

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

POPLAR RIVER FIRST NATION,	)	<u>Derek M. Olson</u>
	plaintiff,	) <u>Abhishek Makam</u>
		) for the plaintiff
-and-	)	
	)	
HIS MAJESTY THE KING IN THE RIGHT OF CANADA	)	<u>Kelsey Desjardine</u>
as represented by the ATTORNEY GENERAL OF	)	for the defendant
CANADA, and the FRESHWATER FISH MARKETING	)	Attorney General of Canada
CORPORATION,	)	
	)	<u>Sharyne M. Hamm</u>
	defendants.	) <u>Robyn M. Otto</u>
		) for the defendant
		) Freshwater Fish Marketing
		) Corporation
	)	
	)	
	)	Hearing Date:
	)	March 20, 2026
	)	
	)	Judgment Delivered:
	)	April 8, 2026

DECISION ON MOTION FOR AN INTERIM AND INTERLOCUTORY INJUNCTION (JURISDICTION)

INNESS J.

INTRODUCTION

[1] Poplar River First Nation ("PRFN") claims damages and a declaration against the Government of Canada ("Canada") for breach of fiduciary duty and breach of the duty to consult and accommodate. The allegations arise from Canada's divestiture of the Freshwater Fish Marketing Corporation (the "FFMC"), including the MV Poplar River (the "Vessel") owned by the FFMC. PRFN relies on the Vessel during the open water season to transport commercially harvested fish for sale in the market (via the FFMC) and to supply critical goods and equipment to the community. The divestiture has put PRFN's continued use of the Vessel into question, leaving the community in a state of economic uncertainty.

[2] In the context of the foregoing, PRFN filed a motion for an interim and interlocutory injunction (the "motion") to protect its interests regarding the use of the Vessel. Canada and the FFMC oppose the motion. The parties disagree on the issues of urgency and jurisdiction. It was agreed that I would hear and decide the preliminary issue of jurisdiction on an urgent basis.

[3] At the conclusion of the hearing I reserved my decision. Thereafter, I wrote to the parties to inform them of my decision, with written reasons to follow shortly. For the reasons set out below, I find the Court of King's Bench of Manitoba ("Court of King's Bench") does not have jurisdiction to hear and decide PRFN's motion.

BACKGROUND

[4] PRFN is an Ojibway First Nation community located on the east shore of Lake Winnipeg, Manitoba. It is a remote (fly-in) community of approximately 1,400 people with winter access to Berens River, Manitoba, where it connects to the all-weather road. The all-weather road is generally accessible from December to March. According to the affidavit evidence of David Mackay, the Manager of PRFN's Negginan Fishing Station, the Vessel is used by the community during the open water season, which is usually from May to October. The Vessel has been servicing northern Manitoba communities, including PRFN, since 1970. Since 2016, it has been owned by the FPMC. According to the PRFN, the Vessel is critical for its economic survival.

[5] A couple of years ago, the Department of Fisheries and Oceans Canada ("DFO") established a process to divest itself of the FPMC, which includes the Vessel. The first phase consisted of an open and informal solicitation of interest (February 19 to April 5, 2024), which invited Indigenous organizations, private sector entities, harvester collectives, and other potential proponents to express their interest in the divestiture. Participation in this phase was not a prerequisite to participating in the formal request for proposal process, which consisted of three phases: Stage 1: Solicitation of Initial Letters of Intent (December 5, 2024 to March 28, 2025); Stage 2: Solicitation of Final Letters of Intent (May 7, 2025 to September 17, 2025); Stage 3: Closing (i.e. negotiation of a binding, final agreement). The divestiture is now in the Closing stage.

[6] PRFN previously raised concerns regarding the potential impact of divestiture on its economy. In a letter written to the DFO on July 5, 2024, (then) Chief Vera Mitchell of PRFN inquired whether the Vessel would continue to serve PRFN following divestiture of the FFMC. Furthermore, on or about November 22, 2023, February 1, 2024, and September 26, 2024, David Mackay participated in meetings with representatives of the DFO to express concerns and gain information about the future operation of the Vessel. On September 26, 2025, counsel for PRFN wrote to the minister of the DFO, indicating an intention to seek injunctive relief if there was further inaction by the DFO.

[7] On November 7, 2025, the minister of the DFO replied to counsel for PRFN, reiterating that the DFO publicly announced Canada's decision to divest itself of the FFMC in November 2023. The correspondence confirmed that the Vessel was acquired to secure access to fish from PRFN, Beren's River, and McBeth Point, and forms part of the FFMC's operational infrastructure. The correspondence also stated that proposals submitted for the divestiture were being assessed against criteria and considerations informed by input from Indigenous governments and organizations, including PRFN, as well as harvesters, provinces and territories. The letter concluded with a statement reassuring PRFN its concerns were being taken seriously.

[8] On December 11, 2025, PRFN filed its statement of claim against Canada, seeking declaratory and injunctive relief, as well as damages. The FFMC was named as a defendant in the claim. The allegations comprise breach of fiduciary duty, including breach of the duty to consult and accommodate. Canada agrees that the Court of King's

Bench has jurisdiction to decide the claim brought by PRFN for damages and declaratory relief.¹

[9] Also, on December 11, 2025, PRFN filed a notice of motion seeking an interim, interlocutory and permanent injunction against Canada and FMCC. The motion first appeared on the civil uncontested list (“the list”) on December 17, 2025. It was adjourned by consent to the list on January 5, 2026, then adjourned by consent *sine die*.

[10] On March 4, 2026, PRFN requisitioned the motion onto the list for March 11, 2026, without notice to the defendants of any urgency. PRFN filed a motion brief on the afternoon of March 10, 2026. When the matter appeared on the list on March 11, 2026, PRFN sought a hearing date on an urgent basis. The parties agreed to set March 20, 2026 for argument on the preliminary issue of jurisdiction.

[11] A “comfort letter” was provided by the DFO to PRFN on March 12, 2026. The letter summarized the remaining steps to complete the divestiture, which is not expected to occur before the end of May 2026 (Affidavit of Jennifer Muszynski, affirmed on March 12, 2026, Exhibit A) (“Muszynski Affidavit”). This timeframe was earlier communicated to counsel for PRFN by counsel for Canada on February 13, 2026 (Muszynski Affidavit, Ex. C).

[12] Regardless of the timeframe asserted by Canada, PRFN maintains its position on urgency as it will soon be the open water season. On that basis, PRFN seeks all or some of the following relief as set out in its notice of motion:

¹ This decision only determines jurisdiction to grant interim and interlocutory injunctive relief on the motion, not the claim for a permanent injunction against Canada.

- a. An Order that Canada and the FFMC suspend or refrain from completing the divestiture of the FMCC;
- b. An Order that Canada and the FFMC suspend or refrain from completing the divestiture of the FFMC until the Crown has fulfilled its duty to fully and meaningfully consult with and accommodate PRFN's Indigenous and Treaty rights; and
- c. An Order to prevent any transfer, sale, or disposal of the Vessel without the consent of PRFN.

THE POSITION OF THE PARTIES

PRFN

[13] PRFN argues that Canada has disregarded its rights in a manner that impacts its economic security. The lack of information sharing with PRFN regarding the Vessel leaves PRFN in a state of uncertainty. Without assurance it will be able to use the Vessel in the future, PRFN will suffer imminent, irreparable harm. This can be established from events that occurred in 2022 as the community suffered a near collapse of its economy when the Vessel became non-operational due to an explosion.

[14] PRFN emphasizes that it is not seeking judicial review. It simply wants to stop the divestiture process, pending a determination of its claim for declaratory relief and damages. PRFN argues that the principle of Crown immunity does not bar the Court of King's Bench from having inherent jurisdiction to grant the motion against Canada and the FFMC. Alternatively, jurisdiction can be found in the status quo exception to Crown immunity.

Canada

[15] Canada concedes that the Court of King's Bench has jurisdiction to determine PRFN's claim for damages and may order declarative relief as part of the final determination of the matter. It argues, however, that the Court of King's Bench does not have jurisdiction, either by statute or common law, to grant the injunctive relief sought on this motion. Crown immunity at common law arises from the principle that a coercive order cannot be made against the Crown. Furthermore, s. 22(1) of the ***Crown Liability and Proceedings Act***, R.S.C. 1985, c. C-50 ("**CLPA**"), provides statutory immunity in the circumstances.

[16] According to Canada, the federal court retains exclusive jurisdiction to grant injunctions and traditional administrative law remedies against the Crown, but only on an application for judicial review in that court (ss. 18(1)(a) and 18(1)(b) of the ***Federal Courts Act***, R.S.C., 1985, c. F-7) ("**FCA**").

[17] Finally, while conceding there are some exceptions to the prohibition against injunctive relief which binds the Crown, Canada asserts that none of those exceptions apply in this case. In particular, there is no exception to Crown immunity; no constitutional challenge to legislation; no unique property requiring preservation and a status quo exception is not available in the circumstances of this case.

FFMC

[18] The FFMC adopts Canada's arguments. In addition, the FFMC argues that an injunction is generally a remedy ancillary to a cause of action. Because PRFN failed to plead a cause of action against the FFMC in its statement of claim, the request for

injunctive relief against the FFMC must fail. Furthermore, the FFMC has no independent or delegated duty at law to consult with PRFN. As such, no cause of action exists in any event.

[19] The FFMC acknowledges that because it is a Crown agency, it is excluded from Crown immunity pursuant to s. 35(1) of the **CLPA**. Nonetheless, because it is the subject of divestiture, the FFMC argues that injunctive relief cannot be ordered against it, independent of Canada. Furthermore, to grant an order against the FFMC alone would permit PRFN to circumvent Crown immunity, which would be improper.

[20] Finally, the FFMC seeks an order to stay the proceedings against it. The FFMC argues that a stay invariably flows from the lack of jurisdiction to grant an injunction.

ANALYSIS

[21] While this decision is not about the Court of King's Bench's jurisdiction to determine the claim, a brief discussion about general jurisdiction and the nature of the originating proceedings is necessary to explain my reasons for deciding against this motion.

[22] The ordinary rule, pursuant to s. 17 of the **FCA**, is that provincial superior courts and the federal court share concurrent jurisdiction in cases in which relief is sought against the federal Crown, unless it is ousted "*by clear and direct statutory language*" (**Canada (Attorney General) v. TeleZone Inc.**, 2010 SCC 62 (CanLII), [2010] 3 S.C.R. 585, at para. 6) ("**TeleZone**"). Where a plaintiff is content to accept the legal force and effect of the government's decision, it may pursue a private action for damages. Where a plaintiff seeks to challenge the lawfulness of the decision and have it set aside, it must proceed to judicial review. The distinction is important. If the essential character

of the claim is for judicial review with only a thin pretense to a private wrong, it ought not to proceed in the superior court (**TeleZone**, at para. 78).

[23] I accept that while some aspects of this claim could be addressed through judicial review pursuant to ss. 18 and 18.1 of the **FCA**, the essence of the claim is for damages and therefore within the jurisdiction of this court. This is agreed to by the parties. It also accords with the law (**Manuge v. Canada**, 2010 SCC 67 (CanLII), [2010] 3 S.C.R. 672, at para. 19). This brings me to my analysis on jurisdiction to hear and decide PRFN's motion for injunctive relief against Canada and FFMC.

[24] At the outset, I disagree with PRFN's argument that **TeleZone** is a complete answer to the jurisdiction issue that arises in this case. In my view, **TeleZone** decided that the **Grenier** principle (**Canada v. Grenier (F.C.A.)**, 2005 FCA 348 (CanLII), [2006] 2 F.C.R. 287) did not require litigants to proceed through judicial review in federal court as a preliminary step to the recovery of damages against the Crown in superior court. The issue of jurisdiction to grant interim or interlocutory injunctive relief in a claim for damages against the Crown was not before the court in **TeleZone**. The court's ruling in **TeleZone**, therefore, does not stand for the proposition that the Court of King's Bench has jurisdiction to grant interim or interlocutory relief in this case. Nonetheless, I agree with all parties that some of the principles arising from **TeleZone** are instructive in determining the issue before me.

[25] In **TeleZone**, the court referred to s. 18 of the **FCA** as conferring exclusive original jurisdiction on the federal court to grant traditional administrative law remedies, as well

as injunctive and declaratory relief, but only on an application for judicial review (**TeleZone**, at paras. 51-52). The relevant provisions of the **FCA** are set out below:

Extraordinary remedies,
federal tribunals

18 (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of certiorari, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

Recours extraordinaires:
offices fédéraux

18 (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :

a) décerner une injonction, un bref de certiorari, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

[Emphasis on original]

[26] The following comments at paragraphs 52 and 75 of **TeleZone** underscore the importance of litigants carefully choosing their remedy and the appropriate forum in which to seek it:

[52] All of the remedies listed in s. 18(1)(a) are traditional administrative law remedies, including the four prerogative writs — certiorari, prohibition, mandamus and quo warranto — and declaratory and injunctive relief in the administrative law context. Section 18 does not include an award of damages. If a claimant seeks compensation, he or

she cannot get it on judicial review. By the same token, the plaintiff in a damages action is not entitled to add a supplementary claim for a declaration or injunction to prevent the government from acting on a decision said to be tainted by illegality. That is the domain of the Federal Court.

. . .

[75] ... Of course, “artful pleaders” exist and they will formulate a claim in a way that best suits their clients’ interests. However, no amount of artful pleading in a damages case will succeed in setting aside the order said to have harmed the claimant or enjoin its enforcement. Such relief is not available in the provincial superior court. The claimant must, as here, be content to take its money (if successful) and walk away leaving the order standing.

[27] As I will discuss shortly, while **TeleZone** does not stand for the proposition that injunctive relief is available against the Crown in the circumstances of this case, neither does it expressly overrule jurisprudence that has upheld the availability of injunctive relief against the Crown in superior court in very limited circumstances. For reasons I explain, this is not one of those cases where injunctive relief is available to PRFN.

The Prohibition Against Injunctive Relief Binding the Crown

[28] I agree with Canada’s arguments that s. 22 of the **CLPA** and common law principles of Crown immunity generally prohibit the injunctive relief sought by PRFN against Canada on this motion. Section 22(1) of the **CLPA** states:

Declaration of rights

22 (1) Where in proceedings against the Crown any relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, a court shall not, as against the Crown, grant an injunction or make an order for specific performance, but in

Déclaration de droits

22 (1) Le tribunal ne peut, lorsqu’il connaît d’une demande visant l’État, assujettir celui-ci à une injonction ou à une ordonnance d’exécution en nature mais, dans les cas où ces recours pourraient être exercés entre personnes, il

lieu thereof may make an
order declaratory of the rights
of the parties.

peut, pour en tenir lieu,
déclarer les droits des parties.

As I stated earlier, nothing in **TeleZone** departs from this well-established law. (See **Daniels v. Daniels**, 2011 MBCA 94, at para. 79; **J.D. Irving, Limited et al. v. Wolastoqey Nation**, 2025 NBCA 129, at para. 87; **Julmac Contracting Ltd. v New Brunswick**, 2025 NBKB 73 (leave to appeal dismissed at **Julmac Contracting Ltd. v. Province of New Brunswick**, 2025 NBCA 63); **Canada (Attorney General) v. Wu**, 2025 BCCA 171, at paras. 55-58.)

[29] As regards the FFMC, PRFN argues for an exception from Crown immunity pursuant to s. 35(1) of the **CLPA**, as the FFMC is a Crown agency. Unlike **Sapotaweyak Cree Nation et al. v. Manitoba et al.**, 2015 MBQB 35, there is no evidence of FFMC having an independent or delegated duty to consult. As a result, the immunity exception does not arise in the present case.

[30] A further difficulty with PRFN's request for relief against FFMC is that an injunction is not a stand-alone cause of action. It is a remedy ancillary to a cause of action. If there is no underlying cause of action, there is no legal basis to grant an interlocutory injunction (**R. v. Canadian Broadcasting Corp.**, 2018 SCC 5, at paras. 24-25). To address this issue, PRFN argues that its request for injunctive relief against FFMC is ancillary to its claim against Canada. I reject this as a basis to grant the relief sought. While I recognize that an injunction can bind non-parties (**McMillan Bloedel Ltd. v. Simpson**, 1996 CanLII 165 (CanLII), [1996] 2 S.C.R. 1048), an order for injunctive

relief must still be obtained against a party. Because an injunction cannot be obtained against Canada, it cannot be obtained against FPMC.

Exceptions to the Prohibition Against Injunctive Relief Binding the Crown

[31] There are exceptions to the prohibition against injunctive relief binding the Crown. A court may resort to its statutory jurisdiction. In circumstances where there is a challenge to the constitutionality of legislation, jurisdiction can also be found in s. 24(1) of the *Canadian Charter of Rights and Freedoms* (*RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (CanLII) [1994] 1 S.C.R. 311, at paras. 42-43). Even then, the bar is set very high (*Springs of Living Water Centre Inc., v. The Government of Manitoba*, 2020 MBQB 185, at para. 28). Another example is where an interim preservation order is granted to protect unique property rights (*Couchiching First Nation v. Attorney General of Canada*, 2010 ONSC 4373, 103 O.R. (3d) 745). Cases decided since *Couchiching*, however, have distinguished between preservation of property and the protection of economic interests. Cases involving the latter usually decline injunctive relief (*Grain Farmers of Ontario v. Ontario Ministry of the Environment and Climate Change*, 2015 ONSC 6581, at para. 19; *Julmac*, at para. 117). I find that none of the foregoing exceptions apply in this case.

[32] Canada concedes there are rare occasions where a superior court can order interim and interlocutory relief against the Crown to maintain the status quo but this case is not one of them. Recently, in *Julmac*, the court rejected the argument for a status quo

exception in a contract dispute involving a construction company and the New Brunswick government, concluding that the exception rarely applies (at para. 107).

[33] This Court has previously invoked the status quo exception to find jurisdiction in ***Southeast Child and Family Services v. Canada (Attorney General)***, 1997 CanLII 11528 (MB QB), 120 Man. R. (2nd) 114. In that case, the plaintiff filed a claim seeking a declaration that Canada's decision to discontinue discretionary funding for children living in care on reserves was a breach of Canada's fiduciary duty. The court invoked the status quo exception to find jurisdiction for a motion seeking injunctive relief against Canada, relying on ***A.G. Can. v. Law Society of B.C.***, 1982 CanLII 29 (SCC), [1982] 2 S.C.R. 307 at p. 330. I note that in ***Southeast Child and Family Services***, there was a constitutional challenge to the directive that denied funding. Ultimately, injunctive relief was denied on the motion.

[34] PRFN relies heavily on the decision in ***Jane Doe v. Canada (Attorney General)***, 2015 CarswellOnt 18622, 2015 ONSC 4203, [2015] O.J. 5434, 261 A.C.W.S. (3rd) 296, as support for a status quo exception. In that case, injunctive relief was ordered to prevent Canada removing the plaintiff from the witness protection program. PRFN argues that the facts in its case are more exceptional and the harm is of a greater magnitude than in ***Jane Doe***. I disagree. PRFN is conflating a status quo exception with the test for irreparable harm. While I agree that the degree of harm or prejudice could inform the decision on whether a status quo exception arises, whether harm will occasion to the PRFN in this case is speculative. I conclude the case of ***Jane Doe*** is unique on its facts and does not further the argument for jurisdiction in this matter.

[35] I agree with Canada that a significant difficulty for PRFN is that it seeks to combine two distinct routes to a remedy, contrary to ***TeleZone***. Furthermore, it takes little unpacking to reveal that the relief sought by PRFN is not restricted to a prohibitive injunction. The request includes a combination of prohibitive and mandatory injunctive relief. In ***R. v. Canadian Broadcasting Corp.***, the Supreme Court of Canada said the following regarding mandatory injunctions, at para. 15:

[15] ... A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the status quo, or to otherwise “put the situation back to what it should be”, which is often costly or burdensome for the defendant and which equity has long been reluctant to compel... The potentially severe consequences for a defendant which can result from a mandatory interlocutory injunction, including the effective final determination of the action in favour of the plaintiff, further demand what the Court described in *RJR — MacDonald* as “extensive review of the merits” at the interlocutory stage.

[36] The discussion that arose during the hearing highlights the fact that PRFN is seeking injunctive relief that includes both mandatory and prohibitive aspects. PRFN is not simply seeking to maintain the status quo as between itself and Canada, it is seeking an order requiring Canada to take positive steps to *restore* the status quo. Because the Vessel is owned by the FFMC, which is the subject of divestiture, it cannot be made available to PRFN on a simple order for prohibitive injunctive relief pertaining to the divestiture, or even the Vessel itself. Furthermore, the nature of the relief sought in the notice of motion is inconsistent with the oral arguments advanced by PRFN that it seeks to stop the divestiture for only a “short time” and that the divestiture process (apart from the Vessel) is of no interest to it.

[37] PRFN is asking for a coercive order against Canada, contrary to long-standing prohibitions against same. Without being critical of PRFN, its motion lacks the evidentiary foundation necessary to support its alternative request for a status quo exception. The Court of King's Bench cannot grant a status quo exception if it is unable to ascertain what the status quo is, or how an order could be drafted to preserve it. For example, PRFN was unable to advise the Court of King's Bench where and in whose possession the Vessel currently remains. This compounds the difficulty as the terms of an order must be clear and capable of being complied with, particularly since contempt of court proceedings cannot be undertaken against Canada (*Daniels*, at para. 79).

[38] As stated in the hearing, I am sympathetic to PRFN's circumstances as the future economic stability of the community hangs in the balance. However, these factors are insufficient for me to find jurisdiction to grant the relief sought. While it is not for the court to decide the litigation strategy of the parties, the discussion at the hearing did reveal other potential remedies available to PRFN.

Stay of Proceedings Against the FMCC

[39] The FFMC argues that since no cause of action has been pleaded against it in the claim, there ought to be a stay of proceedings. I note that at this juncture, the statements of defence have not yet been filed and PRFN may seek to amend its claim in the intervening time. Furthermore, PRFN argued at the hearing that it named the FFMC pursuant to Rule 5.03(1) of *The Court of King's Bench Rules*, M.R. 553/88, as a necessary party to adjudicate the claim. Of significance, the FFMC did not file a motion seeking to stay or strike the claim against it.

[40] Having considered the arguments of counsel, I find it would be unjust and prejudicial to PRFN if I were to order a stay of proceedings against the FFMC in the context of this motion. The issue of whether the FFMC ought to remain in the claim as a named party can and should be addressed separately, with the court having the benefit of fulsome submissions.

CONCLUSION

[41] In conclusion, having found a lack of jurisdiction for the motion brought by PRFN for injunctive relief against Canada and the FMCC, the motion is therefore dismissed.

COSTS

[42] Canada made no submission as to costs. The FMCC sought an order for costs in its motions brief. None of the parties addressed the issue of costs at the oral hearing.

[43] While unsuccessful, PRFN's motion raised important and complex issues, including the issue of jurisdiction. It is my hope that the parties can agree to bear their own costs. If there is disagreement, I am directing that an appointment be made for a one-hour hearing within 30 days of this decision, failing which I decline to grant costs to any party.

_____ J.