IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Steelhead LNG Limited Partnership v ARC Resources Ltd.,* 2026 BCSC 1990

Date: 20261016
Docket: S197484
Registry: Vancouver

Between:

Steelhead LNG Limited Partnership and Steelhead LNG Corp.

Plaintiffs

And

ARC Resources Ltd., Rockies LNG Limited Partnership, and Rockies LNG GP Corp.

Defendants

Before: The Honourable Justice Basran

Reasons for Judgment Re Rule 7-5(1) Application

Counsel for the Plaintiffs:	T. Dumigan A. Rico Wolf
Counsel for the Defendants:	K.E.H. Thompson
Counsel for the Attendees, Eva Clayton, Bartek Kienc, and Margaret Rosling:	D. Cappe
Place and Date of Hearing:	Vancouver, B.C. October 8, 2026
Place and Date of Judgment:	Vancouver, B.C. October 16, 2026

2026 BCSC 1990 (CanLII)

Table of Contents

OVERVIEW **3**
FACTUAL BACKGROUND **4**
The Defendants' Relationship with the Nisga'a Nation 4
Correspondence Leading to Written Answers 5
Eva Clayton 7
Bartek Kienc 8
Margaret Rosling 11
LEGAL PRINCIPLES **12**
WERE THE WRITTEN ANSWERS PROVIDED BY THE THIRD PARTIES NON-RESPONSIVE AND CONSTITUTE A REFUSAL TO ANSWER THE QUESTION(S)? **14**
Positions of the Parties 14
DISCUSSION **15**
Eva Clayton 15
Bartek Kienc 16
Margaret Rosling 18
CONCLUSION **19**
COSTS **19**

2026 BCSC 1990 (CanLII)

2026 BCSC 1990 (CanLII)

Overview

[1] The plaintiffs, Steelhead LNG Limited Partnership and Steelhead LNG Corp. (together, "Steelhead"), seek an order, pursuant to Rule 7-5(1)(a) of the *Supreme Court Civil Rules* [*SCCR*] that each of Eva Clayton ("Ms. Clayton"), Bartek Kienc ("Mr. Kienc"), and Margaret Rosling ("Ms. Rosling") (collectively, the "respondents"), be examined under oath on matters relevant to the issues in this action.

[2] Steelhead's action alleges that the defendants, ARC Resources Ltd. (formerly, Seven Generations Energy Ltd. ("7G")) ("ARC") and Rockies LNG Limited Partnership and Rockies LNG GP Corp. (together, "Rockies") (collectively, the "defendants"), misused and leveraged its confidential information to secure and maintain a partnership with the Nisga'a Nation, upon whose territory the defendants' LNG project is based. A significant issue is the factual context of the defendants' relationship with the Nisga'a Nation.

[3] Steelhead seeks to examine the three respondents with different roles in the Nisga'a Nation's dealings with the defendants:

a) Eva Clayton, the President of the Nisga'a Lisims Government ("NLG") Executive, the governing body of the Nisga'a Nation;

b) Bartek Kienc, LNG team member and regulatory and technical consultant to the Nisga'a Nation; and

c) Margaret Rosling, external counsel and advisor responsible for representing the Nisga'a Nation in its dealings with the defendants.

[4] Ms. Clayton, as president, was briefed on and personally executed key project agreements with the defendants, which continue to govern the defendants' project. Ms. Rosling and Mr. Kienc were primary representatives of the Nisga'a Nation. They actively participated in dozens of meetings with the defendants and were party to numerous emails with them regarding their LNG project development. All three respondents may be witnesses at trial.

[5] Steelhead asserts that these witnesses have relevant information. This Court has accepted that communications between the defendants and the Nisga'a Nation on LNG development is relevant to the issues in this action.

[6] Steelhead further asserts that the proposed examinations will assist the parties and the Court to understand the events and factual context behind the defendants' relationship with the Nisga'a Nation, including what role, if any, Steelhead's confidential information played in that relationship. It also suggests that the requested examinations will provide information that the defendants cannot provide. For example, what information was considered by the Nisga'a Nation, and details of the Nisga'a Nation's reasons for partnering with ARC and Rockies.

[7] It is important to note that the respondents provided answers to written questions on matters relevant to the action through their counsel. This was in response to approximately 600 questions: 220 questions to Ms. Clayton, 199 questions to Mr. Kienc, and 182 questions to Ms. Rosling. However, Steelhead asserts that many of their written answers are unresponsive, profess a lack of recollection, and require follow-up.

[8] Steelhead submits that an oral examination is the most effective and efficient way to address these alleged deficiencies and obtain relevant information.

Factual Background

The Defendants' Relationship with the Nisga'a Nation

[9] The defendants' dealings with the Nisga'a Nation are central to liability and damages. Steelhead alleges that the defendants misused and leveraged their confidential information to secure key commercial agreements with the Nisga'a Nation and springboard their LNG project development, including:

a) A May 1, 2020 Memorandum of Understanding between the Nisga'a Nation and Rockies, which sets terms for a jointly-developed LNG project on Nisga'a Nation territory ("MOU");

2026 BCSC 1990 (CanLII)

b) A contemporaneous May 1, 2020 Site Option agreement between the Nisga'a Nation and Rockies, providing rights to a site on Nisga'a Nation territory for Rockies' proposed LNG development ("Site Option Agreement"); and

c) Various project agreements between the Nisga'a Nation, Rockies, and Western LNG, including:

1) A Memorandum of Understanding dated July 1; 2020;

2) A Cooperative Endeavours Agreement dated October 1, 2020 (further amended on January 1, 2022) ("CEA"); and

3) an Amended Site Option Agreement dated December 22, 2021, conveying site rights to Western.

(the ''Project Agreements")

[10] I accept that live issues in the action include what led the Nisga'a Nation to partner with the defendants, enter into the Project Agreements, maintain that partnership through to present, and permit LNG development on their territory. The individuals Steelhead seeks to examine were, to varying degrees, directly and personally involved in those discussions. They may have knowledge of the information conveyed by the defendants and this was the subject of the written questions and answers.

Correspondence Leading to Written Answers

[11] The history of the correspondence that led to the written answers from Ms. Clayton, Mr. Kienc, and Ms. Rosling is instructive. On January 23, 2025, Steelhead sent letters to Ms. Clayton and Mr. Kienc, requesting a meeting to discuss their respective knowledge, information, and relevant documents or, alternatively, a response to written questions, on matters at issue in the action. Steelhead sent a similar letter to Ms. Rosling on March 18, 2025 (collectively, the "Requests'').

2026 BCSC 1990 (CanLII)

[12] The Requests outlined the following topics for which each witness was asked specific questions:

a) The defendants' course of conduct in pursuing their LNG project on Nisga'a Nation territory, including the alleged use of Steelhead's information for their own purposes in connection with that pursuit;

b) The defendants' business relationship with the Nisga'a Nation;

c) The similarities in the design of the defendants' proposed LNG facility and Steelhead's design; and

d) The benefits gained by the defendants through the exploitation and use of Steelhead's confidential information, including their execution of the May 1, 2020 MOU and Site Option Agreement with the Nisga'a Nation for LNG development on the Nisga'a Nation's territory.

[13] All three respondents eventually responded, agreeing to answer questions, and acknowledging that they have some relevant information.

[14] Ms. Clayton responded to Steelhead's letter after retaining counsel, as described below.

[15] Mr. Kienc responded on February 4, 2025, agreeing to answer written questions, which Steelhead provided to him on March 20, 2025.

[16] Ms. Rosling responded on March 24, 2025, also agreed to answer written questions, which Steelhead provided to her on April 14, 2025.

[17] On December 12, 2025, the respondents responded through their counsel, who advised that Mr. Kienc and Ms. Rosling would answer the written questions already provided and that Ms. Clayton would do the same once she received written questions. Steelhead provided written questions to Ms. Clayton on January 26, 2026.

2026 BCSC 1990 (CanLII)

[18] Counsel provided written answers to Steelhead's questions on behalf of Mr. Kienc and Ms. Rosling on March 13, 2026, and on behalf of Ms. Clayton on April 15, 2026. Steelhead asserts that the answers reveal some level of coordination between the third parties and the defendants.

[19] Steelhead submits that the written responses provided by Ms. Clayton, Mr. Kienc, and Ms. Rosling necessitate further examinations. This is based on the assertions that they were each personally involved in dealings with the defendants regarding their LNG development during the relevant period, and have direct knowledge and information about the circumstances leading to the defendants' partnership with the Nisga'a Nation, the details of which were not provided in their written answers.

Eva Clayton

[20] Steelhead asserts that Ms. Clayton:

a) has been the President of the Nisga'a Nation since the beginning of their commercial relationship with the defendants;

b) is the most senior member of the Nisga'a Nation Government Executive;

c) participated in various discussions between the Nisga'a Nation and the defendants regarding the defendants' LNG project development; and

d) was briefed on and personally executed the Project Agreements.

[21] Steelhead asserts that despite Ms. Clayton's ongoing involvement in the matters in question, her written answers contain significant gaps in recollection, are superficial and unresponsive, and require follow-up. For example:

a) *Factors on LNG Development* - Ms. Clayton was asked about the factors considered by the Nisga'a Nation for potential LNG development and admitted that "there were factors or criteria that were considered important" but she did not provide further details;

2026 BCSC 1990 (CanLII)

b) *LNG Development Discussions* - Ms. Clayton was asked about her participation in meetings regarding LNG development and answered that she participated in Executive meetings between 2016 and 2020 where LNG development was “occasionally discussed” but she did not provide further details on those discussions;

c) *Descriptions of LNG Liquefaction* - Ms. Clayton was asked what information she received from Rockies or 7G about their potential LNG development activities. She admitted to receiving descriptions of LNG liquefaction development between 2016 and 2020, and recalls some of the contents but did not provide details; and

d) *Executive Briefing Notes* - Ms. Clayton was asked about memoranda and similar documents regarding the Project Agreements between the Nisga’a Nation and the defendants and admitted that there were briefing notes prepared for each such agreement for the Nisga’a Nations Government Executive. However, Ms. Clayton did not produce the briefing notes or provide details of their contents, despite presumably being able to access them in her ongoing role as President of the NLG.

[22] Steelhead asserts that Ms. Clayton’s information on the LNG development factors that were “considered important” by the Nisga’a Nation are relevant to understanding the Nisga’a Nation’s decision to partner with the defendants as is her information on what information the defendants provided to the Nisga’a Nation. Steelhead suggests that Ms. Clayton’s answers require follow-up to obtain that information and understand and test her recollection.

Bartek Kienc

[23] Mr. Kienc is a consultant and lobbyist for the Nisga’a Nation since the beginning of their relationship with the defendants. Ms. Clayton’s written answers describe Mr. Kienc as a “technical consultant” and one of three individuals with “primary responsibility” for representing the Nisga’a Nation in its dealings with the defendants on potential LNG development.

2026 BCSC 1990 (CanLII)

[24] Mr. Kienc was involved in the Nisga'a Nation's dealings with the defendants since at least March 2018 and attended dozens of meetings with the defendants regarding their LNG development activities. He is party to hundreds of emails produced by the defendants.

[25] The documentary record shows Mr. Kienc participated in discussions relating to various aspects of the defendants' project, including economics, engineering, and the Project Agreements.

[26] Mr. Kienc's written answers confirm that he received documents related to the defendants' LNG development activities and participated in several meetings with various representatives of the defendants leading to the execution of Project Agreements.

[27] Steelhead asserts that Mr. Kienc's written responses profess a lack of recollection and require follow-up on matters relevant to the action. For example:

a) *Project Technical Studies and Reports* - Mr. Kienc was asked about and acknowledged that he received documents on LNG development from the defendants, including at least four documents forming part of the defendants' "Pre-FEED Engineering Studies" from 7G and KBR (the defendants' engineering, procurement, and construction ("EPC") contractor). Several of his answers point to productions in which he was "advised by counsel". Others state that he cannot recall "at this time";

b) *Business Models and Costs Estimates* - Mr. Kienc was asked about "any business models or costs estimates" he received from the defendants in respect of an LNG liquefaction facility. He acknowledged that he received such models and estimates but did not provide copies or details of their contents, other than a general reference to a "high-level" and "superficial" discussion with the defendants' representative, Greg Kist, about what a business model with Rockies and the Nisga'a Nation "would look like". However, it appears that Mr. Kienc also met with the defendants' other

2026 BCSC 1990 (CanLII)

representative, Charlotte Raggett, to discuss the defendants' project's economic model, including how it changed with different variables for connection to the BC grid, and thus that Mr. Kienc's recollection may be prompted by an examination;

c) *Nisga'a Rationale for Partnering with Defendants* - Mr. Kienc was asked about the Nisga'a Nation's reasons for proceeding with 7G and Rockies for LNG project development. He answered that "the involvement of Western LNG gave the NLG the necessary confidence that the proposed project was backed with sufficient expertise and capital". The Nisga'a Nation had dealings with the defendants for about three years before Western LNG had any involvement. Steelhead submits that it is entitled to explore Mr. Kienc's answer further, especially given his counsel's simultaneous objection to other questions about what differentiated the defendants' LNG development proposal from others, and whether other development options were considered; and

d) *LNG Lobbying Materials* - Mr. Kienc refused to answer whether 7G or Rockies provided him with any information or materials for his lobbying activities on LNG development on the basis that the question called for legal interpretation of what is meant by "lobbying activities". Based on this objection, Mr. Kienc did not answer any questions related to this topic. Steelhead asserts that this refusal is improper because Mr. Kienc can speak factually about information received from the defendants in the context of his registered lobbyist role without providing legal interpretation.

[28] Steelhead asserts that Mr. Kienc has relevant knowledge and information on the defendants' discussions with the Nisga'a Nation, including on specific technical documents shared with the Nisga'a Nation and on the Nisga'a Nation's rationale for partnering with the defendants;

2026 BCSC 1990 (CanLII)

[29] They submit that an examination will allow Steelhead to elicit Mr. Kienc's recollection, test his answers, reframe questions objected to by counsel, and refresh Mr. Kienc's recollection by way of documents on which he is specifically named or referenced. An examination will also allow Steelhead to follow up on matters evidently within Mr. Kienc's knowledge, such as further details of his recollection of the numerous meetings he attended, the Nisga'a Nation's engagement with the defendants, and the eventual involvement of Western LNG.

Margaret Rosling

[30] Ms. Rosling represented the Nisga'a Nation as counsel in their dealings with 7G and Rockies. Ms. Clayton describes Ms. Rosling as one of three key individuals with "primary responsibility" for representing the Nisga'a Nation in its dealings with 7G and Rockies. Ms. Rosling acknowledges engaging with the defendants' representatives, Ms. Raggett and Mr. Kist, and that she participated in negotiations and meetings leading to the Project Agreements. Ms. Rosling is no longer counsel for Nisga'a Nation.

[31] Ms. Rosling's engagement with the defendants on the Nisga'a Nation's behalf began as early as 2016. She attended dozens of' meetings and is party to hundreds of emails that have been disclosed. She commented on regulatory strategy and site selection, providing project overviews and commentary on the status of engineering work, and attended meetings on LNG development priorities.

[32] Steelhead asserts that despite Ms. Rosling's central role and extensive engagement, her answers profess a lack of recollection or are otherwise superficial and unresponsive. They require follow-up, including to prompt her recollection. For example:

a) *Slide Decks and Presentations regarding LNG Development* - Ms. Rosling was asked questions regarding the defendants' slide decks on LNG development; she admits receiving slide decks from both 7G and Rockies. Ms. Rosling answered that copies of such materials were not in

2026 BCSC 1990 (CanLII)

her possession or control and that she could not recall their content and the context in which they were provided;

b) *Descriptions of LNG Liquefaction* - Ms. Rosling was asked questions about whether the defendants provided verbal or written descriptions of LNG liquefaction development She stated that she received these descriptions from Rockies, but did not describe the content of any such descriptions and claims that copies of descriptions were not in her possession or control;

c) *LNG Development Studies and Reports* - Ms. Rosling was asked whether she received studies or reports from the defendants related to LNG development. She admitted receiving studies from Rockies, but did not recall details of these studies; and

d) *Business Models and Costs Estimates* - Ms. Rosling was asked whether Rockies provided business models or cost estimates for an LNG liquefaction facility. Ms. Rosling stated she could not recall.

[33] Steelhead asserts that Ms. Rosling participated closely in, and has relevant knowledge and information, on the defendants' dealings with the Nisga'a Nation but she professes a lack of recollection that justifies an oral examination.

Legal Principles

[34] Rule 7-5(1) of the *SCCR* provides:

> **Rule 7-5 – Pre-Trial Examination of Witness**
>
> **Order for examination**
>
> (1) If a person who is not a party of record to an action may have material evidence relating to a matter in question in the action, the court may
>
> (a) order that the person be examined on oath on the matters in question in the action, and
>
> (b) either before or after the examination, order that the examining party pay reasonable lawyer's costs of the person relating to the application and the examination.

2026 BCSC 1990 (CanLII)

[35] Rule 7-5(3) provides:

> **Affidavit in support of application**
>
> (3) An application for an order under subrule (1) must be supported by affidavit setting out
>
> (a) the matter in question in the action to which the applicant believes that the evidence of the proposed witness may be material,
>
> (b) if the proposed witness is an expert retained or specially employed by another party in anticipation of litigation or preparation for trial, that the applicant is unable to obtain facts and opinions on the same subject by other means, and
>
> (c) that the proposed witness
>
> (i) has refused or neglected on request by the applicant to give a responsive statement, either orally or in writing, relating to the witness' knowledge of the matters in question, or
>
> (ii) has given conflicting statements.

[36] Pursuant to Rules 7-5(1) and (3), the Court may only order a third-party witness to be examined under oath on the matters in question in the action if the evidence proves that the witness has refused or neglected to give a responsive statement, either orally or in writing, relating to the witness' knowledge of the matters in question, or has given conflicting statements: *Kroeker v MacEwan*, 1991 CarswellBC 2036, BCWLD 1456 (BCSC) at para 7.

[37] The onus is on Steelhead to establish that the application respondents have refused or neglected to provide a responsive statement on the matters in issue.

[38] Rule 7-5 is intended to provide an investigative technique to facilitate full disclosure of the facts and to provide information before trial, to avoid surprise: *Gardner v Viridis Energy Inc*. 2014 BCSC 232 at para 10 [*Gardner*].

[39] Rule 7-5 must be interpreted liberally to eliminate the element of surprise at trial: *Gardner* at para 10.

[40] The provision of written responses is not a bar to an examination under Rule 7-5. Where answers to written questions are superficial, unhelpful or "not responsive in a way which would help the plaintiff learn sufficient information to be able to

2026 BCSC 1990 (CanLII)

assess the merits of the issue", the court may order an oral examination: *Coates v Triance*, 2010 BCSC 294 at paras 8-9 [*Coates*].

[41] An oral examination can be more efficient, compared to multiple rounds of written answers. For example, the court has ordered Rule 7-5 examinations where, due to the complex circumstances, multiple rounds of written answers risk a high degree of inefficiency; often, "one question will lead to several more, and references to various documents will lead to other references to other documents": *Gestion Soprema Canada Inc. v Nanji*, 2017 BCSC 1227 at paras 24-25 [*Gestion Soprema*].

[42] A lack of recollection is a common first response from witnesses but the inquiry rarely ends there: *Coates* at para 12. Where a witness expresses a lack of recollection, an oral examination can "jog their memory and cause them to remember something relevant": *Coates* at para. 11.

Were the Written Answers Provided by the Third Parties Non-Responsive and Constitute a Refusal to Answer the Question(s)?

Positions of the Parties

[43] Steelhead submits that the proposed examinations will serve the underlying purpose of Rule 7-5 and the truth-seeking function because the respondents' knowledge and information will allow Steelhead to thoroughly test the defendants' allegations on their relationship with the Nisga'a Nation with independent evidence. They submit that oral examinations and, hence, the opportunity to obtain spontaneous answers in the witnesses' own words will avoid the impracticality of written answers scripted through counsel: *Geston Soprema* at para 25.

[44] The respondents counter that they are strangers to the underlying litigation, so Rule 7-5 involves a balancing exercise in which the inconvenience and expense incurred by third parties in responding to the questions is weighed against the responsiveness of their answers. The respondents submit that the balance has been met with the written answers they provided and there is no entitlement to follow-up examinations. The respondents assert that the answers they provided are

2026 BCSC 1990 (CanLII)

responsive so further oral examinations are not warranted. They assert that Steelhead seeks to embark on a fishing expedition.

Discussion

[45] The underlying action and factual background are complex. The action concerns commercial dealings over multiple years and involves thousands of documents. I agree with Steelhead's submission that complexity and the risk of inefficiency would be amplified in this case by the possibility of multiple rounds of written questions and answers.

[46] Steelhead asked approximately 200 questions to each witness.

[47] The issue that I must determine is if the written answers provided by the respondents were responsive. I will address the concerns raised by Steelhead in respect of the written answers provided by each of the respondents.

Eva Clayton

[48] The defendants have disclosed approximately 65,000 documents. Ms. Clayton is copied on five emails disclosed by the defendants.

[49] With respect to *Factors on LNG Development*, Steelhead asserts that Ms. Clayton was asked about the factors considered by the Nisga'a Nation for potential LNG development and admitted that "there were factors or criteria that were considered important" but she provided no details. The answer provided by Ms. Clayton elaborated that she did "[…] not know what they were as it was not my responsibility. I had no direct involvement". In my view, this is a complete answer. She did not have further details because she was not involved.

[50] On *LNG Development Discussions*, Ms. Clayton was asked about her participation in meetings regarding LNG development and answered that she participated in Executive meetings between 2016 and 2020 where LNG development was "occasionally discussed". She confirmed that 7G or Rockies were not involved in any of these meetings. In my view, she was not asked to provide

2026 BCSC 1990 (CanLII)

further details, and she did not refuse to answer questions about these meetings. On the contrary, she answered the specific questions she was asked about these meetings.

[51] With respect to *Descriptions of LNG Liquefaction*, Ms. Clayton was asked what information she received from Rockies or 7G about their potential LNG development activities. She admitted to receiving descriptions of LNG liquefaction development between 2016 and 2020 and recalls some of the contents. She did not provide details because she did not recall them. This is consistent with her answers that she heard one or two high level descriptions of LNG liquefaction. Her answers to these questions were responsive.

[52] On *Executive Briefing Notes*, Ms. Clayton was asked about memoranda and similar documents regarding the Project Agreements between the Nisga'a Nation and the defendants and admitted that there were briefing notes prepared for each of these agreements. She did not produce the briefing notes or provide details of their contents. She also did not indicate that she had made any inquiries to determine if these briefing notes could be produced.

[53] In my view, it is incumbent upon Ms. Clayton that she makes these inquiries and produces these briefing notes if they are available, subject to claims of privilege. If briefing notes are produced, Steelhead may ask further written questions in respect of them.

[54] However, in all of the circumstances, I decline to exercise my discretion to order an oral examination of Ms. Clayton because I do not think that Steelhead has established a basis for requiring one.

Bartek Kienc

[55] Mr. Kienc is listed on approximately 800 emails disclosed by the defendants in the underlying action.

2026 BCSC 1990 (CanLII)

[56] With respect to *Project Technical Studies and Report*, Steelhead asserts that Mr. Kienc acknowledged that he received documents on LNG development from the defendants, including at least four documents forming part of the defendants' "Pre-FEED Engineering Studies" from 7G and KBR (the defendants' EPC contractor). Several of his answers state that he cannot recall "at this time".

[57] Mr. Kienc was described by Ms. Clayton, President of the NLG, as a "technical consultant" on LNG development. The significant volume of emails listing his involvement suggests that he has detailed knowledge of the NLG's efforts to develop an LNG project. On approximately 18 occasions, he indicated that he did not recall answers to the questions posed. This is puzzling and merits further examination given Mr. Kienc's extensive role in the details and minutiae of NLG's efforts to develop an LNG project.

[58] Similarly, Mr. Kienc was asked about "*Business Models and Costs Estimates* he received from the defendants in respect of an LNG liquefaction facility". He acknowledged he received such models and estimates but did not provide copies or details of their contents, other than a general reference to a "high-level" and "superficial" discussion with Mr. Kist about what a business model with Rockies and the Nisga'a Nation "would look like". However, the evidence reveals that Mr. Kienc met with Ms. Raggett to discuss the defendants' project's economic model, including how it changed with different variables for connection to the BC grid. This suggests that Mr. Kienc had detailed, relevant, information so his recollection may be jogged with an oral examination on this and other related issues.

[59] On *Nisga'a Rationale for Partnering with 7G and Rockies for LNG project development*, Mr. Kienc stated that the NLG did not proceed with LNG project development with 7G. He further elaborated that "the involvement of Western LNG gave the NLG the necessary confidence that the proposed project was backed with sufficient expertise and capital". Despite Mr. Kienc's significant involvement and knowledge of NLG's interest in working towards developing an LNG project, he did not address the issue of the defendants' dealings with the Nisga'a Nation for three

2026 BCSC 1990 (CanLII)

years before Western LNG's involvement. Nor did he answer questions about what differentiated the defendants' LNG development proposal from others and whether other development options were considered.

[60] Finally, with respect to *LNG Lobbying Materials*, Mr. Kienc refused to answer whether 7G or Rockies provided him with any information or materials for his lobbying activities on LNG development on the basis that the question called for legal interpretation of what is meant by "lobbying activities". Based on this objection, Mr. Kienc did not answer any questions related to this topic. I disagree that this question calls for a legal interpretation. Mr. Kienc can speak factually about information received, if any, from the defendants that he thinks he received in the context of his role as a registered lobbyist.

[61] Based on the foregoing, I am satisfied that Mr. Kienc was not generally responsive to the questions he was asked and this constitutes a refusal that warrants an oral examination. I decline to place any specific restrictions on the scope of the oral examination subject to the Rule 7-5 requirement that the questions must be in respect of material evidence that Mr. Kienc may have relating to a matter in question in the action.

Margaret Rosling

[62] In her written responses, Ms. Clayton confirmed that Ms. Rosling was one of two people who had primary responsibility for representing the NLG in its dealings with 7G. As noted, 7G is a predecessor of the defendant, ARC.

[63] Ms. Rosling was, but no longer is, external counsel to NLG. Accordingly, she no longer has access to NLG documents.

[64] Steelhead asserts that despite Ms. Rosling's central role and extensive engagement, her answers show a lack of recollection, are superficial and unresponsive, so follow-up is required. Specifically, they seek to ask further questions about *Slide Decks and Presentations* regarding LNG Development. Ms. Rosling admits receiving slide decks from 7G and Rockies. Ms. Rosling

2026 BCSC 1990 (CanLII)

answered that copies of such materials were not in her possession or control, she could not recall their contents, nor the context in which they were provided. These responses are rational given that Ms. Rosling no longer represents NLG and these events took place several years ago.

[65] For the same reasons, I accept that she does not have documents in respect of *Descriptions of LNG Liquefaction*, *LNG Development Studies and Reports*, and *Business Models and Costs Estimates*. Presumably, this is information in the possession of NLG and is not accessible legally or probably in fact by their former counsel.

[66] I am not convinced that Ms. Rosling's written answers were unresponsive and constituted a refusal to provide relevant information. Accordingly, there is no basis for a further oral examination of Mr. Rosling.

Conclusion

[67] Steelhead seeks information relating to negotiations and discussions between the Nisga'a Nation and the defendants. They asked written questions and received responsive answers from Ms. Clayton and Ms. Rosling. However, in my view, Mr. Kienc's answers to the written questions were not responsive. I am satisfied that it is appropriate that I exercise my discretion to order a further oral examination of Mr. Kienc.

Costs

[68] Success was divided on this application. Accordingly, each party shall bear their own costs.

"Basran J."

2026 BCSC 1990 (CanLII)