJ that he intended to rely on the transcript of his own cross-examination in his motion to strike motion or that this was anything other than an inadvertent scheduling error.

Costs

[40] In his appeal, McMullen also seeks relief “[f]or any and all costs, charges, expenses on a full indemnity basis, as contractually set out in the Indemnity Agreement between McMullen and Respondent [Piikani Nation]”.

[41] The Defendant Piikani Nation filed a responding motion record in response to McMullen's appeal. This is concerned only with the costs relief that McMullen seeks.

[42] Piikani Nation submits that McMullen commenced an action in the Court of King's Bench of Alberta (Action 1101-11127) seeking to enforce an alleged indemnity agreement with the Piikani Nation. That action is still pending in Alberta and will be heard concurrently with Action 1001-10326, in which McMullen is a defendant. Piikani Nation submits that both the Alberta Court of King's Bench and the Alberta Court of Appeal have denied applications brought by McMullen seeking to enforce the alleged indemnity agreement in advance of a determination of Action 1101-11127 (*Piikani Nation v McMullen*, 2020 ABQB 91, paras 13, 17; *Piikani Nation v McMullen*, 2020 ABCA 366, paras 14-16, 37-45).

[43] The Piikani Nation further submits, that in a statement of claim commencing proceedings against Piikani Nation and other defendants in this Court (T-38-20), McMullen claims damages on the basis that Piikani Nation has refused to abide by the terms of the alleged indemnity agreement. McMullen also seeks damages on the basis of the alleged indemnity agreement in his defence and counterclaim filed in this Action.

[44] Piikani Nation submits that given the pending matter in Action 1101-11127, this Court should decline to grant the relief sought. Alternatively, because McMullen has sought damages on the basis of the alleged indemnity agreement in T-38-20 and his counterclaim in this Action, he should not be entitled to pursue the alleged indemnity agreement as part of this motion before those matters have been determined.

[45] In my view, the existence and enforceability the alleged indemnity agreement would appear to be a live issue elsewhere, which would suggest that seeking such relief in this motion may be premature. However, and in any event, nothing in the motion record filed by McMullen with respect to this appeal supports his bare request for this relief. Accordingly, the Court is in no position to grant this relief, which is properly dealt with whenever the issue of costs and indemnity is determined.

Conclusion

[46] For the reasons above, I find that the CMJ erred in requiring McMullen, in her January 5, 2023 Order, to file his motion to strike on January 13, 2023. This is because the Order had the effect of precluding McMullen from including the Transcript in his motion to strike record, given the CMJ's prior December 22, 2022 Order by which Kostic had until January 31, 2023 to produce the Transcript.

[47] From a practical perspective, it is significant that as of the hearing of this appeal, and in breach of the December 22, 2022 Order, Kostic has not produced the Transcript and now refuses to do so. Her failure to do so, in breach of the December 22, 2022 Order, cannot be permitted to indefinitely pre-empt McMullen's motion to strike. Nor should McMullen be prejudiced by the breach.

[48] I will order the January 5, 2023 Order of the CMJ which required the Defendant/Plaintiff by Counterclaim, Dale McMullen, to file and serve his complete motion record by no later than January 13, 2023 be varied to extend the filing timelines as set out below.

[49] As McMullen, out of an abundance of caution, filed his motion to strike on January 13, 2023 without the Transcript and without being able to address its content, McMullen will be permitted to file and serve an amended motion to strike, which amendment will permit the inclusion of the Transcript and permit any amendment of the written representations necessary to address the Transcript, **on or before April 24, 2023**. If Kostic has cured her breach of the December 22, 2022 Order and has provided the Transcript to McMullen **on or before April 14, 2023**, then Kostic shall be permitted to serve and file her motion record responding to McMullen's motion to strike, including written representations in final form, **by no later than May 9, 2023**.

[50] In the event that Kostic has not cured her breach of the December 22, 2022 Order and has not provided the Transcript to McMullen **on or before April 14, 2023**, then no extension of time to serve and file her responding motion record will be granted.

[51] Further, as indicated in the CMJ's Direction of February 6, 2023, all of McMullen's rights are reserved and any objections or requests for relief may be raised in the context of his motion to strike should Kostic fail to provide the Transcript.

ORDER IN T-680-20

THIS COURT ORDERS that:

1. The appeal is granted and the January 5, 2023 Order is varied as set out herein;
2. McMullen, Defendant/Plaintiff by Counterclaim, shall file and serve his amended motion to strike record, which amendment will permit the inclusion of the Transcript and any necessary amendment of the written representations to address the Transcript, **on or before April 24, 2023;**
3. If Kostic, Plaintiff/Defendant by Counterclaim, has cured her breach of the December 22, 2022 Order and has provided the Transcript to McMullen **on or before April 14, 2023**, then Kostic shall be permitted to serve and file her motion record responding to McMullen's amended motion to strike, including written representations in final form, **by no later than May 9, 2023;**
4. In the event that Kostic has not cured her breach of the December 22, 2022 Order and has not provided the Transcript to McMullen **on or before April 14, 2023**, then no extension of time to serve and file her responding motion record will be granted;
5. In the event that Kostic has not cured her breach of the December 22, 2022 Order and has not provided the Transcript to McMullen **on or before April 14, 2023**, then pursuant to the CMJ's Direction of February 6, 2023, all of McMullen's rights are reserved and any objections or requests for relief may be raised in the context of his motion to strike; and

6. There is no order for costs.

"Cecily Y. Strickland"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-680-20

STYLE OF CAUSE:

LILIANA KOSTIC v HIS MAJESTY THE KING IN RIGHT OF CANADA, AND ALBERTA THE ATTORNEY GENERAL OF CANADA (“CANADA” or “INAC”); THE MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT CANADA; AND ITS AGENTS and PIIKANI NATION AND THE BAND NATION AS REPRESENTED BY THE CHIEF AND COUNCIL (“C and C”); ~~ROD NORTH PEIGAN; JANET POTTS; DANIEL NORTH MAN;~~ (TERMS OF THE CHIEF AND COUNCIL 2001-2021 ONWARDS) and ~~STANLEY GRIER; DOANE K CROWSHOE~~ (“DCS”); ~~ERWIN BASTIEN (“EB”); TROY KNOWLTON; WESLEY CROWSHOE; RIEL PROVOST HOULE; THEODORE PROVOST; CHE LITTLE LEAF MATUSIAK~~ and MICHAEL PFLEUGEUR [(“M. PFLEUGEUR”) BAND EMPLOYEE TERM 2010-2017] PIIKANI INVESTMENT CORPORATION (“PIC”); AND ITS DIRECTORS (Directors terms 2003-2021 onwards) And DIRECTORS & ITS LEGAL COUNSEL (2003 ON WARDS) CHIEF STANLEY GRIER [(“SG”) SHAREHOLDER TRUSTEE 2015-22]; ERWIN BASTIEN; TROY KNOWLTON; WESLEY CROWSHOE; THEODORE PROVOST; CHE LITTLE LEAF-MATUSIAK CHIEF REGGIE CROW SHOE [~~SHAREHOLDER TRUSTEE 2007-11~~]; FABIAN NORTH PEIGAN; KAREN CROW SHOE; SAM KHAJEEI; PIERRE-GILLES BETTINA; VERONA WHITE COW; EMILY GRIER & RANA LAW; BLAKE CASSELS & GRAYDON LLP; RICK YELLOW HORN; DALE MCMULLEN and PIIKANI RESOURCE DEVELOPMENT LIMITED (“PRDL”); & ITS DIRECTORS 2008 – ONWARDS PRESIDENT- DOANE K CROW SHOE (“DCS”); CHIEF STANLEY GRIER [(“SG”) SHAREHOLDER TRUSTEES 2015-22]; TROY KNOWLTON; RIEL PROVOST-HOULE; ERWIN BASTIEN (“EB”); THEODORE PROVOST; CHE LITTLE LEAF-MATUSIAK; PAUL BLAHA; JASON EDWORTHY; SHAWNA MORNING BULL;

MIKE ZUBACH and CANADIAN IMPERIAL BANK OF COMMERCE (“CIBC”); CIBC TRUST CORPORATION (“CIBC TRUST”) and CIBC WOOD GUNDY/CIBC WORLD MARKETS AND ITS AGENTS (“CIBC WG”) and JENSEN SHAWA SOLOMON DUGUID HAWKES LLP.; ROBERT HAWKES; GLEN SOLOMON (JSS BARRISTERS, “JSS”) and BRUCE ALGER (“ALGER”); ALGER & ASSOCIATES INC.; ~~THE GRANT THORNTON GROUP OF COMPANIES; GRANT THORNTON LTD.; GRANT THORNTON INC.~~; AND ALGER INC. and CARON AND PARTNERS LLP; RICHARD GILBORN; DANIEL GILBORN (“CP”) and MILLER THOMPSON LLP; JEFFREY THOM and GOWLING WLG (CANADA) LLP; CAIREEN HANERT (“CH”) and MCLENNAN ROSS LLP; (“MR”) and JOHN DOES 1-10 and DALE MCMULLEN and CANADIAN IMPERIAL BANK OF COMMERCE, CIBC TRUST CORPORATION, CIBC WORLD MARKETS, and BLAKE CASSELS & GRAYDON LLP and PIKANI NATION and PIKANI NATION CHIEF & COUNCIL

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: MARCH 9, 2023

ORDER AND REASONS: STRICKLAND J.

DATED: APRIL 11, 2023

APPEARANCES:

Dale McMullen FOR DALE MCMULLEN
(ON HIS OWN BEHALF)

Liliana Kostic FOR LILIANA KOSTIC
(ON HER OWN BEHALF)

Jordan Milne FOR THE DEFENDANTS
(HIS MAJESTY THE KING IN RIGHT OF CANADA,
ATTORNEY GENERAL OF CANADA, AND

MINISTER OF INDIAN AFFAIRS AND NORTHERN
DEVELOPMENT CANADA)

Caireen Hanert

FOR THE DEFENDANTS
(PIIKANI NATION PIIKANI NATION, PIIKANI
NATION CHIEF AND COUNCIL, STANLEY GRIER,
ERWIN BASTIEN, TROY KNOWLTON, WESLEY
CROW SHOE, THEODORE PROVOST, CHEF
LITTLE LEAF-MATUSIAK, RIEL HOULE AND
DOANE CROW SHOE)

Geoff Adair

FOR THE DEFENDANTS
(CANADIAN IMPERIAL BANK OF COMMERCE,
CIBC TRUST CORPORATION AND CIBC WOOD
GUNDY/CIBC WORLD MARKETS)

Keltie Lambert

FOR THE DEFENDANTS
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SOLICITORS OF RECORD:

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FOR THE DEFENDANTS
(HIS MAJESTY THE KING IN RIGHT OF CANADA,
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EMILY GRIER WHO IS SOLICITOR FOR PIIKANI
RESOURCE DEVELOPMENT LIMITED ET AL.)

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FOR THE DEFENDANTS
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THORNTON GROUP OF COMPANIES, GRANT
THORNTON LTD., GRANT THORNTON INC., AND
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(BLAKE CASSELS & GRAYDON LLP.)

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FOR THE DEFENDANTS
(CANADIAN IMPERIAL BANK OF COMMERCE,
CIBC TRUST CORPORATION, AND CIBC WORLD
MARKETS INC.)