

Piikani Nation v Raymond James Ltd., 2026 ABKB 622

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Court of King’s Bench of Alberta

Citation: Piikani Nation v Raymond James Ltd., 2026 ABKB 622

Date: 20260909
Docket: 0601 13081
Registry: Calgary

Between:

Piikani Nation

Plaintiff

- and -

Raymond James Ltd. and Liliana Kostic

Defendants

- and –

CIBC Trust Corporation and CIBC World Markets Inc.

Third Parties

**Reasons for Case Management Decision
of the
Honourable Justice M.A. Marion**

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I. Introduction

[1] This action is part of a larger set of actions (**Case Managed Actions**)¹ under my case management as case management justice (**CMJ**).

[2] On November 28, 2025, and December 2, 2025, Liliana Kostic (**Kostic**) provided me several fiat requests (**November 2025 Fiat Requests**)² relating to amending existing pleadings or filing new claims in the action number 0601-13081 (**0601 Action**) and other relief.

[3] Over a full week in February 2026, I heard numerous applications (**February 2026 Applications**), including relating to the 0601 Action, action 0801-05039 (**0801 Action**), and action 1701-01341 (**Kostic-CIBC Trust Action #2**). Significant materials were filed in respect of the February 2026 Applications and I have considered all the materials relating to all applications before I have rendered my decision in any specific application.

[4] Following the February 2026 Applications, I issued several endorsements directing further procedures for some matters arising out of or impacting my determination of the February 2026 Applications.³ Those subsequent processes are now complete.

[5] These Reasons address the following matters:

- (a) Kostic's application (**NTCD Application**) to file a late notice to co-defendant (**NTCD**) against Raymond James Ltd (**RJL**) in the 0601 Action; and
- (b) Kostic's November 2025 Fiat Requests.

[6] For the reasons set out below, Kostic is not permitted to file the late NTCD against RJL and the November 2025 Fiat Requests are denied.

II. Issues

[7] The issues are:

- (a) Should Kostic be permitted to file a late NTCD against RJL?
- (b) Should Kostic's November 2025 Fiat Requests be granted?

¹ As defined in Endorsement #4. These Reasons used the definitions set out in Endorsement #4 unless otherwise indicated.

² The November 2025 Fiat Requests, Fiat Responses, and Fiat Replies (all as contemplated in Endorsement #4 and Endorsement #45) are set out elsewhere in these Reasons.

³ Endorsements #60, 62, 64, 68, 70 and 71.

III. Analysis

A. Background Context

[8] The issues noted above appear deceptively simple. However, requests to amend or add pleadings or claims to a decades-old action requires an assessment of why the requests are being made at such a late stage. That has been and is a daunting and complex task, compounded by:

- (a) the perhaps unprecedented length of the procedural journey of the 0601 Action, now over 20 years old;
- (b) the reality that the 0601 Action is interrelated with several other Case Managed Actions involving Kostic, including the group of actions mentioned above as well as action 1501-11111 (**Kostic-Thom Action**), action 1701-06258 (**AIG Action**), action 1901-06547 (**SVR Action**) and action 2101-06345 (**BridgePoint Action**);
- (c) the involvement, over the many years, of different judges and five different CMJs;
- (d) various efforts by the Court to impose leave requirements on the parties to commence new actions or applications, for which materials are often not filed and may no longer be easily accessible;
- (e) Kostic's representation by various lawyers from time to time, against some of which she has commenced or threatened action, Kostic's use of limited scope retainers of counsel for specific steps, and Kostic's (at least in recent years for some matters) self-represented status; and
- (f) what appear to be never-ending disputes between counsel and Kostic about what (or the effect of what) was said, directed, or decided by earlier CMJs or other judges, often years earlier, all of which requires extensive work by the parties and the Court to determine what actually happened (and the effect of what happened).

[9] Accordingly, and with regret about the length of these Reasons, the unfortunate reality is that an understanding of the 0601 Action's still-incomplete Odyssean litigation journey in the context of the Kostic-related Case Managed Actions is necessary to put the NTCD Application and the November 2025 Fiat Requests into proper context. This will also hopefully put to rest some of the repeated disputes about the past. Despite its length, the below background summary is not intended to be (and is not) a complete summary of everything that has happened, but rather provides milestones of various events.

1. Pre-0601 Action

[10] The Court of Appeal has provided this succinct summary of what lead to the 0601 Action, in **Piikani Nation v Kostic**, 2018 ABCA 234⁴ at paras 2-5 (definitions added):

⁴ Given the numerous reported decisions in the Case Managed Actions, and the common parties across those actions, it is not possible to use traditional methods to meaningfully define cases for the purposes of these Reasons. Instead, for efficiency, I will simply refer to the numerical citation as the definition. For example, **Piikani Nation v Kostic**, 2018 ABCA 234 will be referred to as **2018 ABCA 234**.

[2] Pursuant to a 2002 Settlement Agreement [**Settlement Agreement** or **Settlement**], the Piikani Nation agreed to allow a portion of its lands to be used for the development of the Oldman River Dam, which included a hydro-electric power plant. In exchange, the Piikani Nation received \$64.3M that was settled in the Piikani Trust. The Settlement Agreement contemplated, among other things, that the trustee of the Piikani Trust could invest the funds. Piikani Investment Corporation [**PIC**] (which later filed a proposal in bankruptcy through the Grant Thornton Group as trustee) was designated as the beneficiary of the Piikani Trust, as the Piikani Nation's investment vehicle. The trust funds were to be invested through "Institutional Investment Counsellors". The CIBC Trust Corporation [**CIBC Trust**] was selected as the investment trustee.

[3] The trust agreement between the Piikani Nation and CIBC Trust conferred upon the Piikani Nation the power to appoint not only the broker (the "Institutional Investment Counsellor") but also such additional advisors as the Piikani Nation directed the investment counsellor to retain.

[4] The appellant, Ms. Kostic, was the advisor selected by the Piikani Nation, and the Piikani Nation covenanted with Ms. Kostic that it would direct whichever investment counsellor was appointed to retain her. At first the Piikani Nation retained CIBC Wood Gundy [**CWM**]⁵ as the institutional investment counsellor, and directed it to hire Ms. Kostic as the advisor. When Ms. Kostic changed employers, [RJL] was retained as the institutional investment counsellor, and it was directed to hire her to be the advisor: see *Kostic v Piikani Nation*, 2017 ABCA 53 at paras. 5-12, 48 Alta LR (6th) 310.

2. Initial Pleadings and Questioning in the 0601 Action

[11] In late 2006, Piikani Investment Corporation (**PIC**) and Piikani Nation commenced the 0601 Action against Kostic, RJL and several individuals, including councillors of the Piikani Nation council (**Council**) during the relevant times. At that time, the plaintiffs were represented by Norman K Machida, QC (**Machida**) of Machida Mack Shewchuk Meagher LLP.

[12] The statement of claim pleaded, among other things, that:

- (a) Kostic and the defendant councillors had a scheme or conspiracy (**Conspiracy Claim**) to obtain funds from the Piikani Trust unlawfully, including to: (1) defraud the Plaintiffs of \$23,000,000 in settlement funds by "Swift Transfers" (**SWIFT Scheme**) which were not properly disclosed to the plaintiffs (of which Kostic was the alleged "mastermind"); (2) invest in non-qualifying or unauthorized investments (**Offending Investments**) which provided substantial commissions to

⁵ I understand that CIBC Wood Gundy is or was a division of CIBC World Markets Inc, and/or was the result of a name change from CIBC Wood Gundy to CIBC World Markets Inc: *Piikani Nation v Kostic*, 2024 ABKB 137 at para 3. For ease of reference and consistency I refer to them collectively as CWM, which is a reference to CIBC Wood Gundy and/or CIBC World Markets Inc as the context requires. To the extent my understanding is incorrect, my definition is not intended to be any substantive finding relating to the relationship between CIBC Wood Gundy and CIBC World Markets Inc.

RJL and Kostic; (3) pay kickbacks or bribes by Kostic to the defendant councillors (**Bribery Scheme**); and (4) actively conceal their activities and conduct;

- (b) Kostic and RJL breached their fiduciary duty, including by investing in Offending Investments for their personal benefit;
- (c) Kostic and RJL breached the terms of an Investment Management Agreement and Investment Policy, and were negligent by, among other things, failing to manage the investments consistent with the purpose of the Piikani Trust, investing in Offending Investments, failing to disclose Offending Investments, failing to ensure Kostic and RJL were qualified to manage the Piikani Trust's funds, failing to report on a timely basis, and failing to ensure appropriate investment liquidity;
- (d) Kostic and RJL conspired with the defendant councillors to allow them to continue to manage the Piikani Nation investment portfolio; and
- (e) RJL was vicariously liable for Kostic's negligence and breach of fiduciary duty.

[13] On January 15, 2007, RJL/Kostic filed a joint statement of defence. At that time, they were jointly represented by Jeffrey N. Thom, QC (**Thom**) of Miller Thomson. Thom was appointed to defend RJL and Kostic by the successor to American Home Assurance Company, AIG Insurance Company of Canada (**AIG**).⁶

[14] In their defence, RJL/Kostic denied PIC's authority to file the claim and generally denied all the allegations against them (including that Piikani Nation had suffered the damages alleged), describing the claims against them as "baseless and outrageous".

[15] On January 18, 2007, RJL/Kostic amended their statement of defence to plead that the claim was filed without authority and that the Council had resolved to discontinue the claim. Their defence was further amended on July 23, 2007 to plead a limitations defence.

[16] On June 20, 2007, RJL/Kostic filed a third party claim seeking indemnity and contribution against CIBC Trust. They alleged (among other things) that if RJL/Kostic were unsuitable investment advisors, or if there were Offending Investments, CIBC Trust was in breach of the Investment Management Agreement, had instructed RJL/Kostic to make the Offending Investments, and was responsible for any damages. CIBC Trust defended this third party claim on March 16, 2007. Among other things, CIBC Trust pleaded that Piikani Nation and its Chief and Council appointed RJL/Kostic (not CIBC Trust); CIBC Trust had no investment management responsibility; CIBC Trust was protected by a waiver of liability clause in the Trust Agreement; and CIBC Trust did not breach any agreements. CIBC Trust denied RJL/Kostic's entitlement to indemnity or contribution from CIBC Trust.

⁶ Statement of Claim of AIG in the AIG Action at para 9.

[17] On June 20, 2007, Kostic filed a third party claim against CWM, seeking indemnity and contribution from CWM for any acts or omissions by Kostic up to June 9, 2004, on the basis that CWM was her employer until that date.⁷

[18] In June and July 2007, some examination for discoveries was conducted of several defendants, including an RJL representative. Due to asserted medical issues, Kostic was not examined in 2007 but initial discovery of her was conducted in January and March 2008.⁸ Following this, the momentum of the 0601 Action appears to have waned and minimal steps were taken to advance the 0601 Action until 2012.

[19] In May 2010, Machida ceased to act for Piikani Nation and Piikani Nation appears to have been without counsel for several months.

3. Kostic Commences the 0801 Action

[20] On May 1, 2008, Kostic commenced the 0801 Action against Piikani Nation and CIBC Trust, pleading damages for breach or termination of a November 2002 business agreement between her and Piikani Nation, which was later amended in November 2004 (**Business Agreement**). Initially, the 0801 Action statement of claim asserted monetary damages and damages for emotional pain and suffering. At that time, Kostic was represented by Clint Docken, QC of Docken & Company (**Docken**). A helpful summary of the procedural history of the 0801 Action is at *Kostic v Piikani Nation*, 2024 ABKB 671 at paras 3-48.

[21] On February 4, 2009, Kostic amended the statement of claim in the 0801 action to remove CIBC Trust as a party: *2024 ABKB 671* at para 17.

[22] On March 20, 2009, Kostic noted Piikani Nation in default. She subsequently started proceedings for judgment.

[23] In April 2010, Piikani Nation applied to set aside the noting in default. On July 10, 2010, the Court set aside the default.

[24] By July 2010, William Klym (**Klym**) began representing Kostic in the 0801 Action.

[25] On July 29, 2010, Piikani Nation filed its defence in the 0801 Action. At that time, it was represented by Walsh Wilkins Creighton LLP (initially Michael Pflueger and later Gary Befus). Piikani Nation denied that it entered into the Business Agreement or that it was a valid, binding or enforceable agreement. Piikani Nation also pleaded that if the Business Agreement was entered into, it was terminated because of Kostic's breach of the Business Agreement, breach of fiduciary duty and negligence, and in particular due to making Offending Investments and charging fees and commissions not allowed by the Trust Agreement. Piikani Nation denied Kostic had suffered any damages.

[26] Not much happened in the 0801 Action until late 2011. Kostic provided notices to admit, which were responded to. In November 2011, Kostic conducted questioning of Piikani Nation's representative, Doane Crow Shoe (**Crow Shoe**). In December 2011, Piikani Nation questioned

⁷ As noted below, it does not appear that a defence to this third party claim was filed by CWM until 2016.

⁸ February 22, 2008 consent order.

Kostic for discovery in the 0801 Action and a consent order was granted for the provision of undertakings.

4. 2012 Applications in the 0601 Action and the 0801 Action

[27] In 2012, Piikani Nation retained new counsel, Jensen Shawa Solomon Duguid Hawkes LLP (**JSS**) to represent it in the 0601 Action and the 0801 Action.

[28] Prior to June 2012, Associate Chief Justice (**ACJ**) Rooke had been CMJ over several actions involving Piikani Nation. In June 2012, Chief Justice Wittmann confirmed ACJ Rooke's appointment as CMJ for the 0601 Action and the 0801 Action, among others.⁹

[29] On July 9, 2012, Piikani Nation applied to compel Kostic to answer undertakings in the 0801 Action, primarily to obtain medical records relevant to Kostic's pain and suffering damages. It also filed an application to consolidate the 0601 Action and the 0801 Action.

[30] On July 13, 2012, Kostic filed an application for summary judgment in the 0801 Action on liability and directing an assessment of damages.

[31] On August 30, 2012, Kostic filed an amended amended statement of claim in the 0801 Action, which removed her claim for pain and suffering damages, and, on September 2, 2012, Piikani Nation filed its statement of defence to the amended amended statement of claim: **2024 ABKB 671** at paras 24 and 25.

[32] On September 4, 2012, Kostic's summary judgment application was adjourned *sine die*: **2024 ABKB 671** at para 26. It was later abandoned.

[33] On September 7, 2012, Piikani Nation filed its statement of defence to the amended amended statement of claim in the 0801 Action, in a different form than its first statement of defence. Piikani Nation continued to deny that the Business Agreement existed, was legal or was binding for various reasons. It also pleaded that Kostic relied on falsified documents; that Kostic knew she was not authorized to enter into an agreement with Piikani Nation on her own behalf; that Piikani Nation did not agree to pay Kostic commissions and fees; that Kostic induced Piikani Nation to enter into the Business Agreement based on misrepresentations about her status and qualifications; that Piikani Nation terminated the Business Agreement due to Kostic's breach of fiduciary duty and negligence; and that Kostic suffered no damages or failed to mitigate her damages. In 2012, Piikani Nation confirmed that it was not relying on the conspiracy to commit the SWIFT Scheme as a defence to Kostic's claim in the 0801 Action.¹⁰

5. The February 2013 Order

[34] By 2013, Piikani Nation was involved in or the subject of numerous lawsuits directly or indirectly related to the Piikani Nation Trust and the handling of the funds received as part of the Settlement. For example, in addition to the 0601 Action and the 0801 Action, there was a lawsuit

⁹ June 25, 2012 letter of Chief Justice Wittmann (filed September 19, 2023 in the 0601 Action).

¹⁰ Brief of Piikani Nation (filed October 26, 2012 in the 0601 Action) at para 39; February 27, 2014 affidavit of Crow Shoe (filed February 28, 2014 in the 0601 Action) at Exhibit E; Piikani Nation's June 6, 2025 amended statement of defence in the 0801 Action does not specifically plead the SWIFT Scheme as a defence.

by Kerry Scott (action number 0801-04735), a class action by Brian Jackson (**Jackson**) on behalf of Piikani Nation members against CIBC Trust and former or current Piikani Nation councillors (action 0801-06768), lawsuits by Shelley Small Legs and Stan Knowlton seeking indemnity from Piikani Nation (actions 0901-03549 and 0901-05220 respectively), insolvency and restructuring or related proceedings involving PIC and Piikani Energy Corporation (**PEC**) (action numbers 0901-07214, 0901-15297, 0901-15396, and 0901-18791)¹¹, active proceedings involving Dale McMullen (**McMullen**) and others (action numbers 1001-10326 and 1101-11127), various claims or proposed claims against Piikani Nation's legal counsel, and more recent litigation by and against the then Chief of the Piikani Nation, Gale Strikes with a Gun (action numbers 1201-11755, 1201-15897, and 1201-16383),¹² and Dianna North Peigan (action 1201-15671).

[35] On February 5, 2013, in action number 1201-15897 (but having wider effect), ACJ Rooke granted an order to deal with the growing proliferation of Piikani Nation-related litigation (**February 2013 Order**). The February 2013 Order stayed several actions pending a Court of Appeal decision in action 1201-0072AC, which was ultimately delivered on August 29, 2013: *Piikani Energy Corporation (Re)*, 2013 ABCA 293. There were certain exemptions to the stay, including for aspects of the 0601 Action and the 0801 Action.

[36] The February 2013 Order also provided:

No new action may be commenced by or against the Piikani Nation, Council of the Piikani Nation, Chief of Piikani Nation or any trustee or corporation associated with the Piikani Nation that is a legal entity controlled by the Piikani Nation or as between or among or against any of the parties to the litigation listed above, or against their legal counsel in a [sic] the Court of Queen's Bench of the Provincial Court of Alberta without leave of this Court or its designate.

6. The February 19, 2013 Order, the 0601 Action Litigation Plan, the Removal of PIC as a Plaintiff, and Thom's Withdrawal

[37] On February 13, 2013, Kostic applied in the 0801 Action for an order preventing the further disclosure of her medical records.

[38] On February 19, 2013, various actions were before ACJ Rooke as CMJ, including the 0601 Action and the 0801 Action. ACJ Rooke dismissed Piikani Nation's application for consolidation of the 0601 Action and the 0801 Action "at this time". With respect to the 0601 Action, ACJ Rooke directed that the stay under the February 2013 Order was not lifted, except to direct the 0601 Action parties to provide the Court a joint submission for a schedule in the 0601 Action within 60 days. With respect to the 0801 Action, ACJ Rooke lifted the stay and directed the 0801 Action to proceed to trial in December 2013.

[39] On June 7, 2013, ACJ Rooke approved (with amendments) a litigation plan for the 0601 Action, which contemplated significant steps in the 0601 Action before the end of 2013. In the

¹¹ See, for example: *Piikani Nation v Piikani Energy Corporation*, 2010 ABQB 352; *Piikani Nation v Piikani Energy Corporation*, 2011 ABQB 450; *Piikani Energy Corporation (Re)*, 2012 ABQB 187.

¹² Some of this litigation is summarized in *Chief Gayle Strikes With a Gun v Piikani First Nation*, 2014 FC 908 at para 117.

0801 Action, ACJ Rooke dismissed Kostic's medical records application, and ordered Kostic to produce various medical records and directed the parties to provide a litigation plan by September 1, 2013.

[40] By at least 2013,¹³ Kostic was dissatisfied with Thom's representation of her in the 0601 Action. On August 12, 2013, Thom and Miller Thomson filed a Notice of Withdrawal of Lawyer of Record and withdrew as her counsel. Thom remained counsel for RJL at that time. In September 2013, Klym (then with Docken Klym) filed a Notice of Change of Representation confirming he was Kostic's counsel of record in the 0601 Action.

[41] On September 12, 2013, Kostic filed several affidavits in support of her request for leave to file a summary dismissal application in respect of the fraud allegations in the 0601 Action.

[42] On September 13, 2013, on the application of Grant Thornton Alger Inc (the court officer with respect to PIC's winding up proceedings), and with consent of the parties, ACJ Rooke removed PIC as a party plaintiff in the 0601 Action and its claim was dismissed with prejudice.

[43] Also on September 13, 2013, by consent of the parties, ACJ Rooke approved a revised litigation plan for the 0601 Action. The litigation plan contemplated completion of all questioning in the 0601 Action by March 2015, completion of a dispute resolution process by August 2015, expert reports exchanged by November 2015, and requesting a trial date by the end of 2015.

7. The April 7, 2014 Orders in the 0601 Action and the 0801 Action

[44] On January 22, 2014, Kostic filed her application for summary dismissal of what she described as the "fraud allegations" in the 0601 Action, namely the Conspiracy Claim to unlawfully obtain funds through the SWIFT Scheme, Offending Investments, and the Bribery Scheme. On January 28, 2014, ACJ Rooke directed the application to be heard on April 7, 2014.

[45] On January 28, 2014, Piikani Nation filed an application to strike the 0801 Action due to Kostic's failure to comply with the Court's orders or, alternatively, an order for security for costs and a direction that the 0801 Action proceed to a summary trial on whether the Business Agreement was a binding contract and whether Kostic suffered any damages.

[46] On March 18, 2014, ACJ Rooke dismissed an application by Kostic for production of the "Navigant Report" in the 0601 Action.

[47] On April 3, 2014, RJL/Kostic applied in the 0601 Action to determine costs to be payable by PIC in the 0601 Action.

[48] On April 7, 2014, ACJ Rooke addressed several applications in the 0601 Action and the 0801 Action and made several orders. He granted Kostic's summary dismissal application, on these terms (**April 2014 Order**) (as I have previously summarized in *Piikani Nation v Raymond James Ltd*, 2025 ABKB 493 at para 20, aff'd *Kostic v Raymond James Ltd*, 2026 ABCA 135, and which were not finalized and entered until July 2016):

¹³ For the purposes of these Reasons, I do not need to make finding about when Kostic first became concerned about Thom's representation, and do not make any such finding.

1. The Application to strike the SWIFT transfer allegations as a separate cause of action is granted.
2. The facts related to the allegations with respect to the SWIFT transfer facts may be maintained in the Statement of Claim if they go to other allegations in the Claim, but not to sustain an independent cause of action.
3. The Statement of Claim shall be amended to reflect the foregoing as counsel can agree or, failing agreement, as will be further determined by the Court.

[49] Kostic frequently argues that the April 2014 Order “precluded any further allegations of fraud or conspiracy against [her] related to the same incidents”.¹⁴ That is incorrect or an overstatement. This is not the text or effect of the April 2014 Order.

[50] In the 0801 Action, ACJ Rooke’s April 7, 2014 order struck Kostic’s pleading but stayed it on certain conditions which, if met, would then see the 0801 Action be directed to a summary trial to determine whether the alleged Business Agreement was binding and whether Kostic suffered damages: **2017 ABCA 53** at para 4.

8. The June 2014 Order in the 0601 Action and the 0801 Action

[51] On June 12, 2014, in the 0801 Action, ACJ Rooke directed several physicians to produce certain Kostic medical records.

[52] On June 12, 2014, in the 0601 Action, ACJ Rooke granted a restricted access order (**June 2014 Order**) which, among other things, sealed a May 16, 2014 McMullen affidavit (which included the Navigant Report) and a May 28, 2014 affidavit of Edwin Yellow Horn: see: **Piikani Nation v McMullen**, 2024 ABKB 264 at paras 13-18; **Piikani Nation v McMullen**, 2025 ABKB 481 at paras 21-28. The June 2014 Order was confirmed in another order on September 2, 2014: **Piikani Nation v Raymond James Ltd**, 2025 ABKB 562 at para 12. An appeal of this order was dismissed: **Piikani Nation v Kostic**, 2015 ABCA 60. Other attempts to unseal the Navigant Report up to 2018 are described in **2025 ABKB 562** at paras 12-19 and **Piikani Nation v Raymond James Ltd**, 2026 ABKB 620.

[53] Not much else happened in the 0601 Action until 2015.

9. The Summary Trial Decision in the 0801 Action

[54] On April 16, 2015, Justice Anderson presided over the summary trial in the 0801 Action. On April 17, 2015, she granted Piikani Nation’s application to have the matter determined by summary trial and dismissed the 0801 Action. As noted below, this was later overturned: **2017 ABCA 53**.

¹⁴ See for example: November 2025 Affidavit (defined herein) at para 11.

10. Kostic's Withdrawn and Struck Amended Third Party Notices

[55] In May 2015, Gabor Zinner (**Zinner**) filed a Notice of Change of Representation and, by July 2015, he began appearing on Kostic's behalf in the 0601 Action.

[56] On September 10, 2015, Kostic filed an amended third party notice against CWM. The amendment added several pages of new allegations, including against new third parties including Piikani Nation, various counsel of Piikani Nation (past and present), various Piikani Nation councillors, Canadian Imperial Bank of Commerce (**CIBC**), and various other individuals. On September 14, 2015, Kostic further amended the third party notice (**2015 Amended Third Party Notice**).

[57] Around this time, Kostic's counsel also arranged a case management conference (**CMC**), on October 26, 2015, in front of ACJ Rooke, to set dates for a proposed application to amend Kostic's third party notice against CIBC Trust, to specifically add a claim to contractual indemnity and save harmless relief under client account agreements between RJL and CIBC Trust (**RJL Account Agreements**).¹⁵

[58] On October 26, 2015, after complaints by other parties about lack of service and the requirement to obtain leave prior to filing the 2015 amended pleadings, Kostic agreed to withdraw them. ACJ Rooke ordered that they be struck by agreement of the parties. ACJ Rooke also ordered the parties to work on a schedule for Kostic's proposed application to amend Kostic's third party notice against CIBC Trust.

11. September 2015 – The Kostic-Thom Action

[59] On September 22, 2015, Kostic (represented by Klym) commenced a professional negligence action against Thom and Miller Thomson (**Kostic-Thom Action**). In the Kostic-Thom Action, Kostic pleads that Thom/Miller Thomson acted in a material conflict because "their ongoing representation of RJL created a conflict where the interests of RJL diverged from the interests of Kostic" in respect of the 0601 Action. She also pleads, among other things, that Thom/Miller Thomson failed to advise Kostic to obtain independent legal advice; failed to advise her of her contractual indemnity rights against Piikani Nation; failed to take reasonable steps to have the claims against her struck or summarily dismissed; failed to fully advise her about the terms of the AIG insurance policy; failed to protect her interests; breached their duty of loyalty and candour; advised her that they did not take instructions from her; failed to have a proper joint retainer agreement; failed to provide full disclosure to her; advised her that they did not represent her interests; and failed to provide her file to her new counsel. The claim seeks general, punitive and exemplary damages.

[60] On February 26, 2016, Thom/Miller Thomson filed their statement of defence.

[61] In June 2016, Kostic sought leave for a number of applications, but these were overtaken by an application by Thom/Miller Thomson for summary dismissal of the claim, which was not resolved by appeal until 2022: *Kostic v Thom*, 2023 ABKB 642 at para 12.

¹⁵ July 29, 2015 affidavit of Kostic (filed July 30, 2015) at para 24 and Exhibit 5.

12. Close of Pleadings between Kostic and CWM in the 0601 Action

[62] On January 18, 2016, RJL changed its counsel in the 0601 Action from Thom/Miller Thomson to McLeod Law LLP.

[63] On January 27, 2016, CWM filed its statement of defence to Kostic's third party claim against CWM in the 0601 Action. On February 5, 2016, Kostic filed her reply to CWM's statement of defence to her third party claim. Kostic's reply raised her contractual indemnity and save harmless claim against CIBC Trust:¹⁶ *Kostic v CIBC Trust Corporation*, 2017 ABQB 747 at para 3.¹⁷

13. February 2016 – Kostic-CIBC Trust Action #1

[64] On February 29, 2016, Kostic filed an originating application in action 1601-01693 (**Kostic-CIBC Trust Action #1**) against CIBC, CWM and CIBC Trust. In it, Kostic claimed CIBC Trust (or alternatively CWM) was contractually obligated to indemnify and hold her harmless pursuant to RJL Account Agreements and account agreements between CIBC Trust and CWM operating as CIBC Wood Gundy (**CWM Account Agreements**).¹⁸

[65] Kostic's originating application also claimed, more generally, indemnity and save harmless relief against CIBC, CIBC Trust, and CWM, and sought leave to file "Counter Claims" against CIBC, CIBC Trust, and CWM.

[66] On June 15, 2016, Kostic filed an amended originating application, which removed CIBC and CWM as respondents as well as the relief seeking leave to file counterclaims, among other things.

[67] The originating application was returnable on June 22, 2016, and then was addressed on July 11, 2016, at which time ACJ Rooke approved the filing of a further amended amended originating application which further narrowed the pleading. ACJ Rooke also set a procedural schedule and set the application down for a hearing in November 2016 (which occurred on November 22 and 25, 2016).

14. The June 22, 2016 Orders

[68] In the first half of 2016, there were also several applications filed in the 0601 Action.

[69] On February 24, 2016, Kostic filed an application in the 0601 Action seeking leave to file a counterclaim in the 0601 Action against Bruce Alger, Grant Thornton LLP, Grant Thornton Alger Inc, and Grant Thornton Limited (collectively, **Court Officer**).

[70] In March 2016, Kostic filed notices to admit in the 0601 Action to Piikani Nation, CIBC Trust and CWM, and sought particulars.

¹⁶ February 5, 2016 Reply to Defence of Third Party Defendant at paras 9, 11.

¹⁷ *2017 ABQB 747* is currently not available on CanLII. An alternate citation is: *Kostic v CIBC Trust Corporation*, 2017 CarswellAlta 2666. *2017 ABQA 747* was reversed on appeal in *2018 ABQA 355*.

¹⁸ The RJL Account Agreements and the CWM Account Agreements were the subject of *2018 ABQA 355* and I refer to them collectively as the "Account Agreements".

[71] On June 9, 2016, Piikani Nation filed an application in the 0601 Action to settle the terms of the April 2014 Order and to obtain leave to file a proposed amended statement of claim.

[72] In June 2016, Kostic applied for a fiat to pursue a number of applications in the Kostic-Thom Action: **2023 ABKB 642** at para 12.

[73] On June 15, 2016, Kostic filed an application in the 0601 Action to finalize the terms of the April 2014 Order; to order enhanced costs against Piikani Nation for maintaining, among others, the Conspiracy Claim (including in relation to the alleged SWIFT Scheme and the alleged Bribery Scheme); and to disallow Piikani Nation's proposed amendments to the 0601 Action, seeking summary dismissal of Piikani Nation's claim, and seeking security for enhanced costs.

[74] On June 22, 2016, ACJ Rooke granted an order in the 0601 Action:

- (a) adjourning all applications in the 0601 Action;
- (b) providing Kostic time to withdraw two affidavits she had filed in support of her applications, failing which he granted the Court Officer and Piikani Nation leave to apply strike them;
- (c) providing that no application may be brought in the 0601 action without a fiat; and
- (d) providing a process for the finalization of the April 2014 Order in the 0601 Action, without prejudice to Kostic applying for reconsideration or amendment of the April 2014 Order to correct slips or because of new evidence.

[75] With respect to the Kostic-Thom Action, on June 22, 2016, ACJ Rooke dismissed an application by Thom/Miller Thomson to strike the statement of claim, because Kostic did not require leave to file the claim against Thom. ACJ Rooke ordered a schedule for the hearing of Thom/Miller Thomson's application for summary dismissal (which was not ultimately heard until 2019).

[76] On July 20, 2016, the April 2014 Order (summarized above) was executed by the Court and entered. To my knowledge, the April 2014 Order was not appealed.

15. Further Revised Litigation Plan for the 0601 Action

[77] On August 26, 2016, ACJ Rooke ("having regard to all the issues between the parties") directed the parties to work on a revised litigation plan "containing the procedural steps for all applications and all steps leading to Trial". Kostic's appeal of this order was later dismissed: **2018 ABCA 234** at paras 13-29.

[78] On September 30, 2016, Zinner wrote to the parties in the 0601 Action and confirmed that Kostic had many applications currently pending or "under contemplation", including a proposed fresh action or counterclaim against Piikani Nation for its commencement and maintenance of the 0601 Action.¹⁹

¹⁹ Affidavit of Jennifer Samaco sworn on January 6, 2017 (filed in the 0601 Action) at Exhibit A.

[79] On October 17, 2016, ACJ Rooke presided over a lengthy CMC in the 0601 Action. ACJ Rooke approved a comprehensive replacement litigation plan for the 0601 Action (**2016 Litigation Plan**): *Piikani Nation v Raymond James Ltd*, 2017 ABQB 81 at para 4, aff'd **2018 ABCA 234**.²⁰ Some excerpts of what was discussed in this process are set out in **2018 ABCA 234** at para 17.

[80] The 2016 Litigation Plan provided procedural directions for certain known “phase 1” applications and provided a schedule for parties to confirm whether they intended to proceed with certain “phase 2” applications. The 2016 Litigation Plan provided a more detailed fiat process and pre-hearing procedures for any future interlocutory applications. The 2016 Litigation Plan contemplated completion of discovery, an application to set a trial date, and exchange of expert reports, all before the end of 2017.

[81] During the submissions related to the approval of the 2016 Litigation Plan, Zinner raised that steps should be contemplated for Kostic to file a counterclaim if Piikani Nation’s application to file its amended statement of claim was approved. Zinner also advised that additional third party notices were “under contemplation”.²¹ In response, ACJ Rooke noted that he was “not contemplating new pleadings, counterclaims, and third party claims”, or new parties being added to existing pleadings. ACJ Rooke noted that these were collateral matters.²² The 2016 Litigation Plan did not contemplate steps for filing new pleadings.

16. Kostic’s January 2017 Fiat Request and Action Against CIBC Trust Filed Without Leave

[82] On January 20, 2017, Kostic made a fiat request,²³ through Zinner, for (among other things) approval to bring an application to strike or summarily dismiss the 0601 Action against her; to file a counterclaim or a new action against Piikani Nation for malicious prosecution; to file a claim for contractual indemnity and save harmless relief against Piikani Nation under the Account Agreements, on the basis that Piikani Nation was a joint account holder; and to file a counterclaim or new action against CIBC Trust for its role in “aiding and abetting” Piikani Nation’s termination of the Business Agreement (based on interference with contractual relations).²⁴

[83] Before the Court had decided whether to grant this fiat request, and without permission from the Court, on January 26, 2017 (through Klym), Kostic filed a statement of claim against CIBC Trust in Kostic-CIBC Trust Action #2. This was apparently because of “concerns about a limitation period”: **2018 ABCA 234** at para 10.

[84] The statement of claim in Kostic-CIBC Trust Action #2 asserts damages against CIBC Trust for its role in inducing Piikani Nation to breach and terminate the Business Agreement, based on interference with contractual relations and economic interests.

[85] On March 1, 2017, ACJ Rooke, addressed Kostic’s January 20, 2017 fiat request. He:

²⁰ The 2016 Litigation Plan was approved by order on December 12, 2016 but was not entered until March 22, 2017.

²¹ Transcript of October 17, 2016 proceedings: Tab 5 to September 20, 2018 Brief of Kostic.

²² Transcript of October 17, 2016 proceedings: Tab 5 to September 20, 2018 Brief of Kostic.

²³ Affidavit of Mario Fruci sworn June 13, 2025 (filed October 16, 2025) at para 7 and Exhibit B.

²⁴ In **2024 ABKB 137** at para 15, CMJ Graesser referenced that this fiat request also sought to bring an application for indemnity/save harmless relief as against RJL.

- (a) denied Kostic leave to bring a summary dismissal application: **Piikani Nation v Raymond James Ltd**, 2017 ABQB 140 at paras 5-15, aff'd **2018 ABCA 234**; **2025 ABKB 493** at paras 66-68;
- (b) denied Kostic leave to file an application to seek a declaration, counterclaim, or a new action to claim malicious prosecution against Piikani Nation: **2017 ABQB 140** at paras 16-20; and
- (c) denied Kostic leave to file an application seeking a declaration that Piikani Nation is obliged to indemnify and save Kostic harmless as a joint account holder based on the Account Agreements: **2017 ABQB 140** at paras 21-24. ACJ Rooke held that this was "a late attempt to apply the facts and law to the Nation in the same manner as to the CIBC Trust, in a way and with timing that is an abuse of process".

[86] With respect to the proposed action against CIBC Trust, ACJ Rooke also denied Kostic leave to file a counterclaim or a new action against CIBC Trust and CIBC on the basis they aided and abetted Piikani Nation's termination of the Business Agreement: **2017 ABQB 140** at paras 25-30. ACJ Rooke's denial was based on several grounds including that "Kostic has not shown a true new, viable, cause of action against CIBC, that isn't precluded by limitations legislation, or already present, in substance, in the pleadings to date". In **2018 ABCA 234**, the Court of Appeal found no reviewable error in ACJ Rooke's decision. The Court of Appeal interpreted ACJ Rooke to have found that Kostic was not entitled to "continue the new action".

[87] In April 2017, ACJ Rooke wrote to the parties "regarding a determination as to whether the within action is allowed to be maintained".²⁵ On May 1, 2017, ACJ Rooke took over case management of Kostic-CIBC Trust Action #2. On July 13, 2017, he granted CIBC Trust a fiat to file an application to strike Kostic-CIBC Trust Action #2, which it did on July 19, 2017. The application was originally returnable on October 11, 2017 but was adjourned *sine die*, at least in part because Kostic had appealed ACJ Rooke's denial of her fiat request seeking to commence an action against CIBC Trust (addressed below).

[88] CIBC Trust's application to strike Kostic-CIBC Trust Action #2 is addressed in separately-issued Reasons: **Kostic v CIBC Trust Corporation**, 2026 ABKB 623.

17. Numerous Fiat Requests Made and Decided in the 0601 Action

[89] Following ACJ Rooke's approval of the 2016 Litigation Plan, in addition to the January 20, 2017 fiat request noted above, there was significant activity in the 0601 Action related to the phase 1 and phase 2 applications contemplated by the 2016 Litigation Plan, as well as numerous other fiat requests brought by the parties in the 0601 Action. ACJ Rooke addressed several of these applications and fiat requests in the first half of 2017.

[90] In particular, ACJ Rooke:

- (a) denied Kostic leave to seek costs against PIC on a solicitor-client basis, including because he had already decided that issue and that the costs award was compromised by the September 28, 2014 approval of PIC's bankruptcy proposal:

²⁵ Affidavit of Mario Fruci sworn June 13, 2025 (filed October 16, 2025) at Ex L.

2017 ABQB 81 at paras 8-16. As noted by the Court of Appeal, Kostic is “unable to challenge the validity of the BIA Proposal, which was not appealed and is final”: **2018 ABCA 234** at para 39;

- (b) granted Kostic leave to apply to amend the April 2014 Order in the 0601 Action to seek enhanced costs against Piikani Nation in relation to the striking of aspects of the statement of claim in the 0601 Action: **2017 ABQB 81** at paras 17-24. This was granted “primarily because leave was not opposed”: **2018 ABCA 234** at para 34. In **2025 ABKB 493**, at para 25, I noted that “it is not presently clear to me whether Kostic ever filed this application.” Based on my current knowledge of the 0601 Action, it does not appear that Kostic ever pursued this application;
- (c) denied Kostic leave to add Crow Shoe and Piikani Nation’s internal and external legal counsel (including Mr. Hawkes) to the 0601 Action for the purpose of seeking costs against them in respect of the struck portions of the statement of claim: **2017 ABQB 81** at paras 25-31;
- (d) denied Kostic leave to apply to declare Piikani Nation a vexatious litigant: **2017 ABQB 81** at paras 32-37;
- (e) denied Kostic leave to file a counterclaim against legal counsel for Piikani Nation and PIC for counselling, directing and instructing the plaintiffs to make false allegations against Kostic: **Piikani Nation v Raymond James Ltd**, 2017 ABQB 97 at paras 5-15;
- (f) denied Kostic leave to apply to hold Crow Shoe in contempt: **Piikani Nation v Raymond James Ltd**, 2017 ABQB 98;
- (g) granted Piikani Nation leave to apply to strike several affidavits filed by Kostic in the 0601 Action: **Piikani Nation v Raymond James Ltd**, 2017 ABQB 102. It is not clear whether this application ever proceeded;
- (h) granted Piikani Nation leave to apply to strike a March 10, 2016 notice to admit facts that Kostic served on Piikani Nation: **Piikani Nation v Raymond James Ltd**, 2017 ABQB 112. It is not clear whether this application ever proceeded;
- (i) granted Piikani Nation leave to apply to amend its statement of claim, including because this was already directed under the April 2014 Order: **Piikani Nation v Raymond James Ltd**, 2017 ABQB 113;
- (j) denied Kostic leave to apply to unseal the Navigant Report: **Piikani Nation v Raymond James Ltd**, 2017 ABQB 116 at para 15, aff’d **2018 ABCA 234**;
- (k) granted Kostic leave to apply for enhanced costs for breach of the 2013 amended litigation plan: **2017 ABQB 116** at para 15. It is not clear whether this application ever proceeded; and
- (l) granted Kostic leave to apply to strike a January 11, 2017 “Stipulation” filed by Piikani Nation related to a “blocked bank account”, which was agreed to by Piikani

Nation: **2017 ABQB 116** at paras 15, 18. It is unclear whether this application ever proceeded.

[91] As noted further elsewhere, Kostic unsuccessfully appealed several of ACJ Rooke's 2017 decisions.

[92] On April 1, 2017, Justice Nation became CMJ of the 0601 Action.

18. Scott Venturo LLP and the Stay of the 0601 Action

[93] On February 16, 2017, Scott Venturo LLP (later known as Scott Venturo Rudakoff LLP²⁶)(SVR), filed a notice of change of representation indicating that it was now the counsel of record for Kostic in the 0601 Action, replacing Zinner.

[94] On March 15, 2017, at the request of SVR, ACJ Rooke granted a consent order staying the dates in the 2016 Litigation plan for 4 months, so that SVR could review the file. He directed the parties to provide him a revised litigation plan by July 14, 2017.

[95] SVR's involvement was short-lived, and led to another lawsuit (discussed further below). On May 19, 2017, SVR filed a notice of withdrawal as Kostic's counsel of record. On May 25, 2017, Kostic filed a notice of change of representation indicating she was self-represented in the 0601 Action.

19. The February 2017 Overturning of the 0801 Action Dismissal

[96] On February 9, 2017, the Court of Appeal overturned Justice Anderson's dismissal of the 0801 Action: **2017 ABCA 53**. The Court of Appeal found that there was consideration for the Business Agreement and stated, at para 18, that "the Nation prematurely terminated its contractive relationship with Ms. Kostic and in doing so the Nation breached the business agreement it had with her." The Court of Appeal noted, at para 19, that "[t]ypically, a plaintiff's inability to earn income as a result of another's breach of contract gives rise to a damage claim, but this is a matter for a trial court to assess. And in conducting that assessment, Ms. Kostic's claim to damages for the manner in which the Nation terminated the business agreement should also be considered". As noted below, the parties have had a long-standing disagreement about the effect of **2017 ABCA 53**.

[97] On June 29, 2017, Piikani Nation's application seeking leave to appeal **2017 ABCA 53** to the Supreme Court of Canada was dismissed: 2017 CanLII 40510 (SCC). On August 10, 2017, Piikani Nation's application to reargue **2017 ABCA 53** was denied, although the Court of Appeal corrected an error about the length of the term of the Business Agreement: **Kostic v Piikani Nation**, 2017 ABCA 263.

[98] Kostic has subsequently relied on **2017 ABCA 53** to support various propositions, including to the effect that the Court of Appeal finally determined liability of Piikani Nation to her for termination of the Business Agreement and that all that is left in the 0801 Action is a damages assessment. This has subsequently been clarified by the Court of Appeal, which has confirmed that

²⁶ I understand Scott Venturo LLP became known as Scott Venturo Rudakoff LLP on May 1, 2017.

there has not been a final determination of any potential breaches of the Business Agreement: **2018 ABCA 234** at para 66²⁷; **Piikani Nation v Kostic**, 2018 ABCA 275 at para 8.²⁸ See also **Kostic v Piikani Nation**, 2024 ABKB 40 at paras 7-8.

20. The AIG Action

[99] On May 12, 2017, AIG filed the AIG Action. AIG pleads that it advised Kostic on May 5, 2017, that it considered her conduct to be in breach of the applicable policy of insurance for failing to cooperate in the defence of the 0601 Action as required under the policy, for numerous particularized reasons. AIG's statement of claim seeks declarations of Kostic's breach of the policy and that AIG is relieved of any further obligation to defend Kostic, pay Kostic's costs, indemnify Kostic, or have any future liability to Kostic for failing to accept appointed defence counsel's recommendations. A further summary of the claim is at **AIG Insurance Co of Canada v Kostic**, 2023 ABKB 702.

[100] AIG also sought a declaration of its right to seek recoupment of defence costs already paid to defend Kostic in the 0601 Action. However, on January 9, 2026, AIG confirmed it is no longer intending to proceed with that relief.

[101] On May 18, 2017, ACJ Rooke ordered the AIG Action court file be sealed.

[102] On June 5, 2017, Kostic filed her statement of defence in the AIG Action, as a self-represented litigant. Kostic's defence includes some of the same allegations against Thom that are in the Kostic-Thom Action. She denies that she did not cooperate as required, and pleads that AIG unilaterally retained SVR despite it being in a conflict, and insisted that the file be transferred to SVR. Kostic also pleads that AIG was in a conflict and breached its duties of good faith. Further, Kostic pleads that, among other things, around the time she was asked to sign a retainer with SVR, AIG and RJL "were conducting undisclosed settlement negotiations with Piikani which Piikani publicly disclosed in January 2017".

[103] On June 13, 2017, AIG filed its reply to Kostic's statement of defence.

[104] On June 23, 2017, Justice Rawlins dismissed Kostic's application seeking various declarations against AIG, and in respect of alleged errors SVR made in the Court of Appeal on March 10, 2017. Justice Rawlins also prohibited Kostic from filing further applications in the AIG Action without the Court's permission. She also granted Kostic the right to file a counterclaim.

[105] On July 10, 2017, Kostic filed a counterclaim against AIG for, among other things, breach of her insurance policy, AIG's duties under the policy (including its duties of good faith), and failing to defend Kostic. Kostic seeks unspecified general, specific, exemplary and punitive damages.

[106] On July 31, 2017, AIG filed its statement of defence to the counterclaim.

²⁷ "There has not, however, been a final determination as to whether there have been any potential breaches of that agreement, or whether it would provide the indemnity presently claimed by Ms. Kostic."

²⁸ "Specifically, there is no prior decision of this Court holding that there has or has not been proof of a breach of the Business Agreement. Ms. Kostic's interpretations of the prior decisions and the decision of this panel do not prevail in the face of what was actually decided."

[107] On August 8, 2017, Kostic (now represented by Klym) filed a summary dismissal application for the AIG Action.

21. Amended Pleadings and Cross-Summary Judgment Applications in the Kostic-Thom Action

[108] On September 7, 2017, Kostic (through Klym) filed an amended statement of claim in the Kostic-Thom Action.

[109] On September 12, 2017, Thom/Miller Thomson filed their statement of defence to the amended statement of claim.

[110] On October 11, 2017, ACJ Rooke granted a procedural order for the parties' cross-applications for summary dismissal and summary judgment in the Kostic-Thom Action. These applications were filed on October 25, 2017, and October 31, 2017, respectively.

22. August 2017 Dismissal of Kostic Fiat to Claim Indemnity and Save Harmless Relief Against Piikani Nation

[111] Following the Court of Appeal decision in **2017 ABCA 53**, Kostic formally demanded that Piikani Nation indemnify her under the terms of the Business Agreement. Piikani Nation refused, and Kostic brought another fiat request.

[112] On November 9, 2017, CMJ Nation denied her leave request: **Piikani Nation v Raymond James Ltd**, 2017 ABQB 681. In her reasons, CMJ Nation stated at para 10, that as there was no judgment or assessment against Kostic (a matter for trial), there was currently "nothing to trigger a hold harmless declaration", and that "[o]bviously, at trial, whether indemnity is available for any damages, costs or liability that may be found against Ms. Kostic will be determined, in the context of all the evidence". She also held that on the record before her, Kostic's argument that Piikani Nation had a duty to pay for her counsel to defend herself in the 0601 Action was hopeless.

[113] As noted below, Kostic appealed this decision.

23. Court Finds CIBC Trust Obligated to Defend Kostic or Pay Her 0601 Action Defence Costs

[114] As noted earlier, Kostic-CIBC Trust Action #1 was directed to a hearing and heard in late 2016. On December 6, 2017, ACJ Rooke delivered his decision: **2017 ABQB 747**. He found that any indemnity from liability could not be determined until liability against Kostic was determined at trial; that CIBC Trust had no liability to defend under the CWM Account Agreements; that Kostic had a right to be defended (or have her reasonable defence costs paid) by CIBC Trust under the RJL Account Agreements; and that any right of Kostic to defence costs was limited to the 0601 Action absent further application. The Court of Appeal's summary of ACJ Rooke's decision is found at **2025 ABKB 493** at para 127, citing **Kostic v CIBC Trust Corporation**, 2018 ABCA 355 at paras 7-8. CIBC Trust appealed this decision and was successful: **2018 ABCA 355**.

24. Amended and New Pleadings in the 0601 Action

[115] On January 3, 2018, Klym (then of DD West LLP) filed a notice of change of representation confirming he was back on as counsel of record for Kostic in the 0601 Action.

[116] On February 9, 2018, CMJ Nation finally heard and granted Piikani Nation's application to amend the statement of claim (including to implement the April 2014 Order) which, as noted above, Piikani Nation had originally filed in June 2016 and for which ACJ Rooke had granted leave in early 2017: **2017 ABQB 113**; **2025 ABKB 493** at paras 22-27.

[117] As per **2025 ABKB 493** at para 27 (footnotes omitted):

[27] Piikani Nation's application to amend the statement of claim was heard by CMJ Nation on February 9, 2018. She granted the 2018 Order approving the filing of the ASOC. While Kostic filed an appeal, she did not seek to set aside the approval of the ASOC but complained that CMJ Nation did not also permit her to file a Counterclaim. Her appeal was dismissed: **Piikani Nation v Kostic**, 2018 ABCA 358. The 2018 Order is a final order.

[118] On March 1, 2018, Piikani Nation filed its approved amended statement of claim in the 0601 Action. The amendment removed numerous paragraphs and claims, including the Conspiracy Claim (which in turn included the alleged SWIFT Scheme and the alleged Bribery Scheme). In **2025 ABKB 493** at paras 13-41, I refused Kostic leave to apply to strike the amended statement of claim in the 0601 Action. Kostic's appeal of that decision was later dismissed: **Kostic v Raymond James Ltd**, 2026 ABCA 135.

[119] Following the amended statement of claim, the parties in the 0601 Action filed numerous amended pleadings, and the pleadings in the 0601 Action closed again. Kostic was represented by Klym at this time. Thus, in April 2018:

- (a) Kostic filed an amended amended amended statement of defence and amended third party claims against CWM and CIBC Trust. In her amended third party claim against CIBC Trust, Kostic added Piikani Nation's Chief and Council as third parties. That claim pleaded, among other things, that Piikani Nation's Chief and Council were joint account holders and obligated to indemnify and hold Kostic harmless under the RJL Account Agreements. Kostic also claimed indemnity and save harmless relief from CIBC Trust and Piikani Nation's Chief and Council as Kostic's "employer";
- (b) RJL filed an amended amended amended statement of defence and an amended third party claim against CIBC Trust;
- (c) CIBC Trust filed an amended defence to Kostic and RJL's third party notice;
- (d) CWM filed an amended statement of defence to Kostic's third party notice;
- (e) Piikani Nation filed a reply to the amended amended amended statements of defence of both Kostic and RJL; and

- (f) Piikani Nation's Chief and Council filed a statement of defence to Kostic's amended third party notice naming them as parties. Its pleading asserted, among other things, that Kostic's third party claim against Piikani Nation's Chief and Council was effectively a claim against Piikani Nation and was an abuse of process.

25. Adjournment of Summary Judgment Applications in the Kostic-Thom Action

[120] On June 21, 2018, in the Kostic-Thom Action, the parties' cross-applications for summary dismissal/judgment were scheduled for hearing, but were adjourned because Kostic became self-represented. She then retained Zinner in December 2018. There were further procedural steps in 2019, including a June 20, 2019 order striking supplementary affidavits of Kostic. Eventually, the summary judgment application was heard on October 28, 2019.

26. The June 2018 Dismissal of Appeals of Various Fiat Request Decisions

[121] As referenced above, on June 29, 2018, the Court of Appeal dismissed six appeals of some of the 2017 fiat refusals by ACJ Rooke and CMJ Nation discussed above: **2018 ABCA 234**. This included a dismissal of Kostic's appeals related to her request to bring a claim against CIBC Trust for its role in the termination of the Business Agreement.

[122] In **2018 ABCA 234**, the Court also dismissed Kostic's appeal related to her request for declarations that Piikani Nation was obligated to indemnify and save Kostic harmless pursuant to the Business Agreement or as a joint account holder under the Account Agreements:

- (a) with respect to the Business Agreement, the Court of Appeal held that Kostic's failure to plead indemnity against Piikani Nation in the 0601 Action was sufficient to dismiss the appeal and, in any event, that CMJ Nation "correctly concluded there was no merit to that claim", including because "there cannot be a duty to defend arising out of the Business Agreement for claims that have nothing to do with any breach by the Piikani Nation of the Business Agreement": at paras 71, 73; and
- (b) with respect to the claim against Piikani Nation for indemnity under the Account Agreement, the Court of Appeal noted that **2017 ABQB 747** was under appeal and stated: "That issue will have to be brought back, if necessary, once the appeal from 2017 ABQB 747 is decided": at para 74.

[123] On August 23, 2018, the Court of Appeal dismissed Kostic's request to reargue **2018 ABCA 234**: **2018 ABCA 275**. On October 2, 2018, the Court of Appeal ordered costs against Kostic in favour of Piikani Nation (\$51,700), CIBC Trust/CWM (\$14,500), and Court Officer (\$14,500): **Piikani Nation v Kostic**, 2018 ABCA 320.

27. August and September 2018 Orders and Another New Litigation Plan in the 0601 Action

[124] On August 9, 2018, CMJ Nation approved another amended litigation plan (**2018 Litigation Plan**) in the 0601 Action. The 2018 Litigation Plan followed the same format as the 2016 Litigation Plan, with amended dates. It now contemplated the completion of discovery,

expert reports, and an application to set the trial date in 2019. Kostic did not raise that she intended to seek to add any other new claims to the closed 0601 Action pleadings.

[125] Also on August 9, 2018, CMJ Nation dismissed an application by McMullen for intervenor status in the 0601 Action,²⁹ gave Piikani Nation leave to apply to strike the amended third party claim against the Chief and Council, and scheduled Piikani Nation's application to disqualify Zinner from acting against Piikani Nation.

[126] On September 24, 2018, CMJ Nation struck Kostic's amended third party claim against the Chief and Council and ordered costs against Kostic.

28. October 2018 - CIBC Trust Duty to Defend Decision Overturned

[127] As noted above, on October 30, 2018, in **2018 ABCA 355**, the Court of Appeal overturned **2017 ABQB 747**. I summarized this in **2025 ABKB 493** at paras 128-130:

[128] The Court of Appeal majority found that ACJ Rooke erred by making preliminary fact findings and inferences. They set aside his preliminary fact findings, his determination that Kostic was entitled to have her defence costs associated with the RJL Account Agreements paid by CIBC Trust, and his determination that Kostic had no claim for indemnity and defence costs with regard to the CWM Account Agreements: **2018 ABCA 355** at para 43.

[129] The Court of Appeal then stated, at para 44:

[44] Ms Kostic's claims for defence costs (past and future) and indemnity from CIBC³⁰ in respect of the [RJL] and [CWM] Account Agreements are to be determined at the trial of the [0601 Action]. The preliminary factual findings made by the case management judge on the application are also set aside and left to be determined at trial.

[130] Kostic unsuccessfully applied to the Court of Appeal to reargue the appeal: **Kostic v CIBC Trust**, 2019 ABCA 29 [**2019 ABCA 29**]. Then, the Supreme Court of Canada denied her application for leave to appeal: **Liliana Kostic v CIBC Trust Corporation**, 2019 CanLII 37469. Then, Kostic again unsuccessfully applied to the Court of Appeal to reargue the appeal: **Kostic v CIBC Trust**, 2019 ABCA 173. That time, she also sought to adduce new evidence from questioning of Piikani Nation to show it was claiming against her for the Pre-RJL Period/while she was employed by CWM. The Court of Appeal stated, at para 19, that whether "the chambers judge erred in concluding that the Nation was not pursuing Kostic for conduct while she was employed with Wood Gundy is not relevant to the Defence Costs Appeal". And then repeated, at para 19: "Kostic's entitlement to indemnity and defence costs pursuant to both [CWM Account Agreements] and the [RJL Account Agreements] will be determined at the trial of the 2006 Action".

²⁹ McMullen appealed this decision but the appeal was deemed abandoned on February 1, 2019.

³⁰ A reference to CIBC Trust.

[131] Some of this history was canvassed by CMJ Graesser in [*Piikani Nation v Kostic*, 2024 ABKB 137].

29. November 2018 Orders in the AIG Action

[128] On July 12, 2018, ACJ Rooke was appointed CMJ for the AIG Action and directed a procedural schedule. Kostic (through Klym) filed an application for a summary trial in the AIG Action, and AIG filed an application seeking to have certain questions answered respecting the insurance policy.

[129] On October 1, 2018, Kostic filed a notice of change of representation indicating she was now self-represented in the AIG Action. The parties' applications were argued on October 9, 2018.

[130] In November 2018, Kostic sought a fiat to bring an application for interim relief from forfeiture with respect to the Policy.

[131] On November 20, 2018, ACJ Rooke dismissed Kostic's application for a summary trial and granted AIG's application: *AIG Insurance Co of Canada v Kostic*, 2018 ABQB 947.

30. The January 18, 2019 Order in the 0601 Action

[132] On January 18, 2019, CMJ Nation held a CMC to address questioning in the 0601 Action, and other issues. That day, she ordered a process for the questioning of corporate representatives in February and March 2019. She held dates in April and May 2019 for applications relating to questioning. The application to disqualify Zinner remained outstanding.³¹

[133] In March and April 2019, questioning of various corporate representatives and parties in the 0601 Action proceeded.

31. The March 12, 2019 Orders in the AIG Action

[134] On March 12, 2019, ACJ Rooke granted two orders in the AIG Action.

[135] First, he ordered that AIG's filing of the AIG Action was not an irregularity even though Kostic was covered by the restriction on filing new actions set out in the February 2013 Order. He ordered that AIG's filing of the action without permission did not form any basis for any objection to the AIG Action.

[136] Second, he granted a procedural order for Kostic's application for interim relief from forfeiture. Considerable materials were filed for this application, and the matter was before ACJ Rooke on June 27, 2019, and August 28, 2019. As later explained in *2023 ABKB 702* at para 12:

[12] Ms. Kostic then brought an application before the case management judge for relief against forfeiture of her benefits under the Policy. That was argued at case management meetings on June 27, 2019 and August 28, 2019. I do not see that a

³¹ Zinner filed an affidavit on May 2, 2019, in the 0601 Action in response to the application to disqualify him from acting against Piikani Nation. It is not clear whether this application ever proceeded. Zinner appears to have continued to act for Kostic from time to time well into at least 2024.

decision was made, although the August 28, 2019 transcripts shows that ACJ Rooke was leaning against making any interim orders.

[137] As noted by CMJ Graesser, it does not appear that a decision on Kostic's application was ever made.

32. The April/May 2019 Orders in the 0601 Action

[138] On April 23, 2019, CMJ Nation granted Kostic the right to question Jackson "in his capacity as a councillor" of Piikani Nation. She denied Kostic's request to question McMullen or to delay her questioning.

[139] In early 2019, the Court Officer began proceedings against Kostic to recover costs, and for her failure to provide a Form 13 financial statement of debtor under section 35.10 of the *Civil Enforcement Regulation*, Alta Reg 276/1995.

[140] On May 3, 2019, Kostic (then as a self-represented litigant) filed affidavits in response, a "Cross-Contempt" affidavit, and a "Cross-Contempt Brief". Among other things, these materials referenced that the Court Officer's claim was precluded for various reasons. One of those reasons³² was that the claim was really the claim of CIBC Trust, Piikani Nation, CWM, or RJL, all of which were forestalled by various "save harmless" relief already brought or "to be filed" against Piikani Nation, "Principal Wood Gundy"³³ and "Principal RJL".³⁴

[141] In a May 3, 2019 affidavit, Kostic stated that she had subsequently learned that "the trigger of the [Court Officer] parties, who the Piikani was paying to work against [her], triggered the operation of Principal Agent Alternative Liability Judgment Merger Transit in Rem Judicatum from all [her] Principals. Those being RJL, AIG, and now admitted as fact by the Piikani, including [CWM]".³⁵ Kostic stated that at the trial of the 0601 Action, she intended to rely on "evidence of bad faith conduct" of Piikani Nation, the Court Officer, CWM, CIBC Trust, RJL and AIG.

[142] In her May 3, 2019 affidavit, Kostic went on to state she needed "immediate interim relief" against RJL and CWM, immediate save harmless relief available in her Business Agreement, and save harmless relief from both CWM and RJL as "disclosed agent", and as principals. She states that she swore the affidavit "to provide evidence in support of my application for save harmless relief, as disclosed Agent, under CWM agreements and RJL agreements."

[143] On May 13, 2019, counsel for the Court Officer noted that there was no fiat request before the Court for the matters raised in Kostic's materials.³⁶ In oral argument, Kostic raised various indemnity and save harmless claims that she had not yet brought but anticipated bringing.³⁷ She addressed that CWM and RJL, as her principals, were liable to her "on top of the agreements, and the save harmless and indemnity provisions".³⁸ Kostic sought a stay of the Court Officer's costs

³² Cross-Contempt Brief (filed May 3, 2019) at para 5(x).

³³ Referenced as "Save Harmless/Agent relief to be filed by Kostic for remedy as Disclosed Agent".

³⁴ Referenced as "Save Harmless/Agent Relief to be filed by Kostic for remedy as Disclosed Agent".

³⁵ Affidavit of Kostic dated May 3, 2019 at paras/headings J-N (p 16).

³⁶ Transcript of May 13, 2019 proceedings (filed July 9, 2019) (**May 13, 2019 Transcript**) at p 3, lines 19-26.

³⁷ May 13, 2019 Transcript at p 39, lines 5-7.

³⁸ May 13, 2019 Transcript at pp 35-36.

award against her because she claimed it would prejudice these claims through the doctrine of merger.

[144] On May 15, 2019,³⁹ CMJ Nation declared Kostic to be in civil contempt pursuant to section 35.17(b) of the *Civil Enforcement Regulation* and rule 10.52, with respect to her failure to provide a Form 13 financial statement of debtor to the Court Officer's counsel in relation to a costs award granted against her. The order provided that Kostic could purge her contempt by providing the Form 13 to the Court Officer's counsel by May 31, 2019. CMJ Nation did not address Kostic's requests, made in her May 3 affidavit and brief, for indemnity/save harmless relief,⁴⁰ during the May 13, 2019 hearing or in the May 15, 2019 order.

33. May 2019 – The SVR Action

[145] On May 5, 2019, Kostic (acting as a self-represented litigant) filed a 120-paragraph (14-page) statement of claim against SVR and some of its lawyers with respect to their involvement in the 0601 Action from January 2017 to May 2017. Kostic claims an unspecified amount for income loss as well as general, punitive, and exemplary damages. On May 28, 2019, SVR filed its statement of defence. On June 17, 2019, Kostic filed a reply to the statement of defence.

34. Kostic Formally Demands Indemnity from RJL

[146] On May 10, 2019, Kostic formally demanded that RJL provide her indemnity/save harmless relief. RJL did not agree and, according to Kostic, “deferred it to later consideration”.⁴¹

35. The June 2019 Orders in the 0601 Action

[147] On June 5, 2019, ACJ Rooke stood-in for CMJ Nation because CMJ Nation was unavailable. He granted an order addressing the questioning of Jackson, which was ordered to continue July 11, 2019. The order provided parameters around Jackson's questioning, prohibiting Kostic from posing various categories of questions.

[148] By order filed on June 10, 2019, CMJ Nation granted an application by CIBC Trust directing that Kostic's continued questioning of CIBC Trust and CWM's respective corporate representatives would be in writing, following which Kostic could apply to question them orally on their answers to the written questions.

36. Kostic Seeks Damages Assessment in 0801 Action

[149] On August 9, 2019, Kostic (through Klym) filed materials seeking that the 0801 Action be set down for a damages assessment or, alternatively, summary judgment against Piikani Nation. It

³⁹ Transcript of May 15, 2019 proceedings (filed on July 9, 2019).

⁴⁰ I am aware of the difference between indemnity and the duty to defend, and “save harmless” relief, as explained in **2018 ABCA 355** at paras 17-23. For ease of reference only, I have assumed that where Kostic seeks indemnity relief, she also seeks duty to defend or save harmless relief and have simply referred to them by the shorthand “**indemnity/save harmless**” at times in these Reasons.

⁴¹ November 2025 Affidavit at paras 19-20. During the February 2026 Applications hearing, Kostic provided me a May 10, 2019 email with her demand for indemnity from RJL. No party objected to this being part of the record. This email chain was also attached to Kostic's unfiled January 16, 2023 affidavit at exhibit 18, which was provided to CMJ Graesser in 2023.

does not appear that these matters were ever substantively addressed by CMJ Nation, in part due to the COVID-19 pandemic: **2024 ABKB 40** at para 9; **2024 ABKB 671** at para 44; **BridgePoint Financial Services Inc v William S Klym Professional Corporation**, 2026 ABKB 236 at para 70.

37. The September 2019 Orders in the 0601 Action

[150] On September 6, 2019, CMJ Nation addressed a follow-up application relating to Kostic's contempt with respect to the Form 13. On September 6 and/or 11, 2019, CMJ Nation declared that Kostic had not purged her contempt, struck her application to add the Court Officer as a party to the 0601 Action, and directed that should "Kostic wish to bring an Application to add persons or entities other than the [Court Officer] as parties" to the 0601 Action, she "must submit a request for a fiat" in accordance with the 2018 Litigation Plan. She also directed certain materials that had been provided for the application to be filed and sealed.

[151] Kostic appealed CMJ Nation's September 11, 2019 order. The Court of Appeal ordered her to pay security for costs, and refused an application to appeal that decision to a three-member panel of the Court: **Piikani Nation v Raymond James Ltd**, 2020 ABCA 41; **Piikani Nation v Raymond James Ltd**, 2020 ABCA 116. On January 29, 2021, the Court of Appeal dismissed Kostic's appeal and, in doing so, re-confirmed that if Kostic wished to add parties to the 0601 Action she needed to bring a fiat request: **Kostic v Alger**, 2021 ABCA 31 at para 31 leave to appeal refused 2022 CanLII 689 (SCC).

38. The October 2019 CMC in the 0601 Action

[152] On October 1, 2019, Kostic provided a fiat request to bring an application to strike the amended statement of claim or to declare that it disclosed no cause of action. CMJ Nation denied Kostic's fiat request to bring an application based on the amended statement of claim not disclosing a cause of action.

[153] Kostic's October 1, 2019 letter also put the Court on notice of several other potential matters that may be coming, including "asking for summary dismissal, raising some indemnity issues, and asking to amend the statement of defence and bring a counterclaim".⁴²

[154] At this CMC, the parties also discussed a request by Piikani Nation to bring civil contempt proceedings against Kostic, a cross-contempt claim by Kostic against Piikani Nation, the disqualification of Zinner, the possibility of a claim against the Court Officer's counsel, the possible removal of Crow Shoe as Piikani Nation's representative for questioning, and the potential Potts' application to apply to set aside her noting in default. The status of the questioning for discovery process and undertakings was also addressed (some of which are now the subject of other February 2026 Applications before me which are addressed in separate Reasons). In particular, issues had arisen in the July 2019 continued questioning of Jackson which both parties addressed.

[155] Finally, at this CMC the parties discussed setting the 0601 Action down for trial. CMJ Nation directed the parties and their counsel to keep the four weeks commencing October 18, 2021

⁴² Transcript of October 15, 2019 proceedings (**October 15, 2019 Transcript**) at p 2. Kostic provided me the October 15, 2019 Transcript on March 17, 2025.

available for the trial, and also provided directions about the need to complete dispute resolution before a specific trial date could be assigned.⁴³ CMJ Nation tasked counsel to prepare minutes of the CMC but did not require an order to be taken out.

39. The December 2019 Orders in the 0601 Action

[156] On November 15, 2019, Piikani Nation filed an application to declare Kostic in contempt of ACJ Rooke's June 5, 2019 order related to the questions she could ask Jackson, prohibiting Kostic from further questioning Jackson, and directing that further questioning of Piikani Nation's representative Crow Shoe be in writing. That same day, Kostic filed an application seeking particulars from Piikani Nation.

[157] On December 6, 2019, Kostic filed an application to strike the Piikani Nation contempt application, which also sought an order directing Jackson to answer objected to questions, striking all applications filed in the 0601 Action from 2015-2019, and compelling the release of an expert report provided by Piikani Nation to RJL, among other things.

[158] In a supporting affidavit, Kostic provided a draft further amended statement of defence but stated that she could not complete it without the requested particulars.⁴⁴ The draft amended statement of defence included, among other things, claims to indemnity from RJL and CWM as an employee, agent and principal, and from Piikani Nation and CIBC Trust under the Account Agreements. In another affidavit, Kostic said this:

37. Not only is the absence of these Particulars holding up completion of my fourth amended Statement of Defence, but this has created a logjam also preventing my completion of my Third Party Notice and Co-defendant Notice contra RJL, my Amended Third Party Notice contra CIBC parties, and my Counterclaim.

[...]

45. I have in hand a draft copy of my Notice to Co-Defendant [RJL] and a draft copy of my Counter Claim. However, they cannot be finalized until I receive all the particulars which I demanded.

[159] During submissions on December 9, 2019, Kostic, after referencing her pending counterclaim and amended statement of defence, indicated there was a "logjam in the system" and that she could not complete her documentation until she had particulars.⁴⁵

[160] At the December 9, 2019 hearing, CMJ Nation refused to hear Kostic's applications for which there was no fiat request or fiat approving them. She only addressed Piikani Nation's contempt application and the continued questioning of Jackson. She dismissed a preliminary application that there was no proper authorization for Piikani Nation to bring the contempt application, and then dismissed Piikani Nation's application for contempt and ordered that Kostic's

⁴³ October 15, 2019 Transcript at pp 60-62.

⁴⁴ Affidavit of Kostic dated November 15, 2019 at para 3 and Exhibit 2.

⁴⁵ Transcript of December 9, 2019 proceedings transcript at p 90. The December 9, 2019 transcript was provided to me by Kostic on March 17, 2025.

further questioning of Jackson would be through written interrogatories. Kostic was ordered to provide her detailed written interrogatories to Jackson by January 31, 2020, and a party could provide their objections to the questions by February 28, 2020. Then Jackson was to answer any questions not objected to. CMJ Nation further ordered that “the Court may deal with any issues arising from this process at another time, however, is granting no fiats related to such issues in advance”.

40. 2020 Procedural Slowdown in the Case Managed Actions

[161] In January 2020, Jackson provided undertaking responses and Kostic provided her written questions to Jackson, Piikani Nation, CIBC Trust and CWM: *Piikani Nation v Raymond James Ltd*, 2023 ABKB 710 at para 20. On February 28, 2020, Piikani Nation provided lengthy objections to the written questions: **2023 ABKB 710** at para 18 (Table).

[162] As per CMJ Graesser, the parties “do not appear to disagree” that the 0601 Action and other Case Managed Actions “stalled to some extent during the period after March 2020”: **2023 ABKB 710** at para 25. This coincided with COVID-19.

[163] In June 2020, Kostic sued Piikani Nation and others in Federal Court raising issues common to the 0601 Action and the 0801 Action: **2023 ABKB 710** at para 39.

41. May 2020 - Summary Dismissal of the Kostic-Thom Action

[164] On May 15, 2020, ACJ Rooke granted summary dismissal of the Kostic-Thom Action: *Kostic v Thom*, 2020 ABQB 324 reversed 2021 ABCA 406.

42. March 2021 - October 2021 Trial of 0601 Action Not Proceeding

[165] In March 2021, before the Court set its fall 2021 schedule, CMJ Nation requested the parties’ input on whether they would be in a position to proceed to trial of the 0601 Action in fall 2021. All counsel involved responded that, in their view, the matter would not be ready for trial in fall 2021. Kostic disagreed and provided her position, in a March 24, 2021 letter.⁴⁶ In her letter, Kostic advised she was in the “final stages” of drafting paperwork to move for particulars, amend her statement of defence, third party notices and other pleadings”. She stated, “I believe the Court must preserve the Trial date and that we should proceed with the record we have”. CMJ Nation advised the parties that she had decided the trial would not proceed in 2021 as previously planned.

[166] It appears that this was the last step involving CMJ Nation in the Case Managed Actions, even though she remained CMJ for some time. Nothing material appears to have happened, from a case management perspective, from April 2020 to fall 2022: **2024 ABKB 40** at para 10.

43. May 2021 – the BridgePoint Action

[167] On May 19, 2021, BridgePoint Financial Services Inc and BridgePoint Financial Services Limited Partnership (**BridgePoint**) commenced the BridgePoint Action against Klym, his

⁴⁶ On March 26, 2026, Kostic provided me and the other parties to the 0601 Action with her March 24, 2021 letter to CMJ Nation as Appendix 21 to her “Brief No. 2” with respect to the 6 Records Application (“Kostic Brief no 2 Endor 60 with table- 2026-03-26.pdf”).

professional corporations, and Kostic for the repayment of various loans. The procedural history of the BridgePoint Action is summarized in **2026 ABKB 236** at paras 4-36.

44. The 2021 Applications in SVR Action

[168] On May 11, 2021, Kostic filed an application for summary judgment in the SVR Action. On June 8, 2021, SVR filed a security for costs application. On June 10, 2021, Justice Jeffrey granted a procedural order relating to these applications and a future Kostic application for advance costs, as explained by ACJ Rooke in **Kostic v Scott Venturo Rudakoff LLP**, 2022 ABQB 188⁴⁷ at para 11:

[11] On June 10, 2021, before I became CMJ, Justice Jeffrey, on June 10, 2021, granted an Order, which directed (without limiting the number of documents or page numbers for filings), *inter alia*, that: (para 1) the application by SVR for Security for Costs and Kostic for advance costs would be heard before the Kostic Application for Summary Judgment and the SRV Application for Summary Dismissal; (para 8) initial briefs would be filed by each party by November 22, 2021; (para 9) respondent briefs would be filed by November 29, 2021; and (para 10) any reply briefs will be filed by December 2, 2021.

[169] On June 24, 2021, ACJ Rooke became CMJ over the SVR Action.

[170] On September 14, 2021, Kostic filed an application for advanced costs.

[171] On November 16, 2021, Kostic filed an application seeking to compel answers to questions which arose in questioning on affidavits relating to these SVR Action applications. It was heard by ACJ Rooke on December 15, 2021.

45. The December 2021 Overturning of the Dismissal of Kostic-Thom Action

[172] On December 13, 2021, the Court of Appeal overturned ACJ Rooke's summary dismissal of the Kostic-Thom Action: **Kostic v Thom**, 2021 ABCA 406. The Court of Appeal held that ACJ Rooke erred by granting summary dismissal without reference to or evidence of the appropriate standard of care. However, the Court upheld his summary dismissal of Kostic's claim against Thom/Miller Thomson for failing to seek immediate save harmless relief: **2021 ABCA 406** at para 28.

46. Procedural Decisions in SVR Action Cross-Applications

[173] On March 3, 2022, ACJ Rooke issued his decision addressing Kostic's application to compel answers to questions in the context of the SVR Action Applications: **2022 ABQB 188**. In his reasons, he confirmed that the fiat process applied to the SVR Action: **2022 ABQB 188** at para 54.

[174] On December 2, 2022, the Court of Appeal dismissed Kostic's appeal of **2022 ABQB 188**: **2022 ABCA 392**. On December 23, 2022, it dismissed Kostic's application to reargue the appeal:

⁴⁷ Affirmed **Kostic v Scott Venturo Rudakoff LLP**, 2022 ABCA 392.

Kostic v Scott Venturo Rudakoff LLP, 2022 ABCA 423. On December 14, 2023, the Supreme Court of Canada dismissed Kostic’s application for leave to appeal: **Liliana Kostic v Scott Venturo Rudakoff LLP**, 2023 CanLII 118466 (SCC).

47. The March/April 2022 Applications in the BridgePoint Action

[175] On March 7, 2022, Kostic filed an application for, among other things, summary dismissal of BridgePoint’s claim, and other relief: **2026 ABKB 236** at para 15. This relief also included “indemnity and save harmless” relief from RJL, CWM, CIBC Trust and Piikani Nation. In 2026, Kostic withdrew her March 7, 2022 application before its scheduled hearing in May 2026.

[176] On April 1, 2022, in the BridgePoint Action, Kostic filed, among other things: (1) a notice of claim against co-defendants (which named Miller Thomson, Docken, BridgePoint, RJL, CWM, CIBC Merrill Lynch, CIBC WG, CIBC, CIBC Trust, Piikani Nation and Gowling WLG as named “third party defendants”; and (2) an amended reply to BridgePoint’s amended statement of defence and counterclaim, and an amended counterclaim (which included claims against the same parties as in the notice to co-defendants related to their conduct in other Case Managed Actions (including the 0601 Action and the 0801 Action).

[177] On April 19, 2022, Kostic’s March 7, 2022 application was before Justice Feasby in morning civil chambers. Kostic advised Justice Feasby that she was interested in pursuing indemnity/save harmless relief. The application was adjourned *sine die* and Justice Feasby directed the parties to work on scheduling a special application. Since then, Kostic has on numerous occasions argued that Justice Feasby had given her leave to pursue her indemnity/save harmless application. This has been rejected by CMJ Graesser and me: **2024 ABKB 137** at paras 75-81, 134; Endorsement #13 at para 46; Endorsement #66 at para 9.

[178] On April 21 and 22, 2022, ACJ Rooke granted Piikani Nation and its Chief and Council (and what appears to be its council members) leave to apply to strike the Notice to Co-Defendants, the Amended Reply and the Amended Counterclaim against them in the BridgePoint Action.

48. The August 2022 Kostic Fiats in Kostic-Thom Action

[179] In August 2022, Kostic sought leave to bring numerous applications in the Kostic-Thom Action, as described in **2023 ABKB 642**, at paras 14-15, including related to a proposed amended statement of claim, *de bene esse* questioning, a litigation plan, production of Thom’s medical records, striking of the statement of defence, and contempt of court. Although some of these were not opposed, these fiat requests do not appear to have been addressed until CMJ Graesser decided them in **2023 ABKB 642**.

49. The September 2022 Appointment of CMJ de Wit

[180] In September 2022, Kostic sought leave to file an application seeking ACJ Rooke’s recusal from managing various Cased Managed Actions, which was not approved.

[181] On September 16, 2022, in light of ACJ Rooke’s pending retirement, Justice de Wit was appointed CMJ over many of the Case Managed Actions, including the 0601 Action, the 0801 Action, the Kostic-Thom Action, Kostic-CIBC Trust Action #1, Kostic-CIBC Trust Action #2, the

AIG Action, the SVR Action and the BridgePoint Action.⁴⁸ ACJ Rooke stated: “I observe that many Piikani related actions are “stale dated”, past or approaching the “drop dead date” under Rule 4.33. As I pass on the torch to Justice de Wit, I invite parties and Counsel to prepare Consent Orders, or equivalent applications, to terminate such actions”.

50. The October 7, 2022 Orders in BridgePoint Action

[182] On October 7, 2022 (after hearing argument on August 15, 2022), CMJ de Wit struck Kostic’s Notice to Co-Defendant, Amended Reply and Amended Counterclaim as against Piikani Nation, Gowling WLG (Canada), RJL, CWM and CIBC Trust, in part because she had not obtained leave of the Court to file them under the February 2013 Order.

[183] CMJ de Wit gave Kostic time to make further arguments about other striking applications. I heard applications to strike these pleadings by Thom/Miller Thomson, various remaining CIBC parties, and Docken in May 2026, and reserved my decision.

51. The November 21, 2022 CMC with CMJ de Wit

[184] On November 21, 2022, CMJ de Wit held a CMC during which several issues were discussed, including indemnity/save harmless applications, applications to strike the 0601 Action and the AIG Actions for delay, scheduling a hearing for assessment in the 0801 Action, and a procedural order in the Kostic-Thom Action.

[185] At the CMC, Kostic raised that the first matter she wanted addressed was her applications for save harmless relief, including against CWM and RJL. She referenced, at that time, that her claim against Piikani Nation in the 0801 Action was going to assessment. CMJ de Wit confirmed that the leave requirement used by previous CMJs would remain in place and noted that the next step was for Kostic to bring her leave request for save harmless relief.

52. Kostic’s February 2023 Fiat Request

[186] On February 13, 2023, Kostic (through Zinner) provided a fiat request (**February 2023 Fiat Request**) to CMJ de Wit seeking to bring an application in the 0601 Action for indemnity and save harmless relief against Piikani Nation, CWM, and RJL, with respect to the Case Managed Actions covered by ACJ Rooke’s September 16, 2022 order. From the materials provided to CMJ Graesser, the proposed application was founded:

- (a) as against Piikani Nation, upon the Business Agreement and the Account Agreements, but this was withdrawn by Kostic and treated as adjourned *sine die* and requiring a further fiat request if she sought to pursue it: **2024 ABKB 137** at para 59. It appears that Kostic may have withdrawn this on the expectation that her indemnity/save harmless claim against Piikani Nation would be addressed as part

⁴⁸ There was some confusion about whether the 0601 Action and the 0801 Action would remain under CMJ Nation or would be transferred to CMJ de Wit, but this was clarified by ACJ Rooke’s September 16, 2022 order when it was signed and entered on November 29, 2022, which confirmed that they were also under CMJ de Wit’s case management. When CMJ Graesser took over as CMJ, there continued to be some confusion early on as to whether CMJ Nation remained involved with the 0601 Action, but it was ultimately resolved in September 2023 that CMJ Graesser would be the CMJ for the 0601 Action.

of her application for an assessment of damages in the 0801 Action (which application had been filed in August 2019 but was still outstanding);

- (b) as against CWM, upon Kostic being employee and disclosed agent of CWM, and pursuant to a 2001 insurance policy; and
- (c) as against RJL, upon Kostic being employee and disclosed agent of RJL.

[187] On April 4, 2023, Acting ACJ Jeffrey appointed CMJ Graesser as CMJ to replace CMJ de Wit. CMJ Graesser took time to get up to speed and hear from the parties about undecided fiat requests and their intentions for future fiat requests. This started a period of significant work and decision making by CMJ Graesser until his retirement in late 2024.

[188] Significant materials were provided to CMJ Graesser over the course of 2023 with respect to the February 2023 Fiat Request, and the positions of the parties were summarized by CMJ Graesser in detail in **2024 ABKB 137**.⁴⁹

[189] On May 15, 2023, Zinner provided CMJ Graesser a 795-page reply to the other parties' responses to the February 2023 Fiat Request (**May 15, 2023 Letter**). It indicated that, since 2018, "it has come to light" that Kostic will have to amend pleadings previously submitted, and attached draft pleadings from 2019 (**2019 Draft Pleadings**), including a 41-page draft NTCD against RJL (**2019 Draft NTCD**), a 38-page draft counterclaim (**2019 Draft Counterclaim**) against Piikani Nation and its Chief and Council, RJL, CWM, and others, and an 11-page draft amended amended statement of defence (**2019 Draft ASOD**) that would almost entirely replace her 2018 amended amended statement of defence.⁵⁰ Kostic has confirmed that in 2019 she had "advanced drafts" of amended pleadings in 2019.⁵¹

53. The CMCs with CMJ Graesser

[190] On June 21, 2023, CMJ Graesser held a CMC with all parties in the Case Managed Actions. CMJ Graesser confirmed the continued use of the fiat protocol. The parties and CMJ Graesser discussed several issues Kostic raised in the 0601 Action, including (among other things) the first priority being her application for indemnity/save harmless relief; the Court's alleged lack of jurisdiction; the alleged lack of authority to file the 0601 Action; the 2021 cancellation of the planned trial; the fiat process; applications for summary dismissal and delay; what happened before CMJ Nation in September 2019; demands for particulars and notices to admit; the disputed effect of **2017 ABCA 53**; Kostic's continued request to have an application to assess her damages set down for a hearing in the 0801 Action; scheduling outstanding fiat requests in the Kostic-Thom Action; and *de bene esse* questioning of Kostic's psychiatrist; among other things.

[191] CMJ Graesser provided deadlines for further responses to the February 2023 Fiat Request: **2024 ABKB 137** at para 62. The parties continued to provide numerous further submissions. Then,

⁴⁹ In Endorsement #45 at para 67, I directed Kostic that if she wished to pursue indemnity/save harmless relief, she must provide me "exactly what she provided to CMJ Graesser that led to his decision in **2024 ABKB 137**". As discussed further later in these Reasons, Kostic failed to do so but, at my request, counsel for RJL provided the requested materials to me.

⁵⁰ These draft pleadings were attached to the May 15, 2023 Letter at Tabs 12-14. That letter refers to these various pleadings, in Footnotes 8-10, as "2019 draft".

⁵¹ November 2025 Affidavit at para 4.

in August 2023, Kostic requested that CMJ Graesser put the February 2023 Fiat Request on hold pending other fiat requests relating to the dismissal of the 0601 Action: **2024 ABKB 137** at para 71. This was a shift in strategy from indemnity/save harmless relief being the first priority: see, for example: **2023 ABKB 710** at para 28. CMJ Graesser acceded to Kostic's request to address her other fiat requests first.

[192] CMJ Graesser held a further CMC in September 2023. At this CMC, the parties discussed many of the Case Managed Actions, again what occurred before CMJ Nation in 2019 with respect to Kostic's proposed application for indemnity/save harmless relief and amended or new pleadings in the 0601 Action. After the CMC, CMJ Graesser wrote to the parties setting out various tasks for various actions, including the 0601 Action, the 0801 Action, the AIG Action, the Kostic-Thom Action, the BridgePoint Action, and the SVR Action. He confirmed Kostic's request to put her indemnity/save harmless relief on hold pending her fiat requests seeking to dismiss the 0601 Action.

54. The October 2023 Kostic Fiat Request in 0601 Action

[193] On October 2, 2023, as contemplated by CMJ Graesser's September 19, 2023 memo to the parties, Kostic provided a fiat request (**October 2023 Fiat Request**),⁵² which sought to strike or dismiss the 0601 Action against Kostic under rule 3.68, for delay under rules 4.31/4.33 of the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*) or by way of summary dismissal under rule 7.3. As noted by CMJ Graesser in **2023 ABKB 710** at para 2, the context to the fiat request was included in an earlier September 5, 2023 letter from Zinner (4 pages, 350 pages of attachments) (**September 5, 2023 Letter**).

[194] The proposed 20-page draft application attached to the October 2023 Fiat Request also sought permission to file a NTCD or third party claim against RJL (as well as an amended amended statement of claim, amended third party claims against CIBC Trust and CWM, and a third party claim against Piikani Nation's Chief and Council (**2023 Draft Pleadings**): **2023 ABKB 710** at para 14. The draft application purports to attach copies of the 2023 Draft Pleadings, but they do not appear to have been attached. It is unclear whether the 2023 Draft Pleadings were ever provided to the Court or the other parties to the 0601 Action.

55. The November 2023 Decisions of CMJ Graesser

[195] On November 14, 2023, in **2023 ABKB 642**, CMJ Graesser rendered his decision on several Kostic fiat requests in the Kostic-Thom Action, refusing to grant her leave to apply to obtain Thom's medical records, refusing to grant her leave to apply to strike the defendants' statement of defence due to alleged misrepresentations, refusing to separately grant her permission to apply to hold the defendants in contempt of court, and refusing an application to declare Thom in breach of his professional obligations under the Alberta Law Society's *Code of Conduct*. He acknowledged that four other proposed applications had been agreed to by the defendants (relating to the defendants' affidavit of records, amending the statement of claim, *de bene esse* questioning, and the development of a litigation plan), and directed Kostic to finalize her application materials: **2023 ABKB 642** at paras 14, 45. Since then, the parties agreed to Kostic filing an amended

⁵² At my request, the October 2023 Fiat Request and draft 20-page application were provided by RJL's counsel to me in June 2026.

statement of claim in July 2025. They also agreed to sever liability from damages, and that matter is scheduled to proceed by streamlined trial in September 2026.

[196] On November 29, 2023, CMJ Graesser dismissed a fiat application by Jackson seeking, among other things, permission to file a case-managed application, and indemnification from Piikani Nation in his capacity as a councillor of the Piikani Nation Council: ***Jackson v Piikani Nation***, 2023 ABKB 677. CMJ Graesser did not believe that Jackson's proposed application was part of his case management mandate and that the court orders requiring leave did not preclude him from filing an originating application seeking indemnity from Piikani Nation.

56. The December 2023 Denial of Kostic Fiat Request to Strike or Dismiss the AIG Action

[197] On December 8, 2023, CMJ Graesser denied Kostic's request for a fiat to apply to strike AIG's claim or to apply for a summary trial in the AIG Action: **2023 ABKB 702**. For various reasons, ACJ Graesser felt an application to strike the AIG Action for delay would be highly unlikely to succeed. He also agreed that the matter was not suitable for a summary trial or summary judgment. He encouraged the parties to work on a litigation plan themselves, or to return to him for assistance: **2023 ABKB 702** at para 55. He noted the complexities of Kostic's various damages claims against Piikani Nation, Thom/Miller Thomson, SVR, BridgePoint and AIG and that a process would be required to assess Kostic's damages: **2023 ABKB 702** at paras 56-58.

[198] On January 19, 2024, CMJ Graesser responded to various correspondence Kostic provided after this decision, and refused to reconsider his decision: ***AIG Insurance Company of Canada v Kostic***, 2024 ABKB 32.

57. The December 2023 Denial of Kostic Summary Dismissal Fiat Request

[199] On December 21, 2023, CMJ Graesser denied Kostic's request for a fiat to apply to dismiss the 0601 Action for delay or based on summary dismissal: **2023 ABKB 710**. He found that an application to strike the 0601 Action under rules 4.31 or 4.33 was bound to fail. He addressed and rejected numerous grounds raised by Kostic for summary dismissal of the 0601 Action (including that a claim was barred by the indemnity provisions of the Account Agreements), as I further summarized in **2025 ABKB 493** at paras 69, 87, 95, 106, 107. CMJ Graesser indicated that he intended to set the matter down for trial at the earliest reasonable date, and directed the parties to provide him information about the status of discovery and information about expected trial time: **2023 ABKB 710** at para 143.

[200] In his reasons, CMJ Graesser did not expressly address the aspect of Kostic's October 2023 Fiat Request by which she sought to file the 2023 Draft Pleadings against RJL, CWM, and Piikani Nation (as noted above): **2023 ABKB 710** at para 14. He certainly did not grant a fiat request to bring those applications.

58. The January 2024 Denial of Kostic's Fiat Request for a Damages Assessment in the 0801 Action

[201] On January 23, 2024, CMJ Graesser dismissed Kostic's fiat request to set the 0801 Action down for a damages assessment: **2024 ABKB 40**. He did not interpret the Court of Appeal decision

in **2017 ABCA 53** (having regard to **2018 ABCA 234** at para 66) as directing a damages assessment to occur apart from the trial on liability. He also noted the complexity of Kostic's various damage claims against Piikani Nation and others, and the need to avoid double-recovery. He concluded that the appropriate path forward was for all of Kostic's damages claims to be quantified in one damages trial: **2024 ABKB 40** at para 30. CMJ Graesser concluded that it was appropriate to set Kostic's damages claims against Piikani Nation for trial ahead of other liability trials by Kostic involving damages claims by her: **2024 ABKB 40** at para 38.

[202] At this point, having by then digested and decided numerous fiat requests in various actions, CMJ Graesser was attempting to set the wheels in motion to have the 0601 Action, and a damages assessment for Kostic's claims, each set down separately for trial. As per **2024 ABKB 137** at para 14:

[14] Since I was appointed case manager of these proceedings in April 2023, I have attempted to catch up on outstanding Fiat requests and to start the process of having the active lawsuits set for trial, with case plans put in place to ensure trial readiness.

[203] On January 26, 2024, CMJ Graesser issued a case management report to all parties summarizing the status and his directions for, among others, the 0601 Action, the 0801 Action, the Kostic-Thom Action, the SVR Action, the AIG Action, and the BridgePoint Action.

59. The March 2024 Denial of Fiat Request to File Indemnity/Save Harmless Relief Application

[204] On March 14, 2024, CMJ Graesser dismissed Kostic's fiat request seeking to file an application for indemnity/save harmless relief against Piikani Nation, CWM, and RJL: **2024 ABKB 137**. By this time, as noted above, Kostic had withdrawn her request to apply for indemnity/save harmless relief against Piikani Nation and CMJ Graesser considered it adjourned *sine die*: **2024 ABKB 137**. CMJ Graesser confirmed that the Court of Appeal's earlier decisions (**2018 ABCA 355**) were binding and that the determination of indemnity/save harmless or duty to defend obligations relating to the Account Agreements were matters for trial: **2024 ABKB 137** at paras 107, 135.

[205] CMJ Graesser also addressed Kostic's argument for indemnification/save harmless relief against CWM and RJL based on common law, employment and agency principles. After an extensive analysis, he found that "these claims are far too ill-defined and speculative to allow for some sort of summary process to determine an employer's obligation to indemnify": **2024 ABKB 137** at para 131. He indicated that those types of claims would have to be addressed after trial: **2024 ABKB 137** at para 118.

60. The June/July 2024 Orders/Directions

[206] In June 2024, CMJ Graesser held several days of CMCs in the Case Managed Actions. On July 8, 2024, he provided parties memoranda summarizing his directions in several of the Case Managed Actions,⁵³ some but not all of which were turned into orders. In the 0601 Action, he provided deadlines for Piikani Nation and CIBC Trust's responses to outstanding written

⁵³ See Endorsement #7 at Schedule D.

interrogatories from 2020, and RJL’s outstanding responses to discovery undertakings. CMJ Graesser also directed Piikani Nation to provide “as it is best able to do, particulars as to the Nation’s damages claim against Ms. Kostic and [RJL] by the end of July” (**Damages Particulars**).

[207] In July 2024, Piikani Nation provided what it asserts were its Damages Particulars, although whether this complied with CMJ Graesser’s direction has been disputed.

61. The November 2024 Granting of Kostic’s Fiat Request to Amend her Statement of Claim in the 0801 Action

[208] On November 16, 2024, CMJ Graesser granted Kostic permission to amend her statement of claim in the 0801 Action to include “Wallace/Honda Keays” damages:⁵⁴ **2024 ABKB 671**. On November 28, 2024, CMJ Graesser refused Kostic’s request for him to issue a corrigendum to this decision: **Kostic v Piikani Nation**, 2024 ABKB 705.

[209] On May 15, 2025, Kostic filed the approved form of amended amended amended statement of claim in the 0801 Action. On June 6, 2025, Piikani Nation filed its amended statement of defence to the amended amended amended statement of claim.

62. The December 2024 New CMJ Appointment

[210] I was appointed CMJ in December 2024 and engaged in a process by which parties provided me information about the various Case Managed Actions, including their status and next steps. It has required (and continues to require significant effort) to get caught up with respect to the Case Managed Actions: **2025 ABKB 481** at para 3.

[211] In Kostic’s responses to my information request⁵⁵, among other things, with respect to the 0601 Action, she indicated her desire or intention to (1) amend her defence; (2) amend third party claims in the 0601 Action (which, at that time, existed only against CIBC Trust and CWM); (3) add a third party claim against RJL; and/or (4) commence a new claim against RJL and CWM; and (5) seek “automatic and retroactive save harmless” relief in the 0601 Action.

[212] On March 10, 2025, I issued Endorsement #4, which (among other things), at para 38, directed Kostic to, within two weeks, advise whether any new claims she anticipated would be part of the Case Managed Actions and to provide a fiat request within one month of Endorsement #4. I gave her the opportunity to request more time within one week.

[213] In Endorsement #4, I also set out a revised Fiat Process, which is summarized in detail in **2025 ABKB 481** at paras 8-16. I also confirmed that new fiat requests that had been previously denied by previous CMJs shall not be permitted barring exceptional circumstances including, at a minimum, a material change of circumstances and/or new evidence meeting the test in **Palmer v The Queen**, 1979 CanLII 8 (SCC) (as recently described in **R v Ruiz-Durang**, 2025 ABCA 20 at para 24). I further directed that I may require fiat approvals obtained prior to my appointment as CMJ to be rescinded and requested afresh.

⁵⁴ Referencing **Wallace v United Grain Growers Ltd**, 1997 CanLII 332 (SCC) and **Honda Canada Inc v Keays**, 2008 SCC 39.

⁵⁵ Endorsement #4 at Schedules G, R, S, U.

63. The April/May 2025 CMCs

[214] On April 30 and May 1, 2025, I held CMCs in the 0601 Action, the 0801 Action, Kostic-CIBC Trust Action #1, and Kostic-CIBC Trust Action #2. Following that meeting, on May 9, 2025, I issued Endorsement #7.

[215] At those meetings, in the 0601 Action Kostic raised that she would like to apply to file a late NTCD against RJL, to amend her statement of defence, and to add third party claims. Kostic suggested that perhaps the amendment to her defence and the addition of third party claims might not be necessary if her summary dismissal application is permitted and granted. In Endorsement #7, I rejected the idea of proceeding in a linear, step-by-step fashion with respect to the Case Managed Actions. In my view, such an approach has significantly contributed to the 0601 Action being extant for over 20 years.

[216] Accordingly, I made these directions in Endorsement #7 at paras 12-13 (Emphasis added):

[12] Ms. Kostic makes the point that this may not be necessary if a summary dismissal application is permitted and is granted. **However, in my view, it is not efficient in this matter, in particular given the lengthy time that this action has been outstanding, to proceed in linear steps, given the number of different requests and applications which may be made. Amendments to a statement of defence, or adding third parties, may affect the timing of moving the 0601 Action to trial and I find it is more efficient to get all potential issues on the table now.**

[13] If Ms. Kostic intends to seek to amend the statement of defence or to add third party claims in the 0601 Action, she shall provide her Fiat Request by **May 30, 2025.**

[217] Kostic did not to provide any fiat request to amend the statement of defence or to add third party claims in the 0601 Action by the deadline of May 30, 2025.

[218] In Endorsement #7, I directed Piikani Nation to provide a “precise number” of the gain realized on the portfolio under Kostic’s management (as had been offered by Mr. Hawkes in questioning) (**Gain Particulars**) by June 20, 2025, and to provide particulars of its misrepresentation claims (**Misrepresentation Particulars**) by June 13, 2025. Piikani Nation provided its response to those directions by the deadlines, although whether they were compliant with my direction has been disputed.

[219] In Endorsement #4, I also provided a process to determine whether RJL would agree to a NTCD being filed, failing which I directed Kostic to provide a fiat request by June 13, 2025.⁵⁶ On June 13, 2025, Kostic provided her fiat request for permission to file a late NTCD against RJL.

64. The July 2025 Consent Order in the Kostic-Thom Action

[220] On July 18, 2025, I approved a consent order in the Kostic-Thom Action permitting Kostic to file an amended amended statement of claim. It was then filed on July 28, 2025. With the

⁵⁶ Endorsement #7 at paras 14-16.

agreement of the parties, as noted above, I also severed liability from damages in this matter and, through orders dated September 5, 2025 and March 11, 2026 (filed April 1, 2026), the liability trial in the Kostic-Thom Action is scheduled to proceed by way of streamlined trial on the question of liability in September 2026.

[221] Of note with respect to the matters addressed in these reasons, Kostic's amended amended statement of claim includes claims against Thom/Miller Thomson relating to (1) refusal to make a summary dismissal application in the 0601 Action (in part related to Kostic's right to be saved harmless from the allegations in the 0601 Action);⁵⁷ (2) failing to file a counterclaim against Piikani Nation and PIC in the 0601 Action;⁵⁸ (3) failing to advise Kostic to get independent legal advice and acting in a conflict of interest vis a vis RJJ;⁵⁹ (4) failing to file a NTCD against RJJ as Kostic's disclosed principal;⁶⁰ (5) failing to obtain save harmless relief and indemnity from her disclosed principals RJJ and CWM;⁶¹ and (6) failing to invoke save harmless indemnities available to her from CIBC Trust.⁶²

65. The August 2025 Fiat Request Decisions

[222] On August 6, 2025, I issued my reasons on several fiat requests made in the 0601 Action: **2025 ABKB 493**. In particular, I granted Kostic permission to file a proposed NTCD application. I refused to allow Kostic to file a summary dismissal application. I allowed several applications related to particulars, records and discovery in the 0601 Action.

[223] I also refused Kostic leave to amend the originating application in Kostic-CIBC Trust Action #1 to seek immediate save harmless relief from CIBC Trust because the Court of Appeal had already decided that such a claim would be dealt with at the trial of the 0601 Action: **2025 ABKB 493** at paras 133-136. However, I gave her permission to advise me if she nonetheless wished to amend her claim in Kostic-CIBC Trust Action #1 to assert litigation misconduct related to an alleged misrepresentation that Kostic asserts CIBC Trust made to the Court of Appeal, failing which she would not be permitted to proceed with it: **2025 ABKB 493** at paras 136-139. Kostic did not advise me that she wanted to proceed with those amendments.

[224] Kostic appealed **2025 ABKB 493**. On April 27, 2026, the Court of Appeal refused Kostic's appeal: **2026 ABCA 135**.

[225] In **2025 ABKB 493**, I did not address whether Kostic should be allowed to amend the statement of defence, or to file new or amended third party claims in the 0601 Action, or a new action, because no fiat requests seeking to do so were provided to me in accordance with my directions.

66. The September/October 2025 CMCs

[226] On September 22, 2025, I held a CMC with respect to the 0601 Action, the 0801 Action, Kostic-CIBC Trust Action #1, and Kostic-CIBC Trust Action #2. At my direction, the parties

⁵⁷ Amended amended statement of claim in the Kostic-Thom Action at paras 13-14, 24(b) and (c), 36.

⁵⁸ Amended amended statement of claim in the Kostic-Thom Action at para 16.

⁵⁹ Amended amended statement of claim in the Kostic-Thom Action at paras 9-15, 18, 23, 24(e), 25(a), 32-35.

⁶⁰ Amended amended statement of claim in the Kostic-Thom Action at para 55.

⁶¹ Amended amended statement of claim in the Kostic-Thom Action at para 56.

⁶² Amended amended statement of claim in the Kostic-Thom Action at para 57.

provided a detailed agenda with numerous items on it. Kostic's portion of the agenda added (among other things) "amendments – that remain outstanding including endorsements that remain outstanding or decisions and timelines".

[227] We could not address all agenda items and I directed another CMC in October. On October 2, 2025, I issued Endorsement #43, in which I directed the 0601 Action and Kostic-CIBC Trust Action #1 be tried at the same time or one after the other (with the details to be determined closer to trial). I did not foreclose potentially adding the 0801 Action and Kostic-CIBC Trust Action #2 to the trial in the future depending on future circumstances. I directed the parties to contact the Civil Trial Coordinator to book a 25-day trial for the 0601 Action/Kostic-CIBC Trust Action #1.

[228] In Endorsement #43, I also directed numerous approved fiat request applications in the 0601 Action (and others) to be heard together in the February 2026 Applications.

67. The September 2025 Striking of Kostic Appeal of 2024 ABKB 137

[229] On July 17, 2025, Kostic's appeal of CMJ Graesser's decision in **2024 ABKB 137** (denying her permission to file an application for immediate indemnity/save harmless relief against CWM and RJI), was struck because Kostic, despite an extension, failed to comply with the Court of Appeal's factum formatting and page limit rules.

[230] On September 2, 2025, Friesen JA dismissed Kostic's application to restore the appeal: **Raymond James Ltd v Kostic**, 2025 ABCA 296.

68. The October 2025 Endorsements #45 and #46

[231] In September and October 2025, Kostic provided my office with numerous purported fiat requests and other correspondence that did not comply with the Fiat Process and which caused some chaos and confusion.

[232] On October 7, 2025, I issued Endorsement #45 to address the non-compliant fiat requests. As it relates to the matters covered by these Reasons, I provided further detailed directions and instructions about indemnity/save harmless relief. As these were not published, I reproduce them here for ease of reference (at paras 55-70)(footnotes omitted):⁶³

[55] It is apparent that Kostic continues to seek to claim against RJI/CWM for indemnity and save harmless relief, and seeks a summary determination of those obligations. It is inappropriate to attempt to shoehorn such asserted possible claims into Case Managed Actions, without proposed pleadings, where those claims are not reasonably engaged based on the existing pleadings and parties involved, or where those claims are duplicative of existing claims in existing pleadings.

[56] Further, as noted in other Endorsements, it is not up to the Court to provide Kostic legal or strategic advice in the Case Managed Actions. It is up to her to decide what relief she seeks and in which action.

⁶³ Para 68 is excluded as it related specifically to the BridgePoint Action.

[57] I am aware of CMJ Graesser’s comments about “equitable agency”, and common law principles applicable to employment and agency relationships and indemnities/save harmless relief, in **Piikani Nation v Kostic**, 2024 ABKB 137. Kostic’s appeal from that decision has been struck and Kostic’s application to restore it has been denied: **Raymond James Ltd v Kostic**, 2025 ABCA 296.

[58] At para 136 of **2024 ABKB 137**, CMJ Graesser said:

[136] As for Ms. Kostic’s arguments relating to common law principles applicable to employment and agency relationships, these arguments can only be determined with appropriate fact findings. They too will have to be determined at trial or following a successful claim against Ms. Kostic by the Nation or I suppose by Bridgepoint.

[59] It is unclear to me what trial CMJ Graesser was referring to. Further, if a compliant Fiat Request is presented, I may also require more fulsome submissions about whether (or to what extent) Kostic’s proposed indemnity/save harmless or other claims related to agency, employment or equitable principles against RJL or CWM are already caught by Kostic’s existing pleadings or previous Fiat Requests.

[60] These ongoing issues about indemnity and save harmless relief are causing confusion, have caused a significant waste of party and court resources, and must all be addressed, one way or the other, so that the Case Managed Actions can progress.

[61] I again remind Kostic that it is not for the Court or other parties to fill in the blanks and attempt to deduce or infer precisely what Kostic is seeking to do: **Piikani Nation v North Peigan**, 2025 ABKB 508 at paras 41-42.

[62] Accordingly, if Kostic does not wish to wait until after the trial in the 0601 Action or the Bridgepoint Action, as one possible option suggested by CMJ Graesser in **2024 ABKB 137**, to seek “indemnity and save harmless relief” against RJL, CWM, or anyone else, based on equitable or common law principles of agency or employment, whether as a claim within an existing Case Managed Action or in a new action, she must provide compliant Fiat Request(s) which, at the very least:

- (a) identify against whom specifically the claim is made against;
- (b) identify for what exactly she seeks indemnity and save harmless relief (including the specific matters for which she seeks defence costs);
- (c) where the claim is proposed to be added to an existing action, identify the action to which she seeks to add the claim, together with her proposed form of pleading for the added claim in the existing action (including whether by amendment to an existing pleading or the filing of a new proposed pleading in an action);

- (d) where the claim is a proposed new action, the proposed form of commencement document with all defendants identified; and
- (e) such Fiat Request(s), if pursued, must be compliant with the Fiat Process and must not repeat the same relief already pleaded/claimed, or sought by way of Fiat Request, in the existing Case Managed Actions. Kostic must, as part of her Fiat Request(s), identify and explain how the proposed claims are different than what she has already pleaded or sought in the Case Managed Actions.

[63] Separate Fiat Requests should be provided for each action in which Kostic seeks such relief (although multiple proposed defendants may be included in a single Fiat Request in that action).

[64] For example:

- (a) if Kostic seeks approval to add a late-filed third party claim/counterclaim to an action, she must provide one Fiat Request for each such action that includes all proposed third party defendants/defendants by counterclaim (together with the proposed form(s) of third party claim/counterclaim);
- (b) if Kostic seeks approval to amend a third party claim/statement of claim/originating application/counterclaim in an existing action, she must provide one Fiat Request that includes all proposed third party defendants/defendants/respondents/defendants by counterclaim to be added by amended pleading in that action (together with the proposed form of amended pleading);
- (c) if Kostic seeks approval to commence a new action, she should provide a Fiat Request with her proposed commencement document (statement of claim/originating application), including all claims against all defendants where the claims arise out of the same transaction or occurrence or series of transactions or occurrences” to avoid multiplicity of claims (together with the proposed commencement document). See rule 3.70. If the claims do not arise out of the same transaction or occurrence or series of transactions or occurrences, Kostic should provide separate Fiat Requests for each claim / proposed new action.

[65] Further, if in any of these, Kostic seeks immediate summary relief, she must include her proposed form of summary determination application(s) with her Fiat Request or Fiat Requests. Kostic should also address how indemnity and save

harmless relief would be amenable to summary determination given the decisions of the Court of Appeal and CMJ Graesser.

[66] If Kostic wishes to pursue any further indemnity and save harmless relief at all, she must provide compliant Fiat Requests as set out above, and under Endorsement #4, by **October 31, 2025**, failing which she will be deemed to have represented to the Court she does not intend to pursue that relief.

[67] If a compliant Fiat Request for indemnity and save harmless relief is provided, Kostic is directed to provide me exactly what she provided to CMJ Graesser that led to his decision in **2024 ABKB 137**.

[...]

[69] Kostic is strongly recommended to obtain legal advice to assist her in providing efficient, reasonable and non-hopeless Fiat Requests so that indemnity and save harmless issues are brought forward together one last time for consideration, and not in the present piecemeal, sequential or repetitive manner.

[70] This will be the last time that Fiats seeking to file proposed applications seeking relief of this nature will be considered in the Case Managed Actions, barring exceptional circumstances.

[233] One of Kostic's non-compliant fiat requests included a proposed application in the BridgePoint Action that sought to add RJL and "Merrill Lynch" as third party defendants and defendants by counterclaim in the 0601 Action. In Endorsement #45, I provided further directions:

[76] Kostic's Proposed Bridgepoint Action Application, in the Bridgepoint Action, seeks to add RJL and "Merrill Lynch" as a third party defendant and by counterclaim in the 0601 Action. It is not permissible to apply in one action for relief in another action in this manner. That is irregular, abusive and hopeless. It is not permitted.

[77] I do not necessarily agree with RJL that my approval to allow Kostic to proceed with the Proposed Notice to Co-Defendant Application in the 0601 Action (as set out in **2025 ABKB 493** at paras 42-57) would be duplicative of an application seeking to add RJL as a third party defendant in the 0601 Action. As I stated in **2025 ABKB 493** at para 56(d):

It appears likely that the proposed application seeking "indemnification and save harmless remedies" were, as against RJL, contractual or by virtue of agency or employment. The proposed notice to co-defendant is proposed to be filed under rule 3.43, which applies to claims for contribution or indemnity under the *Tortfeasors Act*, RSA 2000 c T-5 or the *Contributory Negligence Act*, RSA 2000, c C-27;

[78] If Kostic seeks to add RJL as a third party defendant or defendant by counterclaim in the 0601 Action, she must bring a compliant Fiat Request in the

0601 Action together with a proposed third party claim or proposed counterclaim. To extent the claims relate to indemnity and save harmless relief against RJL, Kostic will have to follow my directions in section XIV above. Further, she will have to provide me exactly what she sought leave to file against RJL that was the subject of CMJ Graesser’s decision in **2024 ABKB 137** and will have to address why what she seeks now is not duplicative.

[79] If Kostic wishes to provide a Fiat Request to seek this relief, she must do so by **October 31, 2025**, failing which she will be deemed to have represented to the Court that she does not intend to pursue that relief.

[234] Alas, as described further herein, Kostic did not follow my detailed directions.

[235] On October 10, 2025, Kostic wrote to me seeking various declarations and time extensions. On October 17, 2025, I issued Endorsement #46 in response. As it relates to the matters relevant to these Reasons, I stated the following at paras 24-30:

5. Amendment to Statement of Defence and Third Party Claims in the 0601 Action

[24] Kostic seeks an extension to December 20, 2025 of a “[fiat] to amend statement of defence and TPC in 0601 – required to be attached with save harmless motions”. It is not clear exactly what is being referenced, but I believe it is the deadline at para 79 of Endorsement #45 and may be duplicative of her request for an extension to provide her “Fiat for TP defendant claim or Counterclaim against RJL”.

[25] The possibility of amendments to pleadings, or new claims, being added to the 0601 Action at this stage must be dealt with as a priority given the potential impact they may have on the scheduled trial. In the circumstances, I am not prepared to provide the requested extension. I am prepared to provide a short extension, however, that still allows for the fiat request, the response, and any reply, to be provided to me reasonably before the holiday season. Therefore, the deadline at para 79 of Endorsement #45 is amended to be **November 28, 2025**. This provides Kostic a three-week extension.

6. Adding New Claims and “Save Harmless and Equitable Agency Relief”

[26] Kostic seeks an extension for “save harmless equitable relief agency – re done with court ordered individual fiats” and “to provide Fiat Request individually for save harmless equitable relief actions: 0601, SVR, AIG, BP and elsewhere”. I believe this is a request for extension of the deadline at paras 66-67 of Endorsement #45 from October 31, 2025 to December 20, 2025.

[27] As noted in Endorsement #45, I find that the various iterations of indemnity and save harmless relief referenced or sought have caused delay and confusion. Repeated references or relief in the form of other new or amended claims/pleadings also creates confusion and potential delay.

[28] It is imperative that all potential new claims/pleadings or amended claims/pleadings that any party wishes to add to any of these Case Managed Actions, including claims for indemnity and/or save harmless relief, be addressed so that all actions may move forward without further late requests to add/amend claims/parties. Each of the Case Managed Actions is now at least several years old. It is not an onerous requirement for all parties to put their cards on the table now, once and for all, so I can address them and we can move forward. In my view, this is most efficiently done having all Fiat Requests for all proposed new claims/pleadings or amended claims/pleadings brought forward. For efficiency, I require these reasonably before the holiday season so I may process them.

[29] Therefore, I do not grant the extension requested but amend the deadline at paras 66-67 of Endorsement #45 to be **November 28, 2025**.

[30] This applies to all parties, not just Kostic. For clarity, I make this direction: if any party in any of the 0601 Action, 0801 Action, Kostic-CIBC Trust Action #1, Kostic-CIBC Trust Action #2, AIG Action, Kostic-Thom Action, SVR Action, or Bridgepoint Action, seeks to add new claims, new parties, or amend their pleadings in those actions (which are not already covered by a previous direction) they will provide a compliant Fiat Request to do so by November 28, 2025, failing which they will be deemed to have represented to the Court that they do not intend to seek that relief.

[236] Kostic also sought various page increases to her fiat letters and affidavits, and I provided her further guidance about how to avoid repetition and to reduce unnecessary attachments/exhibits. I refused most of her requests, other than with respect to pages of exhibits related to specific fiat requests.⁶⁴

69. The October 24, 2025 CMC and Endorsement #50

[237] On October 24, 2025, I held another CMC to address the agenda items we had not covered in the September CMC. In the interim period, Kostic requested additional agenda items be added. At that CMC, Kostic again raised her desire to amend the statement of defence in the 0601 Action. On October 30, 2025, I issued Endorsement #50 which directed Kostic to provide a compliant fiat request to do so by November 28, 2025.

70. The Filing of NTCD Application

[238] On October 28, 2025, Kostic filed her NTCD Application. Her affidavit in support included her proposed NTCD (**Proposed NTCD #1**). Various other filings occurred in fall 2025 related to the February 2026 Applications.

71. The November 2025 Fiat Requests and December 2025 CMC

[239] After Endorsements #45 and #46, on November 28, 2025, I received an email from Kostic attaching 11 PDFs purporting to be in support of what appear to be fiat requests (which are part of

⁶⁴ Endorsement #46 at para 36.

the November 2025 Fiat Requests). There was no explanation of how the 11 PDFs fit together. The PDF names were of little assistance.⁶⁵

[240] On December 1, 2025, Piikani Nation's counsel wrote to me expressing concerns about the fact that the November 2025 Fiat Requests were not compliant with my Endorsements. RJL's counsel expressed the same concern.

[241] On December 2, 2025, Kostic provided a further PDF⁶⁶ in response. My assistant wrote to the parties and advised that I would not have time to review these matters in detail. I provided Kostic the opportunity to consider her position set out in the correspondence from counsel, and to decide whether she wishes to pursue the November 2025 Fiat Requests, and I gave her the option to abandon them without costs consequences. I refused to provide her any assurance that if she withdrew the requests that she would be entitled to re-submit them later.

[242] On December 3, 2025, Kostic sent me further correspondence. On December 4, 2025, I received a response to the fiat request from AIG. On December 5, 2025, I received responses to the three fiat requests from Piikani Nation, and one response each from RJL and CWM.

[243] On December 12, 2025, I received Kostic's reply to the various responses to the November 2025 Fiat Requests. Her email appended another 7 PDF files.⁶⁷

[244] On December 18, 2025, I held another CMC. This confirmed that the trial for the 0601 Action and Kostic-CIBC Trust Action #1 was in process to be scheduled in March 2027. I confirmed with the parties that, as per a December 12, 2025 email direction I provided them, they are to continue the Fiat Process even if non-compliant materials are provided and I would consider the non-compliance in my decision-making.

[245] On December 19, 2025, Kostic provided several fiat requests seeking relief in the SVR Action and the AIG Action.

72. The Hearing of the NTCD Application

[246] As noted, the NTCD Application was heard as part of the February 2026 Applications. Kostic's brief was too long and did not comply with the page limit set out in Endorsement #43 at para 19.

73. The Kostic Request to Defer the November 2025 Fiat Requests

[247] On June 18, 2026, I wrote to the parties for two reasons. First, I noted that Kostic had not provided me the materials that were before CMJ Graesser that led to his decision in **2024 ABKB 137** (which I had directed her to do in Endorsement #45 at para 67), and I requested the other parties to provide me that information, which was done.⁶⁸ On June 23, 2026, Kostic then asserted she had provided me "all CMJ Graesser materials ... and attach them herein again". Her assertion

⁶⁵ The various PDFs comprising the November 2025 Fiat Requests are discussed in more detail later in these Reasons.

⁶⁶ "THIRD-PARTY CLAIMS AGAINST PIIKANI CHIEF AND COUNCIL, RJL, AND AIG with indiv claims.pdf". I later define this as "**Claims Summary**" herein.

⁶⁷ These PDFs are discussed in more detail later in these Reasons.

⁶⁸ June 19, 2026 letter from RJL's counsel.

is incorrect. She did not provide me the directed materials, nor did her June 23, 2026 correspondence attach them all “again”. Her June 23, 2026 correspondence did include some, but not all, of the materials that were before CMJ Graesser. And those that were provided were buried within hundreds of pages of filings in appeal action 2401-0095AC.

[248] Second, in my June 18 letter, I asked for submissions, by June 25, 2026, with respect to paragraphs 12 and 13 of the Court of Appeal’s decision in **2026 ABCA 135**.

[249] On June 23, 2026, apparently in response to my June 18 letter, Kostic also requested that I defer my decision respecting her “October leave requests” on the basis that it was “without prejudice” to her rights. She also confirmed she was deferring “all save harmless requests” to trial. On June 24, 2026, I provided the other parties until June 29, 2026, to respond to this new Kostic request. On June 25, 2026, I sought clarification from Kostic to specifically identify which fiat requests she sought to withdraw or defer, which she confirmed was “my Fiat requests that began October 2025 and I believe were last resubmitted December 2, 2025”. That is, Kostic sought to defer what I have defined in these Reasons as the November 2025 Fiat Requests.

[250] On June 25, 2026, Piikani Nation and RJL provided their response to my June 18 letter. Kostic objected to these responses, incorrectly asserting that they had missed their June 23, 2026 deadline (the deadline was June 25, 2026).

[251] On June 29, 2026, Piikani Nation and RJL provided their response to Kostic’s June 23 request to defer the November 2025 Fiat Requests. Kostic again incorrectly asserted that these responses were non-compliant with my directions, and then, on June 30, 2026, complained that the other parties were providing new evidence or arguments to her prejudice. On July 2, 2026, Piikani Nation objected to Kostic’s June 30, 2026 correspondence on the basis that it breached Endorsement #4 and caused Piikani Nation prejudice because it had no avenue to respond without itself breaching Endorsement #4.

[252] With all that background context, I now turn to the issues addressed in these Reasons.

B. Should Kostic Be Entitled to File a Late NTCD Against RJL?

1. Positions

[253] Kostic continues to rely on her positions as set out in **2025 ABKB 493** at para 44, but amplified. She argues that allowing her to file a NTCD against RJL is essential for the fair administration of justice. She argues that: the length of her delay in seeking this relief should be looked at through the lens of collective responsibility; the delay was caused by the other party’s intentional “pattern of obstruction”, among other things; new information has become available that explains her delay; there would be no prejudice to allow her relief; her claim is not time barred; and she would suffer prejudice if relief is not granted.

[254] RJL’s position is set out at **2025 ABKB 493** at para 46. RJL also argues that: Kostic seeks relief beyond that approved to proceed, including attempting to convert the application to one to approve a third party claim; a NTCD is time barred; what Kostic really seeks is immediate indemnity/save harmless relief, which has been directed to be determined at trial and is not the proper subject of a NTCD; Kostic’s delay is lengthy with no reasonable excuse, which was not caused by RJL; the provision of the Damages Particulars in 2024 does not excuse the delay or

restart the limitation period; RJL has not changed its position; and RJL would suffer prejudice if the relief is granted.

2. Requested Relief that Was Not Approved is Not Before Me

[255] The NTCD Application that was approved (and filed) is limited in scope to the question of permission to file the late NTCD against RJL. However, Kostic's written brief and oral submissions went well beyond that into areas not approved or that are the subject of other applications or processes. Kostic's brief seeks relief related to other parties and non-parties; particulars; records disclosure; undertakings; *Mary Carter*⁶⁹ agreements; indemnity and save harmless obligations of other parties; *Mareva*⁷⁰ relief; and striking or staying the 0601 Action against Kostic.

[256] Further, Kostic at times appears to confuse a NTCD with a third party claim, and suggests that this application is about whether she should be entitled to file a late third party notice against RJL. As noted above, although I gave her an opportunity to provide a fiat request to apply for permission to file a third party claim against RJL by May 30, 2025 (Endorsement #7 at para 13), Kostic did not do so and so any such fiat request was not considered as part of **2025 ABKB 493** and was not approved to proceed to application. Whether Kostic should be entitled to file an application for permission to file a third party claim against RJL is not part of this application, rather it is part of the November 2025 Fiat Requests (addressed later in these Reasons).

[257] The only issue before me on the NTCD Application is whether to permit Kostic to file a late NTCD against RJL. To the extent these other matters Kostic raises are relevant to the limited question that is before me, I have considered them.

3. Legal Framework for Filing a Late NTCD

[258] In **2025 ABKB 493** at para 54, I noted that I had not been provided authorities related to the legal framework the Court might apply to an application to file a late NTCD. The parties did not provide me any further authorities on this point in their submissions. They rely on the framework for late third party claims.

[259] In *Amoco Canada Petroleum Co Ltd v Propak Systems Ltd*, 1999 ABQB 716 at para 23 and citing *Lister v Calgary (City)*, 1997 CanLII 24562 (AB CA) and *ESM Transport v Western Mack Trucks (Edmonton) Ltd*, 1988 ABCA 157, the Court appears to have adopted the same test as for a late third party notice (as it was then called) when considering a late NTCD. The Court appears to have done the same in *Stefanyk v Stevens*, 2017 ABQB 402⁷¹ at para 38, citing *Calgary Mack Sales Ltd v Shah*, 2005 ABCA 304 at para 24 [*Shah*], and *Arcelormittal Tubular Products Roman SA v Canadian Natural Resources Ltd*, 2013 ABQB 578 at para 499.

[260] A NTCD is, in effect, a procedural short-cut of convenience to make a third party claim against a co-defendant tortfeasor without the formalities or more complex third party claim rules: *Arsopi v ARVOS GmbH*, 2026 ABCA 49 at para 41. Further, an application to file a late NTCD

⁶⁹ The expression of "Mary Carter" relief owes its origins to *Booth v Mary Carter Paint Co*, 202 So. 2d 8 (Fla. 1967). See for example, *Edmonton (City of) v Lovat Tunnel Equipment Inc*, 2000 ABQB 63 at para 10.

⁷⁰ A reference to *Mareva Compania Naviera SA v Int'l Bulkcarriers SA*, [1980] 1 All E.R. 213.

⁷¹ Reversed on other grounds: *Stefanyk v Sobeys Capital Incorporated*, 2018 ABCA 125.

and an application to file a late third party claim both require an extension of deadlines under rule 13.5. It makes good sense that the same framework is used for both, while recognizing their unique aspects.

[261] I summarized the framework for extending time to permit late-filed third party claims in *H2 Canmore Apartments LP v Cormode & Dickson Construction Edmonton Ltd*, 2024 ABKB 428 [*H2 Canmore*] at paras 31-34 and incorporate it here by analogy to late NTCDs.

[262] The key factors are (1) delay length; (2) the reason for the delay; and (3) prejudice, although this is not a strict or sequential test: *H2 Canmore* at para 20. Other factors (whether embedded within these factors or considered separately) include the merits of the proposed claim, and the stage, status and pace of the underlying action: *H2 Canmore* at paras 23-25.

[263] I have considered these factors and the parties' extensive submissions. I turn to summarizing some key considerations below.

4. The Delay in Seeking Relief is Extreme Under Any Scenario

[264] Kostic argues that she first started the process to get permission to file a NTCD against RJL years ago, before CMJs Nation and then CMJ Graesser. However, in my view those processes, which I discuss further later in these Reasons, are not directly connected to the process before me. In my view, the start-date for the length of delay should be considered based on when Kostic started the process before me which has led to this decision, namely March 2025.⁷² Pre-March 2025 events before previous CMJs are better considered in determining the reason for the delay. In any event, as will be seen, the nuance of determining the precise start or end date of the delay period has no bearing on the outcome of this application.

[265] The pleadings in the 0601 Action closed in 2007. If that is used as the starting point to consider delay, the delay is roughly approaching 17-18 years.

[266] However, RJL does not strongly argue that 2007 should be the starting point, given that RJL and Kostic were jointly represented by Thom/Miller Thomson until 2013, which would be a potential barrier to a claim between them. Kostic's submissions suggest she had her own counsel by June 2013.⁷³ Thom/Miller Thomson formally filed their withdrawal on August 12, 2013. The delay using this date is roughly 11-12 years.

[267] As noted above, the pleadings in the 0601 Action went through a series of amendments flowing from Piikani Nation's March 1, 2018 amended statement of claim. Using that timeframe as another potential delay starting point, is a delay of about 7 years.

[268] Under any of these scenarios, I am not aware of any Alberta case involving delay of this length. For context, in *H2 Canmore*, I canvassed numerous Alberta cases and found that delays of over 50 months "have consistently been considered inordinate, significant, or long": *H2 Canmore* at para 29. Delays of 7 years have been found to strongly support dismissal of applications to late-

⁷² Endorsement #4 at Schedule U (PDF p 132).

⁷³ Kostic Brief at para 38.

file: *Breen v Foremost Industries Ltd*, 2022 ABQB 478 at para 46; *Piikani Nation v McMullen*, 2020 ABQB 89 at para 30; *Pikani Nation v McMullen*, 2020 ABCA 366 at para 65.

[269] The delay, and accordingly the requested extension of time under rule 13.5, is extreme and unprecedented under any scenario; but the Kostic Case Managed Actions are also procedurally extreme and unprecedented.

5. Kostic Has No Reasonable Excuse for her Delay, Notwithstanding the Stage, Status and Pace of the 0601 Action

[270] The requirement to explain delay is mandatory and the onus is on Kostic: *H2 Canmore* at para 26. When the delay is relatively short, more weight is given to the existence of prejudice resulting from the delay and, as the delay becomes longer, more weight is given to the reason, explanation or excuse for the delay: *Nelson & Nelson v Condominium Corporation No 0013187*, 2019 ABQB 426 at para 51; *Canadian Natural Resources Limited v Arcelormittal Tubular Products Roman SA (Mittal Steel Roman SA)*, 2012 ABQB 679 at para 499 [*Arcelormittal*], var'd on other grounds 2013 ABCA 279 [*Arcelormittal CA*]; *Condominium Plan 9812082 v Battistella Developments Inc*, 2014 ABQB 644 at paras 9, 15 [*Battistella*]; *2020 ABQB 89* at para 38; *TRDMS Services Inc v Condo Corp 0425913 (the New Cambridge Lofts)*, 2016 ABQB 527 at para 37; *Stefanyk* at para 38; *Condominium Corporation No 0425636 v Amyotte's Plumbing Ltd*, 2015 ABQB 801 at paras, 25-26, 30 [*Amyotte's Plumbing*] at par 20; *Spartek Systems Inc v Brown*, 2009 ABQB 705 at para 14; *Whitecourt Power Limited Partnership v Interpro Technical Services Ltd*, 2014 ABQB 135 at para 14; *Flight v Dillon*, 2001 ABQB 211 at para 12.

[271] When there is extreme delay, as here, the need for the applicant to reasonably explain or provide an excuse becomes a very important factor. In those cases, leave will generally be denied where there is extreme delay and there is no or insufficient evidence to reasonably explain or excuse it: *Arcelormittal* at para 499.

[272] Kostic takes almost no personal responsibility or accountability for her delay. She blames the other parties to the 0601 Action and their counsel, as well as her former counsel, Thom/Miller Thomson (and perhaps even those that followed). I have considered each of Kostic's purported explanations for her delay. To test and untangle the many different explanations Kostic asserts, I have considered the long history, pace and stage of the Kostic-related Case Managed Actions (including as set out above in detail) with a focus on the 0601 Action. Almost all of Kostic's explanations are unpersuasive or not supported by any evidence. I specifically address some of Kostic's main arguments in my analysis below as I look at various distinct time-periods in the 0601 Action.

a. The Pre-2013 Period

[273] Given RJL's position, for the purpose of my analysis, I have not considered Kostic to be responsible for the delay from 2007 to 2013 given their joint-representation and Kostic's claims against Thom/Miller Thomson in the Kostic-Thom Action (in which Kostic claims against Thom for failing to file a NTCD on her behalf). This is not a finding about whether Thom was or was not responsible for Kostic not filing a NTCD during his representation of her, or whether Thom/Miller Thomson were negligent or are otherwise liable to Kostic. Thom/Miller Thomson's potential liability is scheduled for trial and is better addressed in that context. For my purposes, I have

assumed without deciding that Kostic was not responsible for (or had a reasonable excuse for) the delay during that period. Therefore, I start my analysis in 2013.

b. September 2013 to May 2015

[274] Thom withdrew as Kostic’s counsel of record in the 0601 Action in August 2013 and Klym took over in September 2013. Klym was Kostic’s counsel of record until May 2015.

[275] During this period, the court-imposed restriction from the February 2013 Order prohibited the filing of a new claim against RJL without court permission, and it further stayed steps in various actions until the later of April 1, 2013 or the release of a Court of Appeal decision (which was delivered on August 29, 2013). The February 19, 2013 order provided an exception to the stay to allow the parties to the 0601 Action to negotiate a joint submission on a schedule to get the 0601 Action ready to be set down for trial. The parties did that and, on June 7, 2013, ACJ Rooke approved a litigation plan that provided that “the parties are at liberty to bring interlocutory applications at any time”.

[276] It does not appear that, at any time during the process leading up to the approval of the litigation plan, any party (including Kostic) referenced an intention to add further claims to the 0601 Action. The litigation plan did not contemplate any questioning between RJL and Kostic. They were not adverse in interest based on the pleadings.

[277] From September 2013 onward, Kostic could have applied for permission to file a late claim for contribution or indemnity against RJL during this period. She did not do so. Instead Kostic focussed on her application to dismiss the fraud allegations against her in the 0601 Action, which led to the April 2014 Order. Then, she and Klym worked on the unsuccessful summary trial in the 0801 Action which was decided in April 2015.

[278] That Kostic and her counsel may have been busy with or focussed on other processes in the Case Managed Actions is not, in these circumstances, a reasonable excuse. Litigation by instalment and in piecemeal can be contrary to the foundational rules. Piecemeal litigation can be an impractical waste of resources, including court resources which are “community property that exist to service everyone”: *Piikani Nation v McMullen*, 2020 ABCA 183 at para 28. Litigation by instalment is discouraged: *2526646 Alberta Ltd v Condominium Corporation No 0313512*, 2026 ABKB 146 at para 72; *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, 2021 ABCA 153 at paras 56-58. Parties are expected to investigate expeditiously and bring forward all claims they want to bring within the time requirements under the *Rules*, or to do so quickly if claims are discovered after the *Rules*’ deadlines. This is part and parcel of the requirement for parties to “identify or make an application to identify the real issues in dispute”: rule 1.2(3)(a).

[279] I find that Kostic has not provided a reasonable explanation for not applying for permission to file a claim for contribution and indemnity against RJL from June 2013 to May 2015, or about 20 months.

c. May 2015 to February 2017

[280] In May 2015, Zinner became Kostic’s lawyer of record, and remained so until February 2017.

[281] As noted earlier, in 2015 and the first half of 2016, Kostic filed two amended third party claims against CWM, but then agreed to withdraw them and they were struck. She filed a reply to CWM's late-filed 2016 defence to Kostic's third party claim against CWM. She first sought to amend her third party claim against CIBC Trust, but then instead filed the originating application in Kostic-CIBC Trust Action #1. She filed an application to add the Court Officer by counterclaim.

[282] In June 2016, ACJ Rooke instituted a fiat process for applications in the 0601 Action and, in August 2016, he directed the parties to work on a litigation plan, which led to the October 2016 approval of the 2016 Litigation Plan. The 2016 Litigation Plan provided details about numerous proposed applications and the fiat process.

[283] The 2016 Litigation Plan expressly contemplated and allowed for fiat requests. Kostic, with Zinner's assistance, used that process multiple times in 2016 and early 2017, as evidenced by the numerous reported decisions of ACJ Rooke in the first half of 2017. Kostic was also willing to breach the February 2013 Order by filing Kostic-CIBC Trust Action #2 without permission.

[284] Clearly, Kostic has never been and was not shy about engaging court processes to enforce her perceptions of her rights. She appears to have been focussed on bringing various claims forward, just not against RJL at that time. The 2016 Litigation Plan process also gave her a ripe opportunity to raise potential claims against RJL.

[285] I find that Kostic has not provided a reasonable explanation for not applying for permission to file a claim for contribution and indemnity against RJL from May 2015 to February 2017, or about 21 months.

d. February 2017 to May 2017

[286] During this period, based on court filings, SVR was Kostic's counsel of record. It is not necessary for me to make any findings about this short period, and I decline to do so. For my purposes, I have assumed without deciding that Kostic was not responsible for delay during this short period. This period is at least part of the subject of the SVR Action and/or the AIG Action, where there are numerous contested matters that are better addressed in the SVR Action or the AIG Action. This is not a finding about whether or not SVR was negligent or otherwise liable to Kostic, or on the merits of the parties' positions in the AIG Action.

e. June 2017 to December 2017

[287] Commencing in May 2017, Kostic began self-representing in the 0601 Action and continued unrepresented until January 2018.

[288] During this period, Kostic appears to have been focused on defending herself and bringing applications in the AIG Action, amending her claim in the Kostic-Thom Action (represented by Klym) and getting a procedural order in place for cross summary judgment/summary dismissal applications. She was also focussed on her fiat request to CMJ Nation in the 0601 Action for a declaration that Piikani Nation was under an immediate obligation to defend and hold her harmless, which was denied: **2017 ABQB 681**. This period illustrates that Kostic was capable of managing multiple actions, applications and requests on her own.

[289] I find that Kostic has not provided a reasonable explanation for not applying for permission to file a claim for contribution and indemnity against RJL from June 2017 to December 2017, or 7 months.

f. January 2018 to September 2018

[290] In January 2018, Klym returned as Kostic's counsel of record in the 0601 Action.

[291] During this period, as summarized earlier, following CMJ Nation's February 9, 2018 order approving Piikani Nation's amended statement of claim, there were significant amendments to the pleadings in the 0601 Action and then the creation of the revised and updated 2018 Litigation Plan.

[292] Kostic also wanted to add a counterclaim, but, in March 2018, CMJ Nation reminded her that court approval would be required: **2018 ABCA 358** at paras 3-4. Then, as discussed in more detail below, Kostic did not even start that process until 2019.

[293] This timeframe, given the newly filed amended pleadings, Kostic's desire to add a pleading to the 0601 Action, and the creation of a new litigation plan, all while she was represented by counsel, was another opportunity for Kostic to raise new claims against RJL (or otherwise). Instead, Kostic was focussed on other parties in the 0601 Action, the summary determination applications in the Kostic-Thom Action, her unsuccessful appeal of various orders of ACJ Rooke and CMJ Nation, and her attempts to reargue the appeal: **2018 ABCA 234**; **2018 ABCA 275**.

[294] I find that Kostic has not provided a reasonable explanation for not applying for permission to file a claim for contribution and indemnity against RJL from January 2018 to September 2018, or 9 months.

g. October 2018 to December 2019

[295] On September 27, 2018, Kostic became self-represented in the 0601 Action again.

[296] In fall 2018, not much happened in the 0601 Action. After the Court of Appeal overturned **2017 ABQB 747** in **2018 ABCA 355**, and held that CIBC Trust did not have an immediate obligation to save Kostic harmless or pay her defence costs, Kostic appears to have been focussed on trying to have that reargued and unsuccessfully seeking leave to appeal to the Supreme Court of Canada. Kostic was also focussed on her application for a summary trial and interim relief from forfeiture in the AIG Action.

[297] In early 2019, as noted earlier, the parties in the 0601 Action appeared before CMJ Nation to address questioning, contempt and other issues. They also engaged in discoveries in the first four months of 2019 which Kostic appears to argue caused her to believe she needed to seek relief from "all sources", including RJL.⁷⁴

[298] Kostic relies heavily on the events of 2019 as an explanation for her delay. In particular, she has represented to the Court that she made a fiat request,⁷⁵ "sought to have the issue of the

⁷⁴ Kostic Brief at paras 83, 99.

⁷⁵ Affidavit of Kostic dated October 28, 2025 at para 11.

Notice to Co-Defendant heard,”⁷⁶ that CMJ Nation had “scheduled her application for a hearing”,⁷⁷ that this was scheduled for September 6, 2019,⁷⁸ that CMJ Nation “directed that it be heard on September 6, 2019”,⁷⁹ that the respondents requested an adjournment,⁸⁰ that the application “was previously commenced and adjourned” and “remain adjourned *sine die* at this time in this action on a without prejudice basis”,⁸¹ that CMJ Nation agreed and “even inquired if Kostic wanted to seek costs for the adjournment which Kostic advised could be deferred to after the hearing of the application”,⁸² and that “leave was previously sought and granted”.⁸³ In effect, I believe Kostic argues that she started the process in 2019 and has effectively been in process since then. She relies on **Buckler v Minchau**, 2006 ABQB 291 at para 36.

[299] I have reviewed the evidence and court records related to the events of 2019.⁸⁴ Based on that, I find Kostic’s arguments and positions are incorrect or unpersuasive. Below is what happened, based on the record before me and court records.

[300] As noted above, in early 2019, the Court Officer began proceedings against Kostic to enforce recovery of a costs award and Kostic’s failure to provide her Form 13. In her May 3, 2019 response materials, Kostic referenced (among other things) that the Court Officer’s relief was forestalled by various “save harmless” relief already brought or “to be filed” against (among others) RJL as principal and that Kostic was RJL’s disclosed agent.⁸⁵ She swore that the Court Officer had triggered operation of liability against her principals, including RJL.⁸⁶ Her affidavit said that, at trial, she intended to rely on the bad faith conduct of RJL and several others, and that she needed immediate interim relief against RJL as disclosed agent and principal.

[301] When the matter came before CMJ Nation on May 13, 2019, counsel for the Court Officer noted that there was no fiat request before the Court for the matters raised in Kostic’s materials.⁸⁷ In oral argument, Kostic raised various indemnity and save harmless claims that she had not yet brought but anticipated bringing.⁸⁸ She addressed that CWM and RJL, as her principals, were liable to her “on top of the agreements, and the save harmless and indemnity provisions”.⁸⁹ Kostic sought a stay of the Court Officer’s costs award against her because she claimed it would prejudice these claims through the doctrine of merger.

⁷⁶ Kostic Brief at para 44.

⁷⁷ May 15, 2023 Letter at para 15 and Tab 7.

⁷⁸ May 15, 2023 Letter at para 15 and Tab 7.

⁷⁹ **2024 ABKB 137** at para 56.

⁸⁰ Kostic Brief at para 44; May 15, 2023 Letter at para 15 and Tab 7.

⁸¹ May 15, 2023 Letter at para 10; November 2025 Affidavit at paras 4, 18.

⁸² May 15, 2023 Letter at Tab 7.

⁸³ May 15, 2023 Letter at Tab 7.

⁸⁴ Although she has provided me with many transcripts of court proceedings in the Case Managed Actions, Kostic did not provide me a transcript of the September 6, 2019 attendance before CMJ Nation. In oral submissions, Kostic did not object to me reviewing the record of that attendance, which I have done.

⁸⁵ Cross-Contempt Brief filed May 3, 2019 at para 5.x.

⁸⁶ Affidavit of Kostic dated May 3, 2019 at paragraphs/headings J-N at p 16.

⁸⁷ May 13, 2019 Transcript at p 3, lines 19-26.

⁸⁸ May 13, 2019 Transcript at p 39, lines 5-7.

⁸⁹ May 13, 2019 Transcript at pp 35-36.

[302] On May 10, 2019, Kostic formally demanded that RJL provide her indemnity/save harmless relief.⁹⁰ On May 15, 2019, RJL denied this request.

[303] Neither in the May 13, 2019 hearing, nor in her May 15, 2019 reasons or order, did CMJ Nation address Kostic's references to claims against RJL.

[304] On May 31, 2019, Kostic wrote to CMJ Nation seeking a fiat to question the Court Officer and its counsel as proposed third party defendants.

[305] Kostic asserts that she then hand-delivered a 31-page letter dated June 3, 2019 (**June 2019 Letter**) in which she sought a fiat.⁹¹ The June 2019 Letter is unsigned. It was not filed on the court file in the 0601 Action. I have been unable to verify from court records if it was delivered to CMJ Nation⁹², or when.⁹³ It may be a similar letter was sent later.⁹⁴ In the June 2019 Letter, Kostic sought fiats for many different applications seeking many different remedies, including dismissal of the 0601 Action, or, alternatively, filing of claims including a NTCD and third party claim against RJL. The letter purports to attach applications, proposed third party claims and counterclaims, but nothing is attached in the version of the letter that is in evidence. At a minimum, the June 2019 Letter illustrates potential claims Kostic believed or knew she had as of 2019, and some of her grounds for those claims. As against RJL, this included claims of negligence (para 5), receipt of a concealed report from Piikani Nation (para 33), reckless, negligent and wilful assistance of Piikani Nation's Chief and Council and CIBC Trust in breaching court orders (para 61), interference with contractual relations (para 61); participation in fraudulent PIC proof of claims (para 70), unjust enrichment (para 121), and breach of indemnity/save harmless obligations (para 123).

[306] Also on June 3, 2019, Kostic swore an affidavit in the 0601 Action (**June 3, 2019 Affidavit**).⁹⁵ It is generally consistent with the relief described in the June 2019 Letter. Kostic states that she has previously informed the parties and the Court of her intention to bring further applications and counterclaims based on the recent discovery evidence. The June 3, 2019 Affidavit attached a draft proposed application which included the striking of the claim against her or, alternatively, leave to file a NTCD against RJL for save harmless relief and as a defendant by counterclaim, and to amend her pleadings to add "agency law defences".

[307] On June 13, 2019, CMJ Nation refused Kostic's May 31, 2019 fiat request to question the Court Officer and its counsel, but was willing to grant her a fiat to bring her proposed application to add the Court Officer and its legal counsel as third party defendants in the 0601 Action.⁹⁶ CMJ

⁹⁰ November 2025 Affidavit at para 19. During the February 2026 Applications hearing, Kostic provided me a May 10, 2019 email with her demand for indemnity from RJL. No party objected to this being part of the record.

⁹¹ Kostic Responses to Undertakings filed January 24, 2026.

⁹² In the September 6, 2019 court appearance, CMJ Nation referenced several letters that had been received from Kostic, but none were referenced as being dated June 3, 2019. I also note that a different (but similar) version of an unsigned June 3, 2019 letter was attached to the September 5, 2023 Letter, in which Zinner indicated it was Kostic "giving notice of her intention to bring an application for various forms of relief and seeking leave therein".

⁹³ I note that the letter is dated June 3, 2019, but refers to events on July 11, 2019, although this may be a typo: at paras 22, 33. In other places, it seems to suggest that it was written before May 31, 2019: at para 8.

⁹⁴ Kostic provided me two black binders, one of which includes records that pertain to this issue. I did not rely on the contents of the black binders unless they were already in the evidentiary record or were copies of court records.

⁹⁵ The June 3, 2019 Affidavit was not filed until August 21, 2019.

⁹⁶ June 13, 2019 letter of CMJ Nation, attached to September 5, 2023 Letter.

Nation provided various dates for the scheduling of that application. CMJ Nation made no reference to the June 2019 Letter or the June 3, 2019 Affidavit (which had not yet been filed), which casts some doubt about whether the June 2019 Letter had been provided to her by that time.

[308] On June 24, 2019, the Court Officer filed an application in response to Kostic's application to add the Court Officer as a third party, in which the Court Officer sought (among other things) an order declaring that Kostic had not purged her contempt as required by the May 15, 2019 order, and an order striking Kostic's application.

[309] On August 6, 2019, CMJ Nation wrote to the parties advising that she had not heard from Kostic or counsel "confirming a date for the two applications which are presently outstanding. This relates to the application by Mr. Gilborn to have Ms. Kostic in contempt, and Ms. Kostic's application to add Third Parties to the lawsuit."⁹⁷ It is obvious CMJ Nation was referring to the Court Officer's cross-application and Kostic's application to add the Court Officer as a third party, as this is what she approved on June 13, 2019. CMJ Nation was not referring to any application to add a claim against RJL or anyone else. CMJ Nation scheduled the two applications to be heard on September 6, 2019 and directed that any further affidavits or material to be filed in relation to the two applications had to be filed by August 30, 2019.

[310] On August 21, 2019, Kostic filed an application to file a proposed third party claim. Although the application referenced that the proposed claim was attached as Schedule "A", the filed version on the court file has no attachment. However, it is clear from the body of the application that it related to her proposed third party claim against the Court Officer and its counsel, which is consistent with the proposed application CMJ Nation approved to proceed on September 6, 2019. Kostic filed the June 3, 2019 Affidavit in support of this application.

[311] On August 26, 2019, CMJ Nation wrote to Kostic,⁹⁸ confirmed she had received Kostic's August 21, 2019 materials, and confirmed that, on September 6, 2019, CMJ Nation would be addressing Kostic's application to add the Court Officer as a third party, the Court Officer's cross-application, and an enforcement application by the Court Officer.

[312] On August 30, 2019, Kostic wrote to CMJ Nation,⁹⁹ enclosing "drafts of proposed additional materials which would be required to rely on in order to bring [her] Counterclaim" against the Court Officer and its counsel. The letter included another proposed draft application to file a counterclaim against the Court Officer (with a draft proposed counterclaim), and an unfiled August 30, 2019 affidavit of Kostic in support of that application. The letter also appears to have appended another proposed draft application seeking "a procedural order for advice and directions" about: (1) how to proceed to have Kostic removed as a defendant in the 0601 Action; (2) leave to file a "Notice of Claim Against Co-Defendants [RJL]"; and (3) how to proceed against Piikani Nation, and Kostic's "insurers, indemnitors, employers and principals". No other draft pleadings were provided.

[313] On September 6, 2019, the matter came before CMJ Nation. She summarized the many letters that had been provided to her. Contrary to what Kostic has represented to the Court subsequently, there was no request for an adjournment from the other parties to the 0601 Action.

⁹⁷ August 6, 2019 letter from CMJ Nation, attached as Tab 13 to the September 5, 2023 Letter.

⁹⁸ August 26, 2019 letter from CMJ Nation, attached as Tab 15 to the September 5, 2023 Letter.

⁹⁹ August 6, 2019 letter from Kostic to CMJ Nation attached as Tab 7 (Schedule C) to the May 15, 2023 Letter.

There was no discussion about costs of any adjournment. Counsel for Piikani Nation and RJL had attended only because of Kostic's unfiled, new proposed advice and directions application that she had circulated on August 30, 2019. CMJ Nation simply confirmed (consistent with her August 26, 2019 letter) that she was only dealing with the matters between Kostic and the Court Officer.

[314] During her oral submissions on September 6, 2019, Kostic referenced her applications to third party or counterclaim other parties into the 0601 Action, advised that claims were being drafted against Piikani Nation, RJL and CWM. CMJ Nation confirmed she was not dealing with those matters on September 6, 2019. Clearly, at this point, proposed claims were contemplated, being drafted, but had not yet provided to the Court in a fiat request.

[315] On September 6, 2019, CMJ Nation reserved her decision and scheduled September 11, 2019 to deliver her reasons. In the course of the court proceedings on September 6 and 11, 2019, CMJ Nation declared that Kostic had not purged her contempt, struck Kostic's application to add the Court Officer as a third party, and directed that should "Kostic wish to bring an Application to add persons or entities other than the [Court Officer] as parties" to the 0601 Action, she "must submit a request for a fiat" in accordance with the 2018 Litigation Plan. She also directed certain materials that had been provided for the application to be filed and sealed.

[316] On October 1, 2019, Kostic provided a fiat request to bring an application to strike the amended statement of claim in the 0601 Action, or to declare that it disclosed no cause of action, which CMJ Nation denied.¹⁰⁰

[317] Kostic's October 1, 2019 letter also again put the Court on notice of several other potential matters that may be coming, including "asking for summary dismissal, raising some indemnity issues, and asking to amend the statement of defence and bring a counterclaim".¹⁰¹ This included a potential counterclaim against Piikani Nation, an amended statement of defence, and a "notice to co-defendant third party" claim against RJL.¹⁰² Kostic appears to have intended to wait to complete some of the fiat requests until other steps in the 0601 Action had been completed. With respect to a potential claim against RJL, she said: "I'm not going to provide that to you because I want a lawyer to complete that" and the lawyer she was working with was out of the country.¹⁰³ With respect to amending the statement of defence, Kostic advised it may not be necessary if her application of no cause of action succeeds.

[318] CMJ Nation advised Kostic that the Court would not address hypothetical fiat requests and reminded Kostic of the process to follow for fiat requests. CMJ Nation said: "And the time is ticking away, applications that should have been brought years ago are going to be dealt with ... with that in mind".¹⁰⁴ There is no indication that Kostic ever provided a fiat request for an application to file a late NTCD or third party claim against RJL before the end of 2019, despite CMJ Nation's advice to her.

¹⁰⁰ October 15, 2019 Transcript at p 47.

¹⁰¹ October 15, 2019 Transcript at p 2.

¹⁰² October 15, 2019 Transcript at pp 40-41, 47.

¹⁰³ October 15, 2019 Transcript at p 41.

¹⁰⁴ October 15, 2019 Transcript at p 49.

[319] As noted above, in her December 6, 2019 affidavit, Kostic swore that Piikani Nation's lack of particulars prevented her from completing amendments to her statement of defence, her NTCD against RJL, her amended third party claims against CIBC Trust/CWM, and her counterclaim, even though she had draft pleadings "in hand". In reality, as set out above, it appears that Kostic had very significantly advanced draft pleadings prepared in 2019, namely the lengthy 2019 Draft Pleadings.¹⁰⁵

[320] Kostic's attempt to recast what happened in 2019 to suit her purposes and litigation strategy before CMJ Graesser and me is rejected. I reject Kostic's argument before me that she had sought or obtained approval of fiat requests to file the late NTCD against RJL (among other things), or that CMJ Nation adjourned any such fiat requests or applications. Kostic had clearly raised the issue and flagged her intention to seek additional relief, and tried to collaterally refer to it or include it as part of her 2019 dispute with the Court Officer. CMJ Nation did not address or permit that, and instead directed her to bring a proper fiat request, which Kostic simply did not do. It is not enough to simply raise issues or seek general advice and directions, and then not follow the Court's directions.

[321] Before the end of 2019, Kostic appears to have had the 2019 Draft Pleadings drafted, which could have formed the basis for a fiat request, but Kostic unreasonably suggested or believed that she needed further particulars from Piikani Nation to do so. Holding those pleadings back at that time was her decision, not something the Court approved, condoned, or directed.

[322] I find that Kostic has not provided a reasonable explanation for not applying for permission to file a claim for contribution and indemnity against RJL from October 2018 to December 2019, or 14 months.

h. January 2020 to December 2022

[323] From 2020 to December 2022, the 0601 Action did not progress greatly. Some work was done with respect to CMJ Nation's directed written interrogatory process, but neither it nor questioning was completed. CMJ Nation was barely involved if at all, prior to CMJ de Wit's appointment in 2022. In 2020, Kostic appears to have been focussed on litigation in the Federal Court and Thom/Miller Thomson's summary dismissal application in the Kostic-Thom Action.

[324] In 2020, the COVID pandemic caused delays in the litigation process. I have not held the 75 day period from March 17, 2020 and June 1, 2020 against Kostic. This is the period during which *Ministerial Order 27/2020*, and related master orders, were in effect: ***StraightVac Services Ltd v Sunshine Oilsands Ltd***, 2024 ABCA 8 at paras 7-11, 26. There as a reasonable excuse for Kostic's delay during this period, and likely reasonably after that.

[325] In 2021 and 2022, Kostic was responding to the BridgePoint Action, the cross-applications in the SVR Action, pleadings and other procedural applications in the BridgePoint Action, and the various August 2022 fiat requests she sought in the Kostic-Thom Action.

[326] As noted above, in March 2021, CMJ Nation contacted the parties about the October 2021 dates which had been earmarked for the 0601 Action trial. Kostic disagreed with vacating the trial dates and has subsequently frequently (and unreasonably) raised the adjournment of the trial as

¹⁰⁵ May 15, 2023 Letter at Tabs 12-14.

some kind of litigation misconduct by the other parties. At that point in time, Kostic had not taken any steps to bring the 2019 Draft Pleadings back before the Court since CMJ Nation's direction to provide a fiat request.

[327] The fact that Kostic was adamant, in March 2021, that the trial should proceed "with the record we have" only 7 months later, but had not taken any steps to bring forward her various additional or amended pleadings, suggests that Kostic was likely satisfied the matter should and could proceed to trial without her proposed applications to augment the pleadings or claims.

[328] I find that Kostic has not provided a reasonable explanation for not applying for permission to file a claim for contribution and indemnity against RJL from January 2020 to March 17, 2020, and then again between fall 2020 and December 2022.

i. January 2023 to March 2025

[329] By at least late 2022 or early 2023, Zinner began assisting Kostic in the 0601 Action. As noted above, he submitted the February 2023 Fiat Request to CMJ de Wit seeking to file an application in the 0601 Action to seek immediate indemnity/save harmless relief against Piikani Nation, CWM and RJL, but, in August 2023 Kostic later requested that this be postponed pending other Kostic fiat requests.

[330] In the May 15, 2023 Letter, Zinner provided Kostic's response to the submissions of RJL, CWM, and Piikani Nation in opposition to the February 2023 Fiat Request. It was in this response that Zinner provided CMJ Graesser Kostic's the very advanced 2019 Draft Pleadings. However, to be clear, the 2019 Draft Pleadings were not part of the February 2023 Fiat Request. Further, Zinner was clear they were "not intended as participation in the action so as to restart the clock" under rule 4.33. Kostic appears to have been holding off on seeking to file new or amended pleadings or claims pending her other fiat requests. That was clearly part of her litigation strategy.

[331] On October 2, 2023, after the two CMCs with CMJ Graesser in June and September, Kostic provided the October 2023 Fiat Request. As noted above, this sought permission to apply to strike the 0601 Action, but the proposed 20-page draft application also sought permission to file 2023 Draft Pleadings. As noted above, the draft application purports to attach copies of the 2023 Draft Pleadings, but they do not appear to have been attached. It is unclear whether the 2023 Draft Pleadings were ever provided to the Court or the other parties to the 0601 Action.

[332] As noted above, on December 21, 2023, CMJ Graesser issued his decision in **2023 ABKB 710**, rejecting Kostic's October 2023 Fiat Request to bring an application to strike or dismiss the 0601 Action. Instead, he directed the parties to provide him information so he could set the matter down for trial. And then, on March 14, 2024, in **2023 ABKB 137**, CMJ Graesser dismissed the February 2023 Fiat Request seeking immediate indemnity/save harmless relief.

[333] In neither of these decisions, and to my knowledge at no other time before his retirement, did CMJ Graesser expressly address the portion of the October 2023 Fiat Request seeking permission to file the unattached 2023 Draft Pleadings. It could reasonably be inferred that this was because the 2023 Draft Pleadings were not attached to the draft application, and that **2023 ABKB 710** constituted a rejection of all components of the October 2023 Fiat Request. Kostic could have sought clarification or could have formally attempted to bring this issue back before CMJ Graesser.

[334] However, based on the uncertainty surrounding this issue on the record before me, I do not hold the delay post-September 2023 against Kostic. It could also be reasonably inferred that CMJ Graesser had not decided the 2023 Draft Pleadings component of the October 2023 Fiat Request, that it was still under contemplation by the Court until CMJ Graesser retired, and then was brought forward again when I was appointed CMJ.

[335] Therefore, I find that Kostic has not provided a reasonable explanation for not applying for permission to file a claim for contribution and indemnity against RJL from January 2023 to September 2023, or 9 months. However, the period starting in October 2023 is not held against Kostic for the purposes of these applications.

j. Kostic's Other Possible Explanations for The Delay Are Not Persuasive

[336] Based on the above, I have found that for the period of September 2013 to September 2023 (other than brief periods in 2017 and 2020), Kostic has not provided a reasonable explanation for her delay in seeking to file a late NTCD against RJL. In reaching my conclusions, I also considered Kostic's other arguments intended to explain the delay during this lengthy period. I briefly address some further considerations below.

[337] First, Kostic frequently raises the fact that she is self-represented and is doing her best, when her litigation conduct is questioned. This is not persuasive here. From September 2013 onward, Kostic was frequently represented by counsel in the 0601 Action, or on other Case Managed Actions. Further, Kostic is not an inexperienced or incapable litigant. She likely has more litigation experience than many senior Alberta lawyers. But, in any event, the *Rules* apply to all litigants: **2025 ABCA 296** at para 17. Self-represented parties are expected to familiarize themselves with the relevant legal practices and procedures pertaining to their case and to comply with the Court's processes: ***Piikani Nation v North Peigan***, 2026 ABKB 374; ***Bank of Montreal v Luciano***, 2024 ABKB 314 at para 46 [***Luciano***]. There is not a separate, more lenient, set of procedural rules for self-represented parties: ***Luciano*** at para 46, citing ***Abou Shaaban v Baljak***, 2024 ABKB 28 at para 66, ***Gjergji v Hyatt Mitsubishi***, 2017 ABQB 500 at para 32, and ***Lofstrom v Radke***, 2020 ABQB 122 at para 93; ***RK v GSG***, 2024 ABKB 121 at para 121.

[338] In any event, confusion, mistakes or misunderstanding of a pertinent rule or procedure may not constitute a special circumstance that reasonably explains a delay in filing, particularly in the absence of due diligence; although there is no absolute rule: ***Luciano*** at para 48; ***Heath-Engel v Alberta (Human Rights Commission)***, 2024 ABCA 138 at para 10; ***Schulte v Alberta (Appeals Commission for Workers' Compensation Board)***, 2015 ABCA 148 at para 14; ***Macdonald v King***, 2021 ABCA 258 at para 7; ***Adderley v 1400467 Alberta Ltd***, 2014 ABCA 291 at paras 10-12; ***Real Life Homes & Investments Ltd v Wert Homes and Investments Ltd***, 2012 ABCA 3 at para 8; ***AE v Alberta (Child Welfare)***, 2019 ABCA 435 at para 8; ***Gezehegn v Alberta (Appeals Commission of the Workers' Compensation Board)***, 2020 ABCA 48 at para 3.

[339] Second, I appreciate that the Case Managed Actions involve a complex and intertwined web of matters. However, much of that over the years has been caused by the never-ending fiat requests and relief sought by the parties, many of which have been instigated by Kostic. Parties to litigation are not generally excused from acting reasonably expeditiously and in accordance with

the *Rules*, simply because they are busy. Many litigants are busy. Parties are expected to dedicate the resources they need to reasonably move matters along.

[340] Further, and in any event, Kostic had the 2019 Draft Pleadings ready over three years before the October 2023 Fiat Request. She could have easily dedicated some of the significant personal and legal resources she used in the intervening period to bring the matter forward. Also, I note, the Form 15 (used for a NTCD under rule 3.43) is a simple one page form – it would have been a simple matter to seek a concise, narrow NTCD fiat request long ago.

[341] Third, I am not satisfied that the other parties to the 0601 Action, or other Case Managed Actions, intentionally or otherwise caused delay, or somehow are responsible for Kostic not bringing the October 2023 Fiat Request sooner. There is simply insufficient evidence to support that argument. It was not up to Kostic's adversaries or co-defendants to remind her to bring forward claims she wanted to make against them. She is responsible for her own conduct. There was nothing preventing Kostic from bringing a fiat request forward at any time after September 2013.

[342] Fourth, I am not persuaded (as Kostic seems to argue) that Kostic would not have known about a possible indemnity or contribution claim against RJL years ago. Kostic has long had detailed knowledge of RJL's involvement in the matters at issue that are the subject of the 0601 Action. Even if Kostic discovered something new in 2018, or in the 2019 discovery process, she clearly knew about various claims she wanted to bring against RJL and others in 2019 and did not ever provide a fiat request until 2023 (and even that fiat request did not include the Draft 2023 Pleadings).

[343] Fifth, on the record before me, I am not persuaded that new information arose in 2024 or thereafter that somehow would have changed her potential to file a NTCD or third party claim against RJL. For example, I am not persuaded that Piikani Nation's provision of the Damages Particulars following the June 2024 CMCs, or CIBC Trust's position, representations or evidence with respect to the nature of the underlying accounts, had any material bearing on Kostic's potential claims against RJL. Kostic knew she had a claim and wanted to file a claim against RJL in 2019.

[344] Further, I am not satisfied, on the material before me, that RJL changed its position or has become adverse to Kostic in the 0601 Action. Based on RJL's 2018 amended amended amended statement of defence, it continues to plead that neither RJL nor Kostic have any liability to Piikani Nation. RJL does not seek contribution or indemnity from Kostic. That RJL may not have been able to respond to discovery questions with evidence that might be helpful to Kostic, or may have evidence that is not helpful to Kostic, does not necessarily mean they are adverse, and Kostic's assertions that RJL is conspiring with other parties against her are not sufficiently supported by evidence.

[345] In addition, the fact that RJL opposes the relief Kostic seeks against RJL in the context of the 0601 Action does not constitute RJL changing its position in the 0601 Action. Further, while RJL and Kostic may possibly be adverse in interest on the question of whether RJL owes Kostic indemnity/save harmless obligations, or whether those claims should be part of the 0601 Action, Kostic has known RJL's position about those obligations since May 2019 and those issues have never been part of the pleadings in the 0601 Action.

k. Conclusion re Delay

[346] On balance, and considering the record before me and court documents, I find that Kostic has not provided a reasonable explanation for her almost 10-year delay in seeking permission to file a late indemnity and contribution claim against RJL, whether by way of NTCD or third party claim. This level of extreme delay strongly invites dismissal of Kostic’s application: **Breen** at para 46; **2020 ABCA 366** at para 65.

[347] It appears to me, most likely, that the real reason for Kostic’s delay was one or more of Kostic’s strategic decision not to pursue it (even after she clearly knew the claims she wanted to make), because she wanted to pursue other relief first, or due to a lack of reasonable due diligence in pursuing it. None of these reasons provide a reasonable excuse for the extreme delay. A party cannot sit back and hold claims it knows about and wants to make, and expect them to be added into the action years later. Further, all parties, including self-represented litigants, sometimes have to live with their strategic litigation choices.

6. The Proposed Late NTCD is Not Limitations Barred

[348] RJL argues that the proposed NTCD is limitations barred, which it argues is a full answer to Kostic’s application. I disagree with RJL on this point for the reasons below.

[349] As noted earlier, a NTCD is a specific procedural short-cut mechanism of “convenience” that is limited in scope under rule 3.43, for contribution or indemnity claims “against a co-defendant under the *Tort-Feasors Act*, RSA 2000, c T-5 [*TFA*] or the *Contributory Negligence Act*, RSA 2000, c C-27 [*CNA*]”: rule 3.43(1); **Arsopi** at para 41.

[350] Section 3(1.1) of the *Limitations Act*, RSA 2000, c L-12 provides a “specific limitation period” for tort-feasor’s claims against each other for contribution claims under the *TFA*: **Whitecourt Power Limited Partnership v Elliott Turbomachinery Canada Inc**, 2015 ABCA 252 at para 36 [**Elliott Turbomachinery**]; **Bodnar Capital Corporation (301831 Alberta Ltd) v Synergy Projects Ltd**, 2019 ABQB 528 at para 11. It provides:

(1.1) If a claimant who is liable as a tort-feasor in respect of injury does not seek a remedial order to recover contribution under section 3(1)(c) of the *Tort-feasors Act* against a defendant, whether as a joint tort-feasor or otherwise, within

(a) 2 years after

(i) the later of

(A) the date on which the claimant was served with a pleading by which a claim for the injury is brought against the claimant, and

(B) the date on which the claimant first knew, or in the circumstances ought to have

known, that the defendant was liable in respect of the injury or would have been liable in respect of the injury if the defendant had been sued within the limitation period provided by subsection (1) by the person who suffered the injury,

if the claimant has been served with a pleading described in paragraph (A),
or

- (ii) the date on which the claimant first had or in the circumstances ought to have had the knowledge described in subclause (i)(B), if the claimant has not been served with a pleading described in subclause (i)(A),

or

- (b) 10 years after the claim for contribution arose,

whichever period expires first, the defendant, on pleading this Act as a defence, is entitled to immunity from liability in respect of the claim for contribution.

[351] In my view, Kostic’s contribution claim against RJL under the *TFA*, whether brought by way of NTCD or third party claim, is *prima facie* barred by section 3(1.1) of the *Limitations Act*. Kostic was served with the claim by at least 2007. At that time, or by the time of exchanges of affidavits of records thereafter, Kostic would very likely have had sufficient knowledge of RJL’s involvement to know that RJL was liable in respect of Piikani Nation’s injury. Thus, section 3(1.1)(a) would be engaged.

[352] Even if I am wrong in that, section 3(3)(e) provides that, for the purposes of section 3(1.1)(b), “a claim for contribution arises when the claimant for contribution is made a defendant in respect of, or incurs liability through the settlement of, a claim seeking to impose liability on which the claim for contribution can be based, whichever occurs first.” Kostic was a made a defendant in 2006, and so the 10 year limitation period expired in 2016.

[353] Kostic relies on section 4 of the *Limitations Act*. As per ***Geophysical Service Incorporated v Canadian Natural Resources Limited***, 2025 ABCA 426 paras 19, 20, and 23:

[19] Section 3(1)(b) of the *Limitations Act* provides immunity for claims that arose more than 10 years before an action was commenced, regardless of discoverability. Section 4(1) of the *Limitations Act* suspends operation of the 10-year ultimate limitation period “during any period of time that the defendant fraudulently conceals the fact that the injury for which a remedial order is sought has occurred”.

[20] A plaintiff who seeks to rely on section 4(1) has the burden of proving the limitation period was suspended: *Limitations Act*, s 4(2). They must show: 1) the defendant perpetrated “some kind of fraud”; 2) the fraud concealed a material fact; and 3) the plaintiff exercised reasonable diligence to discover the fraud: *Bruno v Samson Cree Nation*, 2021 ABCA 381 at para 79; *WP v Alberta*, 2014 ABCA 404 at para 33; *Ambrozic v Burcevski*, 2008 ABCA 194 at para 21 [*Ambrozic*].

[...]

[23] Fraudulent concealment is an equitable doctrine that prevents limitation periods from being used as an instrument of injustice. It is concerned with “equitable fraud”, which is broader than the common law action for fraud. The central consideration is “whether it would be, for any reason, unconscionable for the defendant to rely on the advantage gained by having concealed” the fact that the injury occurred. The inquiry is “into the unconscionability of the conduct itself”. Unconscionable conduct can include “some abuse of a confidential position, some intentional imposition, or some deliberate concealment of facts”: *Pioneer Corp v Godfrey*, 2019 SCC 42 at paras 52-54 [*Pioneer*]; see also *Ambrozic* at paras 22-23; *Huet v Lynch*, 2000 ABCA 97 at paras 31, 35 [*Huet*]; *M(K) v M(H)*, 1992 CanLII 31 (SCC), [1992] 3 SCR 6 at 57 [*M(K)*].

[354] See also *Domenic Construction Ltd v Primewest Capital Corp*, 2020 ABCA 265 at para 30.

[355] On the record before me, there is insufficient evidence to suggest that RJL perpetrated fraud that concealed a material fact, or engaged in unconscionable conduct. A possible fact Kostic points to is that RJL has advised in the discovery process that it does not possess certain trade authorization documents. That RJL does not have those records, even though Kostic believes they exist or should exist, is insufficient alone to establish fraudulent concealment of “the fact that the injury for which a remedial order is sought has occurred”, so as to suspend the 10 year limitation period pursuant to section 4 of the *Limitations Act*.

[356] Kostic also relies on section 5 of the *Limitations Act*, which provides a suspension of limitation periods during any period of time that the claimant is “a person under a disability”. A “person under a disability” is defined as being (1) a represented adult as defined in the *Adult Guardianship and Trusteeship Act*, SA 2008, c A-4.2; (2) a person in respect of whom a certificate of incapacity is in effect under the *Public Trustee Act*, SA 2004, c P-44.1; or (3) or “an adult who is unable to make reasonable judgments in respect of matters relating to a claim”: *Limitations Act*, section 1(h)(ii). Kostic has the burden of proving “that any impairments actually rendered them unable to make reasonable judgments”: *Emmons v Alberta (Workers’ Compensation Board)*, 2024 ABCA 78 at para 39, leave to appeal refused 2024 CanLII 88317 (SCC).

[357] This definition of disability is “much narrower” than its colloquial meaning: *Emmons* at para 39. It means more than being injured or unwell: *Tchir v King*, 2021 ABQB 393 at para 13(c), citing *Martin v General Teamsters, Local Union No 362*, 2011 ABQB 412 at para 57. The receipt of government payments does not necessarily prove a person is unable to make reasonable judgments: *Tchir* at para 13(e); *WAR v Alberta (Attorney General)*, 2006 ABCA 219 at para 12. In general, the claimant must establish that their condition deprives them of the ability to assess

their circumstances, formulate a course of action and pursue that course of action, including a course of action that involves legal proceedings: ***Ruach v Calgary Police Service***, 2025 ABKB 404 at para 103; ***Champagne v Sidorsky***, 2017 ABQB 557 at para 79. Typically, expert evidence is required: ***Rauch*** at para 104.

[358] Kostic frequently states in affidavits and in her submissions, that she is “certified disabled”: see for example, ***Canada (Attorney General) v Kostic***, 2025 FC 621 at paras 44-45. I need not make any finding about that for the purposes of this application. Kostic has never suggested, nor is there any expert or other evidence, that she is unable to assess her circumstances, formulate a course of action in the Case Managed Actions, or to pursue her chosen course of action. Her litigation conduct in the Case Managed Actions, and my experience with her in court, establishes quite the opposite. Kostic is a well-experienced, savvy, intelligent and thoughtful litigant, notwithstanding her often irregular and confusing approach to matters. On the record before me, there is no air of reality that she is a “person of disability” as contemplated by section 5 of the *Limitations Act*.

[359] Although section 3(1.1) of the *Limitations Act* would provide RJL immunity from Kostic’s proposed contribution claim under the *TFA*, section 6 of the *Limitations Act* must also be considered because Kostic seeks to add a claim to the existing 0601 Action.

[360] Section 6(1) provides that, notwithstanding the expiration of the relevant limitation period, when a claim is added “to a proceeding previously commenced”, either through a new pleading or an amendment to pleadings, the defendant is not entitled to immunity from liability in respect of the added claim if the requirements of subsection (2), (3) or (4) are satisfied.

[361] In each of subsections (2), (3) or (4) of section 6, the added claim must “be related to the conduct, transaction or events described in the original pleading in the proceeding”: ***Arcelormittal*** at para 390. In this case, a claim by Kostic under the *TFA* would, in my view, by definition given the nature of a *TFA* claim, be related to the same conduct, transaction or events described in Piikani Nation’s amended statement of claim.

[362] With respect to which of the subsections of section 6 applies, the Alberta Law Reform Institute, *Limitations (Report No. 55)*, 1989 CanLIIDocs 83 [ALRI Report] is a helpful guide to interpreting the *Limitations Act*, but it cannot affect the plain meaning of the words of the statute: ***Dean v Kociniak***, 2001 ABQB 412 at para 41; ***Condominium Corporation No 9813678 v Statesman Corporation***, 2008 ABQB 495 at para 27 [***Statesman***].

[363] The ALRI Report suggests that the purpose of section 6(2) of the *Limitations Act* is to address situations where there is no change of a party in the existing proceeding (ALRI Report, page 82 at paras 9-10; ***Statesman*** at paras 22-29); the purpose of section 6(3) is to correct the description of a claimant or to “add a true stranger to the proceeding as a claimant” (ALRI Report, p 83 at para 16); and the purpose of section 6(4) is to correct the description of a defendant or to “add a true stranger as a defendant”.

[364] Courts have recognized that there is some uncertainty as to whether an added claim brought by third party claim (or, therefore by analogy, by NTCD), falls under subsection (2), (3) or (4) (and in many cases it may not make a difference): ***Arcelormittal*** at para 404; ***Shah*** at para 13. In my view, there can be no hard and fast rule; it will depend on the circumstances. This is supported

by the fact that, in some cases, a third party claim has met the requirements of subsection (2) (*Statesman* at para 28; *Gjertsen v Johnston*, 2008 ABQB 491 at para 66) and, in other cases, subsection (4) has been applied (*Kapeluck v Two Girls And A Hammer Inc*, 2022 ABQB 467 at paras 17-25; *Salmon v Mama Panda Ltd*, 2021 ABQB 569 at paras 29-37; *Elliot Turbomachinery* at paras 50-54).

[365] In my view, the proposed NTCD against RJJ falls under section 6(2) of the *Limitations Act*.

[366] Section 6(2) of the *Limitations Act* operates in two scenarios: (1) when the added claim is made by a defendant in the proceeding against a claimant in the proceeding; or (2) when the added claim does not add or substitute a claimant or defendant, or change the capacity in which a claimant sues or a defendant is sued. The first scenario does not apply here, because, while the proposed NTCD would be by Kostic (a defendant in the proceeding), RJJ is not a claimant in the proceeding. However, in my view, the second scenario, under section 6(2)(b), is engaged. The proposed NTCD does not add a claimant or defendant or change the capacity of a claimant/defendant: Kostic is already a claimant in the 0601 Action (by virtue of her existing third party claims) and RJJ is already a defendant.

[367] As noted, the NTCD would be related to the “same conduct, transaction or events described in the original pleading”. Accordingly, if the late proposed NTCD is permitted, in my view RJJ would not be entitled to immunity from Kostic by virtue of section 6 of the *Limitations Act*. But, of course, this is only one factor and does not end the analysis.

7. Prejudice

[368] There are several potential areas of prejudice raised by the parties, which I address below: (1) prejudice to RJJ; (2) impact on the 0601 Action or the other parties in the 0601 Action; and (3) prejudice to Kostic if she is not granted permission to file the late NTCD.

a. Potential Prejudice To RJJ

[369] RJJ argues that it will have to shift its focus in the 0601 Action, but has not otherwise provided positive evidence of prejudice.

[370] However, in cases of very long delay, proof of prejudice becomes less important, or may not even need to be materially considered if the delay cannot be justified, because prejudice may be “more or less” presumed, assumed or inferred: *Breen* at para 47; *H2 Canmore* at para 29; *Battistella* at para 26; *Flight* at para 13; *Bow Valley Insurance* at para 24; *Dean* at para 66. In a different Case Managed Action not involving Kostic, ACJ Rooke found that there was “obvious prejudice” where a party sought to add a third party claim 5 years after the statement of defence: *2020 ABQB 89* at para 32.

[371] I find these cases applicable here. Prejudice to RJJ can be inferred given the lengthy delay and Kostic’s lack of excuse.

b. Impact on the 0601 Action

[372] The Court may consider prejudice to the plaintiff or other parties to the action, including whether the proposed new claim can appropriately be tried together with the action or whether it may cause delay and increased costs in the existing action: *H2 Canmore* at para 23; *Kwik-Kopy Printing Canada Corp v Skoreiko*, 2002 ABQB 835 (Master) at paras 47-74; *Primrose Drilling Ventures Ltd v Hitchner*, 2005 ABQB 84 at paras 14-17; *Dean* at paras 66-75.

[373] RJL will already be defending its conduct as asserted in the amended statement of claim. A late NTCD under the *TFA/CNA* would involve the very same conduct of RJL. However, it is conceivable it may require further records production, and would almost certainly result in questioning under Part 5 of the *Rules*, as between Kostic and RJL, that would not otherwise be engaged because they are not presently adverse in interest. This may cause risk to the trial date presently scheduled for March 2027. Further, adversity between Kostic and RJL would complicate the conduct of, and would likely lengthen, the trial.

c. Potential Prejudice to Kostic

[374] As per *H2 Canmore* at para 33:

[33] [...] the assessment of prejudice includes the relative prejudice to the proposed third party plaintiff (for example, the lost opportunity to seek contribution and indemnity), but that cannot be used to trump the other factors: *Battistella* at paras 15, 24; *Bodnar* at para 9; [*Condominium Plan No 7920829 v Academy Contractors Inc*, 2017 ABQB 583 (Master)] at para 12; *TRDMS* at para 28; [*Hein v Barrett*, 2008 ABQB 548] at para 18; [*2020 ABQB 89*] at para 38; [*Nova Pole International Inc v Trans America Group Ltd*, 2010 ABQB 4] at paras 41-44; *Statesman* at para 86; *Dean* at paras 72-76.

[375] In considering the potential prejudice to Kostic, I have considered the potential merits of Kostic's proposed NTCD against RJL. I note that the merits threshold in assessing a late third party claim "is low and has been described as only requiring that the claim have an "air of reality", or a triable issue alleging facts that, if proved, would constitute a viable action: *H2 Canmore* at para 24; *Arcelormittal* at para 500; *LaBell v Jo (R)*, 1990 ABCA 147 at para 4; *Kapeluck* at para 27; *Van Troyen Holdings Ltd v Hunt Oil Company of Canada Inc*, 2005 ABQB 626 at para 11; *Primrose Drilling* at para 28; *Statesman* at paras 46-49.

[376] I proceed on the basis that Kostic's potential claim against RJL would meet the low merits threshold and, to that extent, Kostic will suffer potential prejudice if she cannot pursue it. However, I also proceed on the basis that the prejudice would largely be the result of Kostic's own inexcusable delay based on her strategic choices or lack of due diligence. Given that Kostic appears to have been prepared to proceed to trial in 2021 without this claim undermines any claim to prejudice if she is not permitted to include it now.

8. Conclusion

[377] On balance, I find that Kostic cannot overcome her lack of a reasonable excuse for her extreme delay in formally seeking to file a NTCD against RJL in accordance with the *Rules*, or the Court's directions and processes. In my view, it would not be consistent with the *Rules*, and would

constitute an abuse of the court's process, or would bring the administration of justice into disrepute, to allow her to bring her extremely late claim in these circumstances. Further, as noted, infusing a claim now would also likely cause prejudice to RJL or delay and confuse the 0601 Action trial process.

[378] Kostic made strategic choices, including to proceed in a linear, incremental, litigation-by-installment fashion, by which she did not bring forward claims she knew she wanted to make for years. And, further, she failed to exercise reasonable due diligence. The consequences of her decisions and inaction are that she is not now entitled to bring the claim. Any prejudice she may suffer if she cannot bring a claim at this late stage, is either the result of her own conduct or is significantly outweighed by the other factors.

[379] Kostic is not granted approval to file the late NTCD against RJL.

C. Should The November 2025 Fiats be Granted?

1. The November 2025 Fiat Requests Should not be Deferred

[380] Kostic argues that the November 2025 Fiat Requests should be deferred for these reasons: (1) the passage of time; (2) the emergence of new evidence and issues; (3) factual inaccuracies presented by other parties since the November 2025 Fiat Requests, to which she asserts she has not been given an opportunity to reply; and (4) further amendments to her requests will be required once my reserved decisions are delivered. It appears that Kostic wants to see the results of my decisions, and then provide new fiat requests.

[381] Piikani Nation agrees with Kostic's decision to defer her request for immediate indemnity/save harmless relief, for several reasons. It otherwise disagrees with Kostic's request to defer the November 2025 Fiat Requests, because: (1) Kostic has provided no reasonable basis to do so, and this will simply invite another round of expensive fiat requests; and (2) the November 2025 Fiat Requests relate to proposed amendments to pleadings in the 0601 Action which must be resolved immediately given the impending trial.

[382] RJL disagrees with much of Kostic's June 23, 2026 letter. It argues that there is no basis to defer determination of the November 2025 Fiat Requests. RJL does not oppose if Kostic seeks to withdraw her request for immediate indemnity/save harmless relief, but does oppose if she intends to defer the November 2025 Fiat Requests to be resubmitted for determination before trial.

[383] I find that it is not appropriate to defer my determination of the November 2025 Fiat Requests, for several reasons.

[384] First, as outlined earlier, significant effort by the Court and the parties went into the November 2025 Fiat Requests process. I have made it clear that there may be cost consequences associated with fiat requests. It would be unfair to the other parties to allow Kostic to defer the November 2025 Fiat Requests now, on the basis that she is simply going to amend them and resubmit them later. This will cause additional expense to all parties and the waste of judicial resources.

[385] Second, while several months have passed since the November 2025 Fiat Requests, I am not satisfied that anything new has emerged since they were submitted that warrants deferral. I am

able to decide these fiat requests based on my knowledge of the court proceedings as CMJ, the November 2025 Fiat Requests, and the related fiat responses and fiat replies. If fiat requests are routinely deferred based on the progress of, or steps taken in, the Case Manage Actions, this would completely undermine the progress of the Case Managed Actions. I am not satisfied there is any prejudice to Kostic to process the fiat requests she has made.

[386] Third, the November 2025 Fiat Requests involve the addition of claims and pleadings in the 0601 Action, which is currently scheduled for trial in 2027. I agree with Piikani Nation that proposed applications to add claims by new or amend pleadings must be addressed as soon as possible.

[387] Fourth, at times in the February 2026 Applications, Kostic incorporated her positions and arguments made in the November 2025 Fiat Requests. It would be unfair or inconsistent to permit her to do that and also seek to have them deferred at the same time.¹⁰⁶

[388] Fifth, deferring the November 2025 Fiat Requests so that Kostic can see the results of my reserved decisions and then amend and provide new fiat requests, in my view, would perpetuate inefficient litigation-by-installment that is inconsistent with the *Rules*. Parties are expected to put their best case forward and not constantly amend it as matters evolve.

[389] Finally, Kostic's decision to defer her request for immediate indemnity/save harmless relief, on the basis that it will all be determined in the upcoming trial, in my view exposes what appears to be a misunderstanding or mischaracterization of what will be determined at the March 2027 trial. In the circumstances, it will be of benefit to all parties for me to decide the November 2025 Fiat Requests to assist in clarifying the real issues in dispute, consistent with rules 1.2(2)(a) and 4.14(a).

[390] I turn now to the November 2025 Fiat Requests.

2. The November 2025 Fiat Requests are Non-Compliant

[391] The Fiat Process set out in Endorsement #4 (and amended in Endorsement #45 at para 94 to add a right of reply) is not complex: **2025 ABKB 481** at para 11. Further, as noted above, in Endorsements #45 and 46, I provided significant further directions to assist Kostic if her fiat request involved a request to file amended pleadings, new pleadings within an action, a new action, or was seeking immediate indemnity/save harmless relief.

[392] Simply put, a Fiat Request requires a short Fiat Letter, a Proposed Application (which would include any proposed amended or new pleading), and a proposed supporting affidavit. There are clear page limits, but I have made it clear the parties have the opportunity to request more pages.

¹⁰⁶ See, for example, Kostic's January 30, 2026 brief filed in support of her application to amend the statement of claim in Kostic-CIBC Trust Action #2 at para 2: "Similarly, her pending Fiat to Third party claims and counterclaim against Piikani Chief and Council equally apply."

[393] Despite being given extensions, and despite my clear directions, the November 2025 Fiat Requests do not comply with the Fiat Process or Endorsements #45 or 46.

[394] As noted above, the November 2025 Fiat Requests were provided by email on November 28, 2025, attaching 11 PDFs. Kostic's cover email references "several Fiat Requests, authorities Part 1-3, affidavit sworn and one unsworn and in draft form". On December 2, 2025, Kostic provided another PDF document (which I will call **Claims Summary**).¹⁰⁷ It is almost impossible to make sense of exactly how the PDFs are intended to fit together. Kostic appears to incorrectly believe it is up to the other parties or the Court to decipher her highly irregular and sometimes non-sensical filings. This is not a matter of form over substance. It is a matter of irregular form obfuscating substance in a way that undermines and frustrates the Fiat Process.

[395] The PDFs include five different and repetitive documents which might possibly be characterized as a Fiat Letter or an argument,¹⁰⁸ a document containing a list or summary of legal authorities,¹⁰⁹ a document titled "Application" (which I will call the **Proposed Third Party/Counterclaim Application**),¹¹⁰ an application document titled "4th Amedned [sic] Statement of Defence of Liliana Kostic" (which I will call the **Proposed ASOD Application**),¹¹¹ a document titled "Third Party Notice" (which I will call the **Proposed Third Party Notice**)¹¹² (which may attempt to incorporate by reference the Claims Summary), an unfiled November 27, 2025 affidavit (**November 2025 Affidavit**) sworn by Kostic, and a second draft unsworn affidavit.

[396] The Fiat Process is for obtaining permission to file "Approved Applications". The November 2025 Fiat Requests contemplate only two proposed applications in the 0601 Action. Therefore, Kostic was limited to two Fiat Letters of 3 pages each. Kostic's various letters and attached documents well exceeded this and were confusing and unnecessarily repetitive. They are non-compliant.

[397] Kostic's provision of 12 separate disconnected PDFs did not comply with the requirement that "Fiat Requests must be stand-alone documents and clearly referenced as a fiat request. They shall not be coupled together with other filings ... or other correspondence".

[398] As noted above, on December 12, 2025, Kostic provided her reply to the responses to the November 2025 Fiat Requests. These were also not compliant with my directions, because a Fiat Reply is "not an opportunity to simply repeat an earlier position".¹¹³ Kostic provided 7 additional PDFs totalling 449 pages. These included a proposed NTCD (**Proposed NTCD #2**), that was not the same as the one Kostic included in her NTCD Application addressed earlier, two largely

¹⁰⁷ THIRD-PARTY CLAIMS AGAINST PIIKANI CHIEF AND COUNCIL, RJL AND AIG with indiv claims.pdf".

¹⁰⁸ These PDFs are: "agency Fiat CMJ no 1.pdf" (**Fiat Letter 1**); "final Fiat by Lili Kostic in support of her application to file counterclaims third-party claims and notices 2025-11-27.pdf" (**Fiat Letter 2**); "fiat-Executive Summary – Agency.pdf" (**Fiat Letter 3**); "fiat TPC short rjl and aig.pdf" (**Fiat Letter 4**); "Fiat against Piikani Chief and Council to Honourable CMJ Marion.pdf" (**Fiat Letter 5**).

¹⁰⁹ "KOSTIC FIATS – PART I-III-RELEVANT AUTHORITIES – 2025-11-27.pdf".

¹¹⁰ "final draft THIRD – TPC APPLICATION---.pdf".

¹¹¹ "FINAL DRAFT KOSTIC Amendment application-2025-11-27.pdf".

¹¹² "motion Third-Party (TPN) is filed pursuant to Rule 13.6 of the Alberta Rules of Court and is directed against American Home AIG and the Piikani Chief and Coun.pdf".

¹¹³ Endorsement #45 at para 94.

duplicate replies (with different attachments) related to her request for immediate indemnity/save harmless relief (which I will call **Fiat Reply 1**¹¹⁴ and **Fiat Reply 2**¹¹⁵), two largely duplicative replies (with different attachments) related to her request to file the Proposed ASOD Application (which I will call **Fiat Reply 3**¹¹⁶ and **Fiat Reply 4**¹¹⁷), and a reply apparently related to Kostic's Proposed Third Party/Counterclaim Application (which I will call **Fiat Reply 5**).¹¹⁸ Kostic also provided a bundle of case law or other authority.¹¹⁹

[399] With respect to the Proposed ASOD Application, Kostic failed to provide her proposed amended statement of defence. The Proposed ASOD Application document states that a "very advanced draft" is attached, but nothing is attached. In Kostic's sworn affidavit, she attached a table of contents for an amended statement of defence (which she referred to as an "advanced draft"), nothing more. Her second, unsworn affidavit purports to attach it as Exhibit A, but it is not attached. Kostic advised in her correspondence that her intention was to file a completely new statement of defence. Non-compliance is fatal to the Proposed ASOD Application.

[400] With respect to the counterclaim aspect of the Proposed Third Party/Counterclaim Application, no proposed counterclaim was provided, which is fatal to a proposed application to approve the late filing of a counterclaim.

[401] With respect to the third party claim aspect of the Proposed Third Party/Counterclaim Application, the proposed Third Party Notice does not include all the parties covered by the proposed application (in particular, RJL).

[402] In the circumstances, I refuse the November 2025 Fiat Requests due to material non-compliance with the Fiat Process and the Court's directions.

3. Deciphering the Relief Kostic Appears to Seek

[403] It is imperative that the pleadings and parties are finalized in the 0601 Action immediately, in light of the upcoming trial in 2027. As illustrated by Kostic's attempt to defer the November 2025 Fiat Requests, I am concerned that Kostic will continue to try to submit fiat requests (with a high likelihood of non-compliance) seeking to add or amend claims or pleadings that will continue to distract the parties and the Court, cause wasteful expenses, confusion, and increased risk of further delay.

[404] In these unique circumstances, and given the timing of trial, I have exercised my discretion to attempt to decipher the *substance* of what claims or amendments Kostic appears to be seeking in the November 2025 Fiat Requests (and in her deferral request), together with the responding parties' positions in response thereto, to avoid injustice, unfairness or further delay. I have then assessed whether, had the November 2025 Fiat Requests been compliant, I would likely have

¹¹⁴ "REPLY ARGUMENTS IN SUPPORT OF LILIANA KOSTIC'S APPLICATION FOR EQUITABLE AGENCY SAVE HARMLESS ENFORCEMENT PREPAYMENT- 0601-13081.pdf".

¹¹⁵ "Reply to Agency from Kostic with appendix a attached -2025-12-12.pdf".

¹¹⁶ "Reply jointly to PN, Piikani C and C, CIBC et al, RJL, AIG Pertaining to the 4th Amended Defence of Lili Kostic.pdf".

¹¹⁷ "Reply to Piikani- Piikani C and C-CIBC-CIBC Trust-CIBC- RJL-AIG re amendments -Kostic 2025-12-12.pdf".

¹¹⁸ "reply TPC- Notices jointly PN et al, CIBC et al, RJL- AIG – 2025-12-12.pdf".

¹¹⁹ "Kostic replies case law and Appendix A and Tabs 1-5-.pdf".

exercised my discretion to grant Kostic permission to proceed with any of the proposed relief, having regard to the factors set out in **2025 ABKB 481** at para 16.

[405] Based on my review of the November 2025 Fiat Requests and Kostic's other correspondence to me, both before and after the November 2025 Fiat Requests, Kostic appears to seek:

- (a) immediate "prepayment and exoneration" and/or immediate indemnity/save harmless relief, against various parties;
- (b) to file a new counterclaim or third party claim against Piikani Nation, and its current Chief and Council. In summary, these claims can be fairly characterized as including:
 - (i) a claim for indemnity/save harmless relief,¹²⁰ potentially based on the Business Agreement,¹²¹ the Account Agreements, equitable agency,¹²² employment principles, or fiduciary duty principles;¹²³
 - (ii) claims for conspiracy,¹²⁴ interference with contractual relations,¹²⁵ bad faith,¹²⁶ abuse of process (including for filing claims without property authority and continuing to claim fraud against Kostic),¹²⁷ breach of fiduciary duty,¹²⁸ breach of a duty to Kostic to protect her from claims arising from her professional responsibilities,¹²⁹ malicious prosecution,¹³⁰ wrongful termination,¹³¹ defamation,¹³² or breach of privacy;¹³³

¹²⁰ Proposed ASOD Application at para 38; Proposed Third Party Notice at paras 2, 18(a), 35; Fiat Letter 1 at paras 9, 16, 18; Fiat Letter 3 at para 1; Fiat Letter 4 at para 5; Fiat Letter 5 at para 9; Proposed Third Party/Counterclaim Application at paras 1, 3, 11, 14, 16, 21; Claims Summary at paras 10, 12-13, 39, 55, 59(g); Proposed NTCD #2.

¹²¹ Claims Summary at para 49.

¹²² Claims Summary at para 49.

¹²³ Claims Summary at para 49.

¹²⁴ Proposed ASOD Application at para 39; Fiat Letter 1 at para 19; Fiat Letter 2 at paras 7, 13; Fiat Letter 4 at para 8; Proposed Third Party/Counterclaim Application at para 17; Claims Summary at para 16.

¹²⁵ Proposed ASOD Application at para 40; Fiat Letter 1 at para 20; Proposed Third Party/Counterclaim Application at para 18; Claims Summary at paras 18-19; Claims Summary at para 40.

¹²⁶ Proposed ASOD Application at para 37; Fiat Letter 1 at para 21; Fiat Letter 2 at para 14; Fiat Letter 3 at para 12; Fiat Letter 4 at para 15; Proposed Third Party/Counterclaim Application at para 13; Claims Summary at paras 20, 22, 53, 56, 60.

¹²⁷ Proposed ASOD Application at para 14; Fiat Letter 2 at para 11; Fiat Letter 4 at para 12; Claims Summary at para 46.

¹²⁸ Fiat Letter 1 at para 19; Claims Summary at paras 49, 57.

¹²⁹ Proposed Third Party/Counterclaim Application at para 12.

¹³⁰ Fiat Reply 4 at para 12.

¹³¹ Proposed Third Party Notice at para 18(d).

¹³² Claims Summary at para 40.

¹³³ Claims Summary at para 40.

- (iii) claims for litigation misconduct in the 0601 Action (or other Case Managed Actions);¹³⁴
 - (iv) injunctive relief;¹³⁵
 - (v) an order for set-off after assessing **Wallace**-type¹³⁶ damages in the 0801 Action, as well as against her claims in Kostic-CIBC Trust Action #1 and Kostic-CIBC Trust Action #2;¹³⁷
 - (vi) claims or declarations that any losses suffered by Piikani Nation were caused by it and its Chief and Council, not Kostic;¹³⁸ and
 - (vii) claims (**Settlement Mishandling Claims**) for mishandling the Settlement trust funds (and related claims to trace “missing assets”),¹³⁹ the particulars of which appear to include diverting annual income, federal government grant misuse, investment and heritage account misappropriation, misuse of a “FEIA Account”, misuse of funds of the Piikani Land Holding Corporation, diversion of funds for legal fees, grazing settlement forfeiture, unlawful diversion of trust property, and allegations of improper liquidity management;¹⁴⁰
- (c) to file a late NTCD or third party claim against RJL, or to include RJL as a defendant by counterclaim. These claims against RJL can be fairly characterized as including claims for indemnity/save harmless relief,¹⁴¹ breach of contract,¹⁴² breach of duty to protect Kostic,¹⁴³ conspiracy,¹⁴⁴ interference with contractual obligations/relations,¹⁴⁵ bad faith,¹⁴⁶ breach of fiduciary duty,¹⁴⁷ and litigation

¹³⁴ Proposed ASOD Application at paras 14-23; Fiat Letter 2 at para 5; Fiat Letter 4 at paras 3-4; Fiat Letter 5 at para 7; Proposed Third Party/Counterclaim Application at para 9; Claims Summary at paras 8-9, 50-52.

¹³⁵ Claims Summary at para 59(i).

¹³⁶ A reference to **Wallace v United Grain Growers Ltd**, 1997 CanLII 332 (SCC).

¹³⁷ Proposed Third Party Notice at para 16.

¹³⁸ Proposed ASOD Application at para 24; Fiat Letter 1 at para 14-15; Fiat Letter 5 at para 8.

¹³⁹ Fiat Reply 4 at para 1.

¹⁴⁰ Proposed ASOD Application at paras 24-34; Fiat Letter 1 at paras 14-15; Fiat Letter 5 at para 8.

¹⁴¹ Proposed ASOD Application at para 38; Proposed Third Party Notice at para 5; Fiat Letter 1 at paras 9, 16, 18; Fiat Letter 3 at para 1; Fiat Letter 4 at para 5; Fiat Letter 5 at para 9; Proposed Third Party/Counterclaim Application at paras 1, 3, 11, 14, 16, 21; Claims Summary at paras 10, 12-13, 25-30, 36(a); Proposed NTCD #2.

¹⁴² Fiat Letter 2 at para 13; Fiat Letter 4 at para 14; Claims Summary at para 16.

¹⁴³ Proposed ASOD Application at para 36; Proposed Third Party/Counterclaim Application at para 12; Claims Summary at para 4.

¹⁴⁴ Proposed ASOD Application at para 39; Fiat Letter 1 at para 19; Fiat Letter 2 at para 13; Fiat Letter 4 at para 8; Proposed Third Party/Counterclaim Application at para 17; Claims Summary at para 16.

¹⁴⁵ Proposed ASOD Application at para 39; Fiat Letter 1 at para 20; Proposed Third Party/Counterclaim Application at para 18; Claims Summary at paras 18-19.

¹⁴⁶ Proposed ASOD Application at para 37; Fiat Letter 1 at para 21; Fiat Letter 2 at paras 13, 14; Fiat Letter 3 at para 12; Fiat Letter 4 at para 15; Proposed Third Party/Counterclaim Application at para 13; Claims Summary at paras 20, 22, 36(d), 38.

¹⁴⁷ Fiat Letter 1 at para 19; Claims Summary at para 16.

misconduct.¹⁴⁸ Kostic also appears to seek an order compelling RJL to provide full disclosure of all relevant documents and communications;¹⁴⁹

- (d) to amend the third party notices already filed against CIBC Trust and CWM, or other CIBC entities or insurers,¹⁵⁰ or to add them as defendants by counterclaim. It is often difficult to discern which CIBC entity is referenced in the November 2025 Fiat Requests. Kostic appears to seek to add new claims, or amend existing claims¹⁵¹ against one or some of them for indemnity/save harmless relief,¹⁵² breach of duty to protect Kostic,¹⁵³ bad faith,¹⁵⁴ conspiracy,¹⁵⁵ interference with contractual relations,¹⁵⁶ and litigation misconduct;¹⁵⁷
- (e) to add AIG into the 0601 Action, intending to make claims for breach and specific performance of its insurance contract for failing to provide Kostic conflict free and fair defence and indemnification,¹⁵⁸ breach of a duty to protect Kostic from claims arising from her lawful employment or professional obligations,¹⁵⁹ conspiracy,¹⁶⁰ interference with contractual relations,¹⁶¹ bad faith,¹⁶² malicious prosecution,¹⁶³ and litigation misconduct;¹⁶⁴
- (f) to file a new late third party claim in the 0601 Action against Thom, Miller Thomson, SVR, Docken or others. These claims appear to be based on alleged breaches of duty to protect Kostic “from claims arising from her professional responsibilities, leading to unnecessary legal challenges and associated burdens”¹⁶⁵ and interference with contractual relations;¹⁶⁶

¹⁴⁸ Proposed Third Party/Counterclaim Application at para 9(c); Claims Summary at paras 31-35.

¹⁴⁹ Claims Summary at para 36(c).

¹⁵⁰ Proposed Third Party/Counterclaim Application at paras 1, 3; Proposed NTCD #2.

¹⁵¹ Proposed ASOD Application at para 6; Proposed NTCD #2 at para 2.5.

¹⁵² Proposed Third Party Notice at para 5; Proposed ASOD Application at para 38; Fiat Letter 1 at paras 16, 18; Fiat Letter 3 at para 1; Proposed Third Party/Counterclaim Application at paras 1, 3, 11, 14, 16, 21; Proposed NTCD #2.

¹⁵³ Proposed Third Party/Counterclaim Application at para 12.

¹⁵⁴ Fiat Letter 1 at para 21; Fiat Letter 2 at para 14; Fiat Letter 3 at para 12; Proposed Third Party/Counterclaim Application at para 13; Claims Summary at paras 20, 22.

¹⁵⁵ Proposed ASOD Application at para 39; Fiat Letter 4 at para 8; Proposed Third Party/Counterclaim Application at para 17.

¹⁵⁶ Fiat Letter 1 at para 20; Proposed Third Party/Counterclaim Application at para 18; Claims Summary at paras 18-19

¹⁵⁷ Proposed Third Party/Counterclaim Application at para 9(c).

¹⁵⁸ Proposed Third Party Notice at paras 6, 18(b); Fiat Letter 1 at para 9, 16; Fiat Letter 2 at para 6, 12; Fiat Letter 4 at paras 6-7, 13; Fiat Letter 5 at para 9; Proposed Third Party/Counterclaim Application at para 1; Claims Summary at paras 11, 14, 62-73, 76, 80-83; Proposed NTCD #2; Claims Summary at para 77.

¹⁵⁹ Fiat Letter 1 at para 16; Proposed Third Party/Counterclaim Application at para 12; Claims Summary at para 5.

¹⁶⁰ Proposed ASOD Application at para 39; Proposed Third Party/Counterclaim Application at para 17.

¹⁶¹ Proposed ASOD Application at para 41; Proposed Third Party/Counterclaim Application at para 18; Claims Summary at paras 18-19.

¹⁶² Fiat Letter 1 at para 21; Fiat Letter 2 at para 14; Fiat Letter 3 at para 12; Fiat Letter 4 at para 15; Proposed Third Party/Counterclaim Application at para 13; Claims Summary at paras 20-22, 69, 76.

¹⁶³ Fiat Letter 2 at para 8; Fiat Letter 4 at para 9.

¹⁶⁴ Proposed Third Party/Counterclaim Application at para 9(c).

¹⁶⁵ Proposed Third Party/Counterclaim Application at para 12.

¹⁶⁶ Proposed Third Party/Counterclaim Application at para 18.

- (g) to further amend her amended statement of defence in the 0601 Action;
- (h) to seek an advanced costs order and/or public interest costs award (**PICA**) from various private parties;¹⁶⁷ and
- (i) to allow claims to proceed as separate actions, if necessary.¹⁶⁸

[406] I turn now to assess whether Kostic would have been granted a fiat to pursue any of this relief, had she provided a compliant fiat request.

4. Request to Apply for Immediate Indemnity/Save Harmless Relief

[407] In the November 2025 Fiat Requests, Kostic sought to file applications that would provide her immediate relief, in the form of indemnity and save harmless relief.¹⁶⁹ In her June 23, 2026 correspondence, however, Kostic confirmed her decision to “defer all save harmless requests to the trial”.

[408] Kostic’s fiat request to file applications seeking immediate indemnity/save harmless relief was hopeless and would not have been granted. Kostic’s decision to defer the proposed relief is of no moment. At best, it “dodged a bullet”.

[409] This Court and the Court of Appeal have made it clear numerous times that any indemnity and save harmless relief must be properly pleaded, is not something that can be dealt with summarily in these matters, and would have to be resolved at or after a trial: **2017 ABQB 140** at paras 21-24, aff’d **2018 ABCA 234**; **2017 ABQB 681** aff’d **2018 ABCA 234** at paras 65-75; **2018 ABCA 355** at para 44; **2019 ABCA 29**; **2019 ABCA 173** at para 19; **2023 ABKB 710** at paras 71-84; **2024 ABKB 137** at paras 107, 141-142; **2024 ABKB 671** at para 170; **2025 ABKB 493** at paras 125-137 aff’d **2026 ABCA 135** at paras 11-13; **2025 ABCA 296** at paras 8, 12-15.

[410] I note that, based on her June 23 and 25, 2026 correspondence to me, Kostic appears to be of the belief that it is *her choice* what will be decided at trial, or that her decision to defer the relief sought means it *will be* addressed at trial. For example, she stated:

I also stated that considering the courts [sic] position to not hear on the merits and given this was never considered by any court or Justice, my request for Equitable Agency Save Harmless to be heard- I now defer. I do so despite the plethora of law that I provided that supports immediate prepayment. I have decided to defer even that relief/request to the trial of Piikani -to be heard with the Duty to Defend save Harmless against clients CIBC trust as Ordered by the court.

[411] To be clear, the claims that will be dealt with at trials are the issues raised in the pleadings in the actions that are the subject of the trial, because the court cannot grant a remedy for a cause of action that has not been pleaded: **2018 ABCA 234** at para 70; **2017 ABQB 140** at paras 21-24; **Quikjets Inc v Q Private Jets Limited Partnership**, 2015 ABQB 702 at para 25; **Dow**

¹⁶⁷ Fiat Letter 1 at para 10.

¹⁶⁸ Fiat Letter 2 at para 18; Fiat Letter 4 at para 21.

¹⁶⁹ See, for example, Fiat Letter 3 and Proposed Third Party/Counterclaim Application at para 14.

Agrosciences Canada Inc v Philom Bios Inc, 2007 ABCA 122 at para 62; *Brown v Sprague*, 2025 ABCA 41 at paras 88-89; *Mazepa v Embree*, 2014 ABCA 438 at para 8.

[412] Previous court statements cannot be taken out of context or interpreted to mean something that they do not, based on matters that were not before the Court at the time. In particular, I do not interpret **2024 ABKB 137**, or the Court of Appeal's decision in **2025 ABCA 296** at paras 12-15 or **2026 ABCA 135** at paras 11-13, when referencing that indemnity or save harmless claims require a trial or shall be dealt with at a trial, to have expanded the pleadings in any Case Managed Actions. Those cases were addressing Kostic's request for immediate indemnity or save harmless relief.

[413] Importantly, in **2024 ABKB 137** at para 110, CMJ Graesser noted (emphasis added):

[110] There is undoubtedly a discretion on the part of a judge to allow a re-argument to prevent miscarriages of justice, but that does not arise here. **At trial, Ms. Kostic will be able to raise any arguments that are properly disclosed in or arise from the pleadings.** There is no determination that she is not entitled to indemnification or save harmless relief or defence costs. Those issues will ultimately be determined with a proper factual foundation following evidence and submissions at trial.

[414] Therefore, while Kostic is correct that her choice to defer her request to pursue immediate indemnity/save harmless relief means that this relief will not be dealt with at this time, that does not necessarily mean it will be dealt with at any particular trial. Whether such a claim is determined in a trial will depend on the pleadings in the subject action. In particular, indemnity/save harmless relief will only be dealt with at the 2027 trial if it is part of a claim made in or arising from the pleadings in the 0601 Action or Kostic CIBC-Trust Action #1.

5. Legal Framework for Filing Late Third Party Claims, Late Counterclaims and Late Amendments to Pleadings

[415] As noted above, I summarized the framework for extending time to permit late-filed third party claims in **H2 Canmore** at paras 31-34 and incorporate it again here. The key factors are: (1) delay length; (2) the reason for the delay; and (3) prejudice, although this is not a strict or sequential test: **H2 Canmore** at para 20. Other factors (whether embedded within these factors or considered separately) include the merits of the proposed claim, and the stage, status and pace of the underlying action: **H2 Canmore** at paras 23-25.

[416] A counterclaim must be filed and served on the defendant-by-counterclaim within the same time period as the plaintiff-by-counterclaim must file its statement of defence: rule 3.57(c). As it does for late third-party claims, and late NTCDs (addressed earlier), the court has broad discretion to extend the time period under rule 13.5(2) and (3) to allow a late counterclaim; **ConocoPhillips Canada Resources Corp v Shell Canada Limited**, 2024 ABCA 307 at para 49; **Fiell v Integral Wealth Securities Limited**, 2016 ABQB 69 at para 4.

[417] The filing of a late counterclaim is treated like an amended pleading: **ConocoPhillips** at para 49.

[418] In **Astolfi v Stone Creek Resorts Inc**, 2023 ABKB 416 at paras 40-42, I summarized general pleadings amendment principles based on several Court of Appeal decisions. In this

context, and having regard to more recent Court of Appeal decisions, the principles can be summarized as follows:

- (a) there is a strong presumption in favour of allowing amendments to pleadings after the close of pleadings: **ConocoPhillips** at para 49; **Kosteckyj v Paramount Resources Ltd**, 2022 ABCA 230 at paras 12, 41; **Pace v Economical Mutual Insurance**, 2021 ABCA 1 at para 3; **AARC Society v Canadian Broadcasting Corporation**, 2019 ABCA 125 at para 85; **Dupuis v Zibell**, 2026 ABCA 218 at para 14. Courts should exercise their discretion to allow the amendment unless the non-moving party demonstrates an exception or compelling reason not to: **Kosteckyj** at paras 12, 41; **Pace** at para 3, 53; **AARC Society** at paras 6, 53; **Dupuis** at para 14;
- (b) courts must consider two distinct interests when assessing the merits of an amendment application: (1) the impact the proposed amendment will have on the non-moving party's litigation interests; and (2) the public interest in the resolution of litigation as quickly as reasonably possible without the expenditure of more public and private resources than is reasonably necessary: **AARC Society** at paras 57–62; and
- (c) what contemplates a compelling reason not to permit an amendment after the close of pleadings includes, non-exhaustively:
 - (i) the proposed amendment will significantly harm a legitimate litigation interest of the non-moving party; for example the proposed amendment will cause significant or serious prejudice to a legitimate litigation interest of the non-moving party that cannot adequately be abridged by an ameliorative costs order or any other order: **Dupuis** at para 14; **Pace** at paras 4–5; **Kosteckyj** at para 41; **AARC Society** at para 64; **Attila Dogan Construction and Installation Co Inc v AMEC Americas Limited**, 2014 ABCA 74 at para 25; **Remington Development Corporation v Enmax Power Corporation**, 2022 ABCA 71 at para 33; **ConocoPhillips** at para 49; **Thomson v Thomson**, 2024 ABCA 293 at para 28;
 - (ii) the proposed amendment advances a claim that cannot possibly succeed or is hopeless because it would have been struck if it were in the original pleading; the test is whether it is plain and obvious that there is no triable issue: **Swaleh v Lloyd**, 2020 ABCA 18 at para 13; **Remington** at paras 35–37; **Eon Energy Ltd v Ferrybank Resources Ltd**, 2018 ABCA 243 at para 18; **ConocoPhillips** at para 49; **Dupuis** at para 14; **Thomson** at para 28. This incorporates considerations like those under rule 3.68. For example, proposed amendments will be hopeless if they:
 - (A) disclose no cause of action or reasonable claim, or no reasonable defence to a claim: **Pace** at para 6; **AARC Society** at para 10; **Attila Dogan** at para 27; rule 3.68(2)(b);
 - (B) raise matters over which the court has no jurisdiction: rule 3.68(2)(a);

- (C) are frivolous, irrelevant or improper: rule 3.68(2)(c);
 - (D) constitute an abuse of process: rule 3.68(2)(d); and
 - (E) have an irregularity that is so prejudicial to the claim that it is sufficient to defeat the claim; rule 3.68(2)(e);
- (iii) the proposed amendment is not supported by a required threshold level of evidence, based on the nature of the proposed amendment: **Balm v 3512061 Canada Ltd**, 2003 ABCA 98 at paras 25–29; **Attila Dogan** at para 24; **Barker v Budget Rent-A-Car of Edmonton Ltd**, 2012 ABCA 76 at para 12; **Brewin v Magyar**, 2022 ABKB 729 at paras 32–33; **Club Industrial Trailers v Paramount Structures**, 2022 ABQB 34 at para 25; **Thomson** at para 28;
 - (iv) unless permitted by statute, the proposed amendment seeks to add a new party or a new cause of action after the expiry of a limitation period and is statute-barred or subject to a “rock-solid” limitations defence: **Dupuis** at para 14; **ConocoPhillips** at para 49; **Attila Dogan** at para 25; **Pace** at para 6; **AARC Society** at para 65; **Thomson** at para 28;
 - (v) if the failure to plead earlier, or the proposed amendment itself, involves bad faith: **Dupuis** at para 14; **ConocoPhillips** at para 49; **Pace** at paras 7, 54; **AARC Society** at paras 11, 66; **Attila Dogan** at para 25; **Thomson** at para 28; and
 - (vi) the proposed amendment will contravene the public interest in promoting expeditious and economical dispute resolution: **Pace** at paras 4, 7, 51–52; **Kosteckyj** at para 41; **AARC Society** at paras 59–62.

[419] I now turn to assess various matters Kostic raises in the November 2025 Fiat Requests.

6. Requests to Add New Claims With New or Amended Pleadings

a. Extreme Delay and Other Factors

[420] The vast majority of the relief sought in the November 2025 Fiat Requests seek to add new causes of action or claims by virtue of new or amended pleadings in the 0601 Action. For much of the same reasons, and based on the same procedural context, as set out above with respect to the late proposed NTCD against RJL, Kostic’s requests to add new claims at this very late stage are the product of Kostic’s unprecedented, extreme, unjustified and unreasonable delay, in many cases from the time the 0601 Action was first commenced in 2006, until at least Kostic’s October 2023 Fiat Request (excepting the brief periods noted above in 2017 and 2020).

[421] In summary, on the record before me, it is clear there were numerous points through the lengthy cycle of the 0601 Action, where Kostic, had she been acting reasonably and diligently, had sufficient knowledge such that she could have filed (or sought a fiat to file) most (if not all) of the claims she now seeks permission to add to the 0601 Action. This includes, without limitation:

- (a) in 2007, before or reasonably after the pleadings closed (arguably, other than as against RJL due to their joint representation by Thom/Miller Thomson);
- (b) anytime after 2007, when initial records disclosure and Part 5 questioning for discovery occurred (arguably, other than as against RJL due to their joint representation by Thom/Miller Thomson until 2013);
- (c) in 2013, when Kostic had independent counsel following the termination of Thom/Miller Thomson;
- (d) in 2015, after Kostic (with the assistance of Zinner) improperly attempted to file the 2015 Amended Third Party Notice, which she then agreed to withdraw and was struck. The 2015 Amended Third Party Notice sought to add some of the same parties she now seeks to bring into the 0601 Action (including CIBC and Piikani Nation's Council), and raises some of the very same claims she now seeks to add to the 0601 Action (including Settlement Mishandling Claims, defamation, litigation misconduct in Case Managed Actions, conspiracy between CIBC/CIBC Trust and Piikani Nation to make the SWIFT Scheme allegations against Kostic, and to terminate Kostic, to cover up their own conduct);¹⁷⁰
- (e) in early 2016, after CWM finally filed its defence to Kostic's third party notice against CWM, after Kostic filed her reply thereto, or after Kostic filed Kostic-CIBC Trust Action #1 against CIBC, CWM and CIBC Trust seeking indemnity/save harmless relief;
- (f) in fall 2016, when the parties and the Court were working on a revised litigation plan, Kostic was contemplating many applications including proposed "fresh" actions and a counterclaim, and the Court approved the 2016 Litigation Plan (which contemplated trial in 2017);
- (g) anytime after the 2016 Litigation Plan was approved, as it contemplated and provided a process for future applications. Kostic did unsuccessfully attempt to bring some claims, including some of the very claims contemplated now, but they were not allowed (for example, claims against Piikani Nation for malicious prosecution, indemnity save/harmless relief, and claims against CIBC Trust and CIBC for "aiding and abetting" Piikani Nation's termination of the Business Agreement (**2017 ABQB 140**));
- (h) in early 2018, after CMJ Nation expressly notified Kostic that if she "wishes now to file a counterclaim, she will have to bring whatever application may be necessary...": cited in **2018 ABCA 358** at para 3;
- (i) in spring 2018, after Piikani Nation filed its amended statement of claim, which precipitated a flurry of updated pleadings. Kostic was represented by independent counsel at that time, and this would have been an opportune time for all parties to make sure all claims they wanted to make were on the table. At that time, Kostic did add an indemnity/save harmless claim against CIBC Trust pursuant to the

¹⁷⁰ 2015 Amended Third Party Notice at paras 81-82.

Account Agreements. She also (without permission) added Piikani Nation as a third party defendant, and (again) attempted to add Piikani Nation's Chief and Council as third party defendants based on an asserted indemnity obligation (as noted above, the third party claim against Piikani Nation and its Chief and Council were later struck by CMJ Nation);

- (j) in fall 2018, when the parties and CMJ Nation were working on the 2018 Litigation Plan which contemplated trial in 2019;
- (k) in 2019, or anytime thereafter after further questioning. By at least 2019, Kostic clearly knew she wanted to make, and had the 2019 Draft Pleadings ready to make, many (if not all) of the very claims she now seeks to bring. Kostic raised the concept of additional claims with CMJ Nation, attempted to have their approval shoe-horned into a process between Kostic and the Court Officer, and CMJ Nation expressly advised Kostic and ordered that Kostic would have to submit a fiat request to add claims or parties to the 0601 Action. I note that:
 - (i) the 2019 Draft NTCD raises, as against RJL (and arguably others) indemnity/save harmless relief; 0601 Action litigation misconduct; defamation; abuse of process; malicious prosecution; conspiracy; interference with business relations; inducing breach of contract; breach of duty of good faith; misappropriation or mismanagement of Settlement trust funds and knowing assistance/knowing receipt; and negligence; and
 - (ii) the 2019 Draft Counterclaim contemplated being against Piikani Nation, its Chief and Council, RJL, and CWM, but also asserted claims against others including AIG. The 2019 Draft Counterclaim raises indemnity/save harmless relief; conspiracy; litigation misconduct; abuse of process; Settlement Mishandling Claims; negligence; breach of duty of honesty and fair dealings; breach of fiduciary duty; malicious prosecution; negligent misrepresentation; invasion of privacy; interference with business relations; and tort of unlawful means;
- (l) in 2021, after CMJ Nation exercised her discretion to cancel the trial because the parties were not ready for trial;
- (m) in 2023, after Kostic provided the October 2023 Fiat Request, but failed to include her proposed new or amended 2023 Draft Pleadings; and
- (n) in the process since I became CMJ. As noted above, in Endorsement #7, I provided Kostic a deadline of May 30, 2025 to provide a fiat request to amend her defence or to add third party claims to the 0601 Action, which Kostic ignored. Then, after her later filings caused chaos and confusion, I gave her another chance, then extended the deadline for that, and then she still failed to provide a compliant fiat request.

[422] In my view, Kostic's inexcusable and unreasonable delay in bringing these matters forward is extreme. In this context, Kostic's strategic decisions or lack of due diligence is sufficient reason alone not to permit any of the proposed relief apparently contemplated in the November 2025 Fiat

Requests to proceed, because there is an “element of bad faith” in the delay, it would be an abuse of process, and it would likely cause significant delay in the 0601 Action. This would involve, in many cases, new pleadings and records disclosure, and some new parties. It would put a March 2027 trial (or a trial any reasonable time thereafter) at risk, thereby causing other interested parties’ prejudice. This would contravene the foundational *Rules*, the public interest in promoting expeditious and economical dispute resolution, and the principal that all litigants must be accountable for their litigation decisions or inaction.

[423] On the other hand, to the extent permission is not granted, Kostic will largely have been the cause of any prejudice she may suffer. In my view, the fact that she advocated forcefully against delaying the trial in 2021 dilutes any asserted prejudice to her if relief is not granted.

[424] Notwithstanding this finding, I nonetheless go on to consider briefly the new or amended claims Kostic appears to seek to add to the 0601 Action, as there are additional reasons why they should not be permitted (and would not likely have been permitted had she provided a compliant fiat request), or there are other factors that warrant discussion.

b. Request to File a Late Third Party Claim Against Piikani Nation

[425] Kostic’s request to add Piikani Nation as a third party defendant is hopeless. Piikani Nation is the plaintiff. Any proper claim against it could have been, and should have been, advanced by virtue of Kostic’s defence (to reduce Piikani Nation’s claim), or by a properly and timely filed counterclaim (in particular if the claim is greater than Piikani Nation’s claim): *CT & Associates Engineering Inc v Renneberg Walker Engineering Associates Ltd*, 2012 ABCA 331 at para 15, and *O’Connor Associates Environmental Inc v MEC OP LLC*, 2014 ABCA 140 at paras 26, 30, both citing *Adams v Thompson*, 1987 CanLII 2590 (BC CA).

c. Request to File Late Claims Against AIG

[426] In addition to the reasons set out above, Kostic’s request to add AIG into the 0601 Action is hopeless for other reasons.

[427] The claims Kostic seeks to make against AIG in the 0601 Action are largely duplicative of her claims against AIG in her counterclaim in the AIG Action, for the alleged breach of AIG’s obligation to contractually indemnify/save harmless Kostic in respect of the 0601 Action. It would be an abuse of process for Kostic to duplicate those claims into the 0601 Action.

[428] To the extent that there are claims against AIG that Kostic wants to bring in the 0601 Action that are not duplicated in the AIG Action, there are other problems.

[429] Any third party claim by Kostic against AIG for contribution and indemnity under the *TFA*, based on the record before me, would be hopeless and without merit. Such a claim requires that the third-party tortfeasor be liable for the same damage suffered by the plaintiff as a condition precedent to the defendant tortfeasor advancing a *TFA* claim against a third party tortfeasor: *Arsopi* at paras 33-34, citing *Howalta Electrical Services Inc v CDI Career Development Institutes Ltd*, 2011 ABCA 234 at para 8 and *Arcelormittal CA* at para 34. There is no indication that AIG had anything to do with Piikani Nation’s losses asserted in its amended statement of claim.

[430] Any other third party claim or counterclaim by Kostic that brings AIG into the 0601 Action, and that is not duplicative of the claims made in the AIG Action, is likely barred by limitations problems, at least to some extent. AIG (or its predecessor) was involved in Kostic’s defence of the 0601 Action in 2006 until it made its decision to take the position that Kostic was no longer entitled to the benefit of AIG’s insurance policy in May 2017.

[431] To be saved by section 6 of the *Limitations Act*, the claims against AIG added to the 0601 Action would have to be “related to the conduct, transaction or events described in the original pleading”: *Limitations Act*, sections 6(2), (3), (4); **Arcelormittal** at para 390. I described the relatedness requirement in **Astolfi** at paras 110-111:

[110] Whether a new claim is related to the same conduct, transaction or events requires an assessment of the whole factual and legal context: **Homersham v New Urban (Ramsay Exchange) GP Ltd**, 2023 ABCA 86 at para 13; **DeSoto Resources Limited v Encana Corporation**, 2010 ABCA 110 at para 8.

[111] No firm line can be drawn between an unrelated new claim and what has previously been pleaded; too general a definition would give the plaintiff an unlimited ability to add statute-barred claims: **DeSoto** at para 8. However, the “relatedness” of the new claims to the conduct, transaction or events described in the original pleading has been described as being broadly defined and having a low threshold: [**Shah**] at para 14; **Domenic Construction Ltd v Primewest Capital Corp**, 2019 ABQB 840 at para 46, rev’d in part 2020 ABCA 265; **Kang v MB**, 2019 ABQB 246 at para 56. But it is not unlimited; there must be more than only a cursory or superficial connection: **513320 Alberta Inc v St Jean**, 2015 ABQB 826 at paras 34-35; **Stirling v Encana Corporation**, 2019 ABQB 182 at para 40.

[112] One test is whether the new claim would require a new set of conduct, transactions and events to be proven at trial, or whether the documents or other evidence needed to prove the new allegations differ significantly from those required to prove the originally pleaded facts: **Desoto** at para 10.

[432] In my view, any limitation barred claims against AIG would not be saved by section 6 of the *Limitations Act*, because these claims Kostic wants to add against AIG would not be sufficiently related to the conduct, transaction or events described in the original pleading in the 0601 Action. They relate to post-0601 Action conduct of AIG and Kostic in the context of the 0601 Action litigation, in particular in 2016 and 2017. The issues in the 0601 Action primarily relate to a much earlier timeframe and have nothing to do with AIG.

[433] Further, and in any event, there are appropriate limits to joinder of claims, whether by way of third party claim or counterclaim.

[434] In the case of third party claims, the complexity, expense and time demands of the proposed added action can justify that it be tried on its own, as a matter of proportionality and efficiency, to allow the economic and timely advancement of the original action: **O’Connor Associates** at para 26. Third party notices that run the risk of “derailing the main proceeding” may not be allowed: **JD1H1 v Budden**, 2020 NUCA 3 at para 21; **Alberta (Treasury Branches) v Jackson**, 1988

CanLII 3814 (ABQB) at paras 82-84; *Edmonton (City) v Dale Chandler Kennedy Partnership*, 1987 ABCA 6 at para 3.

[435] In the case of adding late counterclaims, they may not be permitted where they would raise complex new issues into an already well-advanced action scheduled for long trial: *Hartum (Estate of) v Loewen*, 2007 ABCA 15 at para 14; *Regency Innovations Inc v Wehbe*, 2026 ABKB 537 at paras 30-38; *Eon Energy Ltd* at paras 21, 24.

[436] In my view, the proposed claims against AIG should not be added to the 0601 Action. It would add significant complexity to the 0601 Action. It would, in effect, require joinder or stay of the AIG Action to avoid abuse of process, and there is no such application sought. As noted above, it would add issues that post-date the relevant timeframe in the 0601 Action. This would require new pleadings and discovery, and would certainly delay the trial of the 0601 Action.

[437] For all these reasons, a proposed application to add late claims against AIG as a party to the 0601 Action would not have been successful even if a compliant fiat request had been provided.

d. Request to File Late Claims Against SVR, Thom/Miller Thomson and Docken

[438] For the same reasons as for AIG, in my view it would not be appropriate for Kostic to be permitted to apply to add late claims against SVR, Thom/Miller Thomson and Docken in the 0601 Action. It is difficult to ascertain if Kostic actually seeks to add claims against these parties in the 0601 Action based on the materials she provided, but they are each referenced in the Proposed Third Party/Counterclaim Application (albeit not as respondents). None of them responded to Kostic's November 2025 Fiat Requests.

[439] The reference to these parties in the Proposed Third Party/Counterclaim Application is to their alleged breach of a duty to "protect Kostic from claims arising from her professional responsibilities, leading to unnecessary challenges and associated burdens".¹⁷¹ This can fairly be interpreted as being a claim against these lawyers for alleged breach of duty to Kostic as her legal counsel in matters related to the 0601 Action or, perhaps, the 0801 Action or other Case Managed Actions.¹⁷²

[440] With respect to SVR, Kostic has already commenced the SVR Action against SVR, which she reasonably chose to commence as a separate action rather than as a claim in the 0601 Action. It would be an abuse of process to allow Kostic to claim against SVR for the same thing in two different actions. Further, if claims against SVR for breach of its professional obligations to Kostic were added to the 0601 Action, it would require some or all of the SVR Action to be stayed to avoid duplicative proceedings, which is not relief that has been sought. It would also be prejudicial to SVR, as it already has commenced a security for costs application in the SVR Action, which is the subject of separate Reasons. Allowing Kostic to apply to add the same claims to the 0601 Action would improperly avoid the consequences of security for costs.

¹⁷¹ Proposed Third Party/Counterclaim Application at para 12.

¹⁷² As against Thom and Docken, there is a further reference to "interference with contractual relations", namely her employment and insurance policies: Proposed Third Party/Counterclaim Application at para 17.

[441] With respect to Thom/Miller Thomson, Kostic commenced the Kostic-Thom Action against them, and reasonably chose to do so by way of a separate action rather than as a claim in the 0601 Action. It would be an abuse of process to allow Kostic to duplicate claims against them in two different proceedings. Further, if claims against Thom/Miller Thomson for breach of its professional obligations to Kostic were added to the 0601 Action, it would require some or all of the Kostic-Thom Action to be stayed to avoid duplicative proceedings, which is not relief that has been sought. The Kostic-Thom Action is scheduled, with the consent of Kostic, for a liability trial in September 2026 and it would be expensive and prejudicial to derail that process now.

[442] With respect to Docken, to my knowledge Kostic has never filed a stand-alone action against Docken for professional negligence. However, in 2021 Kostic included Docken as a defendant by counterclaim in the BridgePoint Action. I summarized those claims in **2026 ABKB 236** at para 10(a), which included a claim that Docken “breached professional duties and obligations to her, and was negligent in the conduct of the 0801 Action”, which appears similar to the claims she references in the Proposed Third Party/Counterclaim. Docken’s application to strike Kostic’s claim against Docken in the BridgePoint Action is currently under reserve. It would be duplicative and abusive to allow the same claims to be made in two different actions. To allow the claims to be made here may require a stay of Kostic’s third party claim in the BridgePoint Action, which is not relief she has sought.

[443] Further, if any proposed claims Kostic wishes to raise against SVR, Thom/Miller Thomson and Docken are different than those in the SVR Action, the Kostic-Thom Action, or the BridgePoint Action respectively, then any limitation problems would not likely be saved by section 6 of the *Limitations Act* because the claims are not sufficiently related to the conduct, transaction or events described in the original pleading in the 0601 Action. They all relate to post-0601 Action conduct of Kostic’s legal counsel in the context of the 0601 Action or the related 0801 Action, for various time periods after the 0601 Action was filed. The issues in the 0601 Action primarily relate to an earlier timeframe and have nothing to do with SVR, Thom/Miller Thomson or Docken.

[444] Finally, adding claims against any one of SVR, Thom/Miller Thomson or Docken in the 0601 Action would add significant complexity to the 0601 Action. It would add new parties, new pleadings, and new discovery processes, which would delay the trial in the 0601 Action which Kostic agreed should be set down for trial. It would also lead to significant inefficiency and add complexity into the trial, given that it would, in effect, involve a trial about pre-0601 Action matters between Piikani Nation and Kostic/RJL, on the one hand, and Kostic and some of her various legal advisors in the conduct of that very same action, on the other. Complex privilege issues would very likely arise, with a realistic chance of prejudice to Kostic’s defence in the 0601 Action, among other likely problems. In my view, a trial about a party’s litigation conduct in an action cannot normally be reasonably joined with the trial of the underlying action; certainly, it cannot reasonably be done in this case.

[445] For all these reasons, a proposed application to add late claims against SVR, Thom/Miller Thomson, or Docken, as a party to the 0601 Action would not have been successful even if a compliant fiat request had been provided.

e. Request to Add Late, New or Amended Indemnity/Save Harmless Pleadings in the 0601 Action

[446] Whether by late, new or amended third party claims, or a late, new counterclaim against Piikani Nation and others, Kostic appears to seek to file new or amended claims for non-immediate indemnity/save harmless relief so that those matters are included in the 2027 trial of the 0601 Action and Kostic-CIBC Trust #1 Action.

[447] I already earlier addressed the different, insurance-contract based indemnity claims against AIG, which are properly part of the AIG Action.

[448] However, although it is difficult to discern exactly what Kostic seeks to do, her potential pleadings appear to involve indemnity/save harmless relief against others under several possible contractual, legal or equitable theories or claims, in particular based on one or more of (1) the Business Agreement; (2) the Account Agreements; (3) agency or disclosed principal principles; or (4) under employment principles.

[449] As noted above, Kostic appears to seek to make or amend these claims against Piikani Nation, Chief and Council, RJL, and possibly CIBC-related parties. I address each in turn.

i. Piikani Nation

[450] As noted above, a third party claim against Piikani Nation is hopeless, so here I consider whether an application to add a late counterclaim against Piikani Nation for non-immediate indemnity/save harmless relief is hopeless. I find that it is hopeless, for the reasons noted above, and the further reasons set out below.

[451] First, a request to file a late counterclaim in the 0601 Action to advance a claim by Kostic for indemnity/save harmless relief against Piikani Nation, based on the Business Agreement, is hopeless.

[452] In **2017 ABQB 140**, Kostic filed an application seeking a declaration that Piikani Nation was obligated to fully indemnify her and save her harmless, presumably including based on the Business Agreement. The request was denied by ACJ Rooke, because Kostic had not pleaded that relief in the 0601 Action. He also held that it would be an abuse of process as a “late attempt to apply the facts and law to the Nation in the same manner as to the CIBC Trust”: **2017 ABQB 140** at para 24.

[453] Therefore, Kostic has been aware for many years that, if she wanted to make this indemnity/save harmless claim, she needed to plead it; but also, that the claim was late and abusive. Nevertheless, Kostic again sought interlocutory relief, which was denied again (**2017 ABQB 681**), and this was upheld on appeal. The Court of Appeal again put Kostic on notice that the failure to plead the relief was fatal to her application: **2018 ABCA 234** at para 70.

[454] Further, the Court of Appeal also confirmed that Kostic’s indemnity/save harmless claim under the Business Agreement had no merit and that the CMJ properly did not provide permission to proceed with it: **2018 ABCA 234** at paras 71-73.

[455] On March 7, 2022, despite there being no pleading against Piikani Nation in the BridgePoint Action, Kostic filed another application for, among other things, indemnity and save harmless relief against Piikani Nation (as well as RJL, CWM, and CIBC Trust) and then withdrew that relief before it was scheduled to be heard in May 2026.

[456] Then, later, in February 2023, and still without a proper pleading, Kostic *again* (and, in my view, abusively) sought interlocutory relief for indemnity under the Business Agreement before CMJ Graesser, but then “decided not to pursue indemnification against the Nation at this time, reserving her right to do so at a later date”: **2024 ABKB 137** at para 58. It appears that Kostic abandoned this relief on the expectation that her indemnity/save harmless claim against Piikani Nation under the Business Agreement (or, arguably, under any possible employment principles stemming from the Business Agreement) would be addressed as part of her claim in the 0801 Action (in which she seeks damages for wrongful termination of the Business Agreement). I have already decided that the 0601 Action shall proceed to trial without the 0801 Action because the 0801 Action is not ready for trial.

[457] In these circumstances, it would be an abuse of process to allow Kostic to seek to add a counterclaim to plead this relief now, so many years later and given the previous court decisions.

[458] Next, a request to file a late counterclaim in the 0601 Action to advance a claim by Kostic for indemnity/save harmless relief against Piikani Nation, based on the Account Agreements, is also hopeless.

[459] In April 2018, without permission, Kostic filed her amended third party notice against CIBC Trust in the 0601 Action, but also added Piikani Nation and its Chief and Council as third party defendants. However, as noted above, Piikani Nation was struck as a party by CMJ Nation on September 24, 2018. In doing so, CMJ Nation reminded Kostic that, if she wanted to add parties to the 0601 Action pleadings, she would have to follow the fiat protocol.

[460] On June 29, 2018, in **2018 ABCA 234**, the Court of Appeal addressed this claim. Kostic argued that Piikani Nation had been held, by ACJ Rooke in **2017 ABQB 747**, to be a joint account holder and was, like CIBC Trust, liable to pay her defence costs or save her harmless. The Court of Appeal noted that **2017 ABQB 747** was under appeal and the Court of Appeal did not decide Kostic’s argument. It noted that this “issue will have to be brought back, if necessary, once the appeal from [**2017 ABQB 747**] is decided”: **2018 ABCA 234** at para 74. The appeal of **2017 ABQB 747** was decided in later in 2018 in **2018 ABCA 355**.

[461] In my view, CMJ Nation and the Court of Appeal put Kostic on notice that she required a pleading, and the Court of Appeal put Kostic on notice that she would have to bring the matter back after the appeal result in **2018 ABCA 355**. As noted above, although she may have raised her desire to do so, she never provided a compliant fiat request until at least October 2023, or later.

[462] Further, and in any event, Kostic’s 2018 amended amended amended statement of defence in the 0601 Action already pleads indemnity/save harmless relief against Piikani Nation pursuant to the Account Agreements. Further, and in any event, if Kostic has a contractual right to full indemnity for her defence costs, she may also assert that as a matter of costs after trial. Adding a counterclaim for this same relief at this late stage would increase costs, complicate the trial, and be duplicative.

[463] With respect to a request to file a late counterclaim in the 0601 Action to advance a claim by Kostic for indemnity/save harmless relief against Piikani Nation, based on the employment principles, this is also hopeless. Kostic attempted to make such a claim in her 2018 amended third party notice against CIBC Trust, by adding Piikani Nation as a third party defendant and claiming indemnity/save harmless relief against Piikani Nation (and others) as “her employer”. As noted above, this was later struck and it would be abusive to allow Kostic to try to add it in again so many years later.

[464] In any event, nowhere is it suggested or pleaded that Kostic was Piikani Nation’s employee. Kostic’s evidence is that she was first an employee of CWM’s predecessor Wood Gundy, and then RJL. The Business Agreement references Kostic as an “Investment Advisor” or “Broker”. Kostic pleads that her employer was CWM.¹⁷³ There are numerous instances of Kostic referring to herself as an employee of CWM and then RJL. Further, in allowing Kostic to amend her claim in the 0801 Action to claim **Wallace**-type damages, CMJ Graesser clearly proceeded on the basis that Kostic was not Piikani Nation’s employee, and that **Wallace**-type relief in this context was unique because it was normally found in “employment situations” or “pure employment” situations: **2024 ABKB 40** at para 18; **2024 ABKB 671** at paras 136-144. Any claim to indemnity/save harmless relief against Piikani Nation based on employment principles, beyond a **Wallace**-type damages claim in the 0801 Action, has no factual foundation or merit, and is hopeless.

[465] For the above reasons, a proposed application to add a late counterclaim against Piikani Nation for indemnity/save harmless relief would not have been successful even if a compliant fiat request had been provided.

ii. Piikani Nation Chief and Council

[466] Kostic has attempted on more than one occasion to add third party claims against Piikani Nation’s Chief and Council (past and present), without permission. In both instances, in 2015 and 2018, these were struck. In both instances, Kostic was reminded that she had to follow the fiat protocol. It would be abusive to permit her to now purport to follow the protocol, at this late stage.

[467] In any event, Kostic has not provided any evidence to support that an indemnity/save harmless claim against the Chief and Council has any merit whatsoever. To the extent that these are separate legal persons from Piikani Nation, she has provided no evidence of any contract, agency or employment relationship with them that could possibly give rise to an indemnity/save harmless claim.

[468] Further, an indemnity/save harmless third party claim against Chief and Council would add new parties, new pleadings, and new discovery processes, which would delay the scheduled trial in the 0601 Action.

[469] For the above reasons, a proposed application to add a late third party claim against Piikani Nation’s Chief and Council for indemnity/save harmless relief would not have been successful even if a compliant fiat request had been provided.

¹⁷³ Amended Third Party Notice of the Defendant Liliana Kostic against CWM filed April 12, 2018 at paras 1,2, 6(a), and 16.

iii. RJL

[470] Based on Kostic's materials and arguments made in her application to file the late NTCD against RJL, it became obvious that what she really was seeking in that process was to file a late third party notice that went well beyond a contribution and indemnity claim under the *TFA* or *CNA*, and included indemnity/save harmless relief against RJL on several bases.

[471] My reasons above for not permitting Kostic to file a late NTCD apply equally to any request she might now make to apply to file a late third party claim against RJL as disclosed in the November 2025 Fiat Requests. I adopt my reasons from above. Kostic has had many years to advance any such claim and did not reasonably do so. I would not have granted Kostic permission to pursue the late third party claim against RJL for indemnity/save harmless relief even had she provided a compliant fiat request.

iv. CIBC Parties

[472] It is unclear what, if any, proposed new indemnity/save harmless claim Kostic may be seeking to make against CIBC parties. She has already pleaded indemnity/save harmless relief against CIBC Trust and CWM under the Account Agreements¹⁷⁴ and against CWM as her employer.¹⁷⁵ Those claims will be part of the 0601 Action trial.

[473] It appears Kostic may wish to also plead indemnity against these CIBC parties based on separate agency principles. However, to the extent that this is something different than what she has already pleaded, this is a concept Kostic had already developed, at the latest, in 2019, including in the 2019 Draft Pleadings, and they were never included in a compliant fiat request despite CMJ Nation's directions to her as noted above. Further, had Kostic followed my directions and provided a compliant fiat request by May 2025, rather than a non-compliant Fiat Request six months later, I could have dealt with that fiat request in **2025 ABKB 493** and its potential impact on the trial of the 0601 Action could have been minimized.

[474] With respect to CIBC, or CIBC's insurer, Kostic has not provided any explanation or evidence to support an indemnity/save harmless claim against them.

[475] I would not have granted Kostic permission to pursue further new claims against CIBC parties for indemnity/save harmless relief even had she provided a compliant fiat request.

f. Request to Add a Late Malicious Prosecution Claim

[476] Kostic's attempts to bring a malicious prosecution action, or to amend or bring claims to defend against asserted malicious prosecution, have been rejected previously: **2017 ABQB 140** at paras 16-20; **2024 ABKB 137** at para 21. It would be abusive to allow Kostic to try again now. This is especially because the claim is hopeless (for the reasons set out in **2017 ABQB 140**) or, at the very least, premature (because the 0601 Action has not been terminated in Kostic's favour,

¹⁷⁴ Amended Third Party Notice of the Defendant Liliana Kostic against CIBC Trust filed April 12, 2018 at paras 20 and subparagraph (e) of the Relief Sought; Amended Third Party Notice of the Defendant Liliana Kostic against CWM filed April 12, 2018 at paras 13 and subparagraph (c) of the Relief Sought.

¹⁷⁵ Amended Third Party Notice of the Defendant Liliana Kostic against CWM filed April 12, 2018 at paras 2, 16.

which is a required element of malicious prosecution, as set out in *Miazga v Kvello Estate*, 2009 SCC 51 at para 3). Further, it would cause delay and prejudice to the 0601 Action.

[477] I would not have given Kostic permission to apply to add a malicious prosecution claim had she provided a compliant fiat request.

g. Request to Add Late Defamation Claims

[478] Kostic frequently references defamation in the context of the Case Managed Actions. Any request to add such a claim to the 0601 Action is problematic. Some non-exhaustive reasons follow.

[479] First, Kostic has already attempted to add defamation, or claims to defend against defamation, into the 0601 Action, and it would be abusive to allow her to try again now: **2024 ABKB 671** at paras 148-152.

[480] Second, in addition to the potential limitations barrier noted by CMJ Graesser in **2024 ABKB 671**, it appears that many (if not all) of the alleged defamatory statements against Kostic have been made in the context of the 0601 Action pleadings or court processes, and are likely subject to absolute privilege: **2026 ABKB 374** at paras 39-40, citing *Tuharsky v O'Chiese First Nation*, 2025 ABCA 267 at paras 21-28. Such claims would be hopeless.

[481] Third, to the extent that there is other alleged defamation outside the Case Managed Actions that is not protected by absolute privilege, I have previously decided that Kostic does not require court permission to pursue new defamation claims against Piikani Nation for its extra-litigation conduct: **2025 ABKB 508** at para 62.

[482] Fourth, allowing defamation claims to be added to the 0601 Action at this stage would delay the trial and increase expenses incurred in the 0601 Action.

[483] I would not have given Kostic permission to apply to add a defamation claim had she provided a compliant fiat request.

h. Request to Add a Late Set-Off Claim

[484] Rule 3.59 permits set-off claims to be pleaded by way of counterclaim or within a statement of defence: *Acden Environment Limited Partnership v Environmental Metal Works Ltd*, 2021 ABQB 160 at para 92; *Toronto Dominion Bank v Whitford*, 2020 ABQB 802 at para 67; *Tesla Exploration Ltd v Encana Corporation*, 2018 ABQB 286 at para 18; *Carroll v ATCO Electric Ltd*, 2017 ABQB 426 at paras 10, 13. Kostic did not file a counterclaim. Her defence does not plead set-off, but a specific pleading of set-off is not necessarily required: *Carroll* at para 13; **1400467 Alberta Ltd v Adderley**, 2015 ABQB 656 at para 9.

[485] In my view, an application to add the set-off claims, referenced by Kostic in the November 2025 Fiat Requests, into the 0601 Action would be hopeless.

[486] As against Piikani Nation, Kostic appears to seek to plead set-off of her claim in the 0801 Action against any liability she may have against Piikani Nation in the 0601 Action. This is something that could have been done, many years ago, by way of defence or counterclaim against

Piikani Nation. Doing so early in the litigation would have been appropriate and consistent with the *Rules*. Instead, Kostic filed the 0801 Action as a separate action.

[487] To have any practical or useful effect at this stage, a potential set-off claim amendment related to Kostic's claim in the 0801 Action would require Kostic's claims in the 0801 Action to be tried at the same time as Piikani Nation's claims against Kostic in the 0601 Action. But it would be hopeless and abusive to allow Kostic to apply to seek joinder at this stage. Piikani Nation sought to consolidate the 0601 Action and the 0801 Action in 2012, Kostic opposed it, and ACJ Rooke dismissed the application.¹⁷⁶ In 2025, I set deadlines to advise of intended joinder applications or to provide fiat requests for joinder applications.¹⁷⁷ Although Kostic referenced joining the 0601 Action and the 0801 Action in some correspondence,¹⁷⁸ she never provided a fiat request to do so. Further, through her counsel, Kostic agreed that joining the 0601 Action and the 0801 Action "doesn't work at this stage and that it is preferred they proceed independently at this time",¹⁷⁹ and, later, that the 0801 Action was not ready for trial and should not be set down for trial with the 0601 Action.¹⁸⁰

[488] Further, allowing a set-off claim related to Kostic's claims made in the 0801 Action to be added as a defence to the 0601 Action at this late stage would derail and delay the currently scheduled trial so that the 0801 Action could catch up and be trial ready. That would prejudice all parties to the 0601 Action.

[489] With respect to a set-off claim related to CIBC parties, the 0601 Action does not include any claim by any CIBC party against Kostic, so set-off could not apply as between Kostic and those parties. An application for that relief in the 0601 Action would be hopeless.

[490] In all the circumstances, I would not have granted Kostic permission to apply to add the referenced set-off claim into the 0601 Action had she provided a compliant fiat request. If, for some reason, the 0601 Action trial does not proceed, and if under different circumstances in the future it becomes appropriate to join the 0601 Action and the 0801 Action,¹⁸¹ a fiat request to plead set-off of Kostic's claims in the 0801 Action as a defence to the 0601 Action can be revisited.

i. Request to Add Late Mishandling Settlement Funds Claims

[491] In addition to the reasons set out above related to Kostic's extreme delay and litigation choices, an application to add a late Mishandling Settlement Fund claim against Piikani Nation in the 0601 Action is hopeless for other reasons.

[492] Similar claims were included in the September 2015 Amended Third Party Notice, and then were withdrawn and struck. It would be abusive to allow Kostic to try to again seek to add those claims to the 0601 Action.

[493] In any event, Kostic, as a private individual, does not have standing to advance any such claim against Piikani Nation as she is neither a beneficiary under nor trustee of the Trust. Kostic's

¹⁷⁶ Endorsement #7 at para 36 and Schedule C.

¹⁷⁷ Endorsement #4 at para 36; Endorsement #36 at para 4.

¹⁷⁸ See, for example, Endorsement #4 at Schedule R.

¹⁷⁹ Endorsement #7 at paras 36-37.

¹⁸⁰ Endorsement #43 at para 7.

¹⁸¹ In Endorsement #7 at para 38, I left open the possible future joinder of the two actions.

attempt to advance such claims is similar to “busybody” litigation (where a litigant attempts to enforce alleged rights of third parties), which can be a serious form of abusive litigation: *Unrau v National Dental Examining Board*, 2019 ABQB 283 at para 664; *Jonsson v Lymer*, 2020 ABCA 167 at para 40 (first bullet).

[494] As per *2020 ABQB 89* at paras 18-19 (in which McMullen sought to do something similar) (emphasis added):

[18] Aside from the first relief sought in the TPC, for indemnity, to which I will return, **McMullen has no standing** to bring this proposed TPC.

[19] **In essence, the relief he seeks is on behalf of the Trust. However, he is not a member of the Nation or the Trust, and thus, any relief to which the Nation or the Trust might be entitled is not his right; it is the right of others. To refer to limitations’ issues, as I shall shortly, he has no personal “injury”.** This was admitted by his then Counsel at a case management hearing on May 31, 2013, in this Action 326 (and others), where his Counsel said: “... the money is being intercepted when it’s supposed to go up to the trust. None of this money goes to Mr. McMullen. I just want to be absolutely clear. The money goes up to the CIBC Trust....” This is consistent with the sworn statement of McMullen in his May 31, 2013 affidavit in Action 1201-15897. Moreover, and I believe not out of context, McMullen asserts at p 25 of his submissions (para 28(b)) that “McMullen has never sued anyone in his personal capacity”. He even repeats this in the last paragraph of his 38-page Reply: “The real issue in dispute is the missing funds due the Trust....” **Thus, as debated in previous Nation decisions, he is indeed, as repeated in his Reply herein (p 10), a “busybody”, with no legitimate legal standing, or right, to seek the relief he claims.**

[495] ACJ Rooke’s decision was upheld in *2020 ABCA 366*, at paras 64-65. Without more, the reasoning applies to equally to any proposed Settlement Mishandling Claim Kostic may seek to personally advance.

[496] In any event, even if Kostic had standing to advance such claims, many of her claims are likely long-ago barred under the *Limitations Act* and would not have sufficient relatedness to the original pleading in the 0601 Action to be saved under section 6 of the *Limitations Act*.

[497] Further, these claims would expand the issues in the 0601 Action exponentially and abusively based on no or insufficient evidence, would guarantee a trial adjournment and massive delay to the progress of the 0601 Action, and would cause prejudice to the other parties to the 0601 Action. The 0601 Action would be completely overwhelmed by a new action of much greater scope, that would likely be vigorously defended.

[498] There is no prejudice to Kostic. To the extent that Piikani Nation’s alleged mishandling of the Settlement Trust funds can reasonably be construed as the cause of the losses Piikani Nation alleges against Kostic, the issue of causation is already engaged in the pleadings in the 0601

Action. Kostic has already pleaded that any loss suffered by Piikani Nation was the result of Piikani Nation's misappropriation of Trust monies.¹⁸²

[499] In all the circumstances, I would not have given Kostic permission to apply to add or amend Settlement Mishandling Claims in the 0601 Action even had she provided a compliant fiat request.

j. Request to Add Late Fiduciary Duty Claims

[500] As noted above, Kostic references a breach of fiduciary duty against Piikani Nation and its Council, CIBC Trust, CWM, CIBC and RJL. An application to add these claims is hopeless for the reasons set out above, and for the additional reasons below.

[501] Kostic has not established any reasonable or non-frivolous basis upon which any of Piikani Nation, its Chief and Council, CIBC Trust, CIBC, CWM, or RJL owed Kostic fiduciary obligations.

[502] I summarized key principles of fiduciary duties in *Serinus Energy PLC v SysGen Solutions Group Ltd*, 2023 ABKB 625 at paras 195-201 and I incorporate that summary here.

[503] Kostic's relationship with these parties did not involve an established *per se* or presumed fiduciary relationship. Further, Kostic has not pointed to any reasonable basis upon which there could be an *ad hoc* fiduciary relationship giving rise to fiduciary obligations by these parties to Kostic.

[504] Piikani Nation was Kostic's contracting counter-party under the Business Agreement. Kostic has not pointed to "a legal or practical interest that was not solely created by the contract" (*Serinus* at para 201, citing among others *Alberta v Elder Advocates of Alberta Society*, 2011 SCC 24 at para 33) that could give rise to fiduciary duties owed by Piikani Nation (or its Chief and Council) to Kostic.

[505] CWM and RJL were Kostic's employers. Employees clearly can owe fiduciary duties to their employers: see *Cantak Corporation v Haderer*, 2026 ABKB 93 at paras 128-135. It is also possible for employers to owe fiduciary duties in unique or specific circumstances or pertaining to specific matters: *MP v Ontario Power Generation Inc*, 2024 ONSC 6295 at para 44; *Cohen v Cambridge Mercantile Corp*, 2007 CanLII 2159 (ONSC) at para 26; *Mustaji v Tjin*, 1996 CanLII 1907 (BC CA); *The Manufacturers Life Insurance Company v Ward*, 2007 ONCA 881; *Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6; *Lloyd v Imperial Oil Limited*, 2008 ABQB 379.

[506] Kostic's references to breaches of fiduciary duty are vague and largely unparticularized. She has provided no reasonable legal or sufficient evidentiary basis upon which her employers, CWM and RJL, could have owed or did owe her relevant fiduciary duties in the context of this case, or in the manner referenced in the November 2025 Fiat Requests. Kostic cites **2410-06558 (Re)**, 2025 ONSBT 1877, a decision of the Ontario Social Benefits Tribunal, but that decision is not binding and does not address fiduciary duties at all.

¹⁸² March 22, 2018 Amended Amended Statement of Defence of Kostic at paras 23, 24, 28.

[507] Kostic also cites a case called “Katz v Heller, 2013 ABQB 275” as illustrating that “employers have a fiduciary duty to protect their employees from harm”. This is not a correct citation¹⁸³ and I have been unable to locate any case called **Katz v Heller**. It appears to be a phantom citation. I do not know if this was created using artificial intelligence – if it was, Kostic did not comply with the Court’s directions and warnings: see **QM v RM**, 2025 ABKB 751 at paras 32-33 (and cases cited therein); *Notice to the Public and Legal Profession entitled Ensuring the Integrity of Court Submissions when Using Large Language Models*.¹⁸⁴

[508] Kostic has not explained how CIBC, a bank she appears to have had no direct relationship with, or CIBC Trust, a trust company and trustee owing fiduciary obligations to the beneficiaries of the Trust, owed her fiduciary obligations.

[509] In all the circumstances, I would not have given Kostic permission to apply to add or amend a fiduciary duty claim in the 0601 Action even had she provided a compliant fiat request.

k. Request to Add Other Late Claims Relating to Conduct Predating the 0601 Action

[510] As noted above, Kostic seeks to advance several claims that relate to other conduct that predates the filing of the 0601 Action, either through new or amended pleadings in the 0601 Action. These claims are best characterized as tort claims related to Piikani Nation’s termination of the Business Agreement and commencement of the 0601 Action, potentially based on bad faith, conspiracy, interference with economic or contractual relations, or inducing breach of contract. The proposed defendants are Piikani Nation, its Chief and Council, RJL, the CIBC parties, and possibly even AIG.

[511] I have already decided that Kostic’s extreme delay is sufficient to render hopeless any potential application to include these claims in the 0601 Action. This is particularly so given that Kostic admits there has been “traces of disclosure and evidence since 2017”,¹⁸⁵ that these claims were clearly anticipated and included in the 2019 Draft Pleadings, and yet were not properly pursued in accordance with court directions in the ensuing years until at least October 2023 or later. Given the extensive passage of time, it would be abusive and inappropriate to condone Kostic’s litigation strategy, choices or lack of diligence, by now allowing her to file an application to add them at this late stage.

[512] Further, many of these claims would require additional pleadings, possibly new records production, and new discovery processes, and would delay the trial of the 0601 Action.

[513] I provide some further reasons below relating to specific targeted defendants.

[514] With respect to these claims against Piikani Nation, a claim of bad faith termination of the Business Agreement is already included in the 0801 Action and it would be a duplicative abuse of

¹⁸³ 2013 ABQB 275 is **Blue Steel Investments LLC v Hegco Canada Inc**, 2013 ABQB 275, which is a case addressing an application to sue a receiver; it has nothing to do with fiduciary duties of employers.

¹⁸⁴ Court of Appeal of Alberta, Court of King’s Bench of Alberta, Alberta Court of Justice, “Notice to the Public and Legal Profession, Ensuring the Integrity of Court Submissions When Using Large Language Models” (6 October 2023), online (pdf): <https://albertacourts.ca/docs/default-source/qb/npp/tri-court-notice-to-profession-and-public---large-language-models.pdf>.

¹⁸⁵ Propose Third Party/Counterclaim Application at para 17.

process to add it to the 0601 Action. Other aspects of these proposed claims are already included in Kostic's amended amended amended statement of defence in the 0601 Action, so to that extent there is no prejudice to Kostic if permission is not granted.

[515] With respect to these claims against Piikani Nation's current Chief and Council, there is no evidentiary basis that the current Chief was involved at the time of the decision to terminate relations with Kostic or RJL, or to commence the 0601 Action. Kostic has not identified the specific current or past Councillors that she seeks to claim against, or has not provided sufficient evidence of their involvement at the relevant times.

[516] With respect to these claims against RJL, Kostic has not provided sufficient evidence that RJL was somehow involved in Piikani Nation's decision to terminate the Business Agreement or to commence the 0601 Action. Given that RJL is a defendant in the 0601 Action, it seems highly unlikely RJL conspired with or induced Piikani Nation to terminate relations with Kostic and RJL, and to sue her along with RJL.

[517] With respect to these claims against the CIBC parties, Kostic appears to have known she had a potential claim against CIBC Trust associated with her termination by Piikani Nation by at least 2008, as she added CIBC Trust as a defendant to the 0801 Action. But then, as noted above, she removed it as a party in 2009 (Kostic has suggested that her counsel Docken "forced" her to remove CIBC Trust as a party¹⁸⁶).

Then, as noted above, Kostic sought, but was not granted permission, to file a counterclaim or new action against CIBC Trust and CIBC for its role in "aiding and abetting" Piikani Nation's termination of the Business Agreement (based on interference with contractual relations), and this was upheld by the Court of Appeal: **2017 ABQB 140** at paras 25-30; **2018 ABCA 234** at para 61. ACJ Rooke held that "Kostic has not shown a true new, viable cause of action against CIBC, that isn't precluded by limitations legislation, or already present, in substance, in the pleadings to date": **2017 ABQB 140** at para 30. That continues to be the case. Further, in separate reasons, I have struck Kostic-CIBC Trust Action #2, which included many of these same allegations against CIBC Trust, as an abuse of process: **Kostic v CIBC Trust Corporation**, 2026 ABKB 623. It would be abusive for Kostic to apply to add these same claims now to the 0601 Action, if it means adding new claims beyond what is already included in the pleadings in the 0601 Action.

[518] I have specifically considered all of the evidence Kostic has adduced, including the chain of emails involving (among others) John Elcomb of CIBC Trust on January 23-25, 2007, related to a Piikani Nation band council resolution, and January 18, 2007 communications between counsel for PIC and CIBC Trust. I do not find the evidence presented justifies the late addition of claims against CIBC Trust. See **2026 ABKB 623**.

[519] With respect to CWM, Kostic has not provided sufficient evidence that CWM was somehow involved in Piikani Nation's decision to terminate the Business Agreement or to commence the 0601 Action. I have also considered Kostic's evidence about her 2004 settlement with CWM.¹⁸⁷ Kostic alleges that immediately upon execution thereof, CIBC and CIBC Trust

¹⁸⁶ Kostic's February 13, 2026 "Brief No. 2" at para 87, filed in response to CIBC's application to strike the statement of claim in Kostic-CIBC Trust Action #2.

¹⁸⁷ Affidavit of Kostic sworn October 29, 2025 (filed October 31, 2025) in Kostic-CIBC Trust Action #2 at paras 11-18 and Exhibits C, D and E.

began making false allegations against her. I also note that the statement of claim in Kostic-CIBC Trust Action #2, at para 24, also implicates CWM in the alleged aiding and abetting, which illustrates that Kostic likely knew of any such claim against CWM by at least January 2017.

[520] With respect to AIG, any claim related to the period before the 0601 Action was filed is hopeless as there is no evidence AIG was involved until after the 0601 Action was filed.

[521] In all the circumstances, I would not have given Kostic permission to apply to add or amend pleadings to add these referenced claims relating to conduct that predated the filing of the 0601 Action, even had she provided a compliant fiat request.

I. Request to Add Other Late Claims Relating to Post-0601 Action Conduct

[522] In addition to the reasons set out above, Kostic's request to add claims pertaining to conduct subsequent to the filing of the 0601 Action is hopeless for other reasons.

[523] The November 2025 Fiat Requests refer to a litany of grievances against parties to the 0601 Action, and also against non-parties (Chief and Council and AIG).

[524] In essence, Kostic appears to assert that there is a conspiracy, effort or breach of asserted duties, which are designed harm, or have effected harm, upon her by undermining her position in the conduct of the 0601 Action and other Case Managed Actions.¹⁸⁸ Non-exhaustively, she complains that others have: engaged in abusive litigation practices; improperly maintained fraud allegations, filed claims without authorization; made improper amendments; misled this Court and the Court of Appeal; failed to provide or concealed particulars or other information or records; defamed her; conspired against her; improperly objected to questions; refused to provide undertakings or provided inconsistent undertakings; changed litigation positions; acted in bad faith; breached fiduciary or other duties owed to her; sought adjournments; failed to disclose settlement agreements; and filed forged proofs of claim in the PIC bankruptcy.

[525] An application to add claims of this nature to the 0601 Action is hopeless. Many of my reasons above apply here, but other non-exhaustive reasons are set out below.

[526] First, there is insufficient evidence that the parties to the 0601 Action, or others, are conspiring against her or breaching any duties owed to her, or otherwise engaging in intentional tortious conduct as asserted.

[527] Second, there is no air of reality that the other parties to the 0601 Action, or the Chief and Council, owe Kostic fiduciary duties with respect to their conduct of the 0601 Action.

[528] Third, any claim against AIG in respect of the conduct of the 0601 Action is already made in the AIG Action and it would be an abusive duplication to add AIG to the 0601 Action to make the same claims.

¹⁸⁸ See, as just one example, Kostic's January 30, 2026 brief at para 1, filed in support of her application to amend the statement of claim in Kostic-CIBC Trust Action #2.

[529] Fourth, many of the allegations are vague or bare assertions. Further, factually, several of Kostic’s assertions are not supported by any evidence; they are bare assertions and speculation. As one example, Kostic’s assertion that Piikani Nation and RJL have failed to disclose a *Mary Carter* agreement is not supported by any evidence that there actually is such an agreement.

[530] Fifth, many of the claims, to the extent they are seeking a separate remedial order against the proposed defendants, are likely barred by the *Limitations Act*. Many of the claims address conduct that Kostic has known about for more than two years, or which occurred more than ten years ago. Claims related to conduct that post-dates the filing of the 0601 Action, which are barred by limitations, could not likely be saved under section 6 of the *Limitations Act* because they are not related to the conduct, transaction or events described in the *original* pleading in the 0601 Action.

[531] Finally, at its core, these Kostic grievances relate to the conduct of the 0601 Action. The general rule is that the conduct of a party in the context of an action is a matter properly resolved by way of costs: **2025 ABKB 493** at paras 138-139, citing *Bard v Canadian Natural Resources*, 2016 ABQB 267 at paras 52-54 and *Astolfi* at para 82 (and cases cited therein). In **2026 ABCA 135**, at para 16, the Court of Appeal stated that alleged misrepresentations and other errors in submissions to this Court and the Court of Appeal “can, if necessary, be dealt with at the trial in 2027”.

[532] In **2025 ABKB 493** at para 139, I noted that there may be possible exceptions to the general rule. In my view, there are no compelling reasons to depart from the general rule; rather, there are compelling reasons to follow the general rule here. It would be almost impossible to practically or efficiently include Kostic’s substantive allegations of litigation misconduct in the pleadings in the 0601 Action. Adding new substantive pleadings about litigation misconduct would certainly delay the trial, because there would be new pleadings, further records production (which would be ongoing as the litigation progresses), and a potentially infinite loop of discovery about the past two decades of litigation. The effect would be to graft a complex and ever-growing second trial about the conduct of the 0601 Action, which would dwarf, complicate and overwhelm the already lengthy trial about the relatively narrow substantive real issues in dispute in the 0601 Action. As noted earlier, a trial about a party’s litigation conduct in an action cannot normally be reasonably joined with the trial of the underlying action; certainly, it cannot reasonably be done in this case.

[533] In my view, any allegation of litigation misconduct by the parties to the 0601 Action are best and most appropriately addressed, if necessary, as a matter of costs within the existing process of the 0601 Action, not by way of separate, substantively pleaded claims against the other parties.

[534] In all the circumstances, I would not have given Kostic permission to apply to add or amend pleadings to add these referenced claims relating to conduct that post-dated the filing of the 0601 Action, even had she provided a compliant fiat request.

7. Request to Apply to Further Amend Kostic’s Statement of Defence in the 0601 Action

[535] Despite Kostic’s repeated assertions that she has provided her proposed amendments (or a “very advanced draft” of them) to her defence in the 0601 Action, she has not done so. She did not comply with my directions, or the requirements of rule 3.63. It is not up to the Court or the other

parties to scour everything she has previously provided to the Court and attempt to speculate about what actually constitutes her proposed amendments.

[536] Kostic’s advice to me that “my 4th amended defence is completely new” and is required “as it supports my “new” proposed third party claims etc”¹⁸⁹ is troubling. An application seeking permission to file a completely new defence at this very late stage, and given that the trial has already been scheduled, would be hopeless. Further, if the purpose of a further amended defence is to support other hopeless applications to make new or amended claims, to indirectly make those claims in her defence, or to raise issues of litigation misconduct, then it may not help identify the real issues in dispute, may be abusive, and would likely obfuscate the real issues and be a waste of resources.

[537] If Kostic continues to seek to make appropriate amendments to her defence, they will be considered but she will have to comply with the Fiat Process and the *Rules*.

8. Request to Apply for Advanced Costs/Public Interest Costs Award (PICA) Relief

[538] In Fiat Letter 1, Kostic states:

10. Public Interest Costs Award (PICA): will seek a further order for Grant of Public Interest Costs Award of \$1,000,000 payable and enforceable against all indemnitors to enable the Applicant to retain forensic accountants and legal counsel to address the alleged missing assets and withheld financial disclosures that Piikani allege damages against Kostic from 2002 to present day for Trust related projects alleged lost or caused by breach by me. All Trust and related trust breaches were in fact caused and attributable to Piikani Chief and Council, CIBC, PIC, PRDL, PEC, Land holding Corporation,¹⁹⁰

[539] Kostic advises that a “detailed schedule and plan” is to be determined at a later time, but in advance of a hearing.¹⁹¹

[540] Kostic previously sought permission to bring a PICA application, including as against at least some of the same private parties, and it was denied on various grounds. Those grounds included that she provided a non-compliant fiat request, it was unclear she had notified all potentially interested parties or proposed respondents, and because the request was ambiguous.¹⁹² Kostic’s November 2025 Fiat Requests pertaining to PICA relief has the same problems.

[541] In Endorsement #40, I stated:

[17] It is not up for the Court or respondents to guess or “fill in the blanks” about what exactly is being sought in a Proposed Application. The Proposed Advanced Costs/PICA Application is amorphous and unclear as to what exactly it is seeking advanced costs or public interest costs for, and against whom it seeks relief and for

¹⁸⁹ Kostic’s December 3, 2025 email to the Court.

¹⁹⁰ See also Proposed Third Party/Counterclaim Application at para 5.

¹⁹¹ Proposed Third Party/Counterclaim Application at para 5.

¹⁹² Endorsement #40.

whose benefit, such that it is hopeless. See: **Piikani Nation v North Peigan**, 2025 ABKB 508 at paras 41-42 (and cases cited therein).

[...]

[19] The parties responding to this Fiat Request have made several other arguments in their objection to the Fiat Request. I have decided not to engage on the further issues they have raised at this time as it may be unnecessary in the event a compliant Fiat Request is never provided. Further, some of those arguments will be addressed in the SFC Application / Cross Application in the SVR Action, so I make no findings about those other arguments now. If a compliant Fiat Request is subsequently provided, I will consider whether the Fiat Request should be granted and will consider these additional arguments (or any other arguments any responding party may wish to make at that time).

[542] Kostic's attempt to seek permission to bring another PICA application with another non-compliant fiat request, and with a similarly vague and ambiguous request, is abusive and hopeless.

[543] Since Endorsement #40, I have decided Kostic's advanced costs/PICA request in the SVR Action. I decided her application had no merit and dismissed it: **Kostic v Scott Venturo Rudakoff LLP**, 2026 ABKB 626. For the same reasons, this aspect of the 2025 November Fiat Requests is also hopeless. In particular, Kostic appears to seek to use the advanced costs, at least partly to fund an investigation into the Settlement Mishandling Claims, which (as noted above) I am not satisfied she has any standing to advance.

[544] In all the circumstances, I would not have given Kostic permission to apply for advanced costs/PICA relief as asserted, even had she provided a compliant fiat request.

9. Request to Apply for Records Production Order Against RJL

[545] Kostic requests permission to seek against RJL:

An order for RJL to provide full disclosure of all relevant documents and communications regarding the trading authorizations, communications and compliance with the Piikani Nation, CIBC et al, AIG, Thom and others ensuring transparency in the handling of the accounts.

[546] An application of this nature is hopeless at this stage, for at least the following reasons.

[547] Kostic missed her deadline to bring this fiat request. In Endorsement #7, I directed the parties to provide "any Fiat Request to compel production of records not yet produced (whether from a party or third party)" by August 15, 2025. Kostic did not include relief as against RJL. Had she done so, this could have been dealt with in **2025 ABKB 493** and, if permission had been granted, could have been heard during the February 2026 Applications. She also did not request these records in her proposed records application (addressed in separate Reasons).

[548] Further, disclosure obligations are not limitless, and are not designed to allow every potential, possible, speculative or theoretical stone to be turned over: **Goold v Allen**, 2023 ABKB 66 at para 12. Courts are not overly restrictive to disclosure requests at the interlocutory stage, but

a party seeking further and better disclosure must be able to explain or prove that the records they seek likely exist, are relevant and material, and that the request is not a fishing expedition based on unrealistic or speculative premises: *H2 Canmore Apartments LP v Cormode & Dickson Construction Edmonton Ltd*, 2024 ABKB 424 at para 53.

[549] In light of these principles, Kostic's proposed application about RJL's records disclosure is problematic. The records Kostic seeks are vague and unclear as to what exactly she seeks, what has been provided by RJL, and what she says has not been provided. In several respects, the request appears to be wide-ranging and a fishing expedition to support Kostic's asserted claims against various parties, some of which I have held to be hopeless in these Reasons and which are not likely relevant and material in the 0601 Action. For example, at least some of the communications sought involving AIG and Thom must relate to RJL's post-0601 Action conduct.

[550] To the extent Kostic's request may cover records relevant and material to the 0601 Action, Kostic has not provided a sufficient evidentiary foundation to support the proposed application. Rather, the information currently before me suggests that RJL simply does not possess certain trade authorization documents that Kostic believes RJL should have. RJL cannot be compelled to produce records it does not have.

[551] If Kostic still wishes to bring an application to compel RJL to produce records in the 0601 Action, it will only be considered if a compliant fiat request is provided that, among other things, identifies precisely what records Kostic seeks in accordance with the principles set out above. Further, Kostic will have to address why any such request should be allowed given that Kostic missed the deadline to file such an application.

10. Request to File New Actions

[552] If Kostic's request to add or amend claims in the 0601 Action is not granted, she alternatively seeks to file new actions. As noted above, the February 2013 Order restricts new actions commenced by or against Piikani Nation, its Council, or as between or among the parties to the 0601 Action (and other actions). Without a specific application seeking leave pursuant to paragraph 6 of the February 2013 Order, together with a specific proposed new commencement document, I am not prepared to consider this alternative relief.

[553] Although the Endorsement #4 Fiat Process has never expressly applied to an application for leave to file a new action under paragraph 6 of the February 2013 Order, I have previously directed Kostic to follow the fiat process for a proposed new action otherwise precluded by that order.¹⁹³ If Kostic seeks to file a new action that is precluded by the February 2013 Order, then she will have to provide a compliant fiat request to apply to do so, which must include the proposed form of commencement document (with all defendants identified) as a schedule to her Proposed Application.¹⁹⁴ Kostic is recommended to obtain legal advice about any proposed new actions and the possible cost consequences of unsuccessfully seeking leave to file new actions precluded by the February 2013 Order.

[554] For further clarity, to the extent that any contemplated new action falls outside the restrictions in the February 2013 Order, the Court's permission has never been, and is presently

¹⁹³ Endorsement #8 at para 8; Endorsement #45 at para 62.

¹⁹⁴ The proposed form of action shall not be included in the page limits for the Proposed Application.

not, required. This may be revisited in the future if frivolous or vexatious new actions relating to the matters engaged in the Case Managed Actions are filed. To the extent the parties are unclear whether a proposed new action is precluded by the February 2013 Order, they may seek my further direction.

IV. Conclusion

[555] Kostic's application to file a late NTCD against RJL is dismissed. The November 2025 Fiat Requests are denied.

[556] Counsel for RJL is directed to prepare the order dismissing the NTCD Application. Counsel for Piikani Nation is directed to prepare the order dismissing the November 2025 Fiat Requests. Counsel shall ensure that the form of order is approved by Kostic or her counsel.

[557] I will provide the parties further directions respecting costs in a separate Endorsement.

Heard during the week of February 23-27, 2026, with supplemental evidence and submissions.

November 2025 Fiat Requests heard by written submissions.

Dated at the City of Calgary, Alberta this 9th day of September 2026.

M.A. Marion
J.C.K.B.A.

Appearances:

Robert J. Hawkes, KC, Ripple Kaila and Maureen McCartney-Cameron
for Piikani Nation

Shane King and Lucy Main
for Raymond James Ltd.

Geoff Adair and Connor Vaandering
for CIBC Trust Corp., CIBC World Markets Inc. and Canadian Imperial Bank of
Commerce

Liliana Kostic
Self-represented Litigant

Kalen L. Lumsden
for AIG Insurance Company of Canada
(November 2025 Fiat Requests only)