Court of King's Bench of Alberta

Citation: BridgePoint Financial Services Inc. v William S. Klym Professional Corporation, 2026 ABKB 739

Date: 20261023
Docket: 2101 06345
Registry: Calgary

Between:

BridgePoint Financial Services Inc. and BridgePoint Financial Services Limited Partnership

Plaintiffs

- and -

William S. Klym Professional Corporation, William Stephen Klym Professional Corporation, William S. Klym, and Liliana Kostic

Defendants

- and -

Liliana Kostic

Plaintiff by Counterclaim

- and -

BridgePoint Financial Services Inc., BridgePoint Financial Services Limited Partnership, Clint Docken, Docken Professional Corporation, Guardian Law Group, and John Does 1-10

Defendants by Counterclaim

- and -

Miller Thomson, Clint Docken, Docken Professional Corporation, BridgePoint Financial Services Inc., BridgePoint Financial Services Limited Partnership, CIBC Merrill Lynch, CIBC WG, and CIBC

Third Party Defendants

Reasons for Decision
of the
Honourable Justice M.A. Marion

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I. Introduction

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

[2] These Reasons address three applications (**Applications**):

(a) an application (**CIBC Strike Application**) by CIBC Merrill Lynch (**CML**), CIBC Wood Gundy (**CWG**), and Canadian Imperial Bank of Commerce (**CIBC**) (CML, CWG and CIBC are collectively referred in these Reasons to as the **CIBC Parties**), to strike pleadings of Liliana Kostic (**Kostic**) as against them in the Action, namely her Notice of Claim Against Co-Defendants filed April 1, 2022 (**NTCD**), her amended counterclaim (**Amended Counterclaim**) filed April 1, 2022, and the "Amended Reply to Amended Statement of Defence and Counterclaim of Liliana Kostic" (**Amended Reply**). The NTCD, Amended Counterclaim and the Amended Reply are collectively referred to as the **New Pleadings**;

(b) an application (**MT Strike Application**) by Miller Thomson LLP (**Miller Thomson**) and Jeffrey Thom (**Thom**) to strike Kostic's New Pleadings as against Miller Thomson and Thom; and

[1] As defined in Endorsement #4.

(c) an application (**Docken/Guardian Strike Application**) by Clint Docken, Docken Professional Corporation[2] (together, **Docken**) and Guardian Law Group[3] (**Guardian**) to strike Kostic's New Pleadings as against Docken and Guardian.

[3] For the reasons set out below, I strike the NTCD in its entirety, strike the amendments in the Amended Reply, strike the amendments in the Amended Counterclaim in their entirety as against the CIBC Parties and Miller Thomson, and strike other paragraphs in the Amended Counterclaim/Counterclaim as highlighted in Schedule A to these Reasons.

II. Procedural Background

[4] I provided a detailed procedural background of the Action in ***BridgePoint Financial Services Inc v William S Klym Professional Corporation***, 2026 ABKB 236.[4] Some of the below summary is taken from that decision (with some original footnotes omitted and some new footnotes added).

[5] On May 19, 2021, BridgePoint Financial Services Inc. and BridgePoint Financial Services Limited Partnership (collectively **BridgePoint**) filed this Action against Kostic, William Klym and one his professional corporations (together, **Klym**).[5] At that time, BridgePoint was represented by Guardian. The statement of claim details six loans (**Loans**). The first three loans were in 2009 and involved Kostic and the next three involved both Kostic and Klym.

[6] The May 19, 2021 statement of claim pleaded (among other things):

(a) the loans advanced in 2009 were to be repaid when Kostic "exercised her Restricted Shares pursuant to the Deferred Stock Bonus Plan provided by Raymond James Ltd. [**RJL**]", or upon any settlement and/or adjudication of Kostic's legal claims;

(b) the loans involving Kostic and Klym were to be "payable from the proceeds of settlement or judicial award from any and all claims for damages arising out of legal claims" identified by the statement of claim in action number 0801-05039 (**0801 Action**);

(c) the defendants had received a settlement or judicial award from claims arising from the 0801 Action; and

(d) BridgePoint had demanded repayment of the Loans under the loan agreements, and the defendants had failed to repay the Loans.

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[2] This appears to be an attempt to reference Clint Docken Professional Corporation, also later known as 216194 Alberta Ltd.

[3] This appears to be an attempt to reference Guardian Law Group LLC.

[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, ***BridgePoint Financial Services Inc v William S Klym Professional Corporation***, 2026 ABKB 236 will be referred to as ***2026 ABKB 236***.

[5] The Action was originally filed against William S. Klym Professional Corporation. This was a struck corporation. The statement of claim was later permitted to be amended to include William Stephen Klym Professional Corporation and the and the relevant agreements have been rectified.

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[7] The statement of claim sought special damages against the defendants in the amount of $88,500 plus interest.

[8] On June 18, 2021, Klym filed a statement of defence.

[9] On June 22, 2021, BridgePoint filed an amended statement of claim.

[10] On August 16, 2021, Kostic filed a statement of defence (**Kostic Defence**) and a counterclaim (**Counterclaim**) against BridgePoint, Docken, Guardian and several John Does.

[11] On September 7, 2021, Docken/Guardian filed a statement of defence to the Counterclaim.

[12] On September 10, 2021, BridgePoint Financial Services Inc. filed its defence to Kostic's Counterclaim. That defence did not expressly state that it was also on behalf of BridgePoint Financial Services LP.

[13] On September 20, 2021, Kostic filed her reply to the statements of defence to the Counterclaim (**Kostic Reply**).

[14] On November 16, 2021, Kostic noted BridgePoint, Docken and Guardian in default, even though some of them had already filed a statement of defence. She filed an amended noting in default on November 25, 2021.

[15] On December 2, 2021, BridgePoint (then represented by Miller Thomson) applied to set aside the noting in default as against BridgePoint.

[16] On February 1, 2022, BridgePoint's application to set aside its noting in default was before Master Farrington (as he then was). Master Farrington adjourned the application to March 8, 2022.

[17] On March 7, 2022, Kostic filed an application (**Kostic 2022 Application**[6]) for: (1) summary dismissal or striking of the statement of claim; (2) a stay of the statement of claim pending determination of the Counterclaim; (3) declarations of fact; (4) indemnity/save harmless relief from RJL, CIBC World Markets Inc (**CWM**), CIBC Trust Corporation (**CIBC Trust**); and (5) enhanced costs. Kostic relied on a lengthy March 1, 2022 affidavit (which I have reviewed).

[18] On March 8, 2022, Master Mason (as she then was) granted an order (**Mason Order**) setting aside the noting in default as against BridgePoint and gave BridgePoint permission to file an amended statement of defence to the Counterclaim in an attached form. The order was without prejudice to any application by Kostic to remove Miller Thomson as lawyers of record for BridgePoint.

[19] On March 22, 2022, BridgePoint filed the amended statement of defence to the Counterclaim.

[20] On April 1, 2022, Kostic filed the New Pleadings and a notice of appeal (**AJ Appeal**) of the Mason Order. The New Pleadings referred to Miller Thomson, Docken, BridgePoint, RJL, CWM, CML, CWG, CIBC Trust, CIBC, Piikani Nation and Gowling WLG (**Gowling**) as named "third party defendants" (**Third Party Defendants**).

[6] In some of my endorsements and reasons, I have also referred to this as the "Kostic Dismissal Application".

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[21] On April 18, 2022, Piikani Nation and Piikani Nation's council (**Council**), through Gowling as counsel, wrote to Associate Chief Justice (**ACJ**) Rooke and sought leave to strike the New Pleadings as against Piikani Nation and Council.

[22] On April 19, 2022, the Kostic 2022 Application was before Justice Feasby in morning civil chambers and was adjourned *sine die*.

[23] On April 21, 2022, ACJ Rooke granted Piikani Nation permission to file a striking application.[7] Kostic immediately wrote to ACJ Rooke raising various complaints and matters in response.

[24] On April 22, 2022, ACJ Rooke signed an order granting Piikani Nation and Council permission to apply to strike the New Pleadings against them.

[25] On April 22, 2022, Miller Thomson/Thom[8] and the various CIBC-related parties[9] separately requested leave to strike the New Pleadings. On April 25, 2022, RJL did the same.[10]

[26] On May 6, 2022, ACJ Rooke noted that leave was only required for those parties he directed to have leave. He directed that one procedural order be prepared. On May 16, 2022, ACJ Rooke confirmed that the CIBC-related parties did not require leave to file a striking application.

[27] On May 17, 2022, ACJ Rooke signed an order dated April 22, 2022, confirming the permission of Piikani Nation and its Council, Gowling, Miller Thomson, Thom, and RJL to file an application to strike the New Pleadings against them.

[28] On May 18, 2022, Docken and Guardian filed the Docken/Guardian Strike Application.[11]

[29] On June 2, 2022, the AJ Appeal of the Mason Order was adjourned by Justice Hollins *sine die* and directed to a half-day special application. The AJ Appeal was later deemed abandoned in 2025. [12]

[30] On July 12, 2022, ACJ Rooke directed that a hearing would occur before another judge on August 15, 2022, in which the issues would be (subject to the direction of the hearing justice): (1) whether Kostic was required to obey the February 5, 2013 order in court action 1201-15897 (**February 2013 Order**) (namely to seek leave before filing claims), and (2) if leave was required, what the result should be.

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[7] April 21, 2022 letter from ACJ Rooke to Ms. Hanert, at p 313 of the Kostic Bundle (as defined herein).
[8] April 22, 2022 letter from Emery Jamieson LLP, which included an unfiled proposed application naming both Miller Thomson and Thom as applicants.
[9] April 22, 2022 letter from Blakes (CIBC Brief at Tab 7). This also included a proposed unfiled application, although it was not attached as part of Tab 7 of the CIBC Brief. This was updated by way of a May 12, 2022 letter from Blakes.
[10] April 25, 2022 letter from McLeod Law LLP, which included a proposed unfiled application.
[11] In ***2026 ABKB 236***, at para 21, I implied that Docken and Guardian required but did not obtain permission to file Docken/Guardian Strike Application. I now understand that the BridgePoint Action was not the subject of case management until September 16, 2022 and Docken/Guardian did not require permission to file the Docken/Guardian Strike Application.
[12] See Endorsement #13 at para 40 and Endorsement #23 at para 15. I provided Kostic a deadline of August 8, 2025 to advise me whether she intended to pursue the AJ Appeal, failing which it would be deemed abandoned. She incorrectly denied having filed the AJ Appeal. She did not ever advise me of an intention to pursue it and it was deemed abandoned.

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[31] On July 28, 2022, BridgePoint filed an application to compel Kostic to serve her affidavit of records in the Action. It remains unclear whether this application ever proceeded.[13]

[32] On August 2, 2022, in correspondence copied to the Court, Kostic sought clarification from the applicants as to which rules of the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*) they relied on to support their striking applications, to which each counsel responded on August 3, 2022. Counsel for Docken/Guardian confirmed that they would not argue the Docken/Guardian Strike Application on August 15, 2022, given ACJ Rooke's decision to limit the scope of the hearing, but would pursue it after the decision on the other striking applications. Counsel for the CIBC Parties also reserved their right to bring a subsequent application.

[33] On August 5, 2022, Kostic filed an affidavit (**Kostic 2022 Affidavit**[14]) and brief (**Kostic 2022 Brief**) in opposition to the strike motions to be heard on August 15, 2022. I have reviewed these materials in the context of the Applications before me. The Kostic 2022 Affidavit also refers back to a September 20, 2021 affidavit of Kostic filed in the Action, which I have also reviewed.[15]

[34] On August 15, 2022, Justice de Wit presided over the ACJ Rooke-directed hearing. He reserved his decision, directed RJL, CIBC Trust and CWM to provide written submissions providing their positions, and gave Kostic an opportunity to provide further written submissions. On August 29, 2022, RJL and the CIBC Trust/CWM each provided their written submissions. On September 12, 2022, Kostic provided lengthy reply submissions.

[35] On September 16, 2022, Justice de Wit granted a consent order permitting BridgePoint to file an amended amended statement of claim (**AASOC**).

[36] Effective September 16, 2022, in light of ACJ Rooke's imminent retirement, Justice de Wit was appointed CMJ over many of the Case Managed Actions,[16] including the BridgePoint Action.

[37] On October 7, 2022, CMJ de Wit struck the New Pleadings as against Piikani Nation, Gowling, RJL, CWM and CIBC Trust, primarily because Kostic had not obtained leave of the Court to file them under the February 2013 Order. CMJ de Wit did not address whether the New Pleadings should be struck as against CML, CWG, Miller Thomson/Thom, Docken, or Guardian. CMJ de Wit directed Kostic to provide further written submissions with respect to Miller Thomson/Thom within three weeks. It does not appear that CMJ de Wit ever decided the remaining requests or applications to strike.

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[13] On August 31, 2022, Master Mason adjourned this application until September 22, 2022. On September 22, 2022, Applications Judge Prowse adjourned the application further until October 25, 2022, pending confirmation as to whether the Action was under case management. See ***2026 ABKB 236*** at para 22 (footnote 7). It remains unclear to me whether this application ever proceeded.

[14] The Kostic 2022 Affidavit purports to include various court transcripts, but in each case only includes the first page due to page-limit restrictions. I have reviewed the complete referenced transcripts.

[15] In the Kostic 2025 Affidavit (as defined herein), Kostic states: "I also intend as evidence to be adopted Mutatis Mutundis [sic] all my affidavits in this and the related actions referenced above-herein (the omnibus actions and omnibus evidence filed in support"). I am aware of and have considered Kostic's many affidavits filed in the Case Managed Actions since I became CMJ. At her request, I have also considered affidavits of Brian Jackson (**Jackson**) and Janet Potts in the Case Managed Actions.

[16] September 16, 2022 letter from ACJ Rooke. See also ***Piikani Nation v Raymond James Ltd***, 2026 ABKB 622 at para 181 (footnote 48).

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[38] In October 2022, Kostic sought leave to apply to have CMJ de Wit, among other things, set aside his October 7, 2022 order. It does not appear that this was granted. The October 7, 2022 order was entered on January 11, 2023.

[39] On March 14, 2023, BridgePoint filed the AASOC.

[40] On April 4, 2023, Justice Graesser was appointed CMJ of this Action.

[41] On April 20, 2023, Klym filed an amended statement of defence to the AASOC.

[42] In September 2023, the CIBC Parties sought leave to file an application to strike the New Pleadings against them.[17]

[43] On June 14, 2024, CMJ Graesser granted orders (collectively **June 2024 Orders**), among other things:

(a) approving the filing of the CIBC Strike Application, and prohibiting Kostic from taking further steps against the CIBC Parties until the CIBC Strike Application was heard;

(b) delaying the next steps for the CIBC Strike Application until Kostic filed her response material;

(c) prohibiting Kostic from bringing any fiat request or application for save harmless or indemnity relief against any party that has an outstanding application to strike in the BridgePoint Action;

(d) providing directions with respect to the MT Strike Application; and

(e) providing Kostic leave to file an amended statement of defence and amended counterclaim in the BridgePoint Action, as well as a procedural schedule for the Kostic 2022 Application.

[44] On June 18, 2024, BridgePoint filed an application for summary judgment against Klym (which I later dismissed in ***2026 ABKB 236***).

[45] In December 2024, I was appointed CMJ over the Case Managed Actions, including the BridgePoint Action. I engaged in a process by which parties provided me with information about the various Case Managed Actions, including their status and next steps, following which I directed several case management conferences (**CMCs**).

[46] In that process, following a June 23, 2025 CMC in respect of the BridgePoint Action and other actions, on July 22, 2025, I issued Endorsement #13 and a related order. I directed, among other things, that Kostic:

[17] September 29, 2023 letter from Blakes (CIBC Brief at Tab 11). Tab 11 does not include the proposed form of application, but a proposed unfiled form of application was provided.

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(a) make any amendments to the Kostic Defence or Counterclaim, as contemplated by the June 2024 Orders, by October 1, 2025, failing which she will be deemed to have abandoned that relief (Kostic did not file any amendments);

(b) amend her Kostic 2022 Application by October 1, 2025, failing which she will be deemed to have abandoned that relief (Kostic did not file any amendments);

(c) provide her response to the CIBC Strike Application by September 12, 2025. I also set out the next steps for the hearing of the CIBC Strike Application.; and

(d) provide her response to Docken/Guardian Strike Application and the MT Strike Application by September 28, 2025.

[47] On August 22, 2025, I issued Endorsement #23, which responded to Kostic's request for a corrigendum or clarification of Endorsement #13 related to the BridgePoint Action. On August 26, 2025, in Endorsement #25, I addressed Kostic's further correspondence to the Court related to Endorsement #23.

[48] On September 5, 2025, Kostic provided a fiat request seeking to file a proposed application in the BridgePoint Action.[18]

[49] On September 12, 2025, Kostic swore an 852-page affidavit (filed September 15, 2025) (**Kostic 2025 Affidavit**) in opposition to the CIBC Strike Application.[19] No questioning was conducted on this affidavit.

[50] On October 1, 2025, Kostic provided a fiat request seeking to file another proposed application in the BridgePoint Action, which included many different types of relief, including permission "to file amended Pleadings". However, it did not include or attach any proposed pleadings.

[51] On October 7, 2025, I directed that the hearing together of the Kostic 2022 Application, the CIBC Strike Application, the Docken/Guardian Strike Application and the MT Strike Application.[20]

[52] Also on October 7, 2025, I rejected Kostic's September 5, 2025 and October 1, 2025 fiat requests in the BridgePoint Action, including because they were non-compliant.[21] Further descriptions of these fiat requests can be found in ***2026 ABKB 622*** at paras 231-236. In Endorsement #45, I provided Kostic further directions with respect to some relief Kostic appeared to seek, and provided her new deadlines. She later provided the "November 2025 Fiat Requests" as defined and denied in ***2026 ABKB 622*** at paras 380-554.

[53] On November 24, 2025, in Endorsement #52, I approved a proposed procedural schedule for the hearing of the various applications in the BridgePoint Action that had been scheduled for May 2026.

[18] See Endorsement #45 at paras 16-17 and Schedule H.
[19] Kostic appears to have provided (or attempted to provide) earlier versions of the affidavit on September 8, 2025 and September 11, 2025.
[20] Endorsement #45 at paras 7-10.
[21] Endorsement #45 at paras 29-30.

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[54] On April 13 and 14, 2026, I received correspondence from Kostic advising of her intention to withdraw the Kostic 2022 Application. In Endorsement #66, at para 4, I accepted and permitted this withdrawal and the Kostic 2022 Application did not proceed. See also ***2026 ABKB 622*** at paras 175, 455.

[55] On April 16, 2026, the CIBC Parties filed the CIBC Strike Application. On April 17, 2026, Kostic raised several concerns about that application.

[56] On April 24, 2026, in Endorsement #66, I provided further directions respecting these Applications, including related to the CIBC Strike Application and Miller Thomson's lack of filing its materials as per my directions.

[57] In April, the applicants filed their briefs.[22]

[58] On April 27, 2026, in Endorsement #67, I allowed Miller Thomson to file the MT Strike Application late. It did so on May 4, 2026.

[59] On May 13, 2026, Kostic filed her brief (**Kostic Brief**) responding to the Applications.[23]

[60] On May 21 and 22, 2026, I heard the CIBC Strike Application, the MT Strike Application and Docken/Guardian Strike Application. I reserved my decision.

[61] During oral submissions on May 22, 2026, Kostic provided me a "Draft Amended Counerclaim [sic] in Support of Reply Brief Opposing Strike to Defendants by Counterclaim" (**Draft Amended Counterclaim**) which may have been referenced in the Kostic Brief and was dated April 17, 2026. The Draft Amended Counterclaim had not actually been attached or previously provided.[24] Kostic also provided me a bundle of correspondence and court documents (**Kostic Bundle**). None of the parties objected to the Kostic Bundle being put before me.

[62] On June 2, 2026, Kostic emailed me several PDFs of further legal authorities or articles, to supplement her oral submissions, which I reviewed.

III. Issues

[63] The issue before me is whether the New Pleadings, or some or parts of them, should be struck as against one or all of the CIBC Parties, Miller Thomson, Docken, or Guardian.

[64] In Kostic's materials, she raises relief that is not before me through any approved application or compliant fiat request, including requests for: "immediate enforcement of save-harmless and indemnity obligations arising from Manitoba actions to settle the landscape"[25]; "acknowledgment that she paid for errors and omissions insurance from CIBC, which CIBC is alleged to have failed to honor...";[26]

[22] The CIBC Parties rely on a brief filed August 30, 2022 and a brief filed April 17, 2026. Docken and Guardian rely on an April 17, 2026 brief. Miller Thomson and Thom rely on an August 15, 2022 brief that was filed on May 4, 2026.
[23] The Kostic Brief is a 53-page reply brief with attachments (a 673-page PDF). I have also reviewed and considered the Kostic 2022 Brief filed in the Action on August 5, 2022, prior to the hearing before Justice de Wit.
[24] Kostic Brief at para 46.
[25] Kostic Brief at para 30.
[26] Kostic Brief at paras 30, 59(i), (j) and (k).

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"reconsideration of prior conclusions and potential adjustment of relief orders";[27] a "pre-trial mechanism ... to determined [sic] fiduciary status and related indemnity issues";[28] declarations and orders relating to indemnity/save harmless relief and defence costs;[29] and a "corrigendum and/or supplemental note" in the BridgePoint Action.[30] These issues are not separately before me on these Applications.

IV. Analysis

A. Legal Framework

[65] These applications engage principles relating to amending pleadings (rules 3.62, 3.65 and 3.74) and striking pleadings (rule 3.68 and, in particular, the grounds set out in rule 3.68(2)(b)-(e)).

1. Amending Pleadings and Adding Parties

[66] A party may amend their pleadings as many times as necessary prior to the close of pleadings but, after pleadings close, party agreement or court permission is required to make further amendments: rule 3.62(1); ***Dupuis v Zibell***, 2026 ABCA 218 at para 13.

[67] Pleadings filed outside the time deadlines within the *Rules* require the Court to exercise its discretion in favour of the applicant. I incorporate these principles as set out in ***2026 ABKB 622*** at paras 415-417:

> [415] As noted above, 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] 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.

[68] A court may, on application, give a party permission to amend pleadings after the close of pleadings: rule 3.65(1); ***Dupuis*** at para 13. The test for amendments is well known: ***Dupuis*** at para 14,

[27] Kostic 2025 Affidavit at para 35.
[28] Kostic 2025 Affidavit at 13 (para 9).
[29] Kostic 2025 Affidavit at 13-14 (paras 14-23).
[30] Kostic 2025 Affidavit at 14 (para 24).

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citing ***Attila Dogan Construction and Installation Co Inc v AMEC Americas Limited***, 2014 ABCA 74 at para 25. I summarized the principles from Court of Appeal decisions in ***2026 ABKB 622*** at para 418 and incorporate those principles here:

(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 leave to appeal refused 2019 CanLII 99449 (SCC); ***Dupuis*** 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 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*** 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;

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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, leave to SCC refused 2012 CanLII 56127 (SCC); ***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.

[69] Rules 3.62(1)(b)(i) and 3.74 provide specific rules for amendments to add, remove, substitute or correct the name of a party. To add or substitute a party other than a plaintiff party, a court has discretion and must be satisfied that the order should be made, but it cannot make the order if prejudice would result that could not be remedied by a costs award, an adjournment, or the imposition of terms: rule 3.74(2) and (3); ***Anglin v Pankiw***, 2022 ABCA 362 at para 16; ***Terrigno v Litzius***, 2019 ABCA 100 at para 15; ***Benga Mining Limited v Alberta Energy Regulator***, 2021 ABCA 363 at para 16; ***Handelsman***

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v Ghani, 2023 ABKB 398 at para 10; ***Castledowns Law Office Management Ltd v FastTrack Technologies Inc***, 2012 ABCA 219 at para 18.

[70] In exercising the wide discretion under rule 3.74(2)(b) to add a non-plaintiff party to a claim, courts have applied principles largely consistent with the well-established principles under rule 3.65 as tailored to rule 3.74: ***Sweetland v MacInnis***, 2019 ABQB 736 at para 14; ***Condominium Corporation No 0213028 v Pasera Corporation***, 2016 ABQB 477 at paras 14-15; ***Hartwell v Taylor***, 2016 ABQB 289, aff'd 2017 ABCA 48, at para 14, citing Poelman J in ***Manson Insulation Products Ltd v Crossroads C & I Distributors***, 2011 ABQB 51 at paras 48-52; ***Champagne v Sidorsky***, 2015 ABQB 305 at para 141, citing ***869120 Alberta Ltd v B & G Energy Ltd***, 2011 ABQB 209 at para 23. In the context of rule 3.74(2)(b), courts have specifically noted:

(a) justice must require the addition of the parties;

(b) there should be a link to between the proposed new party and the facts and incidents originally alleged;

(c) any new alleged facts should be supported by some evidence (although the evidentiary threshold required is low);

(d) there should be a non-hopeless or reasonable cause of action against the proposed new party;

(e) there must not be bad faith or misconduct by the party seeking to bring in the new party;

(f) there should not be inexplicable delay in bringing the application; and

(g) there cannot be irremediable prejudice.

(See: ***Qualex-Landmark Towers Inc v 12-10 Capital Corp***, 2023 ABKB 109 at para 37, overturned on other grounds 2024 ABCA 115; ***Swaleh v Lloyd***, 2019 ABQB 348 at paras 22-24 aff'd 2020 ABCA 18; ***864503 Alberta Inc v Genco Place Properties Ltd***, 2017 ABQB 809 at paragraphs 82-84 overturned on other grounds 2019 ABCA 80; ***Kent v Martin***, 2011 ABQB 416 at paras 8-9; ***Geophysical Service Inc v Nwest Energy Corp***, 2014 ABQB 205 (Master) at paras 107-108; ***Gilchrist v Levin***, 2016 ABQB 474 at para 4; ***Wilson v Cordy Manufacturing Inc***, 2018 ABQB 592 at para 19; ***Piikani Nation v Raymond James Ltd***, 2017 ABQB 81 at para 31, aff'd 2018 ABCA 234; ***Anglin v Resler***, 2022 ABQB 231 at paras 85-86, appeal allowed in part 2022 ABCA 362, citing ***Nagy v Phillips***, 1996 ABCA 280; ***McFaul v Ranch-Lewchuk***, 2015 ABQB 706 at para 62).

2. Striking Pleadings under Rule 3.68

[71] Rule 3.68(1)(a) provides that a court may strike all or any part of a claim if the conditions under subrule (2) exist: rule 3.68(1) and (2); ***Piikani Nation v Raymond James Ltd***, 2026 ABKB 621 at para 95; ***Distinct Real Estate USA 2 v Wazonek***, 2025 ABKB 275 at para 55.

[72] The rule 3.68(2) conditions argued in this case are that the New Pleadings disclose no reasonable claim (rule 3.68(2)(b)), are frivolous, irrelevant or improper (rule 3.68(2)(c)), constitute an abuse of

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process (rule 3.68(2)(d)), or have an irregularity that is so prejudicial to the claim that it is sufficient to defeat the claim (rule 3.68(2)(e)).

[73] Rule 3.68(2)(b) allows the Court to strike all or part of a claim if a commencement document "discloses no reasonable claim or defence to a claim". In an application under this sub-rule, the court assesses, on a generous reading of the pleadings, whether it is "plain and obvious" that the claim cannot succeed or does not disclose a valid claim, assuming the facts pleaded are true and without assessing the merits of the claim: ***Shodunke v Alberta***, 2025 ABCA 320 at para 30; ***Anglin v Resler***, 2024 ABCA 113 [***Anglin 2024 CA***] at para 43, aff'd 2026 SCC 23; ***Atlantic Lottery Corp Inc v Babstock***, 2020 SCC 19 at para 14; ***Alberta v Elder Advocates of Alberta Society***, 2011 SCC 24 at para 20; ***Gay v Alberta (Workers' Compensation Board)***, 2023 ABCA 351 at para 11; ***R v Imperial Tobacco Canada Ltd***, 2011 SCC 42 at para 21.

[74] No evidence is admissible with respect to a rule 3.68(2)(b) application. The facts pleaded are taken as being provable and the claim is assessed for legal sufficiency, however bald assertions of misconduct (such as malice, fraud, deceit, 'absence of honest belief', bad faith, misfeasance in public office, etc.) will not be accepted as true without reasonable particulars of the allegations: ***Opabin Sand and Gravel Inc v VINCI GeoInfrastructure Canada Limited***, 2026 ABCA 212 at para 47; ***Anglin 2024 CA*** at para 45, citing ***Gay*** at para 12, ***Clark v Hunka***, 2017 ABCA 346 at paras 31-32, leave to appeal dismissed 2018 CanLII 63140 (SCC), ***Walton International Group Inc v Rockyview (Municipal District No 44)***, 2007 ABCA 21 at para 12, and ***GH v Alcock***, 2013 ABCA 24 at para 58; ***Alberta (Minister of Justice) v Vial***, 2026 ABKB 618 [***Vial***] at para 19. Particulars may be a possible remedy instead of striking the claim: ***Vial*** at para 20.

[75] To be proper, a pleading must set out the essential facts relied on, but it need not identify the precise cause of action by name: rule 13.6(2)(a); ***Vial*** at para 20, citing ***Anglin 2024 CA*** at para 47, ***Wi-Lan Inc v St Paul Guarantee Insurance Co***, 2005 ABCA 352 at para 8, leave to appeal denied 2006 CanLII 8863 (SCC), and ***Fullowka v Whitford***, 1996 CanLII 10199 (NWT CA) at para 39.

[76] Rule 3.68(2)(b) does not involve an assessment of the merits of the claim, but a consideration of whether there is a legal basis for the claim; if the claim is properly pleaded it should not be struck, even if the plaintiff cannot demonstrate at the time of the application that the claim can or will be proven: ***Gay*** at para 13; ***SR v Edmonton (Police Service)***, 2024 ABCA 340 at para 22; ***Pinkney v Hines***, 2026 ABKB 267 at para 23.

[77] However, pleadings may be inadequate and struck where the claims are nothing more than bald allegations or legal arguments; are absurd and highly implausible; or are illogical, incomplete, impenetrable, gibberish or ill-defined, such that the defendant is unable to defend itself and the court is unable to discern or identify any specific material facts: ***GH*** at para 58; ***Dueck v Calgary (City)***, 2021 ABQB 455 at para 10 (and cases cited therein); ***Arabi v Alberta***, 2014 ABQB 295 at paras 74-77, 82-85, citing ***kisikawpimootewin v Canada***, 2004 FC 1426 at para 9; ***Unrau v National Dental Examining Board***, 2019 ABQB 283 at para 629; ***Twilhaar v Alberta (Legislature)***, 2021 ABQB 255 at para 11; ***Burris v Dyck***, 2026 ABKB 3 at paras 18-19; ***Wawanesa Mutual Insurance Co v Correia***, 2001 ABQB 312 at paras 11-12.

[78] With respect to rule 3.68(c), pleadings may be struck if they are frivolous, irrelevant or improper: ***Piri v Good Samaritan Society***, 2026 ABKB 515 at para 31. As recently summarized by Justice Reed in ***Zarate v Bank of Nova Scotia***, 2026 ABKB 402 at para 56:

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> [56] Rule 3.68(2)(c) allows the Court to strike a pleading if it is frivolous, irrelevant or improper. Importantly, these terms do not apply to the litigant personally, but rather the drafting of the pleading. A frivolous pleading is one that obviously indicates bad faith or factual hopelessness, often because of noncompliance with legal rules and conventions, and the Court need no real argument to be convinced that the pleading is palpably bad: ***Haljan v Serdahely Estate***, 2008 ABQB 472 at para 21; see also ***Donaldson v Farrell***, 2011 ABQB 11 at para 24. Maintaining a claim that a plaintiff acknowledges they cannot prove is also indicative of an improper or frivolous pleading for the purpose of Rule 3.68(2)(c): ***Theaker v Public Service Alliance of Canada***, 2017 ABQB 170 at para 51; see also ***Dykun v Odinshaw***, 2000 ABQB 548 at para 42; aff'd 2001 ABCA 204, leave to appeal to SCC refused, 28784 (31 January 2002), as expanded upon in ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 [...] at paras 178-180. [...]

[79] With respect to rule 3.68(2)(d), I summarized applicable principles in ***Kostic v CIBC Trust Corporation***, 2026 ABKB 623 at paras 30-32:

> [30] The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute: ***Behn v Moulton Contracting Ltd***, 2013 SCC 26 at para 40, citing ***Canam Enterprises Inc v Coles***, 2000 CanLII 8514 (ON CA) at paras 55-56.
>
> [31] The Court of Appeal summarized the flexible nature of rule 3.68(2)(d) in ***McLelland v McLelland***, 2021 ABCA 102 at para 17:
>
> > [17] Rule 3.68(2)(d) allows the court to strike all or part of a claim where that claim constitutes an abuse of process. An abuse of process is a compendious principle that the courts use to control misuses of the judicial system: ***Reece v Edmonton (City),*** 2011 ABCA 238 at para 15, [2011] AJ No 876 (QL). It is of the very nature of a court's ability to "function as a court of law": ***R v Cunningham***, 2010 SCC 10 at para 19, [2010] 1 SCR 331. It is necessarily a flexible doctrine that is not confined to the criteria that may be essential to the applications of specific examples of it, such as issue estoppel or collateral attack: ***Toronto (City) v CUPE Local 79***, 2003 SCC 63 at paras 35-37, [2003] 3 SCR 77; [***Behn***] at paras 40-41 [...]. As noted by Lord Diplock in ***Hunter v Chief Constable of the West Midlands Police***, [1982] AC 529 at p 536C: "It would, in my view, be most unwise if this House were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court *has a duty (I disavow the word discretion) to exercise this salutary power*. [Emphasis added]"
> >
> > (See also ***Fairclough Homes Ltd v Summers***, [2012] UKSC 26 at paras 35 and 44, [2012] 4 All ER 317 citing Lord Diplock in ***Birkett v James***, [1977] 2 All ER 801 and ***Hunter***.)
>
> [32] Accordingly, abuse of process can arise in many ways, a sampling of which includes the often-related concepts of:

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(a) attempted re-litigation: ***Behn*** at paras 40-41;

(b) duplicative proceedings: ***Piikani Nation v McMullen***, 2025 ABKB 481 at para 71; ***Mikisew Cree First Nation v Alberta***, 2024 ABKB 578 at para 138, citing ***Ominayak v Penn West Petroleum Ltd***, 2015 ABQB 342 at para 29 and ***Ashraf v Munn***, 2021 ABQB 472 at para 23; ***Polaris Financial Management Limited v AuVert Mining Group Inc***, 2022 ABQB 419 at para 39;

(c) failing to follow court orders or instructions: ***Recycling Worx Solutions Inc v Hunter***, 2023 ABKB 51 at para 128, citing [***Unrau***] at paras 706-709 and ***West Edmonton Mall Property Inc v Proctor***, 2020 ABQB 161 at paras 124-126 [***Proctor***]; and

(d) collaterally attacking or attempting to circumvent a prior final court decision or result: ***Ubah v Ubah***, 2024 ABKB 164 at para 30; ***Rana v Rana***, 2022 ABQB 79 at para 22, citing ***British Columbia (Workers' Compensation Board) v Figliola***, 2011 SCC 52 at para 28; ***Unrau*** at paras, 615-619; ***Chutskoff v Bonora***, 2014 ABQB 389 at para 92(1)(c), citing ***Stout v Track***, 2013 ABQB 751 at paras 79-82, 84-87.

[80] See also: ***Vial*** at paras 26-27.

[81] Pleadings that display impropriety or vexatiousness may also be an abuse of process: ***Piri*** at para 34. Indicia of vexatious litigation conduct include, among other things, collateral attack; hopeless proceedings; escalating proceedings; bringing applications for improper purposes; initiating "busybody" lawsuits to enforce alleged rights of third parties; failing to honour court-ordered obligations; persistently appealing; persistently engaging in inappropriate courtroom behaviour; unsubstantiated allegations of conspiracy, fraud and misconduct; and scandalous or inflammatory language in pleadings or before the Court: ***Chutskoff*** at para 92; *Judicature Act*, RSA 2000, c J-2, s 23(2); ***Jonsson v Lymer***, 2019 ABCA 113 at para 5; ***Piri*** at para 33; ***Stout*** at para 77.

[82] With respect to rule 3.68(2)(e), if a party names another party to the style of cause without being permitted to do so under the *Rules* or by a court, that name may be struck from the style of cause: ***Proctor*** at paras 42-43.

B. The Positions of the Parties

[83] The CIBC Parties argue that the New Pleadings against them:

(a) are captured by the February 2013 Order, were filed by Kostic without the required permission, and should be struck on the same basis as the claims against CIBC Trust and CWM;

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(b) are an abuse of process because they duplicate Kostic's claims against CIBC Trust in action 1601-01693 (**Kostic-CIBC Trust Action #1**) and/or action 1701-01341 (**Kostic-CIBC Trust Action #2**[31]);

(c) do not plead any reasonable claim against the CIBC Parties, including because they (a) do not plead a proper basis for indemnity and save harmless relief; (b) appear to plead against CIBC only on the basis that it is the parent of CWM or CIBC Trust; (c) make bald and inflammatory allegations without sufficient facts pleaded; (d) are disjointed, rambling, unclear and unfocussed so as to make it impossible to respond to; and

(d) are irregular, including because (1) they name the remaining CIBC Parties as Third Party Defendants without any third party claim filed or proposed against them; (2) the NTCD is against the remaining CIBC Parties even though they are not defendants in the BridgePoint Action; (3) the New Pleadings were filed out of time under rules 3.43, 3.45 and 3.57, without court permission; and (4) the Amended Reply was filed in response to Kostic's own pleading.

[84] Miller Thomson/Thom argue that the New Pleadings: (1) are duplicative of claims Kostic makes against them in action 1501-11111 (**Kostic-Thom Action**); (2) are vexatious; (3) are an abuse of process; (4) make unsubstantiated or incomprehensible allegations of conspiracy and misconduct and causation of harm; (5) do not disclose a reasonable claim against them; and (6) contain several irregularities.

[85] Docken/Guardian argue that:

(a) Kostic required permission to file the New Pleadings because pleadings had closed, and had such an application been brought it would have been refused for several reasons, including because the Amended Counterclaim would cause an injustice to the BridgePoint Action by adding significant complexity and multiple parties;

(b) the New Pleadings have numerous irregularities, based on similar arguments made by the CIBC Parties noted above;

(c) the New Pleadings do not comply with the requirements for pleadings under the *Rules*, including because they: (1) are verbose, disjointed, repetitive, and largely unintelligible; (2) contain entirely irrelevant allegations; (3) include allegations against persons not named as parties; (4) include allegations for which particulars are required; (5) include allegations that are outrageous, scandalous and lacking any air of reality; (6) allege virtually every cause of action known to law (and some not known to law); (7) incorporate by reference a multitude of other court actions before this Court and the Federal Court; (8) make legal argument; and (9) assert breaches by multiple lawyers and law firms;

(d) for at least some of the above reasons, the New Pleadings have no reasonable prospect of success;

(e) the New Pleadings are frivolous, irrelevant or improper; and

[31] Kostic-CIBC Trust Action #2 has since been struck in ***2026 ABKB 623***.

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(f) the New Pleadings are vexatious and an abuse of process.

[86] In oral submissions, counsel for Docken/Guardian confirmed their position that the Amended Counterclaim incorporates or replaces Kostic's Counterclaim and, therefore, if the Amended Counterclaim is struck, the Counterclaim is effectively struck or must also be struck.

[87] Kostic's written materials and submissions collectively and repetitively exhort a lengthy and wide-ranging litany of complaints and positions. Rather than list them all here, I expressly address her material positions below. I do not expressly address some of the completely irrelevant matters raised in Kostic's materials, including, for example, her various arguments and positions about the merits of her position in the Case Managed Actions between her and Piikani Nation.

C. Alleged Misconduct of the Applicants

[88] Kostic raises various grounds of misconduct against the applicants and other parties. I only address the allegations that relate to the Applications. With one exception, Kostic's arguments are not persuasive.

[89] First, Kostic argues that BridgePoint breached the February 2013 Order by filing the Action when leave was required. As noted by CMJ Graesser in ***Piikani Nation v Kostic***, 2024 ABKB 137, at para 76, "BridgePoint may well not have been aware" of the February 2013 Order. In any event, Kostic acknowledged in oral submissions that she was not seeking to strike the Action. Kostic defended the Action on its merits. Even if BridgePoint was required to, but did not, obtain leave to file the Action against Kostic, in my view it is too late to raise that now. Further, and in any event, BridgePoint's failings in this regard do not excuse Kostic for her own failure to obtain leave.

[90] Second, Kostic yet again raises Piikani Nation's alleged surreptitious amendments to the statement of claim in action 0601-13081 (**0601 Action**), alleged attempts by others to collaterally attack final judgments she argues were obtained in her favour, and alleged misrepresentations by CIBC-related parties to the Court of Appeal. She also raises that Piikani Nation improperly filed an injunction application in action 2201-01622 (**2201 Action**).

[91] These allegations have little, if anything, to do with the BridgePoint Action. Further, these exact arguments have been rejected (in some cases, several times) in other contexts. They do not help Kostic here.

[92] Third, Kostic argues that the applicants, or some of them, fraudulently altered pleadings to portray her in a negative light. It is not entirely clear to what Kostic refers, other than the fact that Thom has been included as an applicant even though he is not a party to the Action. There may have been some other administrative errors in filings, but Kostic has not convinced me any such errors were intentional, fraudulent, or had any prejudicial impact.

[93] With respect to the inclusion of Thom as an applicant, counsel for Miller Thomson advised that this was done out of an abundance of caution because the New Pleadings refer to Thom personally. Thom is not a party to this Action and should not have been included as an applicant. I strike Thom as an applicant in the MT Strike Application. However, this is not a reason to dismiss Miller Thomson's MT Striking Application, which I consider on its merits.

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[94] Fourth, Kostic argues that the applicants improperly went to ACJ Rooke and obtained *ex parte* relief, and that if he had been fully apprised of all facts, he would not have granted leave. This is not a reason to deny the Applications, for several reasons. Kostic immediately raised her concerns about the *ex parte* communications or applications with ACJ Rooke. He considered those submissions and nonetheless confirmed his decision to grant leave. Further, ACJ Rooke confirmed that it was appropriate that the matter be brought to his attention because he granted the February 2013 Order. I came to the same conclusion for a different breach of the February 2013 Order in ***2026 ABKB 623*** at paras 96-97. In any event, ACJ Rooke's decision to grant permission to allow applications to proceed was later confirmed by CMJ Graesser and me. In any event, Kostic has now fully participated in the Applications.

[95] Fifth, Kostic argues that the applicants breached court orders.

[96] With respect to Miller Thomson, it was expressly granted permission to file its striking application by ACJ Rooke's April 22, 2022 order. This was reinforced by later orders or directions of CMJ Graesser and me. The fact Miller Thomson filed its application late caused no prejudice – it filed the exact same application that had been proposed and approved for filing in 2022.

[97] With respect to the CIBC Parties, as noted above, on May 16, 2022, ACJ Rooke confirmed that the CIBC Parties did not require leave to file the proposed striking application. Later, after CMJ de Wit's October 7, 2022 decision, the remaining CIBC Parties obtained leave again from CMJ Graesser in the June 2024 Orders to file the CIBC Striking Application. For some reason, the CIBC Parties did not actually file the application after obtaining leave. However, despite Kostic's argument to the contrary, I reviewed the proposed application provided to CMJ Graesser and the one the CIBC Parties filed in April 2026, and they are identical in all material respects. The CIBC Parties did not improperly file a different application as Kostic alleges. The fact that it was not filed until 2026 caused no prejudice and is not a compelling reason to dismiss the CIBC Strike Application.

[98] With respect to Docken/Guardian, until effective September 16, 2022, the BridgePoint Action was not under case management. There were no prohibitions on filing applications in the BridgePoint Action before then. This was confirmed by ACJ Rooke on May 6, 2012. Docken/Guardian did not require leave to file the Docken/Guardian Strike Application on May 18, 2022. They did not breach any order in doing so.

[99] Sixth, Kostic argues that the applicants seek to relitigate matters already decided by CMJ de Wit. I have reviewed the recording of the August 15, 2022 and October 7, 2022 appearances before CMJ de Wit. I find Kostic's argument to be disingenuous. The CIBC Parties and Docken/Guardian made it clear before and at the August 15, 2022 hearing before Justice de Wit that, in light of ACJ Rooke's narrowing of the issues to be determined at that hearing, the application of the remaining CIBC Parties and Docken/Guardian Strike Application were not being addressed and they reserved their rights. Further, CMJ de Wit ultimately decided not to address the MT Strike Application on October 7, 2022, so as to allow Kostic to make further submissions.

[100] None of the misconduct allegations support Kostic's position that the Applications should be dismissed. It is appropriate to address them on their merits.

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D. Kostic Required Court Permission to File the New Pleadings

[101] Kostic argues that she did not require court permission to file the New Pleadings. She is incorrect, for several reasons.

[102] First, I find that Kostic was required to obtain leave to file the New Pleadings as against CML and CWG under the February 2013 Order.

[103] As per ***Piikani Nation v Raymond James Ltd***, 2025 ABKB 493 at para 149, aff'd 2026 ABCA 135:

> [149] On February 5, 2013, in another of the now Case Managed Actions (action 1201-15897), ACJ Rooke [granted the February 2013 Order, which] ordered, among other things, that no actions could be commenced against Piikani Nation "or any trustee or corporation associated with the Piikani Nation", or "as between or among or against any of the parties" to the 0601 Action (among other actions), without leave of the Court.

[104] CWM was a party to the 0601 Action at the time Kostic filed the New Pleadings. This was why the New Pleadings were struck as against CWM by CMJ de Wit on October 7, 2022.

[105] Kostic's Amended Reply pleads and admits, at paras 12 and 21 (emphasis added):

> The Defendants by Third Party Notice, CIBC World Markets Inc. ("CIBC WM"), CIBC/Merrill Lynch, CIBC WG, **is a corporation** registered in the Province of Alberta and was at all material times a member of the Investment Dealers Association of Canada ("IDA").
>
> [...]
>
> Defendants CIBC World Markets Inc., **CIBC division Merrill Lynch ("Defendants CIBC, WM, ML WG") is the Canadian full-service retail brokerage division of CIBC World Markets Inc.,** a subsidiary of Defendant CIBC and offers an array of investment and insurance products and services. Defendant CIBC WG has a head office in Toronto, ON and offices in Calgary, AB. Since 1997, **the name CIBC Wood Gundy has been used as the brand for CIBC's retail brokerage business**. In December 2001, Defendant CIBC acquired the Canadian retail brokerage business of Merrill Lynch Canada. **The acquisition of Merrill Lynch Canada, which it subsequently merged with its CIBC Wood Gundy business**, greatly increased CIBC's own brokerage network, adding more than 1,000 brokers across Canada. Plaintiff Kostic was an employee first of Merrill Lynch Canada and moved to CIBC WG long before the acquisition became an employee of Defendant CIBC WM on May 11, 2001 and remained an employee of Defendant CIBC WM until March 17, 2004.

[106] The effect of these pleadings is that, on the face of the New Pleadings, CML and CWG are not legal entities, but are trade names or divisions of corporations that, by the time the New Pleadings were filed, were part of CWM. That is, CML, CWG and CWM are legally one and the same. This is consistent with my understanding from other decisions in the Case Managed Actions: ***2025 ABKB 493*** at para 59(c)

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(footnote 19); ***2024 ABKB 137*** at para 3.[32] Kostic acknowledged in argument that these entities may have merged.

[107] At common law, in order to sue or be sued, a party must be a natural person, corporation or a body given capacity to sue or be sued through legislation: ***Papaschase First Nation v McLeod***, 2021 ABQB 415 at para 12, citing ***Doe v Canada***, 2001 ABCA 216, ***Bruderheim Community Church v Board of Elders***, 2018 ABQB 90, and ***Kwicksutaineuk/Ah-Kwa-Mish First Nation v Canada (Attorney General)***, 2012 BCCA 193. Therefore, the claims naming CML and CWG are, in fact, claims against CWM.

[108] As noted, since CWM was a party to the 0601 Action, the claims against it (including by reference to CML and CWG) required leave under the February 2013 Order.

[109] I note that the same does not hold true for CIBC. CIBC is a separate entity and, to my knowledge, was not a party to any of the actions listed in in the February 2013 Order. The New Pleadings against CIBC were not barred by the leave requirements in the February 2013 Order.

[110] Second, and in any event, court permission was required under rule 3.65 because the pleadings in the BridgePoint Action had closed when the New Pleadings were filed and Kostic no longer had the ability to amend or filing new pleadings without court permission.

[111] Rule 3.67(2) provides that pleadings close at the earlier of (a) the filing and service of a reply by a plaintiff, plaintiff-by-counterclaim, or third party plaintiff, as the case may be and (b) the time for filing and serving a reply expires (which is 10 days after the service of the defence: rules 3.33(3), 3.54(2)(c)).

[112] With respect to BridgePoint's claim against Kostic, Kostic filed her defence on August 16, 2021 and BridgePoint did not file a reply. Pleadings closed on or about August 26, 2021.

[113] With respect to Kostic's Counterclaim, Docken/Guardian filed their defence on September 7, 2021, BridgePoint filed its defence on September 10, 2021, and Kostic filed the Kostic Reply on September 20, 2021. Pleadings closed with respect to the Counterclaim, at the latest, by September 20, 2021.

[114] Under the March 8, 2022 Mason Order, BridgePoint was permitted to file its amended statement of defence to counterclaim, and it did so on April 22, 2022. Under rules 3.62(3) and (4), Kostic was only entitled, without the Court's permission, to file and serve an amended reply to the amended defence to counterclaim within 10 days. She did not do that. Instead, she filed:

(a) the Amended Reply (which was either a reply to or amendment of her own statement of defence), which required court permission under rule 3.62(1)(b);

(b) the Amended Counterclaim, which required court permission under rule 3.62(1)(b); and

(c) the NTCD, which was a new pleading. Whether construed as a notice to co-defendant under rule 3.43, or a third party claim under 3.44, it was filed long past the applicable

[32] "Ms. Kostic had been a financial advisor with Merrill Lynch Canada, which was merged into CIBC Wood Gundy shortly before she began to work with the Nation. CIBC Wood Gundy's name was subsequently changed to CIBC World Markets".

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deadlines and required the Court's permission through an extension of time to file under rule 13.5.

[115] Kostic's argument that BridgePoint's April 22, 2022 amended statement of defence to counterclaim somehow gave her *carte blanche* to file the New Pleadings is incorrect.

[116] Kostic required court permission to file the New Pleadings.

E. Kostic Did Not Have Permission to File the New Pleadings

[117] Despite Kostic's arguments to the contrary, she did not have permission to file the New Pleadings. Kostic raises several arguments, several of which were also raised before CMJ de Wit and rejected. I address her arguments briefly below. Kostic's arguments mischaracterize what really happened.

[118] First, Kostic appears to argue that she somehow obtained leave to file the New Pleadings on August 26, 2016 in Kostic-CIBC Trust Action #1. She asserts that leave "to invoke my save harmless and indemnity relief, as may become required... was granted by [ACJ Rooke] under the [Kostic-CIBC Trust Action #1] which I sought on a pre-emptive basis for all applicable actions mentioned [under the February 2013 Order] and any other related actions".[33] Kostic-CIBC Trust Action #1 is a claim that was originally filed against CWM, CIBC Trust and CIBC, but was later amended to only include CIBC Trust as a respondent. On August 26, 2016, Kostic filed an amended amended originating application to narrow her claim against CIBC Trust, which was approved to be heard by ACJ Rooke: ***2026 ABKB 622*** at para 67. I am not aware of, and Kostic has not pointed me to, any order in Kostic-CIBC Trust Action #1 which could possibly be argued to have given her permission to file the New Pleadings in the BridgePoint Action.

[119] Second, Kostic again relies on the June 22, 2016 appearance before ACJ Rooke for the proposition that she does not require permission under the February 2013 Order to sue her own lawyers. I addressed this in ***2026 ABKB 623*** at paras 37, 98. It is true that the February 2013 Order does not preclude actions by Kostic against her own counsel. However, none of Miller Thomson, Docken, or Guardian argue that the February 2013 Order applied to the New Pleadings as against them. They rely on, among other things, the fact that the pleadings had closed (as discussed above). ACJ Rooke cannot reasonably be interpreted to have given Kostic a blanket approval to add claims against her counsel to existing actions in contravention of the requirements of the *Rules*.

[120] Third, Kostic appears to again rely on CMJ Nation somehow giving her leave.[34] There is no reasonable basis to suggest that CMJ Nation granted Kostic leave to file the New Pleadings in the BridgePoint Action which had not yet been commenced. In ***2026 ABKB 622***, at paras 298-321, I addressed Kostic's mischaracterization of what CMJ Nation did, and found that, at best, CMJ Nation reconfirmed to Kostic that she required approved fiat requests to file applications to add claims to the 0601 Action.

[33] Kostic 2022 Affidavit at paras 6-7, 29, 38.
[34] Kostic 2022 Affidavit at para 38.

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[121] Fourth, Kostic argues that Master Farrington granted her leave to take any and all steps in the Action and to file a counterclaim after the default hearing. I have reviewed the transcript of the attendance before Master Farrington. Kostic relies on this passage:

> MASTER FARRINGTON: [...] Now, I am going to make a direction that no further steps be taken on the counterclaim, except your response to this application. I am also going to direct that there will not be any cross-applications going on the list for March 8th. The only application is the setting aside noting in default application. You can file other applications, Ms. Kostic, but those have to be on different days, and whenever they are ready, you can do whatever you wish to do in terms of this action, but we are not wrapping it up with the noting in default....

[122] Master Farrington simply adjourned BridgePoint's application to set aside the noting in default. He was dealing with the matter pending the next appearance. There is no reasonable basis to find that Master Farrington provided Kostic permission to file the New Pleadings. They were not before him. At best, he only confirmed that Kostic could file other applications, not that she could do whatever she wanted in contravention of the *Rules*. In any event, Kostic did not file an application to permit the New Pleadings.

[123] Fifth, Kostic suggests that Master Mason approved her filing the New Pleadings. I have reviewed the transcript of that attendance and the Mason Order and there is no support for this position. All Master Mason did that potentially relates to the amendment of pleadings was approving BridgePoint filing its amended defence to the Counterclaim, and confirming that Kostic would be entitled, as of right, to file an amended reply to the amended defence to the Counterclaim. As noted above, none of the New Pleadings were a reply or amended reply to Bridgepoint's amended defence to the Counterclaim. I have also reviewed the transcript of the attendance before Master Mason on July 5, 2022 and she did not provide Kostic *nunc pro tunc* leave to file the New Pleadings at that time, as argued.

[124] Sixth, Kostic argues that Justice Feasby granted her leave on April 19, 2022. This Court has addressed Kostic's arguments about the effect of this appearance numerous times, most recently in ***2026 ABKB 622*** at para 177. Justice Feasby adjourned the Kostic 2022 Application. The approval of the New Pleadings was not before him and he did not approve Kostic filing them.

[125] Seventh, Kostic argues that Justice Hollins granted her leave.[35] I have reviewed the June 2, 2022 transcript and there is no merit to this position. Justice Hollins did nothing more than adjourn the AJ Appeal to a special application.

[126] Kostic filed the New Pleadings without court permission. This alone is a sufficient reason to strike them. However, for completeness and case management efficiency, I address other positions and arguments below.

F. The New Pleadings Should be Struck Against CML/CWG as an Abuse of Process

[127] Kostic did not obtain leave under the February 2013 Order. The filing of the New Pleadings against the names of CML and CWG constituted an attempt to make prohibited claims against CWM without leave and were an abuse of process. This Court has consistently struck pleadings filed in breach

[35] Kostic 2022 Affidavit at paras 61, 64.

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of the February 2013 Order when timely applications to do so are brought, including in this Action by CMJ de Wit on October 7, 2022, and most recently by me in another action: ***2026 ABKB 623***. To be consistent, the NTCD and Amended Counterclaim are struck as against CML/CWG (and, therefore, CWM).

G. The NTCD is Properly Struck

[128] It is difficult to discern exactly what Kostic intended by this filing. I find the NTCD is highly irregular and fatally flawed, for several reasons.

[129] First, the court clerk stamped the NTCD as being filed under rule 3.74. As noted above, rules 3.62(b) and 3.74 together contemplate the amendment of existing pleadings to add, remove, substitute or correct the name of an existing party to an action, based on a court order. The NTCD was not an amendment of an existing pleading, but was a new pleading in the Action which also happened to irregularly add the Third Party Defendants to the style of cause. There was no court order permitting Kostic to file the NTCD. The NTCD should not have been stamped as an amendment made under rule 3.74. That was irregular.

[130] Kostic argued that the court clerks required Kostic to file the New Pleadings in the way that she did.[36] However, these submissions were not in an affidavit. Further, Kostic's evidence did not explain what she may have represented to the clerks in the filing process. I have given Kostic's arguments about the clerks' involvement little weight. If a party intends to make allegations about the involvement of the clerks as an excuse for their filings, they should provide evidence, not unsworn assertions.

[131] Second, although on its face the NTCD states that it is in Form 16 under rules 3.44 and 3.45, which is a reference to a third party claim, the NTCD does not actually use Form 16. There are no facts at all pleaded as against any of the applicants. If the NTCD is intended to be a third party claim under rules 3.44/3.45, it is fundamentally flawed and discloses no reasonable claim against any of the applicants.

[132] Third, on its face, and in form, the NTCD appears intended to be a notice to co-defendant under rule 3.43 and a claim for contribution or indemnity under the *Tort-Feasors Act*, RSA 2000, c T-5 [*TFA*] or the *Contributory Negligence Act*, RSA 2000, c C-27, even though it does not reference rule 3.43 or Form 15. A notice to co-defendant 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: ***2026 ABKB 622*** at para 260, citing ***Arsopi v ARVOS GmbH***, 2026 ABCA 49 at para 41. If the NTCD was intended to be a notice to co-defendant under rule 3.43, it is fundamentally flawed because a rule 3.43 notice must be against a "co-defendant". None of the applicants are defendants or co-defendants with Kostic in the Action.

[133] For the above reasons, the NTCD is struck in its entirety.

[134] To avoid injustice, for completeness, and even though not expressly applied for by Kostic, I have also considered whether the NTCD could or should be permitted or approved *nunc pro tunc*, applying the framework set out in ***2026 ABKB 623*** at para 65, citing ***O'Reilly v O'Reilly***, 2025 ABKB 103 at paras 106-108, ***Canadian Imperial Bank of Commerce v Green***, 2015 SCC 60 at paras 85-86, ***Sedgwick***

[36] See, for example, Kostic 2022 Brief at paras 2, 25.

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v Edmonton Real Estate Board Co-Operative Listing Bureau Limited (Realtors Association of Edmonton), 2022 ABCA 264 at paras 78-79, and ***Resta v Thornton***, 2023 ABKB 498 at para 17.

[135] I am satisfied that the flaws and irregularities in the NTCD also preclude its approval *nunc pro tunc* or now as a third party claim. Further, the NTCD would not have been approved for other reasons had permission been sought, including because it is hopeless. For example, a notice to co-defendant "requires that the third-party tortfeasor be liable for the damage suffered by the plaintiff as a condition precedent to the defendant tortfeasor advancing a *TFA* claim against a third party tortfeasor": ***2026 ABKB 622*** at para 429. There is nothing in the pleadings in the Action, the record before me, or otherwise known to me based on my involvement in the Case Managed Actions that could reasonably support that the CIBC Parties or Miller Thomson had any relevant legal relationship or duty to BridgePoint, or anything material to do with BridgePoint's claimed losses as alleged in the AASOC. BridgePoint's claim is a debt claim against Kostic and Klym based on the Loans and related loan agreements.

H. The Amendments in the Amended Reply are Properly Struck in their Entirety

[136] The Amended Reply is also highly irregular and fundamentally flawed. It is appropriate to strike the amendments in the Amended Reply for several reasons.

[137] First, the Amended Reply is also stamped as an amendment under rule 3.74. Although it is an amendment of an existing pleading, namely the Kostic Defence, Kostic did not have a court order or court permission to file it. It should not have been filed as an amendment under rule 3.74.

[138] Second, the Amended Reply appears on its face to be an amendment or reply to the Kostic Defence. The *Rules* do not contemplate a party filing a reply to their own pleading by way of an amendment or otherwise, let alone doing so without permission.

[139] Third, Kostic argues that she never intended to reply to her own pleading. She asserts that the Amended Reply was intended to be a reply to the BridgePoint amended statement of defence to the Counterclaim. However, even if this is accepted, it is highly irregular and causes significant confusion in the pleadings because the Amended Reply is embedded in the Kostic Defence.

[140] Further, the amendments in the Amended Reply were not responsive to the amendments to the BridgePoint amended statement of defence to the Counterclaim. Those amendments were minimal and limited to fixing the earlier error or omission by which one of the plaintiffs was not expressly referenced in the pleading as defending the Counterclaim. BridgePoint's amendment simply expressly included both plaintiffs in the definition of BridgePoint, nothing more.

[141] Rule 3.62(3)(b) allows a plaintiff-by counterclaim, without court's permission, to file a reply to amended statement of defence to counterclaim. However, this rule contemplates that the right to file a reply is limited to responding to the new or amended pleading in the amended statement of defence, and may not go beyond such amendments to unrelated matters: ***Talisman Energy Inc v Petro-Canada Inc***, 2000 ABQB 602 at paras 24-25; ***Van Huizen v Trisura Guarantee Insurance Company***, 2021 ONSC 6614 at para 31; ***Ebadi vs Fosters and Oakwood (aka Navan Realty)***, 2025 ONSC 6860 at para 24. Thus, even if the Amended Reply was intended to be a reply to the BridgePoint statement of defence to the Counterclaim, Kostic required court permission to file the Amended Reply which went well beyond a response to BridgePoint's amended statement of defence to the Counterclaim.

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[142] Fourth, the amendments in the Amended Reply appear to attempt to include a claim against the defendants by counterclaim and the Third Party Defendants for contribution and indemnity based on "unlawful means conspiracy."[37]

[143] Whether the Amended Reply was an amendment or reply to the Kostic Defence, or an irregular attempt to reply to the BridgePoint amended statement of defence to the Counterclaim, the *Rules* do not generally contemplate adding claims in this manner. Statements of claim, counterclaims, notices to co-defendants and third party claims are the pleadings by which the *Rules* generally contemplate claims can and are to be made. To the extent the Amended Reply was an attempt to file a third party claim (which is not what Kostic has argued), it is also irregular and does not comply with rule 3.44 or 3.45. The attempt to irregularly and improperly embed a new claim against parties and non-parties in the Amended Reply further justifies striking the amendments in the Amended Reply.

[144] Fifth, and in any event, the amendments in the Amended Reply do not disclose any reasonable claim against the applicants. Most of the amendments set out facts identifying the new parties, and then it is baldly pleaded at para 27: "Kostic states that the Defendants committed and [sic] unlawful means conspiracy – the parties to the conspiracy knew injury to the plaintiff by Counterclaim Kostic was likely to result". No particulars are provided. No other pertinent facts are pleaded. As noted above, such a bald pleading with no particulars is not assumed to be true for the purpose of determining whether a pleading discloses reasonable claim. This is an independent ground justifying the striking of these amendments.

[145] Sixth, there is no prejudice to Kostic, regardless of whether what was intended was an amendment to the Kostic Defence or a reply to the BridgePoint amended defence to the Counterclaim. CMJ Graesser and I both gave Kostic leave to file an amendment to the Kostic Defence; this was provided in CMJ Graesser's June 2024 Orders and in my Endorsement #13 at para 37. Kostic did not file an amendment, and was deemed to have abandoned that relief. If Kostic seriously wants to file a proper and appropriate amended reply to the BridgePoint statement of defence to the Counterclaim, Kostic will have to provide a compliant fiat request to do so.

[146] For the above reasons, I strike the amendments in the Amended Reply. This effectively reverts this pleading back to the Kostic Defence filed on August 16, 2021.

[147] To avoid injustice, and for completeness, and even though not expressly applied for by Kostic, I have also considered whether the amendments in the Amended Reply could or should be permitted or approved *nunc pro tunc* or now. I am satisfied that they should not be, because the Amended Reply would not have been approved in 2022 had leave been sought, for many of the same reasons outlined above. For the same reasons, I would also not permit it to be filed now.

I. The Amended Counterclaim is Irregular

[148] Like the NTCD and the Amended Reply, the Amended Counterclaim was also irregular.

[149] First, it was stamped as being filed under rule 3.74. It should not have been. It was not amended under a court order. Kostic did not have permission to file it under rule 3.74, or otherwise.

[37] Amended Reply at paras 27, 92.

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[150] Second, the Amended Counterclaim irregularly added the Third Party Defendants to the style of cause as "third-party defendants", not as defendants by counterclaim. This appears to have been an intentional attempt to bring third party claims by way of an amendment to a counterclaim,[38] something that is not contemplated by the *Rules*. To the extent the Amended Counterclaim was intended to counterclaim against the applicants, it erroneously failed to name them as defendants by counterclaim.

[151] These irregularities could also justify striking the Amended Counterclaim. However, I prefer to base my decision on the substantive analysis set out below.

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J. The Amendments in the Amended Counterclaim Are Properly Struck or Not Allowed

[152] I have already struck the New Pleadings as against CML/CWG because they were claims against CWM in breach of the February 2013 Order. Further, I have already held that it would be appropriate to strike the New Pleadings due to Kostic filing them without required court permission.

[153] In this section, I consider whether the amendments in the Amended Counterclaim should otherwise be struck. As part of this exercise, I have also considered whether these amendments could or should be granted *nunc pro tunc* or allowed afresh now as suggested by Kostic.

[154] I have reviewed the Amended Counterclaim and the Kostic Defence (which is incorporated by reference into the Amended Counterclaim) in detail. I address the amendments below.

1. No Damages Claimed Against CIBC Parties or Miller Thomson

[155] The Amended Counterclaim discloses no reasonable claim against the CIBC Parties or Miller Thomson because, at para 231, it does not seek any relief from them. This alone could be a further sufficient basis to strike the Amended Counterclaim against them. However, I further consider the other amendments on the assumption that was a slip and that Kostic in fact claims against the CIBC Parties and Miller Thomson in some way,[39] and that this oversight could be rectified without prejudice to anyone in the event the balance of the amendments are allowed to stand.

2. Alleged Contribution to Kostic's Indebtedness to BridgePoint (Amended Counterclaim paras 2, 31, 40)

[156] Kostic pleads that the Third Party Defendants caused or contributed to the "indebtedness pursued by BP" or "induced the requirement for Kostic" to obtain the Loans from BridgePoint. These are bald assertions for which no particulars are provided. These allegations seem connected to the allegations of negligence in Miller Thomson's representation of Kostic in other Case Managed Actions (noted below). Without more, including a specific pleaded connection between the conduct of the Third Party Defendants and the Loans, a general allegation that the Third Party Defendants contributed to Kostic's financial situation that led her to a business relationship with BridgePoint does not plead a reasonable claim.

[157] For the same reasons, these amendments are not amenable to being allowed *nunc pro tunc*, or now. Further, there is insufficient evidence before me to explain how the CIBC Parties or Miller

[38] Kostic 2022 Brief at paras 25, 43(i).
[39] This intention is borne out by para 92 of the Amended Reply.

Thomson contributed to Kostic's financial situation that may have led Kostic to enter into a business relationship with BridgePoint. In the Case Managed Actions, in which Kostic is adverse to the CIBC Parties and Miller Thomson, the CIBC Parties and Miller Thomson vigorously deny any liability to Kostic. Their contribution to Kostic's financial situation at the time of the Loans, if any, is speculative at this time.

[158] These amendments, allowed *nunc pro tunc* or now, would also work an injustice because they would raise complex new issues that would complicate and further impede and delay the prosecution of the otherwise relatively straightforward claims in the BridgePoint Action. This would turn the BridgePoint Action into a "barnacle on a battleship": ***Ilic v Calgary Sun***, 1998 ABQB 419 at paras 53-55; ***2026 ABKB 622*** at para 435, citing ***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*** at paras 21, 24. The BridgePoint Action would become complex litigation about the cause of Kostic's financial situation at the time of the Loans instead of whether Kostic is obligated to repay the Loans.

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3. Alleged Interference with Fiduciary Duties Owed by Others (Amended Counterclaim paras 15(h) and (i), 229)

[159] Kostic pleads that Miller Thomson and "CIBC et al" induced and interfered with fiduciary duties owed by the defendants by counterclaim (BridgePoint/Docken/Guardian). These are bald assertions for which no particulars are provided. It does not plead a reasonable claim.

[160] For the same reasons, these amendments are not amenable to being allowed *nunc pro tunc*, or now. There is insufficient evidence to explain how the CIBC Parties or Miller Thomson induced a breach of or interfered with any duties BridgePoint, Docken, or Guardian may have owed to Kostic.

4. Alleged Miller Thomson Negligence in Representation of Kostic in Other Case Managed Actions (Amended Counterclaim paras 16, 28, 31, 40)

[161] Kostic pleads that Miller Thomson was negligent and failed to advance and/or invoke numerous causes of actions, defences, or remedies available at law in the 0601 Action and the 0801 Action, which Kostic asserts has caused her harm.

[162] As it relates to the 0601 Action, these allegations are bare assertions without particulars and do not disclose a reasonable claim against Miller Thomson. Further, they are also duplicative of claims made, or which could have been made, in the Kostic-Thom Action, or which relate to damages already captured by Kostic's claim in the Kostic-Thom Action. See, for example: ***Kostic v Piikani Nation***, 2024 ABKB 40 at para 27.

[163] It would be an abuse of process to allow Kostic to claim against Miller Thomson again in this Action for the same claims or damages. I dismissed Kostic's attempt to bring these types of claims into the 0601 Action in ***2026 ABKB 622*** at paras 439, 441, 443, 444. Similar reasoning applies here.

[164] As it relates to the 0801 Action, the Amended Counterclaim provides no particulars and does not disclose a reasonable claim. Further, it appears frivolous and improper because there has never been any suggestion in any of the Case Managed Actions that Miller Thomson acted for Kostic in the 0801 Action. Miller Thomson was never Kostic's counsel of record in the 0801 Action. The Kostic Defence pleads

that Kostic retained Docken with respect to the 0801 Action in June 2007 and that Docken, and then Klym, had carriage of the 0801 Action.[40]

[165] For the same reasons, and for at least the additional reasons set out immediately below, these claims are not amenable to be allowed *nunc pro tunc* (or now), based on the record before me.

[166] First, to allow these new claims would likely deprive Miller Thomson of a limitations defence in this Action. In my view, these claims against Miller Thomson are not sufficiently related to the conduct, transaction or events described in the original pleading in the BridgePoint Action and they would not likely be saveable under section 6 of the *Limitations Act*, RSA 2000 c L-12. See ***2026 ABKB 622*** at paras 360-361, 431-432, 443.

[167] Second, these amendments would dwarf, delay and complicate the BridgePoint Action and again turn it into a "barnacle on a battleship". The BridgePoint Action would become litigation about the 0601 Action and the 0801 Action (the complexity of both of which is obvious from the many written decisions about them).

5. Alleged Involvement in Federal Court or other Court Proceedings (Amended Counterclaim para 23)

[168] Kostic pleads that the CIBC Parties and Miller Thomson caused or induced damages relating to or arising out of conduct in Federal Court proceedings and the 2201 Action.

[169] First, Kostic incorporates by reference Federal Court docket T-680-20. This was an action Kostic commenced in 2020 against 50 defendants, including the CIBC Parties and Miller Thomson. It was struck in 2023, as explained in ***Piikani Nation v Raymond James Ltd***, 2026 ABKB 620 at para 113. I understand that an appeal to the Federal Court of Appeal has also been struck or dismissed: ***2026 ABKB 620*** at para 115.

[170] Second, Kostic incorporates by reference Federal Court docket T-348-21. This was a judicial review action commenced by Kostic and Janet Potts relating to proceedings before the Piikani Nation Removal Appeals Board (**PNRAB**) and a 2020 petition to remove Jackson as a councillor. Neither the CIBC Parties nor Miller Thomson were a party to this action.

[171] Third, Kostic incorporates by reference Federal Court docket T-1224-21. This was a judicial review application by Piikani Nation and Erwin Bastien related to the PNRAB proceedings involving Jackson. The Federal Court dismissed this application in 2022, and in 2025 the Federal Court of Appeal dismissed a further appeal as being moot: ***2026 ABKB 620*** at paras 95-97. Neither the CIBC Parties nor Miller Thomson were a party to this action.

[172] Fourth, Kostic incorporates by reference the 2201 Action. This matter involved an injunction obtained by Piikani Nation against several persons who purported to run an unauthorized election to replace the Piikani Nation Chief and Council and purported to have been acclaimed as the new Council entitled to govern Piikani Nation. Further details about the 2201 Action are set out in ***Piikani Nation v North Peigan***, 2025 ABKB 508 and ***Piikani Nation v North Peigan***, 2026 ABKB 374. Neither the CIBC Parties nor Miller Thomson were a party to the 2201 Action.

[40] Kostic Defence at paras 32-33, 37.

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[173] In my view, these allegations constitute bare assertions that do not illustrate a reasonable claim against the CIBC Parties or Miller Thomson.

[174] Further, any conduct of the CIBC Parties or Miller Thomson in defending Kostic's claim against them in Federal Court is a matter that could or should have been dealt with in that action. It does not give rise to a reasonable claim against them. There is no pleading, or any other information, that the CIBC Parties or Miller Thomson were materially involved in the other Federal Court actions or the 2201 Action. This claim is frivolous and improper.

[175] For the same reasons, these pleadings are not appropriately allowed *nunc pro tunc*, or now (on the record before me).

6. Inducing Piikani Nation's Breach of Agreements with Kostic (Amended Counterclaim paras 26, 30)

[176] Kostic pleads that the CIBC Parties and Miller Thomson (or some of them) "either breached directly or induced and interfered causing the breach, damages and loss to Kostic" under terms of agreements between Piikani Nation and Kostic, and that they "intentionally and from the outset to present continue to intentionally cause further delay, loss, damage and interference...".[41]

[177] This pleading is problematic for several reasons.

[178] First, these are bare assertions without particulars that do not disclose a reasonable claim against the CIBC Parties or Miller Thomson. They can be struck on that basis alone.

[179] Second, as against Miller Thomson, it is frivolous and improper as there is no indication that Miller Thomson was involved in matters involving Piikani Nation and Kostic before the 0601 Action was filed.

[180] Third, as against CIBC, this claim is an abuse of process. Kostic has unsuccessfully attempted to bring such claims against CIBC previously. As explained in ***2026 ABKB 622***, at para 517 (emphasis added):

> 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: [***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.

[41] Amended Counterclaim at para 26.

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[181] Similar reasoning applies here.

[182] Further, leave *nunc pro tunc* or now is not viable on the record before me. A claim against CIBC in this Action would likely be barred by limitations, and would not be saveable in this Action under section 6 of the *Limitations Act* because this claim is not sufficiently related to the conduct, transaction or events described in the original pleading in the BridgePoint Action.

[183] Fourth, as against CWM (by reference to CML and CWL), and in considering whether the permission should be granted *nunc pro tunc* or now, the evidence before me on this application does not support a conclusion that this amendment is anything other than frivolous and improper. Even if I consider evidence adduced by Kostic in other applications, I adopt my reasoning in ***2026 ABKB 622*** at para 519 (footnotes omitted):

> [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. Kostic alleges that immediately upon execution thereof, CIBC and CIBC Trust 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.

[184] Again, for the same reasons noted above with respect to CIBC, leave *nunc pro tunc* or now would be precluded as against CWM in this Action based on limitation defences and a lack of relatedness to the BridgePoint claim.

7. Advising Kostic that the BridgePoint Loan was Required or Recommended (Amended Counterclaim paras 29, 32)

[185] Kostic pleads that Miller Thomson advised her that "the BridgePoint loan" was required, and that in Miller Thomson's opinion it was "a good option considering that Kostic would not be responsible until the [0801 Action] was concluded and Kostic was paid". Unlike other allegations against Miller Thomson, this does not appear to be duplicative of her claim in the Kostic-Thom Action.

[186] In my view, this substance of this pleading could possibly give rise to a reasonable claim. Miller Thomson was Kostic's legal counsel in the 0601 Action at the time of the Loans. Even if Miller Thomson was not her counsel in the 0801 Action, the 0801 Action has connections to the matters at issue in the 0601 Action. If Miller Thomson offered its legal opinion about the Loans or their legal effect, which is implied in this pleading, this could give rise to a reasonable claim against Miller Thomson.

[187] I must therefore consider whether it might be appropriate to approve the inclusion of this pleading in the Amended Counterclaim, *nunc pro tunc*, even though it was originally filed without required court permission and, if not, whether it would be appropriate to allow it now as a fresh amendment (assuming Kostic were to seek to do so). I conclude that due to limitations issues, on the record before me, the answer to both questions is no.

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[188] Based on the pleadings in the Action, BridgePoint advanced loans to Kostic in 2008. The Loans at issue in the Action were advanced between 2009 and 2011. It is implied from the Amended Counterclaim that Miller Thomson's advice about the Loans, at the latest, was sometime before 2012.

[189] This claim by Kostic against Miller Thomson is not a claim for contribution under the *TFA*, because Miller Thomson is not pleaded to be liable to BridgePoint for the same loss as BridgePoint claims against Kostic. That is a requirement of *TFA* contribution claims: ***2026 ABKB 622*** at para 429; ***Arsopi*** at paras 33-34, citing ***Howalta Electrical Services Inc v CDI Career Development Institutes Ltd***, 2011 ABCA 234 at para 8. There is no pleading suggesting that Miller Thomson had any relevant relationship or involvement with BridgePoint at that time.

[190] Therefore, the applicable limitation periods for Kostic's claim against Miller Thomson for any alleged advice respecting the Loans is governed by section 3(1) of the *Limitations Act*, not section 3(1.1). On the face of the pleadings, Kostic's claim would be statute barred under section 3(1)(b) because the Amended Counterclaim was filed in April 2022, more than 10 years from the last Loan advancement and any possible advice from Miller Thomson related thereto.

[191] As this claim against Miller Thomson added a new defendant to the Action, section 6 of the *Limitations Act* could only save Kostic from a Miller Thomson limitation defence if the requirements of section 6(4) of the *Limitations Act* are satisfied. Section 6(4) requires that (a) the added claim must be related to the conduct, transaction or events described in the original pleading in the proceeding, and (b) the defendant must have received, within the limitation period applicable to the added claim plus the time provided by law for the service of process, sufficient knowledge of the added claim that the defendant will not be prejudiced in maintaining a defence to it on the merits.

[192] The first requirement is a relatedness requirement. I summarized this requirement in ***2026 ABKB 622*** at para 431, citing ***Astolfi v Stone Creek Resorts Inc***, 2023 ABKB 416 at paras 110-111. It is a low threshold, but there must be more than a superficial connection. 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: ***2026 ABKB 622*** at para 431, citing ***Astolfi*** at para 112, in turn citing ***Desoto Resources Limited v Encana Corporation***, 2010 ABCA 110 at para 10. In my view, the claim related to Miller Thomson's advice about the Loans is sufficiently connected to the BridgePoint Action to meet this criteria.

[193] However, the record before me is insufficient to find that Miller Thomson received sufficient knowledge of this claim as required by section 6(4)(b) of the *Limitations Act*. Although Miller Thomson would bear the onus to prove that the second requirement was not satisfied (based on section 6(5)(b) of the *Limitations Act*), I note that Kostic did not actually seek permission to file, or file, an application for *nunc pro tunc* relief or to allow the Amended Counterclaim to be filed now, and so Miller Thomson did not address section 6(5)(b) of the *Limitations Act* in its materials. Further, had an application been brought, Kostic would have the overall onus to prove that she should be permitted to file this claim against Miller Thomson. On the record before me, I am not prepared to grant Kostic any relief at this time. If Kostic continues to seek to add such a claim to this Action, she will need to provide a compliant fiat request.

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8. Sharing Kostic's Information (Amended Counterclaim para 32)

[194] Kostic pleads that Miller Thomson shared her records and communications, including privileged information. This is a bare assertion/bald pleading with no particulars. There is no pleading that this caused Kostic any damage. No reasonable claim is disclosed.

9. Conspiracy, Intentional Acts or Malicious Campaign (Amended Counterclaim para 33)

[195] Kostic pleads that Miller Thomson and the CIBC Parties intentionally participated and continue to participate in a malicious campaign against her and to cover that campaign up. These are serious allegations tantamount to conspiracy or fraud.

[196] These bare assertions are not sufficiently particularized and do not disclose a reasonable claim.

[197] For the same reason, permission *nunc pro tunc* or now is not appropriate on the record before me. However, permission *nunc pro tunc* or now is also not appropriate given the likely limitations defences available in this Action which are not saveable under section 6 of the *Limitations Act* due to a lack of relatedness to the BridgePoint claim, a lack of evidence supporting these proposed amendments, and the significant complicating effect they would have on the BridgePoint Action overall.

10. Contribution and Indemnity

[198] The prayer for relief in the Amended Counterclaim seeks "an Order for Indemnity and Save Harmless relief having been triggered or retriggered payable retroactively from the outset and going forward forthwith". This bare assertion is vague and not pleaded specifically as against the CIBC Parties or Miller Thomson. For this reason, and the reasons set out above, this bare assertion does not plead a reasonable claim against them.

11. Other Miscellaneous Amendments

[199] Various other amendments do not appear to have anything to do with the CIBC Parties or Miller Thomson and do not disclose a reasonable claim against them. See: Amended Counterclaim at paras 17, 34 and 37- 39.

12. Conclusion

[200] The above analysis further supports the striking of the amendments in the Amended Counterclaim.

[201] The amendments in the Amended Counterclaim are struck.

K. Parts of the Counterclaim Should Be Struck

[202] I have found that the amendments in the Amended Counterclaim should be struck. This includes any amendments pertaining to Docken/Guardian including because no permission was obtained.

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[203] However, Docken and Guardian also argue that the rest of the Amended Counterclaim, namely the allegations in the original Kostic Counterclaim, should also be struck against Docken/Guardian under various rule 3.68 grounds.

[204] This analysis is different because Docken/Guardian have not proven, on the record before me, that Kostic's filing of her initial Counterclaim required permission. On the record before me, the Kostic Defence and the Counterclaim plead that Kostic was served with BridgePoint's amended statement of claim on July 26, 2021. The Counterclaim was filed on August 16, 2021 within the 20-day requirement set out in rules 3.31(3)/3.57.[42] I also note that Docken/Guardian filed a statement of defence to the Counterclaim and, while they pleaded that the Counterclaim should be struck, they brought no application to strike until after the New Pleadings were filed.

[205] Below, I assess whether the original pleadings in the Counterclaim, as then reflected in and incorporated into Amended Counterclaim, should be struck. In doing so, I have considered the Kostic Reply to the extent it provides further context or particulars to support the Counterclaim.

[206] There is no application by BridgePoint before me to strike any Kostic pleadings. Therefore, I have not considered whether to strike any portions of the Counterclaim (or incorporated Kostic Defence) that only make allegations against BridgePoint.

[207] The Counterclaim is lengthy and repetitive. In substance, having regard to the legal framework noted above, the reasonable claim standard, and assuming that reasonably particularized pleadings are true, I find the Counterclaim (as further contextualized or particularized in the Kostic Defence and Kostic Reply) pleads reasonable claims of professional negligence, and related breach of fiduciary duty and contract (based on her retainer agreement against Docken). It also pleads a reasonable claim against Guardian. My reasons follow.

[208] First, there is a reasonable claim related to the handling of the 0801 Action on Kostic's behalf, from 2008 to 2010. Much of the Counterclaim makes bare assertions in this regard, however, some particulars are discernable including: (1) delay in the prosecution of the 0801 Action; (2) failing to give advice about or pursue claims or defences related to indemnity, hold harmless or agency relief in the 0801 Action; (3) removing CIBC Trust as a defendant in the 0801 Action, including while Docken acted in a conflict as between Kostic and CIBC Trust's interests; (4) failing to seek or obtain timely summary determination or resolution of the 0801 Action; (5) misplacing or losing records, including a noting in default document, the Navigant Report and her retainer; (6) failing to prevent Piikani Nation from setting aside its noting in default in the 0801 Action; (7) failing to advance appeals in the 0801 Action; and (8) failing to follow instructions from, or use information from, other joint clients (collectively, the **0801 Action Conduct**).

[209] The Counterclaim pleads that the 0801 Action Conduct caused Kostic damages by (1) contributing to her financial situation that led to her relationship with BridgePoint or the need for loans from BridgePoint; (2) causing, contributing to or triggering Kostic's liability to BridgePoint for the Loans or repayment of the Loans; or (3) causing or contributing to the continued existence of the harmful allegations made in the 0601 Action against her. These pleaded damages form part of the sufficiently pleaded claims.

[42] August 15, 2021 was a Sunday.

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[210] However, the Counterclaim goes much further with respect to the 0801 Action Conduct. It seems to plead that the 0801 Action Conduct induced or facilitated wrongdoing by Piikani Nation or other non-parties against Kostic in Federal Court, the 0601 Action, or other matters beyond the 0801 Action or any BridgePoint loans. Some of these pleadings are bare assertions, are clearly irrelevant, or are abusive repetition of claims in other matters. They are not part of a reasonable claim and improperly cause confusion and unnecessary complexity in the BridgePoint Action.

[211] Second, the Counterclaim pleads a reasonable claim against Docken with respect to (1) advice, representations (or misrepresentations), and preparation of loan documentation for loans between BridgePoint and Kostic, which were then used or formed the basis for the documentation for the Loans, (2) while in a conflict of interest as between Kostic and BridgePoint. The claimed damages include any amount Kostic may owe to BridgePoint.

[212] Third, the Counterclaim pleads a reasonable claim against Docken with respect to Kostic's sale of RJL shares. This includes on the basis that Kostic was allegedly forced to do so to favour Docken or BridgePoint's interests and the alleged misapplication of the funds generated by the sale.

[213] Fourth, the Counterclaim pleads a reasonable claim with respect to Docken's assistance of BridgePoint, through Guardian, while he was an equity partner there, in relation to loans from BridgePoint for which Docken gave advice to Kostic, all allegedly in breach of Kostic's solicitor-client privilege and confidentiality and the February 2013 Order.

[214] On the other hand, the Counterclaim also includes many frivolous, irrelevant, improper or abusive pleadings, or which do not plead or relate to a reasonable claim. These include:

(a) pleadings against Docken or Guardian for the period from 2011 to 2019 in respect of the conduct of the 0801 Action. Although the Counterclaim pleads Docken's continued advice or involvement after 2010, these are bare assertions and do not plead any specific acts of negligence, breach of fiduciary duty, or breach of contract in respect of the 0801 Action after 2010.[43] However, some of these pleadings may provide context to other reasonable claims and so are not struck;[44]

(b) pleadings against Docken/Guardian for failing to take steps in the 0601 Action or other actions. Although Kostic pleads that Docken was involved and providing privileged legal or strategic advice from time to time until 2019 (including at times through his relationship with Docken Klym[45]), and also that Guardian represented Jackson as agent in the 0601 Action in 2019, these are bare assertions and there are no specific acts of

[43] With respect to the 0801 Action, court records (procedure card and court filings) indicate filings on behalf of Kostic by "Stephens & Klym" (March 2010 to 2012), Docken Klym (2013 to 2015), Zinner Law Office and William Klym Professional Corporation (2015), and DD West (starting in 2019).
[44] For example, paras 12 and 49.
[45] Kostic's 2021 affidavit includes some evidence of post-2010 continued involvement of Docken and/or Docken Klym. Based on court records (procedure card), Docken Klym appears to have been counsel of record in the 0601 Action from September 2013 until May 2015, although this was through Mr. Klym: ***2026 ABKB 622*** at paras 40 and 55.

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negligence, breach of fiduciary duty, or breach of contract pleaded with respect to any advice or involvement in the 0601 Action or other matters;[46]

(c) as noted above, pleadings against Docken/Guardian for facilitating or inducing wrongdoing by Piikani Nation or other non-parties; and

(d) irrelevant pleadings of wrongdoing of others, including in Federal Court proceedings or other actions beyond the 0801 Action or any BridgePoint loans. These do not plead reasonable claims (or reasonable claims for damages) against Docken/Guardian. I note that there is no pleading, or evidence, that Docken/Guardian were parties to the various Federal Court and other proceedings referenced in the Counterclaim.

[215] Based on the foregoing, I strike the pleadings in the Counterclaim as highlighted in Schedule A to these Reasons. Some of my specific reasons are set out in the table below.

Reference	**Brief Reasons**
Style of Cause	Irregular addition of Third-Party Defendants without any third party claim.
Headings I., II., III. IV. V., VI., VII., VIII., IX., X., XI., XII., XIII., XIV., XV., XVI., XVII., XVIII., XIX., XX. Subheadings A., B., C. Para 21	Headings do not plead facts (para 21), but then headings included substantive allegations and cause confusion. Often the headings do not appear to relate to the pleadings following the heading. In these unique circumstances, these headings are frivolous, irrelevant and improper and are struck.
Paras 2, 15(g)-(i), 16-17, 23, 26, 28, 29, 30-34, 37-40, 229, 231(l)	Previously struck amendments (see Reasons above).
Paras 3, 5, 15(f), 23, 74, 77-78, 81-82, 84, 86-93, 95-96, 111-115, 116-117, 118-120, 123-124, 128-129, 133-	Allegations that Docken caused, induced, or assisted Piikani Nation's (or its Chief and Council's, or its legal counsel's) alleged wrongdoing against Kostic, which

[46] A possible exception to this relates to the sale of Kostic's RJL shares, as it is not entirely clear when this occurred. The Kostic Defence, at para 33, indicates this occurred "before 2012".

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167, 169-170, 210-214, 216, 224, 226	are often vague, bare assertions, and do not otherwise plead a reasonable claim or causation against Docken. Many of these pleadings are also frivolous, irrelevant and improper, or abusive duplication of claims made, or unsuccessfully attempted to be made, against Piikani Nation or its Chief and Council in other actions. Some of these are pleadings against Piikani Nation or its Chief and Council, which were previously struck by CMJ de Wit.
Paras 4, 17, 18, 23, 30, 34, 50-61, 64-69, 71, 73, 76-78, 84, 86-93, 96, 97-106, 121-132, 140-146, 155-177, 179-208, 219-226	These are irrelevant, improper or abusive claims against or involving non-parties, including in other actions or proceedings, some of which are claims made, or unsuccessfully attempted to be made, against non-parties in other actions. Allegations that Docken caused, induced, or assisted other non-Piikani Nation non-parties' alleged wrongdoing against Kostic are vague, bare assertions, and do not otherwise plead a reasonable claim or causation against Docken. Generally, these allegations plead no reasonable claim against Docken/Guardian, or they are pleadings not related to a reasonable claim.
Paras 7, 22, 63	References pleadings that do not exist.
Para 20	Improperly incorporates pleadings (and potential future pleadings) from other actions in which Docken/Guardian are not parties.
64	References evidence, not facts.
231(c)	The Court has no jurisdiction to grant the consolidation of the Action with Federal Court actions.

[216] I direct Kostic to file an updated Counterclaim that removes the struck paragraphs. In doing so, Kostic shall also revert back to the paragraph numbering from the original-filed Counterclaim so that references to paragraphs in the statements of defence to Counterclaim filed by BridgePoint and Docken/Guardian refer to the proper paragraphs in the updated Counterclaim.

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[217] I note that my decision not to strike the remaining paragraphs in the Counterclaim is not a finding about the merits of any of the claims made or defences thereto. I make no findings about the merits of the remaining Counterclaim in these Reasons. My decision is not a finding or pre-judgment of any future fiat request or any approved application which may be brought in the BridgePoint Action by any party thereto.

L. Kostic's Proposed Draft Amended Counterclaim is Not Allowed as Requested

[218] As noted above, on May 22, 2026, during the hearing of the Applications, Kostic provided me the Draft Amended Counterclaim. She argues that her proposed amendment to the Counterclaim through the Draft Amended Counterclaim should be considered before deciding whether to strike some or all of the Amended Counterclaim or the Counterclaim. In the circumstances of this case, I disagree, for several reasons.

[219] First, as noted above, CMJ Graesser granted Kostic leave to file an amended counterclaim in the June 2014 Orders, but by the time I was appointed CMJ she had not done so. In Endorsement #13, I provided Kostic a deadline to file her amended counterclaim, failing which "she will be deemed to have abandoned that relief".[47] Kostic did not file amended pleadings by the deadline. Instead, she appears to have attempted to embed an amendment application within or as part of a non-compliant fiat request.[48] Had Kostic complied with the Court's directions, any proposed amendments now referred to in the Draft Amended Counterclaim could have been addressed in these Applications.

[220] Second, having missed the earlier deadline to file an amended Counterclaim, Kostic was required but did not seek or obtain a fiat to file an application to further amend the Counterclaim. There is no fiat request or application now before me. Had a timely fiat request been brought, again this could have been dealt with long before the hearing of these Applications.

[221] Third, it is procedurally unfair for Kostic to provide a proposed further amended pleading *during oral submissions* for the very application to strike the earlier version of her pleading. This is particularly so given the lengthy notice she had of the scheduling of the Applications.

[222] Fourth, the Draft Amended Counterclaim is irregular. It is not in Form 21 as required by rule 3.57. It references rule 13.10 which relates to replies. It purports to be more than an amended counterclaim – it includes a response to applications that are not presently before me. Further, the Draft Amended Counterclaim is also not an amendment to the Counterclaim but a completely new replacement counterclaim.

[223] Fifth, the Draft Amended Counterclaim, or many portions of it, on the record before me, are not sufficiently supported by evidence to meet the requirements for amendments, including based on the nature of some of the pleadings alleged. The Court cannot take judicial notice of the collusion of all parties involved as Kostic asserted in oral argument. Judicial notice may only be taken of facts that are either (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of

[47] Endorsement #13 at paras 36-37.
[48] See also Endorsement #45 at para 82.

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indisputable accuracy: ***R v Dunn***, 2024 ABCA 247 at para 64, citing ***R v Find***, 2001 SCC 32 at para 48; ***McDonald v Sproule Management GP Limited***, 2023 ABKB 587 at para 159.

[224] Sixth, many aspects of the Draft Amended Counterclaim would also not be allowed for some of the same reasons that I have struck aspects of the Counterclaim.

[225] If Kostic seeks to amend the Counterclaim further, she will have to follow the fiat process set out in Endorsement #4 (as amended), by providing a compliant fiat request after she files the updated Counterclaim as per my directions.

V. Conclusion

[226] The NTCD is struck in its entirety.

[227] The amendments in the Amended Reply are struck in their entirety. To be clear, the Kostic Defence is not struck.

[228] The Amended Counterclaim is struck as against the CIBC Parties and Miller Thomson.

[229] The amendments included in the Amended Counterclaim are struck.

[230] The original pleadings in the Counterclaim as highlighted in Schedule A, are struck in their entirety. Kostic is directed to file and serve a new Counterclaim that removes the struck paragraphs and reverts to the original Counterclaim paragraph numbering.

[231] If the parties cannot resolve the costs associated with the Applications, I will consider costs submissions and direct the following process. Within 4 weeks of these Reasons, each party shall provide me and the other parties a written cost submission setting out their costs position. These submissions will be a maximum of 4 pages in letter format, single spaced (excluding authorities, offers, affidavits, proposed bills of costs, or summaries of proposed reasonable costs actually incurred). Within 6 weeks of these Reasons, each party shall file and serve on the opposing parties and submit to my office any response submission to the other parties' cost submission, to a maximum of 3 pages in letter format, single spaced (excluding authorities).

Heard on May 21 and 22, 2026.
at the City of Calgary, Alberta this 23rd day of October, 2026.

M.A. Marion
J.C.K.B.A.

Appearances:

Geoff Adair and Connor Vaandering
for CIBC Merrill Lynch, CIBC Wood Gundy and Canadian Imperial Bank of Commerce

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Kember Handzic
for Miller Thomson and Jeffrey Thom

Edward W. Halt, K.C. and Elena Semenova
for Clint Docken, Docken Professional Corporation, Guardian Law Group LLP

Liliana Kostic
self-represented litigant

Katherine Reiffenstein
for BridgePoint Financial Services Inc. and BridgePoint Financial Services Limited Partnership

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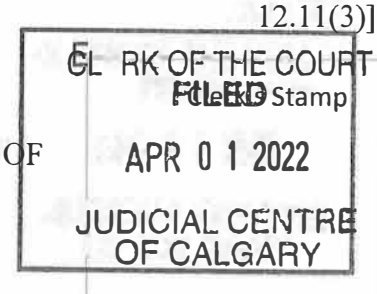
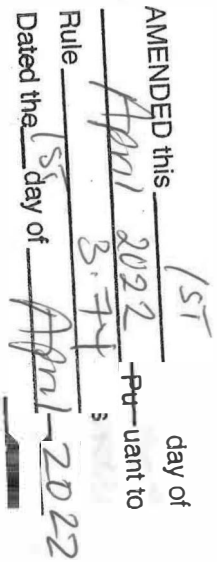
SCHEDULE A

Form 21
[Rules 3.57 and 12.11(3)]



COURT FILE NUMBER	2101-06345
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	Calgary
PLAINTIFF BY COUNTERCLAIM	**LILIANA KOSTIC**
DEFENDANTS BY COUNTERCLAIM	Bridgepoint Financial Services Inc., Bridgepoint Financial Services Limited Partnership, Clint Docken, Docken Professional Corporation, Guardian Law Group and John Does 1-10
DEFENDANTS	William S. Klym Professional Corporation and William S. Klym
THIRD-PARTY DEFENDANTS	Miller Thomson; Clint Docken, Docken Professional Corporation; Bridgepoint Financial Services Inc., Bridgepoint Financial Services Limited Partnership; Raymond James Ltd. CIBC World Markets, the CIBC Merrill Lynch, CIBC WG , CIBC Trust; Piikani Nation; Gowling WLG
DOCUMENT	**AMENDED COUNTERCLAIM**



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Liliana Kostic 1175, 324 8th Avenue SW Calgary, AB T2P 2Z2 Attention: Liliana Kostic Ph: 403-870-6888 Fax: 403-264-9446 Email: lili.kostic8@gmail.com and jessie@zinner.ca

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SCHEDULE A

NOTICE TO DEFENDANT(S) - Bridgepoint Financial Services Inc., Bridgepoint Financial Services Limited Partnership, Clint Docken, Docken Professional Corporation, Guardian Law Group and John Does 1-10 herein referred to as ("the Defendants").

You are being sued. You are a defendant by counterclaim.

Go to the end of this document to see what you can do and when you must do it.

NOTE: State below only facts and not evidence [Rule 13.6]

I. NATURE OF CLAIM

1. The Plaintiff by Counterclaim ("Kostic" or LK") brings this Counterclaim ("CC") for loss and damage suffered by her as a result of acts of omission and commission by the Defendants by Counterclaim under breaches of common law, equitable, statutory and other duties owed to her and to her as the Plaintiff.

2. The Defendants by Third-Party Notice individually and in combination caused and/or contributed to the indebtedness pursued by BP under its claim herein for the reasons and in the manner set out below.

3. The Defendant and Plaintiff by Counter claim LK states that any delay in the 08 action was contributed to in a material way by Defendants Docken et al in failing to do what was required and/or in failing to take steps required causing the delay of the action and or inducing the harm, loss, injury and damage and resulting injury, loss and damage that remains ongoing due to their negligence, negligent misrepresentation and fraudulent concealment which they induced the Piikani to be able to further their malicious campaign and attempt to defeat the 08 damages owed as declared by the Court. And as stated in the SOD and repeated and as stated in this claim herein.

4. Kostic complains of victimization by the Defendants by SOC FC who, in varying combinations, either participated in the formation, planning and design of various conspiratorial illegal schemes created for a dishonest purpose, and/or knowingly or recklessly aided and abetted the initial co-conspirators "the Piikani Chief and Counsel ("the Piikani") and others in implementing their plan. And/or;

5. The Defendants by counterclaim in action 2101-06345 ("45" or action 45") indirectly aided and abetted the Piikani by inducing unnecessary inordinate delay, prejudice, damages and losses still accruing resulting from their acts of omission or commission, negligence or negligent misrepresentation commencing with the 08 action and thereafter.

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6. Kostic pleads and relies upon all Orders governing the litigation rights and history, all decisions of the Court of Queen's Bench, Court of Appeal, Federal Court, Federal Court of Appeal, any Federal Board or Tribunal Decisions and Supreme Court of Canada that govern or have governed the Plaintiff' Kostic by Counterclaim litigation rights and history, as If the same were set out herein in full.

7. Kostic incorporates by reference and repeats the allegations made in the Kostic Statement of Defence ("SOD") filed concurrently with this claim and any Amended SOD or CC or Third-party claims and notices.

8. LK states that she does not waive any solicitor client privilege in action 45 but relies only on the portions hereto now required in action 45.

9. The **Defendants Bridgepoint Financial Services Inc., Bridgepoint Financial Services Limited Partnership, Clint Docken, Docken Professional Corporation, Guardian Law Group and John Does 1-10 herein referred to as ("the Defendants" and/or "The Docken/Bridgepoint Defendants", "BP" and/or the Docken Defendants" 'Docken", "Clint")** have commenced proceedings in action 45 which are an abuse of process by :

a. Commence proceedings which involve a deception on the court, or are fictious
b. Proceedings where the process of the court is not being fairly but is employed or honestly used but is employed for some ulterior or improper purpose or in an improper way;
c. Proceedings which are manifestly groundless or serve no useful purpose;
d. Multiple or successive proceedings which cause or are likely to cause improper vexation or oppression

10. The plaintiff LK states that at all material times Docken, Clint Docken and its agents did not act in accordance with the terms of the Retainer and in accordance with all professional duties, and obligations to their client, Liliana Kostic, the Law Society of Alberta, and the Court.

11. The Plaintiff LK States that Docken and Clint Docken did not act in accordance with the Law Society of Alberta, and the Court 3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer Kostic states that Docken, Clint Docken were not competent and failed to meet that standard.

12. Clint Docken continued to have privileged communications, strategy or offered advice since 2010 and up to in or about 2019 with its client LK.

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13. Gurdian et al, Clint and BP et al knew or ought to have known that Clint Docken at best would be required as Witness in action 45.

14. The Plaintiff LK states that at all material times Defendants by Counterclaim herein Docken, Clint Docken and its agents and BP who acted through Docken its agent did not act in accordance with the terms of the Kostic Retainer and in accordance with all professional duties, and obligations to their client, Liliana Kostic, the Law Society of Alberta, and the Court specifically not in accordance with 2.1;3.1;3.2;3.3;3.4;3.5;3.6;5.1;5.2;5.6;7.1;7.2;7.3;7.5.7.7 and 3.1-1(a-k); 3.1-2 and failed to meet that standard.

15. The **Defendants in 45** and others, some known and others unknown ("John Does 1-10") at this time, but named in this claim to preserve any causes of action, any potential limitation or other necessity as may be required have commenced proceedings which are an abuse of process by:

a. Shifting blame for their own negligent misrepresentation;
b. For fraudulent concealment of having obtained Share proceeds from the Plaintiff Kostic for Defendants Bridgepoint now sought to be recollected;
c. For failure to advise or inform the Plaintiff Kostic in respect to cany conflict from the outset of acting on behalf of her interests and breaching those duties;
d. For failure to advise or inform of any default judgment that it may have obtained against its client Kostic, for its other client Bridgepoint at any point in time prior to the service of its ASOC on July 26, 2021;
e. For failure to plead in the 08 action all causes of action and/or for removing required cause of action previously pled;
f. For failure to preserve material and relevant materials, records and documents in the 08-action inducing the opening of the default by the Piikani in 2010 which caused and induced inordinate delay, damage, prejudice and repleading of the 08 actions initial claim, setbacks, failure to continue to fund the 08 action as was promised, now further prejudice, loss, damage and assistance to arm and assist the conspirators the Piikani and others, by its ASOC .
g. For breaching its fiduciary obligations or the defendants induced and interfered with those fiduciary duties owed to her by the other Defendants who owed her Fiduciary Duties pursuant to the code of conduct in several ways; negligent advise; failure to obtain default judgment; by indirectly or directly assisting the Piikani by acting against its client knowing doing so will inter alia create irreparable harm, loss and damage and impair the 08 action.
h. DOCKEN AND MILLER THOMSON or the defendants induced and interfered with those fiduciary duties owed to her causing damages and loss
i. Gowling WLG, Piikani and CIBC et al Defendants induced and interfered with those fiduciary duties owed to her causing damages and loss.

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16. **DOCKEN AND MILLER THOMSON & RJL WERE NEGLIGENT AND FAILED TO ADVANCE and/or invoke NUMEROUS CAUSES OF ACTIONS/DEFENCES AND REMEDIES available at law IN THE 0601-13081 AND 0801-13081QB ACTIONS NAMELY THAT: together with BRIDGEPOINT** and/or the other named defendants assisted or induced either directly or indirectly causing their own breach(s) to Kostic and Kostic's ongoing losses, injury and damage which each are attempting at capitalizing under action 2101-06345, 2201-01622 and related actions both Federally and Provincially.

17. The Defendants the Piikani Lapsed and Functus term of Chief and Council named as Defendants under Kostic's Federal Action T-680-20 FC **("SOC FC")** and Federal action T-348-21 (" Councillor Potts and Kostic action") and other named Defendants therein have commenced and/or maintained and/or participated in proceedings which are an abuse of process through action 0601-13081QB ("06 action ") and through attempt to defeat and delay Kostic's 0801-05039 action ("08") by attempting to conceal various unlawful schemes some particulars in SOC FC are as follows:

18. The negligent illegal scheme of the Piikani and its various legal counsel included:
    a. misappropriation of $14,979,035.61 from the Piikani Trust;
    b. the creation of a sham insolvency to deflect attention from the misappropriation in order to cover the audit trail of the misappropriated funds;
    c. the scapegoating of Kostic for losses to the Piikani Trust which were in fact caused by the Defendants by SOC FC, or some of them;
    d. further victimizing the Plaintiff LK by bleeding, it of some $22,000,000 through this and related actions which has further enriched the Defendants by SOC FC, or some of them, and their professional advisors, all the while impoverishing the Plaintiff;
    e. supporting the commencement and/or continuation of the Plaintiff's claim against Kostic in the 06 action when the Defendants by SOC FC knew or ought to have known:
        i. that the claim is baseless; and
        ii. that it was maliciously brought or continued

in order to assist in the cover up of the misappropriation and breaches of duty owed to the Plaintiff LK.

19. Kostic complains in SOC FC that she is the victim also of a conspiracy by the conspirators to conceal their own criminal and fraudulent behavior and, by misdirection, to scapegoat Kostic through deceit, fraudulent misrepresentation, negligent misrepresentation, public defamation, invasion of privacy, abuse of process, malicious prosecution, and bankruptcy fraud.

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20. Kostic repeats, adopts, relies upon and incorporates herein by reference the allegations of fact contained in the most recently filed, or to be filed, amended Statement of Defence in 0601-13081, all related actions and her twice ASOC FC.

21. Topic headings herein appear solely for convenience of reference and are not intended as facts or allegations.

II. SOME OF THE PARTIES IN THE SOC FC T-680-20 AND T-348-21; T-1224-21; 2201-01622

22. Kostic adopts the naming conventions appearing in the Amended Statement of Claim, any Amended Statements of Defence and any third-Party Notices filed or to be filed herein.

23. The term "**participating Defendants by** SOC FC" used herein refers to those of the Defendants who participated in the specific acts and events described AND now includes the inter alia damages caused and/or induced intentionally or otherwise by Defendants Docken, Clint Docken, BP and Gaudian Law and the named Third-Party defendants.

24. Kostic resides in the Province of Alberta and was, prior to May 18, 2001, a registered salesperson with the Manitoba Securities Commission and across Canada. Kostic worked for CIBC World Markets Inc./CIBC Wood Gundy from May 18, 2001, to March 18, 2004, as a registered representative, employee and disclosed agent and similarly for Raymond James Ltd. commencing June 9, 2004.

25. Kostic' s Business agreement with the Piikani Chief and Council November 18, 2002, amended November 26, 2004, was directly linked to the RJL account agreements and CIBC Wood Gundy account agreements.

26. The third-Party Defendants or some of them either breached directly or induced and interfered causing the breach, damages and loss to Kostic under the terms as stated in the Piikani Investment Policy, Investment Management Agreement, Business agreements and CIBC WM and RJL Account Agreements. The Third-party defendants intentionally from the outset to the present continue to intentionally cause further delay, loss, damage and interference and are responsible in whole or in part.

27. All agreements included a save harmless, indemnity, Limit of Liability and damages provisions which extended to any claim or proceeding.

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28. Docken and Miller Thomson initially failed to plead the Save harmless provision in the 08 action. Kostic was forced to amend to add this in after Docken ceased acting.

29. Docken directed Kostic to remove CIBC Trust as Defendant and forced her to strike CIBC out, never disclosing of any inherent conflict of interests between him, CIBC and /or others. Miller Thomson did the same and advised her after providing Docken et al with copies of all records and communications Privleged and not Privleged and both advised Kostic that the Bridgepoint loan was required. Both were negligent in not enforcing or obtaining nor advising that her several available remedies for save harmless and indemnity relief from the named Third Party Defendants or some of them was available which eliminated the requirement to obtain any funding from BridgePoint et al given that it would have not been necessary under any one of the said indemnities.

30. On July 29, 2021, at cross examinations it was admitted that CIBC Defendants et al played a major part of the main role together with one Dale Kostic and Gowlings, all these defendants together formulated, planned, created BCR's, planned the filing of the action, planned the defamatory News and media publications. Each did this despite knowing in advance that all allegations, including most notably the fraud allegations. were false and scandalous but intentionally made just the same. Their acts of omission and commission directly induced the breach and termination of the Kostic Piikani Business Agreement ("BA") which Docken and Bridgepoint agreed to fund the litigation under/for at the end of the BA concluding and Kostic obtaining her damages.

31. Defendants Miller Thomson, through Jeff Thom, Kostic's former Lawyer and Docken et al willingly in some instances participated and either caused or induced the delay of collecting those damages and/or were negligent and responsible in several respects, and specifically by having induced the requirementfor Kostic to obtain any loan by BP. Alternatively, they all induced or prevented Kostic from accessing any one or several remedies available to her under her save harmless and indemnities including those indemnities available to her as a Disclosed Agent for CIBC and RJL.

32. Defendants Miller Thomson and Docken shared all Kostic records, communications, inter alia, both Privleged and disclosed pleadings and proceedings. Miller Thomson advised Kostic that the BP loan that Docken arranged under the Business Agreement was in his opinion a good option considering that Kostic would not be responsible until the Business Agreement action was concluded and Kostic was paid.

33. Defendants Miller Thomson and CIBC Defendants et al, Gowlings et al willingly and intentionally participated and continue to participate in attempts to keep buried their intentional acts and malicious campaign against Kostic which they all knew from the outset was false, knew it would and was likely to cause damages, harm and losses including the loss of career.

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34. On July 7, 2021, Removal Appeal Board concluded similar facts, and heard evidence deciding in favour of Councillor Brian Jackson and the same former Councilor Jackson as Defendant under the 0601-13081 action. RAB recommended in its decision to immediately terminate all legal counsel acting for the PN, such as Gowling and others after having seen evidence that Trust funds were unlawfully paid to various law firms and counsel, with unlawfully embezzled unauthorized Trust funds totaling well north of 20 million dollars. All trust funds were never authorized pursuant to the Indian Act sec. 2 3(a)(b) and every Piikani Audit has not itemized or disclosed this line item to the band in any certified audit as required under the Financial Transparency Act.

35. The Defendants Docken and Clint were negligent in removing CIBC as defendant in action 08 which has caused and continues to cause serious injury, delay, damage and loss attributable to their acts of omission or commission. All of which delayed the successful conclusion of the 08 action, now assisting BP in seeking remedy against LK in the 45 action for their own negligent advice and misrepresentation.

36. The Defendants referred to herein are named Defendants by Statement of Claim in Kostic T-680-20 Federal Court action ("SOC FC") : Chief Stanley Grier, Wesley Crow Shoe, Che Little Leaf-Matusiak, Riel Provost-Houle and Theodore Provost, Rodney North Peigan are individuals who at all material times lived in or around Brocket, Alberta and who at various and relevant times served as members of the Chief and Council of the Plaintiff ("the Piikani").

37. On January 20, 2022 Rod North Peigan was elected as Chief of the Piikani along with a newly elected Council by acclamation pursuant to the Piikani Custom Bylaw and code.

38. Chief of the Piikani along with a newly elected 2022 Council passed several BCR'S one being consenting to enforce Kostic's Save Harmless and indemnity under the executed as promised CIBC WM and RJL account agreements and under the Kostic business agreements.

39. The original signatories, namely 2 of the Newly elected Chief and Councillor Rick Yellow Horn under said agreements reaffirmed that they jointly signed, executed and approved Kostic's indemnity and save harmless agreements under all agreements and as account holders under the joint terms as set out thereto.

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40. Defendants Miller Thomson together with Bruce Alger, R. Gilborn, Gowling, PN and others directly interfered and induced and delayed Kostic's payment of damages and costs which were reserved by Court Order on September 13, 2013 under 0601-13081 striking PIC's claim with prejudice and reserved Kostic's costs and damages by fraudulently submitting an unsigned and unauthorized proof of claim in Kostic's name on April 7, 2014 in the fraudulent PIC insolvency proceedings, that the Court acted on and resulted and caused loss, harm and damages to Kostic. Any BP loan amount that may have existed, which is denied to have existed as stated in the BP claim would otherwise have been paid by April 7, 2014. Kostic filed and has an ongoing open criminal Police investigation regarding same.

41. The Defendants by SOC FC **Bruce Alger ("Alger), Alger & Associates,** the **Grant Thornton group of companies, Grant Thornton Ltd., Grant Thornton Inc.** and **Alger Inc.** (hereinafter jointly referred to as "**the GT Parties**") were at all material times insolvency practitioners carrying on business in the City of Calgary and elsewhere in Alberta. **Alger** acted as a court appointed investigator and Proposal Trustee.

42. The named Defendants remaining in the 06 action **Janet Potts** and **Dexter Junior Smith** were at all material times Councilor's and members of the Council of the Piikani Nation and RJL and Liliana Kostic.

43. The Defendants by SOC FC **Brian Jackson, Erwin Bastien, Troy Knowlton** and **Corbin Provost** were members of Council during 2002 and 2003.

44. The Defendant by **Corbin Provost** was also the band manager during the relevant and material times.

45. **Brian Jackson** was the lead Negotiator of the Piikani Settlement Trust Agreement, Chairman, of the Implementation Committee, Chairman of Piikani Investment Corporation at all material times.

46. **Brian Jackson** is currently a Councillor and the Chairman of various committees including of the committee which recently settled the Plaintiff's $50 million dollar Grazing Claim and of current claims. He was recently appointed to the Assembly of First Nations Canada as a board member.

47. **Brian Jackson, Chief Peter Strikes With A Gun, Daniel North Man and Rod North Peigan were clients of Clint Docken, Docken Professional Corporation after Kostic retained Docken as her counsel.**

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48. **Brian Jackson, Chief Peter Strikes With A Gun, Daniel North Man and Rod North Peigan once clients of Docken together with Kostic provided Docken with various evidence, information, strategy including the Navigant report in their attempt to settle both the 06 and 08 Action.**

49. **Guardian Law** represented Brian Jackson as agent on December 9, 2019, in related action 0601-13081.

50. The Defendant by SOC FC **Doane Crow Shoe** ("**DCS**") was and remains a member of council since 2007 and the president of the **Piikani Resource Development Corporation** ("**PRDL**").

51. The Defendant by SOC FC **Fabian North Peigan** was a member of Council and director of **Piikani Investment Corporation** ("PIC") during the relevant and material times.

52. The Defendant by SOC FC **Reggie Crow Shoe** was Chief of the Piikani from 2007-2010 and was 100 percent Shareholder Trustee of the **Piikani Investment Corporation** PIC during the relevant and material times.

53. **Brian Jackson, Erwin Bastien, Troy Knowlton** and **Corbin Provost** executed all agreements with CIBC Trust, CIBC WG, and Kostic at a properly called meeting of the Chief and Council ("C and C") on November 18, 2002.

54. Corbin Provost affirmed the Motion in council at a meeting in accordance with s. 2 of the Indian Act.

55. The Defendant by SOC FC **Michael Pflueger** was at all material times employed by the Piikani as in-house counsel or at Walsh Wilkins LLP.

56. The Defendant by SOC FC and Third-Party claim in the 06 action **CIBC Trust Corporation** ("**CIBC Trust**") is corporation registered in the Province of Alberta, was at all material times a wholly owned subsidiary of the **CIBC Bank** and the institutional trustee of the Piikani Trust.

57. The Defendant by SOC FC and Third-Party claim 06 action **CIBC World Markets Inc.** ("**CIBC WM**") is a corporation registered in the Province of Alberta and was at all material times a member of the **Investment Dealers Association of Canada** ("**IDA**").

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58. The Defendant by SOC FC and Third-Party claim 06 action **CIBC Wood Gundy** (**"CIBC WG"**) is a corporation registered in the Province of Alberta with the Alberta Securities Commission and was at all material times was a member of the IDA Kostic's employer and Disclosed Principal.

59. **Raymond James Ltd.** ("**RJL**") is a corporation registered in the Province of Alberta with the Alberta Securities Commission and was at all material times and was at all material times was a member of the IDA and Kostic's employer and Disclosed Principal.

60. The Defendants by SOC FC **Daniel Gilborn ("D. Gilborn")** and **Richard Gilborn ("R. Gilborn")** are barristers and solicitors who at all material times were active members of the Law Society of Alberta, practicing law in the City of Calgary, Alberta and elsewhere in Alberta as members of the law firm of **Caron and Partners LLP** ("**the CP Parties**") who at all material times represented Alger.

61. Piikani Removal Appeal Board, ("RAB")Decision July 7, 2021.

62. **John Does 1-10**, whose identities are unknown to the Plaintiff in this action, are Parties who have or may have participated wronging Kostic in ways that are presently unknown to her. They are named as defendants at the present time in order to inter alia preserve a cause of action against them.

III. STATEMENT OF FACTS

63. Kostic adopts and restates the statement of facts appearing in her **Statement of Defence and any Third-party claims and /or notices that may be** filed herein this action (2101-06345) and will not be repeated.

64. Further facts supporting Kostic's allegations relating to this action, 2101-06345 include:

a. the misappropriation of $15,408,838.40 by the Defendants Piikani,
b. the cover up; and
c. willful blindness

and are set out and specifically particularized in the Affidavits of Kostic filed in 06 action on January 2014, January 20, 2016; and December 21, 2016, and Federal Court

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Affidavits December 2, 2020, and June 10, 2021. Said affidavits are relied upon and, in the interest of judicial economy, incorporated by reference in this Counterclaim.

IV. ALGER & ASSOCIATES

65. The participating Defendants by SOC FC initiated and/or participated in a proposal under the Bankruptcy and insolvency Act ("**the BIA**") under which Alger was eventually appointed to administer the insolvency of the PIC which was the conduit for the misappropriated trust funds ("**the BIA Proposal**").

66. Alger turned a blind eye and did nothing to recover the misappropriated funds despite its actual and/or constructive knowledge of the place of landing of the misappropriated funds and the avenues available to recover same.

67. The PIC insolvency was a sham because its primary result, if not its purpose, was to obscure the flow of the misappropriated trust funds and to sanitize same by means of legal proceedings which had the imprimatur of the law.

68. Losses sought to be attributed to Kostic arose as a result of the coordinated actions of the participating Defendants by SOC FC acting in concert with one another to create an appearance of insolvency of the PIC, thereby defeating the claim of Kostic as a significant creditor of PIC.

69. The sham PIC insolvency engineered by the participating Defendants by SOC FC damaged Kostic in at least two respects:

a. It was a vehicle by means of which Kostic's legitimate claims against PIC, a plaintiff in 06 action until September 13, 2013, was thwarted; and
b. The wilful blindness regarding the places of landing of the misappropriated trust funds which were well known, or ought to have been well known to the C and C, to CIBC Trust and to Alger allowed scope for allegations of loss by the Plaintiff that Kostic caused the losses.

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V. DOCKEN WAS NEGLIGENT AND FAILED TO ADVANCE NUMEROUS CAUSES OF ACTION IN 0801-13081QB NAMELY: TOGETHER WITH BRIDGEPOINT ASSISTED THE PIIKANI AND OTHERS EITHER DIRECTLY OR INDIRECTLY CAUSING THEIR OWN BREACHES AND CAUSING KOSTIC'S LOSSES AS FOLLOWS: MALICIOUS PROSECUTION, LITIGATION MISCONDUCT AND ABUSE OF PROCESS

A. Overview

70. The claim of the Plaintiff BP against Kostic in action 45 was contrived by the participating Defendants which included Kostic's own legal counsel, Mr. Clint Docken by Counterclaim either knowing full well that the allegations were baseless, or not caring that there are no facts to support the baseless claims and that injury and damage will most likely result and did result to the Plaintiff Kostic.

71. In March 2004 Kostic, under the direction and instruction of the C and C, took the management of the Piikani Trust Accounts to RJL.

72. The allegations in this action (06) that Kostic had mismanaged the financial affairs of the Piikani Nation and that she attempted to embezzle the Plaintiff's funds were initially advanced by CIBC Trust for the purpose of publicly discrediting Kostic and destroying her reputation thereby causing the Piikani Nation to distrust Kostic and to terminate her engagement as a financial advisor.

73. Kostic named the CIBC et parties in the 06 action by Third-party claim.

74. The participating Defendants by Counterclaim caused and/or induced the Plaintiff Piikani to continue with these baseless allegations for their own purposes, primarily to minimize or avoid the payment of damages owed under action 08. These facts were admitted on the record by Michael Pflueger on or about July 2017 at a duly called meeting of the Chief and Council.

75. The participating Defendants by Counterclaim in action 45 have induced or caused serious harm, damage, injury and loss to the Plaintiff which is now expanded by the filing of action 45. The damage, injury and losses caused by the Defendants in action 45 cannot be quantified at present are unknown and will not be known until the end of the 06, 08 and related actions and/or Federal actions.

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76. The purpose of CIBC Trust's was to enable it to recover the management of the trading accounts from RJL for the benefit of its affiliated company, CIBC WG in attempt to reinstate CIBC Trust as trustee after its termination in 2006 and to induce the termination of Kostic which later became the 08-action file by Docken.

77. The Statement of Claim filed by PIC on November 15, 2006, alleged a conspiracy among Kostic and various Piikani Nation Councillors stating that they had attempted to embezzle $23 million of Piikani funds by means of a SWIFT transfer ("the Swift Transfer allegations").

78. These allegations were false and were known by the participating Defendants by SOC FC, including senior employees of CIBC Trust, to be false at the time that they were made because those employees participated in the aborted Swift transfer attempt for which Kostic was blamed.

79. The Piikani Investment Corporation ("PIC") complained to Kostic's professional body, known as IIROC, making the same allegations.

80. Following a full investigation, in January 2009, IIROC cleared Kostic of all allegations made against her and closed its file. The result of this finding by Kostic's regulatory body, after a two-year diligent, extensive and comprehensive investigation put the Piikani Nation on notice that its allegations against Kostic were baseless.

81. Notwithstanding, the Defendants Docken caused or permitted by inducing the Plaintiff by SOC FC to continue to pursue its false and baseless allegations against Kostic in the 06 and 08 actions through their own negligence and negligent representations which induced inordinate delay and prejudice permitting indirectly the funding legal fees and expenses from the Piikani Trust, contrary to and in breach of the terms of the Trust to maintain and conceal facts related to the 06, 08 and all related actions.

82. The C and C have misapplied other funds from the Piikani trust and falsely alleged that losses suffered by the Piikani Trust were the result of Kostic's acts of commission and/or omission.

83. Defendants Docken knew or ought to have known all the facts as stated herein and acted recklessly in the 08 action and failed to advance, were negligent and did not plead all available causes of action or remedies for LK.

84. Kostic has been forced to defend **herself** for approximately 16 years against the false, malicious and harmful allegations at great emotional, financial and reputational cost.

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85. Prior thereto Kostic was a million-dollar producing financial advisor with an exemplary reputation.

86. The Statement of Claim filed on November 15, 2006, and maintained without amendment until March 1, 2018, contained unfounded allegations against Kostic of bribes, kickbacks, and masterminding a conspiracy to defraud the Plaintiff and the Piikani Trust ("collectively, the fraud allegations") which destroyed Kostic's career, her reputation, her employability, her health and her finances.

87. The malicious prosecution complained of has grievously harmed Kostic who seeks indemnity for all her legal expenses. Kostic also seeks damages for the harm caused to her through the relentless pursuit of these false and malicious allegations, her personal anguish and suffering and the destruction of her career, reputation and livelihood.

B. Representations in Court on April 7, 2014

88. On September 13, 2013, PIC's claim was struck with prejudice and her costs and damages reserved by Associate Chief Justice J. D. Rooke ("ACJ Rooke").

89. However, in an attempt to rescue the balance of the Plaintiff's baseless claim against Kostic Glen Solomon Q.C., counsel for the Plaintiff, fabricated new allegations on April 7, 2014, to give continued plausibility to the baseless claim. The RAB and Discovery evidence supports the forgoing facts.

90. On April 7, 2014, Mr. Solomon represented to the Court, without any foundation in fact, that money belonging to the Plaintiff was blocked in a bank account and therefore incapable of earning a yield as was expected in order prevent the dissipation of $23,000,000 sought to be misappropriated by a group of conspirators of which Kostic was alleged to form part.

91. When pressed on the point by the Court Mr. Solomon pivoted to another fabrication, namely that the blocked funds were not performing as they should because Kostic was failing to attend to her investment management duties by virtue of being on a "goose chase", implying that Kostic had an association with the conspirators, and distracted from performing her duties while pursuing endeavours unrelated to her proper work.

92. The facts relating to the false and fabricated representations to the Court which enabled the participating Defendants by SOC FC to keep Kostic captive to this lawsuit for at least

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seven more years are set out and particularized in the Affidavit of Kostic filed on June 15, 2016, in 06 action which is relied upon and incorporated by reference in this Counterclaim.

93. Kostic states that the foregoing representations amounted to or contributed to malicious prosecution, litigation misconduct and abuse of process which contributed significantly to Kostic's hardship and vexation that was unnecessarily induced by defendants Docken et al acts of omission or commission which has further prejudiced the conclusion of th 08 action.

94. Defendants Docken through their negligence and recklessness lost the full contents of the Navigant report, evidence of joint privilege belonging to LK, Jackson, Chief PSWAG, North man, North Peigan, Potts which proved that the Piikani and all its counsel knew from the outset and thereafter that the allegations advanced were false and vexatious. This was done by Docken losing this critical material evidence, the piikani were then enabled in obtaining a false claim of privilege to conceal their misrepresentations since 2006.

95. Docken et al induced the allegations as stated herein.

96. The Defendants by Counterclaim in action 45 Kostic states that the foregoing acts of omission, commission by them induced the ability of the Defendants in SOC FC to continue and maintain and/or assist either directly or indirectly the representations that amounted to or contributed to malicious prosecution, litigation misconduct and abuse of process which contributed significantly to Kostic's hardship and vexation.

C. Conspiracy relating unauthorized Proof of Claim

97. **Alger** was appointed receiver and trustee of PIC which sought insolvency protection. Richard Gilborn, Jeffrey Thom ("Thom"), RJL and AIG, Kostic's, insurer, acting in concert with one another, agreed to file of a claim in the insolvency proposal of PIC, not for a legitimate purpose but rather to facilitate the bankruptcy of PIC when PIC was not truly insolvent in order to defeat Kostic's claims as a creditor and to thereby cause her financial harm or otherwise.

98. Alger, as Proposal Trustee, as well as Alger's agents and representative including CP Parties and Gilborn, owed Kostic, a creditor of PIC, a duty to at all times act honestly and fairly toward her.

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99. Alger, Gilborn and the CP Parties breached these duties causing Kostic loss and harm including by soliciting Proofs of Claim and Proxies submitted purportedly on behalf of Kostic in contravention of 41(7), 63(1),66.3(1), 171(1), 178, and Sections 202(g) of the BIA.

100. The solicitation and utilization of a Proof of Claim not signed or submitted by Kostic was intended to avoid payment of $500.000.00 which she did claim under a Proof of Claim signed and submitted by her.

101. It was also intended to create a majority vote in support of the BIA Proposal which led to the denial of Kostic's claim as a creditor of PIC thereby damaging her.

102. CIBC Trust filed a bogus Proof of Claim in the BIA Proposal thereby assisting in the creation of the majority vote pressed into service to damage Kostic.

103. Alger and CIBC Trust failed to disclose critical PIC records the suppression of which assisted in the launching and administration of the sham PIC insolvency.

104. The foregoing assisted in the concealment and cover up of misappropriated trust money the loss of which served as a pretext by the participating Defendants by SOC FC to maintain a baseless claim against Kostic.

105. Thus far C and C spent $22 million, inclusive of honorariums and miscellaneous expenses, on this and related actions to conceal and sanitize the misappropriation, all the while scapegoating and publicly portraying Kostic in a false light.

106. In the result, Kostic was deprived of her opportunity to pursue significant costs and damages against PIC by means of the bogus insolvency engineered through a manufactured and purported Proof of Claim and a proxy purportedly filed on her behalf to acquire the requisite number of claims required to pass the PIC BIA. Without Kostic's POC the BIA could not be passed.

VI. EXPERT REPORT

107. By Order dated June 7, 2013, ACJ Rooke ordered the Plaintiff to deliver its expert report to demonstrate its losses ("**the Expert Report**") by no later than August 30, 2015.

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108. Although an Expert Report was produced the participating Defendants by SOC FC withheld it from Kostic in breach of the Order despite demand for its delivery. Instead, they denied its existence.

109. On December 9, 2019, at a hearing before the Honourable Madame Justice Nation, Robert Hawkes, counsel for the Piikani, admitted the concealment.

110. The concealment of the Expert Report damaged Kostic:
   a. by delaying this action by at least 5 years, unnecessarily prolonging Kostic's cost, expense and vexation;
   b. by delaying Kostic's right to recover damages and costs; and
   c. by depriving Kostic of evidence resulting in the loss of a number of appeals in the Court of Appeal.
   d. Was an Abuse of Process through its concealment, stripping Kostic of her legal rights, creating a false light misrepresentation of her and causing hardship and intentional infliction of mental suffering and prejudice in this and related actions and depriving her of significant costs and damages owed to her.

VII. DOANE CROW SHOE

111. Since at least February 26, 2014, Councilor **DCS** masterminded and orchestrated the furtherance the malicious campaign to harass and malign Kostic by means of this action to inflict intentional mental suffering on her.

112. To achieve his ends DCS abused the process of court and the law.

113. DCS filed a false affidavit, on which he was questioned on March 10, 2014, wherein he deposed falsely that Kostic tried to steal 23 million dollars, and that the SWIFT Transfer documents were prepared and sent by Kostic from the offices of RJL.

114. DCS further deposed in questioning that the Piikani and he did not care that in the few short years that Kostic managed the investment portfolio that she increased it beyond ten million dollars.

115. DCS knew at the time, and thereafter that this allegation was false but intentionally inflicted mental suffering on Kostic to help conceal his own wrongdoing and that of C and C.

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VIII. CORBIN PROVOST

116. On April 8, 2010, Corbin Provost filed a false affidavit stating that the Piikani did not hire/contract with Kostic, intentionally lying in a sworn and filed affidavit knowing that knowing same to be untrue.

117. In fact, Corbin Provost seconded the motion passed by a properly convened meeting of the C and C on November 18, 2002, to appoint Kostic as exclusive Investment Advisor under a five-year agreement initiated and directed by the Piikani.

IX. FABIAN NORTH PEIGAN

118. Councillor Fabian North Peigan ("FNP") filed false affidavits stating that he did not publicly discuss Kostic's medical records, when in fact he did. He also breached her medical confidentiality publicly, portrayed her in a false light to the Nation's members and intentionally misled the court.

119. FNP and others arranged to provide a false video of the band meeting held in December 2012 to ACJ Rooke which was edited and doctored by the videographer as was later admitted by Piikani Councillors and members.

120. FNP concealed from the court and creditors that PIC had some $451,000.00 available weeks after the BIA Proposal was heard and approved by the Honourable Graeser J on September 28, 2014, and that he wrote write cheques to himself personally totaling over $50,000.00 out of PIC's bank account.

121. **DOCKEN WAS NEGLIGENT AND FAILED TO ADVANCE NUMEROUS CAUSES OF ACTION IN 0801-13081QB NAMELY: together with Bridgepoint assisted either directly or indirectly by not concluding the 08 action in time; by failing to advise Kostic regarding BP's allegations in action 45, by obtaining any default judgment not known to LK which aided the GT et al parties and Piikani on or about January 23, 2020, and thereafter January 2021 to present.**

X. GT PARTIES AND THE CP PARTIES

122. Material facts relating to PIC's insolvency were unreported by Alger, by his agents his solicitors to PIC's creditors or to anyone.

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123. Rather, the C and C, CIBC Trust, the GT and CP Parties, their counsel and others had concealed the accounting known and available to them in their deceptive strategy to hide the breach of trust committed, and the sham insolvency.

124. The concealment of records assisted not only the concealment of millions of dollars missing Trust funds and which pockets into which they flowed but also the targeting of Kostic.

125. The GT Parties and the CP Parties had a positive obligation to report these matters and facts prior to, during and following alleged PIC insolvency under the BIA.

126. However, neither the GT Parties nor their counsel, Daniel Gilborn, reported to Kostic or the other creditors. Instead, they collected further funds from the Piikani Trust and billed PIC for work done by the CP Parties and by Gilborn following the PIC BIA approval.

127. The GT Parties and CP Parties were negligent in not investigating and reporting the misappropriation of funds secured to PIC for repayment to the Piikani Trust despite representing to ACJ Rooke that they would, only to retreat from the promise in front of Justice Graesser.

128. The Piikani Trust was and remains an irresistible dripping roast on which the participating Defendants by SOC FC had been feasting since 2002, primarily under the cynical justification, in the nature of a witch-hunt, that Kostic was and remains the cause of the impoverishment of the Piikani Trust.

129. The GT Parties and CP Parties, together with the C and C and its counsel, further breached an Order of ACJ Rooke granted on February 5, 2013, which prohibits the use of any trust funds, including payments to legal counsel, and to PRDL without prior leave of the court.

130. The second year's PIC BIA payment approved by the court was not made because PIC had no funds to make the payment. The GT Parties, which were not yet discharged as proposal Trustees. failed, neglected or refused to report any of the forgoing to PIC's creditors or to the court, engaging instead in willful blindness.

131. The GT parties and Caron failed to report on the non-compliance of the Order of Grasser J and failed to report on the non-payment to PIC's loan restructuring, the receivables available and their full indemnity and solicitor client payments in excess of the Court Order for both.

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132. On September 13, 2013, the ACJ struck PIC's claim for no cause of action reserving LK costs and damages.

XI. ERWIN BASTIEN

133. DCS, Stan Grier, Barnaby Provost, Keith Grier, Reggie Crow Shoe, Adam North Peigan, Pflueger, Angie Grier JSS, Troy Knowlton, Corbin Provost and Erwin Bastien and the other council members have concealed and misled the court regarding material and relevant facts regarding Kostic.

134. On or about July or August of 2018 Kostic learned that Erwin Bastien ("**EB**") made false defamatory statements at public band meetings and specifically in October and November 2017, one in Edmonton, Alberta about Kostic. Specifically, he stated that Kostic is the cause of the depletion of the Piikani Trust and that she tried to steal funds from the Piikani Trust.

135. This slander and defamation occurred at forums open to the public including to off reserve members, in connection with the Muncell grazing lease settlement for some $50 million dollars which was ratified in or around December 2017.

136. EB continues to publicly accuse Kostic of embezzlement of Trust assets knowing full well the falsity of such accusations.

137. EB filed a false affidavit during the 2007-2011 term regarding Kostic deposing that Kostic tried to steal trust property and that Kostic never had a business agreement despite the fact that he co-signed the agreement together with a full quorum of council at the Duly convened meeting.

138. EB knowingly and intentionally did so to inflict mental suffering and false light misrepresentation of Kostic.

139. EB did so to conceal his and the C and C's misappropriation, breaching the terms of the Trust by diverting some $471,000.00 to pay utility bills and honorariums at a time when the Piikani was in third party management on account of the mismanagement of the affairs of the Piikani and by the C and C.

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XII. CHIEF STAN GRIER, DOANE CROW SHOE, TROY KNOWLTON, BARNABY PROVOST – MALFEASANCE OF PUBLIC OFFICE – DOCKEN INDUCED THE ABILITY OF THE DEFENDANTS NAMED IN SOC FC

140. The motivation to persevere with the malicious prosecution of this action against Kostic by the participating Defendants by SOC FC surpassed the motivation to serve the financial interests of the Piikani Nation.

141. The C and C, including in particular, Chief Stan Grier, DCS, Troy Knowlton and Barnaby Provost caused the Piikani Nation to forfeit between $20 to $50 million dollars from an amount otherwise available under a Muncell grazing lease settlement by refusing, for purposes of quantifying the Piikani lost income opportunity, to rely on the historical earnings achieved by Kostic while managing the Piikani portfolio.

142. Robert Hawkes and Michael Pflueger refused to disclose to the Plaintiff's implementation committee earning statements showing returns achieved under Kostic's management which averaged **over 10% per** annum on the grounds that it would invalidate the claim against Kostic in the 06 action and help her claim for damages assessment in the 08 action.

143. In the result the participating Defendants by SOC FC compelled reliance on a schedule which allowed for compensation to the Plaintiff computed at only around 3% per annum.

144. Hence, in their determination to maintain the malicious prosecution against Kostic the participating Defendants by SOC FC caused the Plaintiff to forfeit an entitlement to roughly three times the amount actually achieved. They did so to suppress evidence to support a higher claim for the sole purpose of enabling the Defendants by SOC FC to justify maintaining the baseless action against Kostic.

145. The opportunity for the higher Muncell grazing lease settlement which the Defendants by SOC FC squandered was in fact created by the results of Kostic's able financial management of the Piikani portfolio.

146. This evidence also was admitted during discoveries of Councillor Jackson and by way of evidence from other Councillors and others.

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XIII. DOCKEN WAS NEGLIGENT AND LOST MATERIAL AND CRITICAL EVIDENCE INDUCING THE FALSE REPRESENTATIONS & RESULTING DELAY BY MICHAEL PFLUEGER ET AL IN THE 08 ACTION

147. LK states that because Docken Was Negligent And Lost Material And Critical Evidence Inducing The False Representations & Resulting Delay By Michael Pflueger Et Al In The 08 Action because of the following events.

148. False affidavit evidence was prepared and filed by Michael Pflueger when he knew or ought to have known at the time of filing same that the evidence was false.

149. Michael Pflueger was aware of and assisted the C and C to conceal material facts. He also made statements against Kostic known by him to have been false. He thereby aided and abetted the joint effort by select members of the C and C, to intentionally inflict mental suffering by means of false light misrepresentation, deceit and concealment of the fraudulent trust misappropriations with the intent to destroy Kostic's reputation and livelihood in order to escape liability both to Kostic and to the Trust.

150. Pfleuger, together with the participation Defendants by SOC FC, was one of the architects of the elaborate scheme complained of which includes the commencement and prosecution of this action and setting in motion the sham insolvency to thwart Kostic's claim for the payment of damages, enhanced costs, indemnity and save harmless relief for the abusive litigation misconduct based on the false fraud embezzlement allegations made against her which he knew to be false since the inception of this action in 2006. This scheme, as aforesaid, also served to conceal the wrongdoing and defalcation of Trust property by C and C, its legal advisors and other participants.

151. Pflueger had stated at duly called meetings of C and C, and elsewhere, that the Piikani lawsuit against Kostic should never have been filed, but that if they don't keep Robert Hawkes on as legal counsel the Piikani will be paying Kostic over $10 million dollars for the allegations known by the C and C and its legal counsel to have been false from the outset and thereafter.

152. Pflueger falsely mislead the court in 2010 to induce the court to set aside a default judgment in Action 0801-05039 ("the Kostic action").

153. In a further attempt to defeat Kostic and to aid in concealing the missing trust funds for which the Defendants by SOC FC failed to account, Pflueger in a false light

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misrepresentation, led the court to believe that the Plaintiff's agreement with Kostic in the 08 action was a forgery and nonexistent, which the Court of Appeal affirmed is a valid, binding agreement that was breached and the " manner in which it was should be considered ".

154. Defendants Docken et al and BP induced the above and below results, as stated herein action 45, which is repeated in each and every paragraph and will not be repeated for ease of the Court. The loss and suffering through their own various breaches, or misrepresentations or negligence the losses and damages will not be known until the conclusion of the 06 action directly because of the delay and negligence that occurred in the 08 action. The damages and losses cumulatively will not be known until the end of several actions.

XIV. DOCKEN WAS NEGLIGENT AND FAILED TO ADVANCE NUMEROUS CAUSES OF ACTION IN 0801-13081QB NAMELY: VARIOUS INTERRELATED UNLAWFUL MEANS CONSPIRACIES

155. The Defendants by SOC FC devised and orchestrated an unlawful means conspiracy to enrich themselves in various ways with trust property, to conceal their wrongdoing and to foist the blame on Kostic.

156. Kostic was named as a Defendant in this Action ("0601"), commenced in 2006 by ("PIC") on behalf of its sole shareholder, the beneficiary Piikani.

157. In January 2007 Chief Reggie Crow shoe DCS, EB and then band manager CB ratified the action and wrongly terminated Kostic and RJL to enable them to access the Piikani Trust funds.

158. In July 2007 Machida informed Thom Kostic's then legal counsel that the only claim that the Plaintiff understood that it had no valid claim beyond a claim for excessive commissions.

159. This information was withheld from Kostic and was only discovered after Kostic sued Thom in 2015 and obtained her complete records concealed from her during the time Thom represented, and only after Thom filed his affidavit of records.

160. In 2008 Machida wrote Thom and advised that he was in a conflict and could not obtain instructions from his client PIC to consent to striking Plaintiff's claim which Kostic was seeking.

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161. The participating Defendants by SOC FC delayed and frustrated Kostic's attempts to bring any application to strike the claim for a period of over five years by means of various guises and the deceptive schemes such as feigning absence of instructions when convenient.

162. However, PIC was able to discontinue during this period of alleged non instruction to remove Maurice Law and Mr. Ron Maurice and Dale Szakacs which exposed the mendacity of the pretext.

163. Machida removed himself in 2010 due to his own conflicts with both the Plaintiff and PIC and because of an alleged failure to obtain instructions from his clients.

164. In 2009 Chief Reg Crow Shoe and DCS as part of C and C council, hired Bruce Alger and paid him several hundred thousands of dollars to help the Nation remove Mr. Dale McMullan CEO of PEC and to help bankrupt PEC and PIC as the first step in preventing payment of Damages owed to Kostic. The GT Parties confirmed the first part of this to Kostic, her counsel and Councillors Daniel North Man, Rod North Peigan and Brian Jackson in February 2014.

165. DCS was the mastermind and controlling mind of PRDL who had employee and in-house legal advisor, Michael Pflueger knowingly assisting throughout.

166. The foregoing was concocted to assist in defeating Kostic's claim in Q.B. Action 0801-05039 and Kostic's claim for enhanced costs and damages resulting from the scurrilous and false allegations made and maintained by PIC and the Piikani for several years.

167. Michael Pflueger employed a strategy of fear and tactics on the remaining PIC board to defeat Kostic's claim against PIC.

168. The directors at the time, and specifically PIC Directors Pat Provost (Buksii) and Derek Smith, Chartered Accountant were threatened to approve the PIC BIA proposal or be terminated. When they refused Michael Pflueger employed scare tactics on them stating that if they did not, then the Piikani would be paying Kostic millions of dollars. Pfleuger than then had the remaining members of PIC's board of directors fired.

169. Michael Pflueger then worked alongside DCS, CIBC Trust, Blakes, D. Gilborn, R. Gilborn. Bruce Alger and others in defeating claims of Kostic and in efforts to push through the PIC BIA Proposal.

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170. Michael Pflueger did so primarily in an effort to conceal the knowing assistance, knowing receipt, misappropriation, defalcation of Trust funds and the criminal breach of Trust.

171. On September 6, 2013, the GT parties applied to remove PIC as a party plaintiff from the 2006 Action on a without costs basis. Instead, the Honourable Rooke ACJ struck PIC as a party, with prejudice, reserving Kostic's costs and damages assessment.

172. As such, Kostic became a creditor of PIC for substantial amounts, later estimated to be at least $500,000.

173. In February 2014 Alger brought forward a proposal ("the BIA proposal") for the creditors in relation to a bankruptcy and insolvency restructuring of PIC.

174. The first meeting of PIC creditors was held on February 24, 2014. Kostic, Kostic, Brian Jackson, Daniel Northman ("Northman"), Rod North Peigan ("North Peigan"), Kelly Bourassa ("Bourassa") the representative of CIBC, Alger and R. Gilborn were all present at that meeting.

175. At that meeting of creditors, Alger advised that he acted as proxy for AIG, Kostic's insurer, and that AIG had a Proof of Claim in relation to the BIA proposal.

176. Kostic objected to the form and substance of AIG's purported Proof of Claim, pointing out to Alger and to R. Gilborn that the costs issue under the September 13, 2013, Order of Rooke ACJ had not been resolved. Kostic further stated for the record that AIG was not a party to the 0601 proceedings, that she did not approve that Proof of Claim and that she was the party who had to submit same. AIG assured Kostic that it would not interfere with Kostic's Proof of Claim ("POC"). Alger abruptly halted the meeting and adjourned same to May 2014.

177. In the intervening period, on April 2, 2014, Thom filed a secretarial affidavit of Shirley Peloski ("Peloski"). In this affidavit to which there was attached a Proof of Claim purporting to be made on behalf of Kostic and Raymond James Ltd. totaling $64,280.47 based on taxable Bills of Costs.

178. Kostic had dismissed Thom as her counsel in August 2013 and he no longer represented her after that date. Instead Kostic was represented at that time by William Klym in the 0601 and 08 action.

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179. This Proof of Claim was not signed by Kostic or anyone else ("unsigned POC"). This unsigned POC was neither seen beforehand nor approved by Kostic who was at all material times the only proper unsecured creditor of PIC, whose creditor status was determined by ACJ Rooke.

180. Kostic had already filed her own properly executed and signed POC dated February 24, 2014, together with a draft affidavit, a draft Statement of Claim, and a signed voting letter.

181. Two days after Kostic filed her signed POC, Alger disallowed Kostic's signed POC. Alger and GT sent Kostic a written disallowance on February 26, 2014, in which he stated, "Your claim, if in fact you have one, is solely for costs which have been and are properly claimable by another party." I understood that the reference to "another party" was to AIG.

182. RJL was enjoying coverage under Kostic's policy of insurance and was not entitled to have an unsecured claim for the period in question as RJL only activated ancillary coverage after Kostic had AIG terminate Thom for his own negligence .

183. It was only at that point in December 2016 that RJL had its own coverage, which coverage is still under Kostic's policy of insurance with AIG and terms in said policy do not permit.

184. No claim should have been submitted in RJL's name, as only Kostic's policy was active and there was only one policy to claim under. AIG or Kostic did not approve the claim pushed through on April 7, 2014, in Kostic's name.

185. Further Kostic was not yet indemnified, and NO subrogation could occur even if the claim was approved, which is denied, and it was not.

186. Alger disallowed all other Proofs of Claim submitted by the unsecured creditors identified above, namely those of Kostic, Jackson, Northman and North Peigan, Potts and Kostic.

187. In subsequent correspondence to ACJ Rooke dated April 1, 2014, Alger stated, inter alia, "In that regard, we would expect Mr. Jeff Thom to be speaking to the matter of costs on behalf of Raymond James and Kostic…".

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188. In April 2014, Thom did not represent Kostic and had no authority to speak to the matter of costs on Kostic's behalf.

189. At the April 7, 2014, hearing, before Rooke ACJ, R. Gilborn and Thom both made submissions to the Court, representing that the unsigned POC was the Proof of Claim for Raymond James and Kostic. ACJ Rooke granted an Order relying on these representations, on Peloski's affidavit and the unsigned POC.

190. On April 7, 2014, ACJ Rooke assessed and ordered costs against PIC in favour of RJL and Kostic up to and including September 13, 2013.

191. The foregoing harmed Kostic in the following ways:

a. she lost her entitlement to claim some $500,000;
b. she lost her entitlement to claim compensation from PIC for the false allegations made against her by PIC;
c. she was disenfranchised within the insolvency thereby depriving of the opportunity and the standing to expose the insolvency for the sham that it was;
d. her exit from the lawsuit was unduly delayed exposing her to prolonger expense, vexation and the reputational taint.
e. it brought Kostic into conflict with her insurer initiating a chain events that culminated in the cancellation of her policy.

XV. SOLICITATION OF VOTES AND PROXIES FOR THE PIC BIA PROPOSAL

192. On April 30, 2019, Counsel for AIG filed and for the first time admitted that AIG did not authorize Alger, Caron or Thom to file any claim subrogated or otherwise and that AIG instructed each of them not to put any claim in Kostic's name.

193. This vote solicitation and false representation to the ACJ are violations under the Criminal code and under section 202 (g) of the BIA.

194. The BIA Proposal initiated in 2009 required approval by creditors in accordance with the Bankruptcy and Insolvency Act and was purportedly approved in September 2014.

195. On February 14, 2014, Thom wrote to AIG, Kostic's insurer, reporting on the impending need for votes to support the BIA proposal and advised that Mr. Gilborn, counsel for the GT Parties needs as many votes as possible in favour of the proposal, and that he solicited Thom to file the Bill of Costs PC in order to create AIG/Kostic as a creditor, to solicit favorable votes for the proposal."

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196. Said communication was an improper solicitation by Alger and GT contrary to Section 202(g) of the BIA. Hence, approval of the BIA Proposal was obtained by means of a proxy and voting letter obtained by unlawfully denying Kostic's Signed POC, colluding with Thom to create an improper unsigned POC, a forgery, falsely representing it as having been made, in part, on behalf of Kostic and, therefore improperly using it to obtain approval of the BIA Proposal.

197. Only on April 30, 2019, did counsel for AIG, Kostic's insurer swear an affidavit in another action, stating that AIG did not authorize Thom, Alger or Gilborn to subrogate any claim in Kostic's name, stating further that AIG advised them NOT to put through any claim in Kostic's name.

198. This entire matter is with the Police.

199. Kostic is the named insured under the policy and no coverage extends to her employer and principal RJL.

XVI. INACCURATE REPORTING AND FINANCIAL AFFAIRS OF PIC: PIC NOT INSOLVENT – DECEIPT

200. Between 2009 and the September 2014 approval of the BIA proposal, Alger and GT Parties in the course of reporting to the Court and to the creditors of PIC, including to Kostic, on the financial state of PIC, omitted or failed to report accurately or fully certain amounts, including loans made between 2005 and June 2007 aggregating $14,025,000.00 to three PBE's from the Piikani Investment Account at CIBC Trust #1518919.

a. Funds due to but not returned to said Investment Account at CIBC Trust, which the GT Parties either neglected to investigate or otherwise turned a blind eye to include the following:
b. $391,632.79 from the Investment Account at CIBC Trust in 2004 set out below and due under the terms of the SRA Bylaw;
c. $391,632.79 from the Heritage Account at CIBC Trust in 2004 set out below and due under the terms of the SRA Bylaw;
d. $278,096.89 from the PLHC and PIC between September 2005 and April 2006;
e. $524,937.44 paid out under the SRA Bylaw for the 2006 income due to PLHC and secured to PIC in December 2007;
f. $1,006,222.22 as of December 31, 2012, from PLHC and PIC as set out in an affidavit of Councillor Doane Crow Shoe filed February 1, 2013;
g. $1,594,526.94 paid to Council from PEC loans # 1 and 2 in 2006 and 2007 as admitted to in a May 14, 2010, undertaking reply;
h. $11,221,789.33 due to PEC and PIC from the ATCO Investment since December 2009.
i. Total: $15,408,838.40

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201. The funds misappropriated by the C and C from the Piikani Oldman Hydro Limited Partnership ("POHLP"), Piikani Energy Corporation ("PEC") and PIC should have been deducted from the funds alleged to be owing by PIC to the Investment Account at the CIBC Trust (Account # 1518919) of some $14,025,000.00 but were not.

202. The two joint account holders, CIBC Trust and the Plaintiff together recovered more funds than were due to CIBC Trust Account # 1518919 which the GT parties failed to report under the PIC BIA Proposal administered by them.

203. The principal amount due by PIC to CIBC Trust of some $14,025,000.00 should therefore have been reduced to $0.00 as should the interest in the amount of $9,013,998.13 alleged to have accrued thereon.

204. Hence, by the date of filing the PIC BIA Proposal on February 6, 2014, nothing remained owing by PIC to Investment Account # 1518919 at CIBC Trust because as the Plaintiff, a joint account holder collected these funds, a matter ignored by the GT parties and their counsel.

205. The value of PIC's security on the six loans totaling $14,025,000.00, which was set artificially low by Alger and the GT parties at $14,025,000.00 was more than sufficient to cover the alleged $27,142.00 owed to, Gowlings, the Plaintiff's counsel, and the $64,280.47 shown to be owed to Kostic under the PIC BIA Proposal.

206. As such, PIC was not, in fact, insolvent at the time of it being petitioned into insolvency and was not insolvent at the time the BIA proposal was approved by Graeser J.

207. Hence, the PIC insolvency was a sham intentionally pressed into service to defeat Kostic's claim and to thereby cause her additional financial harm.

208. Action T-680-20 seeks against the CP Parties and Partners LLP and RGilborn, DGilborn as Agent for Bruce Alger, Proposal Trustee for costs, indemnity and damages in an amount to be determined for negligence and misrepresentation, Breaches of the Duty of care.

XVII. DOCKEN'S NEGLIGENCE IN 08 ACTION PERMITTED THE FUTURE AMENDED STATEMENT OF CLAIM OF PIIKANI IN MARCH 2018

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209. Under its Amended its Statement of Claim filed on March 1, 2018, the Plaintiff Piikani continues to assert that Kostic, as one of the Defendant Brokers, breached the terms of the Investment Management Agreement and the Investment Policy resulting in substantial losses to the Plaintiff, particulars of which include:

a. Failing to manage the investment accounts in such a way that a purpose and objectives of the Piikani Trust could be achieved;
b. Failing to ensure that investments were made within the authorized investments as schedule in the Piikani Trust Agreement;
c. Failing to disclose to the Plaintiff ∧ or the Trustee that the offending investments did not fall within the authorized investments;
d. Failing to report on a timely basis or at all;
e. Failing to ensure that the investments accounts had appropriate liquidity to comply with the terms of the Piikani Trust Agreement.

210. On July 7th, 2021, removal Appeal Board pronounced its decision, part of the decision confirms that the participating Defendants in T-680-20 acted in breach of Federal Statutes and the Defendants by 2101-06345 in this action 2101-06345 ("45") ,assisted in these ongoing and frivolous claims commencing from the filing of action 06 and then since the opening of default in the 08 action and onwards.

211. This induced injury to LK while assisting directly or indirectly the Piikani and others by inducing ordinate delay, prejudice, invasion of privacy, defamation and loss to Plaintiff Kostic by Docken and Clint Docken failing to act competently from the outset in the 08 action.

212. This cumulatively assisting the Piikani and Participating Defendants by SOC FC into concealing material evidence, misleading the Court, breaching the Piikani Trust well north of 20 million, primarily paid to counsel and law firms for maintaining a baseless action against Kostic that all parties knew from the outset or knew from the outset of their entering the landscape that all allegations make in the 06 and 08 action after the default was opened were false, vexatious and malicious.

213. The discovery questioning of Councillor Jackson, the Cross examination of July 29, 2021, of Dale Kostic, the RAB Decision and investigation of the evidence in RAB all confirm the facts of malice and conspiracy against Kostic that Kostic alleges has occurred.

214. Defendants Docken et al had all this evidence prior to its own negligence which would have ended the slaughter targeted at Kostic at minimum by 2010 had the negligent fraudulent concealment, misrepresentation and negligence not occurred by both Clint Docken, Docken and BP and then Gurdian Law.

215. The parties knew or ought to have known that said acts would cause, did cause and continue to cause the Plaintiff Kostic injury, harm, loss, damage and mental suffering for

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their acts of omission or commission acting directly or indirectly, willfully blindly. Similarity the Defendants by counterclaim in action 45 knew the possibility of such injury as stated above and herein.

216. To the extent that the participating Defendants by Counterclaim in action 45 INDUCED THE losses, damages and injury complained of Kostic seeks indemnity, contribution and damages from them in respect of said losses for which the Plaintiff BP is pursuing its own client Kostic through its agent(s) and Defendants Clint Docken, Docken Professional Corporation and Guardian Law.

XVIII. DOCKEN AND THE THIRD-PARTY DEFENDANTS RJL, MILLER THOMSON WERE NEGLIGENT AND DOCKEN AND MILLER THOMSON FAILED TO ADVANCE NUMEROUS CAUSES OF ACTION AND RELIEF IN 0601-13081 AND 0801-05039OB WHEN NEEDED NAMELY:

217. Docken failed to advance remedies required or to settle the 08 action when he was able to, instead because of his failure created a chaos of unnecessary litigation, prejudice, stress, loss and damage to Its client Kostic.

218. The Damage and loss is not quantifiable at this stage from the failure of Docken to settle the 08 action prior to the Piikani opening of default on false statements which were Struck by the Alberta Court of Appeal, but not until 2017.

219. At all relevant times Alger and the GT Parties owed Kostic, as a creditor of PIC, fiduciary duties to ensure that all reporting and accounting for the assets of PIC were truly and fairly reflected and disclosed which they failed or omitted to do.

220. The GT parties, as trustees and officers of the Court breached their duties owed to her as a creditor of PIC and they, together with their agents and representatives, such as the Piikani, the CP Parties, breached the fiduciary duties owed to Kostic as creditor of PIC, and knowingly assisted the participating Defendants by SOC FC in breaching those fiduciary duties particulars of which include but are not limited to:

a. breaching their unqualified duty to ensure that all reporting and accounting for the assets of PIC were truly and fairly reflected and disclosed to the Court, to beneficiaries of the Piikani Trust and to Kostic, as creditor, which they failed to do;
b. failing to investigate and account for the 8.5 million receivables due to PIC;
c. failing to account for the ATCO proceeds secured to PIC.
d. failing to account for the $475,000.00 available to PIC weeks after the September 28, 2014, BIA Proposal approval;

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e. failing to account for some $50,000 payable to Fabian North Peigan from PIC; and

f. failing to report on missing the second payment due under the approved BIA proposal.

221. The CP Parties provided knowing assistance to the GT parties thereby aiding and abetting the breaches of duty owed by the GT Parties to the Court and to Kostic.

222. These parties knew or ought to have known that PIC was not insolvent and that identifiable and traceable assets were available for recovery.

223. The misuse of the unsigned POC created the appearance of creditor approval that was not justified, did not disclose that it was not subrogated and misled the Court and deceived Kostic, thereby denying Kostic her status as creditor.

224. The malicious filing of the 06 action and the interference to prevent the conclusion of the 08 action, the continuation of same for over 15 years against Kostic was a deliberate and sophisticated scheme by various actors, knowing from the outset that the allegations in the 06 claim were false or in reckless disregard of the facts, caused serious damage to Kostic.

225. The participating Defendants in T-680-20 maintained the action by concealing material facts known to the Chief and Council, its counsel, to the GT Parties and its counsel, in an effort to deliberately damage, injure and hurt Kostic including to publicly humiliate and portray her in false light with total disregard to her health status that resulted directly from this litigation, a fact well known to the Defendants by SOC FC and Defendants Docken et al.

226. The multiple breaches of duty included the swearing affidavits and materials known to be false filed by participating Defendants in the other actions who the Defendants by Counterclaim in this action assisted directly or indirectly by: repudiating the terms of the Docken retainer and terms promised to her with BP agreement as represented by Docken et al; by concealing, losing and/or destroying material evidence; concealing that the portion of proceeds obtained from Kostic from being forced to sell her RJL shares was provided to Docken, and BP, which allegation or cause of action was only discovered by Kostic upon service of the 45 action on July 26, 2021; by negligence, then by the filing of the SOC ON May 21, 2021 and changes made a filed on June 22, 2021, and serving the Plaintiff only with the ASOC on July 26, 2021.

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XIX. LIQUIDITY WAS AVAILABLE AND LOANS WERE APPROVED FOR ATCO PROJECT - FUNDS MISAPPROPRIATED BY PIIKANI - LIABILITY OF THE CONSPIRATORS AND DOCKEN ET AL ASSISTED DIRECTLY OR INDIRECTLY BY FAILING TO PROTECT THE INTEREST OF ITS CLIENT KOSTIC

227. The Defendant DOCKEN knew or ought to have known that the PIC BIA proposal was tainted by fraud and dishonesty but FAILED TO ADVANCE CAUSES OF ACTION when required in the 08 action after 2009 WHEN IT OBTAINED EVIDENCE FROM Kostic, Jackson, Chief SWAG, North Man And North Peigan, others including from Jeff Thom Kostic's Counsel In The 06 Action.

228. The various actors in collusion with each other were then able to and completed, in breach of the BIA section 202 (g), solicitation of proxies and proofs of claim to push through the PIC BIA Proposal. Including a forged Proof of Claim in Kostic's name, submitted to the Court and approved by the Court.

229. **DOCKEN ET AL BREACHED ITS FIDUCIARY DUTIES TO KOSTIC INDUCING SEVERAL CAUSES OF ACTION OR THE DEFENDANTS INDUCED, CONSPIRED AND INTERFERED WITH THOSE FIDUCIARY DUTIES OWED TO HER By:**

i. Since 2007 Docken's initial failure by Docken to develop and implement strategies and tactics to invoke on the Kostic's behalf the remedies available in the Terms and Conditions **Booklet attached and linked to the 08 Action Business agreement, including the CIBC WG save harmless and** indemnity also in the BA.

ii. Docken and the Defendants have caused the Kostic stress and mental anguish.

iii. Kostic suffers from Post-Traumatic Stress Disorder and is on permanent disability a fact known to Docken and BP from the outset of Docken retainer for the 08 litigation since 2007.

230. Kostic remained under a cloud of suspicion from November 2006 until present as a result of the failure of Docken to seek a prompt settlement claim against piikani in the 08 action on the basis that on the facts and at law. Notwithdstanding that the Piikani were in default on or prior to April 2010. The BP Defendants assisted or acted through its agent Docken, and now Guardian.

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XX. DAMAGES AND REMEDIES SOUGHT:

231. Kostic seeks the following damages and remedies in respect of loss and harm sustained by her as a result of the matters hereinabove alleged as against: **CLINT DOCKEN; DOCKEN PROFESSIONAL CORPORATION; GUARDIAN LAW; BRIDGEPOINT FINANCIAL SERVICES INC. AND BRIDGEPOINT FINANCIAL SERVICES LIMITED PARTNERSHIP AND JOHN DOES 1-10**

a. **A Declaration** of no remaining Debt liability and extinguishing any Debt alleged to exist;
b. **A Declaration** and Damages for Aggravation, stress and inconvenience;
c. A **Declaration** to reserve the right to consolidate this action with Kostic's Federal Actions or vice versa and to amend to join additional joint tortfeasors as required;
d. general damages in such amounts as may be proved at the trial of this action jointly and severally from each of the Defendants by Counterclaim found to have contributed to the items of general damages to be compensated;
e. special damages in such amounts as may be proved at the trial of this action jointly and severally from each of the Defendants by Counterclaim found to have contributed to the items of special damages to be compensated.
f. punitive, exemplary and aggravated in such amounts as may be proved at the trial of this action jointly and severally from each of the Defendants by Counterclaim found to be liable for same.
g. Damages for the intentional infliction of stress and mental suffering;
h. Damages on the loss of Raymond James shares sold and provided to Docken;
i. Damages on interest for any violation under the Fair-Trading act and further right to convert this component into a class action proceeding;
j. indemnity in respect of any judgement or costs previously awarded against her in related actions in an amount to be determined.
k. Such further and other relief, orders and directions as the circumstances of the case may require and as this Honourable Court may deem appropriate, including leave to amend this Counterclaim;
l. For an Order for Indemnity and Save Harmless relief having been triggered or retriggered payable retroactively from the outset and going forward forthwith
m. Costs on a solicitor-and-his-own-client full indemnity basis with triple cost multipliers or on such other basis as this Honourable Court may deem appropriate;

NOTICE TO THE DEFENDANT(S) BY COUNTERCLAIM

You only have a short time to do something to respond to this counterclaim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

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SCHEDULE A

You can respond by filing a statement of defence or a demand for notice to counterclaim in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice to counterclaim on the plaintiff(s) by counterclaim's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice to counterclaim within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) by counterclaim against you after notice of the application has been served on you.

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