Federal Court Cour fédérale

Date: 20231117

Docket: T-1038-23

Citation: 2023 FC 1531

Vancouver, British Columbia, November 17, 2023

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

DALE MCMULLEN

Applicant

and

PIIKANI NATION, AS REPRESENTED BY ITS CHIEF AND COUNCILLORS AND ITS LEGAL COUNSEL MS. CAIREEN HANERT

Respondents

ORDER AND REASONS

I. Overview

[1] I am seized with two motions to strike the Notice of Application filed on May 15, 2023 by the self-represented Applicant, Dale McMullen. The first motion is brought on behalf of the Respondent, Piikani First Nation, as represented by its Chief and Councillors [Piikani]. The second one is by the Respondent, Caireen Hanert, who is Piikani's legal counsel. While Hanert's

firm is not named as a respondent, the relief sought with respect to her, includes her firm, Gowling WLG (Canada) LLP [Gowling].

[2] The Applicant seeks in the underlying application relief with respect series of decisions of Piikani to deny the Applicant's demands related to an alleged indemnity agreement with Piikani Nation.

[3] Piikani has moved to strike Notice of Application on a number of grounds, including that this Court does not have jurisdiction to review the impugned "decisions," the proceeding is an abuse of this Court's process, and the application is out of time. Hanert raises similar arguments, adding that as legal counsel for Piikani, she is not a proper party to the proceeding.

[4] The case law is clear than only in exceptional cases should an originating notice of motion be struck. As was stated by the Federal Court of Appeal in the seminal decision of *David Bull Laboratories (Canada) Inc v Pharmacia Inc*, [1995] 1 FC 588 (FCA) at pages 596-597: "the direct and proper way to contest an originating notice of motion which the respondent thinks to be without merit is to appear and argue at the hearing of the motion itself."

[5] It remains that this Court may strike an application where a respondent establishes that it is "so clearly improper as to be bereft of any possibility of success" or, as more vividly articulated by Justice David Stratas in *JP Morgan Asset Management (Canada) Inc v Minister of National Revenue*, 2013 FCA 250 [*JP Morgan*] at para 47, "[t]here must be a "show stopper" or a "knockout punch" — an obvious, fatal flaw striking at the root of this Court's power to entertain the application." As explained below, this is such a case.

II. Material to be considered

[6] Before setting out the facts, or engaging in my analysis, some clarification is in order with respect to a procedural issue that arises in this case. This issue revolves around what material can be considered by the Court in determining whether an originating notice of motion should be struck.

[7] The starting point is that, on a motion to strike a notice of application, the facts alleged in the pleading are taken to be true: *Chrysler Canada Inc v Canada*, 2008 FC 727 at para 20; aff'd on appeal, 2008 FC 1049. This obviates the need for an affidavit supplying facts.

[8] The task of identifying the facts upon which the application is based is made difficult in this case because the 29 page, 98 paragraph pleading is not limited to a neutral recitation of events but is rather replete with argumentative commentary. However, for the purposes of this discussion, I will focus on the Applicant's extensive references to various proceedings before this Court, the Federal Court of Appeal and the Alberta Court of King's Bench [ABKB]. The following are but a few examples taken from the preamble and the prayer for relief:

> a) At page 8: "The Piikani Chief and Council since 2007, including this current term elected in January 2023, have never challenged the ostensible authority of the former Piikani Chief (term 2003-07) and did not state, as they now allege, that the Applicants Indemnity Agreement was purportedly invalid and unenforceable in 2014 when obligated under an ABKB Court Order to do so."
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> b) At page 8: "Gowlings accepted payments from the Piikani and the Piikani Investment Corporation ("PIC") in 2006 under the Indemnity Agreement (which Hanert/Gowlings, Piikani are suing McMullen for under a dead/stale/lapsed 2010 claim they have not advanced and for which McMullen obtained a Court Order dating

back to May 2018 to strike which the ABKB won't set down for a hearing)."

c) At page 8: "the Piikani and Hanert affirmed the Indemnity Agreement as valid and enforceable under BCR # 2014-0305-01, and denied the Applicants demands to honour the Indemnity Agreement made in 2011 after being Court Order to do so on February 18, 2014."

d) At page 8: "Further, the Piikani and Gowlings have now opted for what will be shown to be an utterly hopeless and abusive strategy of now attempting to strike McMullen's 2011 Application to have the Indemnity Agreement honoured under ABKB 1101-11127 ("ABKB Action 127")…"

e) At page 9: "Further Zinner Law, Klym and Hanert are the parties who signed and organized in October 2014 for an Order to purportedly defer ABKB Action 127 to be heard with the Trial of the 2010 Piikani Action, and all are, or are alleged to be, legal counsel to Kostic, who is the Plaintiff under FC Action T-680, the Appellant under FCA Docket No. A-116-23, and FC Action T-680-20 is matter is the "First Instance Action" underlying FCA Appeals A-111-23, A-112-23 and A-117-23, which is now being blocked by Kostic's alleged former counsel Hanert on the basis of the October 2014 Order signed and put in place by Hanert and Zinner/Klym who have now been exposed as the drafters of FC Action T-680-20."

f) At paragraph 1(a)(i) of the prayer for relief: "The decision making process was fundamentally flawed as it appears that Hanert was in fact making all the Decisions and or significantly influencing same and it is known the Piikani that McMullen has since November 8, 2018 challenged Hanert/Gowlings and clearly alleged they are operating under intractable and irreconcilable conflicts of interest and that an Order was issued on April 15, 2019 to permit McMullen to permanently enjoin and disqualify Hanert and Gowlings from acting for the Piikani which would include those matters related to the conduct of FC Action T-680-20, and the FCA Appeals noted above;"

g) At paragraph 4 of the prayer: "An Order in the nature of *mandamus* requiring the Piikani to honour all the express terms and conditions of the Indemnity Agreement to address the ongoing FC Docket No. T-680-20 and Appeals under FCA Docket Nos. A-111-23, A-112-23, A-116-23…"

h) At paragraph 5 of the prayer for relief: “An Order of prohibition, removing and prohibiting any and all members of Gowlings including Hanert from acting on matters adverse to McMullen and permanently enjoining Hanert and Gowlings from further conduct as counsel in FC Docket T-680-20, and the FCA Appeals noted above, A-1 11-23, A-1 12-23, A-116-23 and A-117-23, unless Gowlings are required to be a witness for McMullen”

[9] As a general rule, affidavits are not admissible in support of motions to strike applications for judicial review: *JP Morgan* at para 51. In the case at bar, the Respondents did not file any affidavits. They instead attached copies of certain pleadings filed by the Applicant in ABKB Docket 1101-11127 (Action 127), Orders pronounced by Associate Chief Justice Rooke in ABKB Dockets 1101-11127 and 1001-10326 (Action 326) and the Statement of Claim filed by the Applicant in this Court bearing Court No. T-38-20.

[10] The Applicant objects to the inclusion of the pleadings and Orders on the record before me on the basis that it is a blatant attempt on the Respondents’ part to bypass the general rule barring affidavits set out in *JP Morgan.* I disagree. One exception to the general rule, relevant in this case, is where a document is referred to and incorporated by reference in the notice of application: *JP Morgan* at para 54. In addition, similar to what applies to motions to strike under Rule 221(1) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], an affidavit may be admitted where the moving party has added abuse of process as a supplementary ground: *Turp v Canada (Foreign Affairs)*, 2018 FC 12 at para 21. In these circumstances, the moving party may file documents to prove the alleged abuse, and the applicant may file any evidence to refute those allegations. This is exactly what transpired in this case.

[11] While the Respondents may not have complied with Rule 363 which requires that evidence on a motion which does not appear on the Court file to be set out in affidavits, the Applicant chose not to attack this irregularity either informally by letter or by motion in accordance with Rule 58(1). Had he done so promptly, the technical error could have been corrected by simply allowing the Respondents to file an affidavit to append the court documents.

[12] In any event, the failure to adduce the court documents by way of affidavit does not necessarily make them inadmissible as the Court is entitled to take judicial notice of court records in appropriate cases: *British Columbia (Attorney General) v Malik*, 2011 SCC 18 at paras 38, 46-47. While the case law suggests that the exception to the rule of formal proof of court records is limited to the Court's own records, there is no principled reason not to extend the exception to the records of other courts in this particular case.

[13] The Applicant claims that the documents are incomplete, self-serving and misleading. However, the documents have been reproduced in their entirety and they speak for themselves. In fact, the Applicant is the author of many of the documents. In the circumstances, it does not lie in his mouth to question their authenticity.

[14] For the above reasons, I consider it just and appropriate to receive the court documents as part of the factual matrix.

III. The Facts

[15] Much ink has been spilled over the past decade by different courts about the history of the dispute between the parties. It is set out in great detail in an unreported decision by Justice Mandy Aylen dated September 20, 2023 in Court Docket: T-38-20, at paragraphs 4 to 34.

[16] Rather than repeat it, these reasons set out only the essential facts that are salient to the issues that must be decided.

[17] Piikani is a First Nation located in southern Alberta and is "band" within the meaning of section 2(1) of the *Indian Act*, RSC 1985, c I-5. The Applicant alleges that in 2002, Piikani entered into a tripartite settlement agreement with the governments of Canada and Alberta. In 2003, Piikani asked the Applicant to sit on the board of directors of the Piikani Investment Corporation [PIC], a company required to be established under the settlement agreement, for a four-year term in the role of a Chartered Accountant. PIC's role was to make recommendations about and oversee projects by Piikani Business Entities, including the Piikani Energy Corporation [PEC].

[18] On April 28, 2004, the Applicant and other PIC directors entered into an indemnity agreement with Piikani. The Applicant claims that Piikani and its legal counsel have acknowledged the existence and enforceability of the indemnity agreement but now maintain that the indemnity agreement is invalid or unenforceable.

[19] In 2010, Piikani commenced Action 326 in the ABKB against the Applicant and others alleging the tort of maintenance, breach of fiduciary duty, conspiracy and conversion related to monies borrowed from the Piikani Trust by PIC and re-loaned to the PEC during the time that the Applicant was a director and officer of both PIC and PEC. In 2011, the Applicant commenced his own action, Action 127, in response to Action 326 seeking various relief, including a declaration that Piikani "is bound to indemnify the Applicant as set out in the Indemnity Agreement."

[20] On September 29, 2014, ACJ Rooke of the ABKB ordered that Action 127 be heard concurrently with Action 326. The two actions have not yet been adjudicated.

[21] Both the ABKB (*Piikani Nation v McMullen*, 2020 ABQB 91at paras 13, 17) and the Alberta Court of Appeal (*Piikani Nation v McMullen*, 2020 ABCA 366 at paras 14-16, 37-45) have denied applications brought by the Applicant seeking to enforce the alleged indemnity agreement in advance of a determination of Action 127.

[22] In February 2013, ACJ Rooke barred any new action from being commenced by or against Piikani without first obtaining leave of the court. The Applicant sought leave to bring six different applications in Action 326 in 2018 and 2019.

[23] On January 10, 2020, the Applicant commenced an action in this Court bearing Court File No. T-38-20 against Piikani and 20 other defendants claiming $10 million in damages on the basis that Piikani has refused to abide by the terms of the indemnity agreement. The Applicant was also named as a defendant in a related action brought by a former Piikani contractor bearing

Court Docket: T-680-20. The Applicant brought a counterclaim against many of the same defendants based on many of the same allegations as in T-38-20.

[24] As a result of a series of decisions rendered by ACJ Rooke on February 26, 2020 arising from applications for leave made by the Applicant, the ABKB will not consider any new leave applications, for leave of any kind by the Applicant, until proof of payment of all outstanding costs is provided.

[25] On September 6, 2023, Justice Cecily Strickland struck both the action and the counterclaim, without leave to amend, primarily on the basis that this Court lacked jurisdiction to determine the claims advanced: *Kostic v. Canada*, 2023 FC 306. The decision is the subject of an appeal in A-271-23.

[26] The Applicant brought the present application on May 16, 2023. The Applicant alleges that Piikani's decisions deny his demands related to the indemnity agreement. He claims that Piikani's continuing course of conduct has deprived him of a fair trial in violation of Article 14 of the *UN International Covenant on Civil and Political Rights*, and breached his rights to procedural fairness and his security protected by section 7 of the *Charter*. He further alleges that Piikani and Hanert "operated in blatant and all-encompassing conflicts of interest and breached the honour of the Crown and the Charter."

[27] In the prayer for relief, the Applicant seeks broad remedies, including an order in the nature of *certiorari* quashing Piikani's decisions, declaration that the indemnity agreement is valid and enforceable, a declaration that Piikani breached the indemnity agreement, an order in

the nature of *mandamus* requiring Piikani to honour the terms and conditions of the indemnity agreement, and an order of prohibition preventing Hanert and Gowling from acting on matters adverse to the Applicant.

[28] In early June 2023, the Respondents gave notice of their intention to bring a motion to strike the Notice of Application. Following a case management conference with the parties, an Order was issued fixing a timetable for service and filing of the parties' respective motion records.

[29] On September 20, 2023, Justice Aylen struck the Statement of Claim in T-38-20, without leave to amend. The Applicant has appealed the decision in A-285-23, and the appeal remains pending.

IV. Issues

[30] Simply put, the issues to be determined are: (a) whether the Notice of Application should be struck against Piikani, without leave to amend; (b) whether the Notice of Application should be struck against Hanert, without leave to amend; and (c) costs of the motions.

V. Analysis

A. *Whether the Notice of Application should be struck against Piikani*

[31] Piikani seeks to have the Notice of Application struck on a number of grounds, including that this Court does not have jurisdiction to judicially review the decisions being impugned. In order to determine whether there is merit to this argument, the Court must first focus on the

Notice of Application itself to identify its essential character and then determine whether it has jurisdiction to entertain the claims.

(1) The Essential Character of the Application

[32] Piikani submits that the impugned decisions all relate to what the Applicant alleges is a failure by Piikani to abide by the terms of the indemnity agreement. It maintains that the context of the application is clear; after demanding payment under the indemnity agreement on multiple occasions, and those demands being refused by Piikani, the Applicant now seeks to have this Court enforce the terms of the agreement. The Applicant has no answer to this argument.

[33] Despite framing the proceeding as one seeking judicial review, the claims in the application are in pith and substance tort or contractual claims. The Applicant is effectively seeking relief that is akin to a civil claim – namely, the enforcement of the indemnity agreement – as evidenced by type of remedies requested in the prayer for relief.

(2) Jurisdiction of this Court to Entertain the Applicant's Claims

[34] Piikani submits that the Applicant has failed to meet even the most basic requirements for a judicial review application before this Court. I agree.

[35] Judicial review is only available where the state exercises its authority in taking an action or making a decision that is of a sufficiently public character: *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 [*Highwood*] at para 14 . Decisions that are private in nature are not amendable to judicial review, even when they are

made by public bodies: *Highwood* at para 14. As stated by the Federal Court of Appeal, absent some exceptional circumstances, contractual disputes are not subject to judicial review: *Air Canada v Toronto Port Authority*, 2011 FCA 347 at para 52.

[36] The Applicant submits that Piikani is a "federal board, commission or other tribunal" as set out under s. 2.1 and for purposes of s. 18.1 of the *Federal Courts Act,* RSC 1985, c F-7. While that may be, not all conduct of a band council is amenable to judicial review under a superior court's supervisory jurisdiction: *Jimmie v Council of the Squiala First Nation*, 2018 FC 190 at para 40.

[37] The jurisprudence is clear that a three-part test must be met to establish the Federal Courts' jurisdiction over a matter: (a) there must be a statutory grant of jurisdiction by the federal Parliament; (b) there must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction; and (c) the law on which the case is based must be "a law of Canada" as the phrase is used in s 101 of the *Constitution Act, 1867*:*ITO-Int'l Termination Operators v Miida Electronics*, [1986] 1 SCR 752. Contract law is not "a law of Canada" within the meaning of s 101 of the *Constitution Act, 1867*; rather, it is within the exclusive jurisdiction of provincial superior courts.

[38] The Applicant does not provide any meaningful submissions to support his position that the Court has jurisdiction to grant any relief requested in what is, in essence, a private, contractual matter between two parties. He argues that the Court has jurisdiction because Piikani was acting pursuant to powers conferred to it under the *Indian Act* and the case involves the expenditure of Piikani funds, which are matters of public interest. According to the Applicant,

this is an exceptional case that has a serious public dimension, thereby warranting review by the Court. I disagree.

[39] Even if I were to accept that Piikani made the impugned decisions pursuant to the powers conferred to it under the *Indian Act*, which I do not, this would not render the decisions amenable to judicial review. They are the result of Piikani exercising its rights in relation to its private power of contract, namely, the ability to decline to recognize a contract, its terms and its validity, or to deny demands made under a contract. Such decisions by First Nations councils are purely contractual and not subject to judicial review: *Knibb Developments Ltd v Siksika First Nation*, 2021 FC 1214 at para 16.

[40] While the Applicant may dispute Piikani's position on the scope, validity and enforceability of the indemnity agreement, his recourse to dispute the matter lies elsewhere, and certainly not by way of application for judicial review before this Court.

[41] The Applicant claims that the matter in the ABKB does not provide for an expeditious and adequate alternative remedy in all the circumstances. However, even if that were the case, he cannot turn to this Court for relief as the provincial courts have exclusive jurisdiction to address his grievances.

[42] For the above reasons, I conclude that this Court lacks of jurisdiction to entertain the Applicant's claims.

(3) Abuse of Process

[43] Piikani submits that the application and the relief sought by the Applicant is so clearly improper that it would constitute an abuse of process if allowed to proceed. I agree.

[44] Abuse of process is a flexible doctrine that is rooted in the Court's power to control its own process. The doctrine aims to protect the integrity of the adjudicative process against abuses and to achieve fairness for all parties involved: *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 37. It has been well established that the commencement by a party of more than one proceeding in the same jurisdiction against the same defendant in relation to the same dispute is an abuse of process. I would add that repeated attempts to re-litigate essentially the same dispute against the same parties before different courts also constitutes an abuse of process. Further, re-litigating decided claims through a new pleading is a clear abuse of process: *Lauer v Canada (Attorney General)*, 2017 FCA 74 at para 11.

[45] The Applicant again fails to make cogent arguments as to why the present application is not duplicative of proceedings that are extant before the ABKB, the action in T-38-20 and counterclaim in T-680-20. While the pleadings in the proceedings may not be identical, they contain significant and substantive overlap in both content and issues.

[46] The fact that the Applicant is not able to pursue any proceedings before the ABKB, including his action seeking to have Piikani declared in breach of the indemnity agreement, until such time as he has paid outstanding costs awards, is of no moment, nor does it serve to justify turning to this Court for relief. To the contrary, by bringing proceedings before this Court, the

Applicant is blatantly attempting to circumvent Orders of the ABKB, conduct that this Court will not countenance.

[47] For the above reasons, I conclude that the Notice of Application should be struck as constituting an abuse of this Court's process.

(4) Timeliness of the Application

[48] Given my findings that the application is an abuse of process and is not amenable to judicial review, it is not necessary for me to spend much time dealing with Piikani's argument that the application exceeded the 30-day limitation period for commencing an application for judicial review.

[49] The fact that the Applicant has made repeated demands of Piikani with respect to indemnity agreement did not serve to renew in each instance his ability to seek judicial review, if such recourse was available to him. In the circumstances, the application is clearly out of time.

(5) Leave to Amend

[50] The Applicant submits that he may need to seek leave "in the coming week" to amend his Notice of Application; however, no amendments have been proposed that could cure the radical defects in his pleading. The Notice of Application shall accordingly be struck without leave to amend.

B. *Whether the Notice of Application should be struck against Hanert*

[51] Hanert seeks similar relief to Piikani in her motion to strike. The reasons provided above for striking the Notice of Application apply equally to her.

[52] I would simply add that the Applicant makes sweeping allegations of impropriety against Hanert. She is also singled out in the prayer for relief. Such egregious allegations against counsel and an officer of the court have no place in an application for judicial review.

[53] Rule 303(1)(a) of the *Rules* provides that a respondent to a judicial review must be "directly affected by the order sought" in the proceedings. In naming Hanert, the Applicant obviously misapprehends the role of legal counsel and assumes that a lawyer and their client have common legal interests. However, a lawyer who represents a client can only have one interest, that of their client, but does not become subsumed in proceedings.

[54] It is plain and obvious from the context of the application that Hanert was named as a respondent solely in an attempt to enmesh her in the dispute and thereby disqualify her from representing her client. This tactic is wholly improper. In fact, initiating a proceeding against a lawyer acting on behalf of a litigant is one of the hallmarks of vexatious and abusive litigation: *Re Lang, Michener et al v. Fabian et al*, 1987 CarswellOnt 378 at para 20,[1987] 59 OR (2d) 353; *Carten v Canada*, 2010 FC 857 at para 35. Hanert should never have been named as a party to the application.

C. *Costs*

[55] Rule 400 provides the Court full discretion over the awarding of costs. Rule 400(3) lists a host of factors that a Court may consider in exercising its discretion, including the result of the proceeding (400(3)(a)), any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding (400(3)(i)), and whether any step in the proceeding was improper, vexatious or unnecessary (400(3)(k)(i)).

[56] In awarding costs, the Court must bear in mind the three-fold objective of providing compensation, promoting settlement and deterring abusive behaviour: *Air Canada v Thibodeau*, 2007 FCA 115.

[57] Piikani submits that because the application is an abuse of process, significant costs in the amount of $10,000 should be awarded to deter the Applicant and any other parties from bringing the same types of proceedings repeatedly in this Court. Hanert makes a similar request.

[58] The Applicant counters that he should be awarded his costs in the fixed amount of $25,000. According to the Applicant, he is entitled to this amount because he was forced to bring the application after the Respondents failed to honour the indemnity agreement. He also claims that such costs are warranted in light of the Respondents' refusal to recognize the indemnity agreement, which is an act of bad faith.

[59] Having reviewed the parties' submissions and considered the relevant factors under Rule 400(3), particularly (a) and (k)(i), I conclude that costs should awarded to the Respondents as

they were entirely successful on their motions. I see no reason to deviate from the normal practice of awarding costs to follow the event.

[60] I further conclude that costs in an elevated amount are warranted in this case. First, significant court and party resources have been spent dealing with the Applicant's repeated attempts to enforce the indemnity agreement in this Court, despite having commenced his own proceedings to do so in the Alberta courts. Second, the Applicant made derogatory allegations and statements with respect to counsel throughout these proceedings and maintained baseless accusations in his pleadings that the Respondents had acted in bad faith. Third, the Applicant failed to address the substantive issues to be decided in the motions to strike and provided no coherent argument or reason as to why his Notice of Application ought not be struck in his responding materials. Fourth, previous court findings have clearly not dissuaded the Applicant from instituting further proceedings to circumvent the Orders of the ABKB. A clear message needs to be given to the Applicant that there are cost consequences for abusing this Court's process.

[61] The Respondents' request for a lump sum award of $10,000 appears somewhat high since there was no affidavit evidence filed, no cross-examinations were conducted and the motions proceeded in writing. However, I agree with the Respondents that there was a significant amount of work required to review and evaluate the prolix Notice of Application and the background of proceedings in the ABKB and this Court, to prepare motion materials and reply the Applicant's 389 page responding motion record, and address the issue of costs. In the circumstances, I consider $4,000 to be an appropriate amount of costs to award to Piikani.

[62] I would approach costs differently in relation to Hanert. The Applicant had the opportunity to reconsider his decision to name Hanert as a party when I raised the issue with him during a case management conference convened on June 20, 2023. He nonetheless elected to proceed against her. As a result, this imposed a significant financial burden on Hanert personally who was required to retain a law firm to vigorously defend herself against an unmeritorious proceeding clearly intended to intimidate and retaliate against counsel who was just doing her job. For these reasons, I consider that costs in favour of Hanert should be fixed in the amount of $6,000, slightly less than on a full indemnity basis.

VI. Conclusion

[63] The Respondents have established that the dispute between the parties is a strictly private one and the Applicant's claims are essentially tortious and/or contractual in nature. This Court, which is a court of statutory jurisdiction, does not have jurisdiction to adjudicate such claims or grant the relief requested by the Applicant, which basically seeks to enforce the terms of contract, particularly within the context of an application for judicial review. Moreover, the proceeding clearly seeks to collaterally attack an order of the Alberta Court of King's Bench (ABKB) and constitutes an abuse of this Court's process.

[64] For the above reasons, the Respondents' motions to strike the Notice of Application are granted.

[65] I add one last comment. Given the manner in which proceedings have been prosecuted by the Applicant before this Court and the Alberta courts over the past decade, which involve essentially the same issues and the same parties, including multiple, needless filings, prolix,

incomprehensible or intemperate pleadings, the time has come to evaluate whether some restraints should be placed on the Applicant's unrestricted access to the courts. This Court has an obligation to prevent misuse of its resources, which are not inexhaustible. As was done by Justice Donald Rennie, as he then was, in Court Docket. T-478-12, I would invite the Respondents to consider whether an application should be made pursuant to s. 40 of the *Federal Courts Act*.

ORDER IN T-1038-23

THIS COURT ORDERS that:

1. The Respondents' motions to strike are granted.
2. The Notice of Application is struck out, without leave to amend.
3. The application for judicial review is dismissed.
4. The Applicant shall pay to the Piikani First Nation its costs of the motion, hereby fixed in the amount of $4,000, inclusive of disbursements and taxes.
5. The Applicant shall pay to Caireen Hanert her costs of the motion, hereby fixed in the amount of $6,000, inclusive of disbursements and taxes.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1038-23
STYLE OF CAUSE:	DALE MCMULLEN v PIIKANI NATION, AS REPRESENTED BY ITS CHIEF AND COUNCILLORS AND ITS LEGAL COUNSEL MS. CAIREEN HANERT

MOTIONS IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	LAFRENIÈRE J.
DATED:	NOVEMBER 17, 2023

WRITTEN REPRESENTATIONS BY:

Dale McMullen	FOR THE APPLICANT (ON HIS OWN BEHALF)
Caireen Hanert	FOR THE RESPONDENT PIIKANI NATION AS REPRESENTED BY ITS CHIEF AND COUNCILLORS
Allyson F. Jeffs	FOR THE RESPONDENT CAIREEN HANERT

SOLICITORS OF RECORD:

Gowling WLG (Canada) LLP Calgary, Alberta	FOR THE RESPONDENT PIIKANI NATION AS REPRESENTED BY ITS CHIEF AND COUNCILLORS
Emery Jamieson LLP Edmonton, Alberta	FOR THE RESPONDENT CAIREEN HANERT