

# Court of King's Bench of Alberta

**Citation: Jackson v Piikani Nation, 2023 ABKB 677**

**Date:** 20231129  
**Docket:** 1201 15897  
**Registry:** Calgary

Between:

**Brian Jackson**

Applicant

- and -

**Piikani Nation**

Respondent

**Corrected judgment:** A corrigendum was issued on November 30, 2023; the corrections have been made to the text and the corrigendum is appended to this judgment.

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**Decision on Fiat Application  
of the  
Honourable Justice Robert A. Graesser**

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## Introduction

[1] I have inherited a number of case management matters concerning the Piikani Nation from ACJ Rooke and Justice Willie De Wit (as he then was).

[2] This fiat application was brought by Mr. Jackson pursuant to the provisions of a “Master Order” dated February 5, 2013 in Action No. 1201 15897, Chief Gayle Strikes with a Gun and Piikani Nation v Piikani Nation Council, CIBC Trust Corporation, et al. As no action number has been assigned to this matter, I will use the Action Number for the Master Order for the purposes of this decision.

[3] Mr. Jackson was a defendant in Action 0601 13081, Piikani Nation v Raymond James, Liliana Kostic, et al. That action was discontinued against him on April 12, 2011.

[4] Mr. Jackson was also the representative plaintiff in a class action Jackson v CIBC Trust Corporation et al, Action 0801-06768. That intended class action was litigated until 2015 when the lawsuit was dismissed.

[5] Both of these actions were covered by the Master Order. Mr. Jackson has, however, had no role as a party in case managed proceedings involving the Piikani Nation trusts or RJL and Ms. Kostic for some eight years. He was questioned for discovery by Ms. Kostic in 2019 in Action 0601 as a former officer of the Nation, and he has provided affidavit evidence supporting Ms. Kostic in her ongoing battles with the Nation.

[6] Mr. Jackson was a Band Councillor from 1998 until 2007. The materials show that after an absence from the Piikani Nation Band Council for some years, Mr. Jackson was re-elected in 2015. His tenure following his re-election was interrupted by proceedings brought against him by the Chief and some other councillors to have him disqualified from Council. Those proceedings have been active in Federal Court, but not in the Court of King’s Bench. They also have no direct connection with the Nation’s claim against Ms. Kostic or her claim against them and others.

[7] In a case management conference in November 2022, Mr. Zinner advised Justice De Wit that he intended to bring a fiat application on behalf of Liliana Kostic for indemnity and save harmless relief in Action 0601. Instead, on January 9, 2023 Mr. Zinner provided Justice De Wit with a draft originating application and two affidavits (one being 1221 pages in length) on behalf of Mr. Jackson.

[8] After comments from Ms. Hanert, who represents the Piikani Nation in Federal Court proceedings involving Mr. Jackson and the Piikani Nation, Justice De Wit directed Mr. Zinner to provide a short, concise letter in accordance with the case management protocol established by ACJ Rooke for proposed applications in the various Piikani matters he was case managing.

[9] This matter was not discussed at my first case management meeting in June 2023, but Mr. Jackson was present with Mr. Zinner for my second case management meeting on September 7, 2023.

[10] Ultimately, Mr. Zinner sent me a letter dated October 2, 2023 seeking a fiat to permit him to file an originating application on behalf of Mr. Jackson against the Piikani Nation and Piikani Nation Council, as well as a notice of application seeking indemnification against the Nation pursuant to an indemnity agreement in his favour signed by the Chief and Council on April 2, 2015 after Mr. Jackson was again elected to Council (the “Indemnity Agreement”).

[11] Mr. Zinner’s letter of October 2 was sent to Mr. Hawkes, who represents the Nation in Action 0601 and to Ms. Hanert, who represent the Nation in ongoing Federal Court proceedings concerning Mr. Jackson.

[12] Ms. Hanert wrote me on October 23, 2023, opposing Mr. Zinner's fiat application for a number of reasons.

[13] In Mr. Zinner's letter of October 2, he states that Mr. Jackson claims he is entitled to indemnification from the Nation under the terms of the Indemnity Agreement. It appears that the Indemnity Agreement is a somewhat standard form of agreement used when someone is elected to Council. I believe I can take judicial notice of the fact that many organizations provide indemnification to directors and officers for actions taken or omitted to be taken by them while performing their duties for the organization. It is also common but not universal for organizations to provide "directors and officers" coverage in addition to indemnification or in lieu of it.

[14] The terms of Mr. Jackson's Indemnity Agreement are:

1. The Nation, and Council, jointly and severally hereby agree and covenant to Indemnify and save harmless the Indemnified Party and his heirs and legal representatives against any and all demands, claims, action causes of action, losses, damages, expenses or other liability of every kind and description including legal fees (on a solicitor and his own client basis) (the "Claims") which may be sustained, suffered or incurred by them jointly or severally, in connection with or arising out of, directly or indirectly, any Claims made against the Indemnified Party, his heirs or legal representatives which Claims arise in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been an elected member of the Council of the Nation if:
  - (a) he acted with the approval or the authority of Council;
  - (b) he acted honestly and in good faith with a view to the best interests of the Nation;
  - (c) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful; and
  - (d) the activity, conduct or decision giving rise to the claim, action or proceeding was taken or made in fulfilling the role of a member of the Council and did not result in any direct personal benefit to the member or Council or to any member of his immediate family, except as one of a group or category of individuals all of whom were entitled to the benefit for reasons not related to being a member of Council or an immediate family member of a member of Council
2. Subject to paragraph 3, the Nation and Council agree to indemnify and save harmless the Indemnified Party, in respect of all investigation costs, charges and expenses reasonably incurred by the Indemnified Party in connection with the defence of the Claim, if the Indemnified Party was not judged by the Court or other competent authority to have committed:

- (a) a breach of trust;
- (b) a breach of fiduciary duty;
- (c) fraud; or
- (d) malfeasance in office.

All such costs, charges and expenses shall, at the request of the Indemnified Party, be paid by the Nation or Council to the Indemnified Party on an interim basis and as those costs, charges and expenses are incurred by the Indemnified Party.

3. To the extent permitted by applicable law, all costs, charges and expenses reasonably incurred by the Indemnified Party in investigating, defending or appealing the Claim shall, at the request of the Indemnified Party, be paid by the Nation or by Council in advance as may be appropriate to enable the Indemnified Party to properly investigate, defend or appeal such action or proceeding.

[15] Mr. Jackson was one of the Band Councillors who was involved in the initial engagement of Ms. Kostic as the Nation's investment advisor in 2001 and 2002. He was also one of the former Band Councillors who was sued by Piikani Investment Corporation on behalf of the Nation in 2006 in connection with the termination of the Nation's relationship with Ms. Kostic and RJL.

[16] This fiat request has obviously resulted from Mr. Jackson's re-election to Band Council in 2015. His re-election gave rise to the Indemnity Agreement. During his term, a petition was circulated seeking his removal as a Councillor for various reasons, including some issues related to Ms. Kostic and her litigation with the Nation.

[17] Mr. Jackson was removed as a councillor by Band Council. Mr. Jackson appealed his removal to the Piikani Nation Council Removal Appeals Board, which overturned his removal from Council and ordered his reinstatement. The Nation unsuccessfully sought judicial review of that decision, and apparently an appeal to the Federal Court of Appeal is pending. Ms. Kostic unsuccessfully sought to intervene in those proceedings, claiming she should be allowed to intervene because some of the submissions concerning Mr. Jackson's removal involved his dealings with her and the Nation's litigation with her.

[18] Following his reinstatement, however, Mr. Jackson was not successful in being re-elected to Council in 2023.

[19] Mr. Jackson's fiat application details these various proceedings. In his proposed originating notice, he seeks a wide variety of remedies against the Nation. His 1221 page affidavit documents many of these claims. He also seeks to file a notice of application for indemnification.

[20] The details of his indemnification claim are:

1. Defence costs and expenses in Action 0601;
2. Costs of having to be questioned for discovery in that Action;

3. Responding to defamation claims in relation to the petition and other unproven allegations against him;
4. Legal costs in defending the removal proceedings, including his appeal to the Piikani Nation Removal Appeals Board, defending the judicial review application by the Nation, and now responding to the Nation's appeal from that decision; and
5. Legal costs and expenses in 2008 Federal Court proceedings.

[21] I am somewhat concerned that Mr. Jackson's affidavit in support of the fiat request seeks considerably more relief than indicated in Mr. Zinner's October 2 letter.

[22] Paragraph 163 of the Affidavit says:

163. I swear this affidavit:

- a) in support of my Application(s) for save harmless relief at all levels of Court;
- b) for an interim urgent injunction prohibiting the above-named parties and their privies from making further libelous and defamatory acts;
- c) for an interim urgent injunction prohibiting the unlawful election bylaw and code changes if required;
- d) for an interim urgent Order for a Public Apology;
- e) for an interim urgent Order for the immediate and retroactive coverage and damages honouring of my save harmless and indemnity which contains provisions to defend all actions and appeals;
- f) for my Cross Appeal in the Federal Court of Appeal, for any further Application that may be required;
- g) for my judicial review and injunction under T-2317-22, if it continues;
- h) in support and/or not in opposition of Kostic's Application(s) and/or any and all of our application(s) filed concurrently herewith, or application(s) to be filed in the King's Bench and Federal Court; or any Tribunal;
- i) to affirm and or reaffirm certain facts; and
- j) to correct misstatements and misrepresentations that have been made in the courts by the council and by prior councils since at minimum 2007.

[23] It may be that for the purposes of this fiat application, Mr. Jackson is only proceeding with the first claim for relief and his other remedies will be sought in other proceedings.

[24] My response to the application before me is to decline the request. This matter is not clearly within the case management responsibilities assigned to me by Acting Associate Chief Justice Jeffery in April 2023.

[25] The request for indemnification under the Indemnity Agreement does not fall within what I would describe as the scope of this case management. ACJ Rooke's order of February 2013 post-dated the discontinuance of Action 0601 against Mr. Jackson. Any cost consequences of that must have been dealt with at the time. It would be very surprising if they had not, and Mr. Jackson waited for over a decade to address them.

[26] Mr. Jackson's action as representative plaintiff against the Nation and others in 2007, involved issues similar to those in Action 0601. But it too has been out of the system for some eight years.

[27] The current request arises out of completely different circumstances than those involved in Action 0601 and Action 0801 06768 and is based on things that occurred after the case management order: Mr. Jackson's re-election to Council and the 2015 Indemnity Agreement.

[28] Mr. Jackson's claims relating to the disqualification proceedings are not part of anything I am actively case managing now. Nor are his allegations that he has been defamed by the Nation and various councillors and others associated with the Nation.

[29] There is no reason for Mr. Jackson's issues with the Nation to be subject to case management, let alone to be case managed in conjunction with the collection of lawsuits managed by Justices Rooke, Nation, De Wit, and now me.

[30] I am not prepared to treat these claims as part of the matters I am case managing. Mr. Jackson's issues appear to turn entirely on the interpretation of the Indemnity Agreement and the scope of indemnification provided. It is not a complicated matter and involves the interpretation of that contract.

[31] As such, it is not necessary for me to rule on Mr. Jackson's fiat application. My conclusion is that if Mr. Jackson wants to file an Originating Notice against the Nation seeking the relief claimed in the draft he has provided in conjunction with this fiat application, the Master Order does not preclude him from doing that.

[32] I am doubtful that an Originating Notice will provide him anything other than declaratory relief if he is successful in some fashion. If he thinks the Nation is indebted to him in some way such as for unpaid costs from the 2008 Federal Court proceedings, or for breach of a promise to compensate him for attending to be questioned for discovery in Action 0601 in 2019, he will likely have to commence a civil claim against the Nation in the appropriate forum. If he commences any proceedings, he should be aware that he would then expose himself to costs if he is unsuccessful.

[33] On the alternate assumption that I should be treating Mr. Jackson's indemnity claim as part of the case management matters I have received from ACJ Rooke and Justice Nation, I do not see sufficient merit in it to grant a fiat to allow this new claim to proceed.

[34] There is no doubt that he was initially involved in Acton 0601 as a defendant. He was an active plaintiff in his own action against the Nation and many other defendants. That action was part of the case management proceedings with ACJ Rooke and was subject to the 2013 Master Order.

[35] The purpose of that Order was to prevent these related actions from getting out of control and to try to manage them towards efficient and effective trials.

[36] As I understand the purpose of the screening process implemented by ACJ Rooke, it was to prevent hopeless applications and proceedings that would unnecessarily from delaying the matter and detract from the real issues in dispute.

[37] The concept, which was not varied or set aside by the Court of Appeal on numerous appeals from case management decisions, was to allow only those applications that had some reasonable prospect of success and some overall significance to the ongoing litigation to proceed.

[38] Here, Mr. Jackson's indemnification request has nothing to do with the Piikani Trusts or the litigation between Ms. Kostic and the Piikani Nation, other than in relation to the value of the time he is required to spend as a witness because of his role as a Band Councillor between 2002 and 2007. His compensation as a witness is not something that has any connection to the issues between the Nation and Ms. Kostic. Recovery of costs from the 2008 Federal Court proceedings is again unconnected with anything that has been part of this case management process.

[39] Compensation for attending to be questioned for discovery as a former employee or officer is governed by the *Rules of Court* and any agreement Mr. Jackson may have with the Nation. The *Rules* provide for payment of travel and subsistence costs as well as a modest attendance fee for each day involved. Mr. Jackson maintains that the Nation committed to pay him to attend for questioning. That is entirely between him and the Nation and his nothing to do with the litigation itself. If he thinks the Nation has reneged on a legal commitment to compensate him for his time, that is something he needs to take up with them, and if need be, to pursue a civil claim for that.

[40] Mr. Jackson claims that he has been defamed by the Nation and various Councillors and officers relating to his activities as a Councillor. The dates he alleges are well outside any time frames for commencing proceedings for defamation under the Limitations Act. On the face of the materials before me, any claims at this time would be hopeless.

[41] Regardless of the *Limitations Act*, RSA 2000, c L-12, the Indemnity Agreement only covers certain described claims that may be made against Mr. Jackson. I cannot see that a defamatory statement made against him could be considered to be a "claim". For the purposes of indemnification, there is nothing to indemnify in relation to a defamatory statement.

[42] If Mr. Jackson is seeking indemnification for any costs of him making a claim against those who published any defamatory statements, or the costs of "clearing his name", that is a highly unlikely interpretation of a "claim" under the Indemnity Agreement. I view his claim for indemnity against defamation as being highly unlikely to succeed, and I would not have included it in this case management in any event.

[43] A further impediment, as pointed out by Ms. Hanert, is that many of Mr. Jackson's intended claims relate to matters that took place long before the Indemnity Agreement was signed. It would be untenable to suggest that the Indemnity Agreement covers things done by Mr. Jackson or done against Mr. Jackson before he was re-elected and obtained the Indemnity Agreement in 2015.

[44] Mr. Jackson's claim to be indemnified against the costs and expenses he has incurred opposing his ouster as a Councillor has no place in this case management. The likelihood of Mr. Jackson's claim for indemnity under the Indemnity Agreement for costs and expenses in resisting the disqualification proceedings is very low, and again is not something that should be included in this case management.

[45] His remedies for costs of resisting any such claims would be with the Removal Appeals Board and in any Federal Court proceedings. I cannot see a reasonable interpretation of the Indemnity Agreement being that he should be indemnified against claims by the party providing him indemnity based on his alleged misconduct.

[46] I express no thoughts on his claim for being compensated by the Nation for having to attend and be questioned as a former councillor in Action 0601. That is a matter between him and the Nation and could give rise to a civil claim. It is not appropriate to include this in this case management.

[47] Any claims arising from his involvement as a party in Action 0601 were likely dealt with at the time that action was discontinued against him, as were any claims in connection with his own representative action. It is far too late for him to pursue any remedies.

[48] There is very little if anything in Mr. Jackson's proposed claims that could be described as anything beyond frivolous.

### **Conclusion**

[49] No fiats are granted; none are required. A fiat would only be required if Mr. Jackson sought to become a party to any of the ongoing litigation I am case managing, or to commence any proceedings against any of the ongoing parties in such litigation relating to the hiring and termination of Ms. Kostic and RJL, or matters involving Mr. McMullen's role in Piikani Investment Corporation. Mr. Jackson has not applied for any such relief and no basis is made out for any in his lengthy affidavit.

[50] With respect to the potential claims Mr. Jackson has articulated, he should be treated as a regular litigant. It is not appropriate for him to "jump the queue" and become case-managed. It would also not be appropriate for any of his claims to be included in this case management process.

[51] These fiat requests do not ordinarily attract costs and I do not award any to the Nation as there was no actual court appearance required.

Heard by way of written submissions.

**Dated** at the City of Edmonton, Alberta this 29<sup>th</sup> day of November, 2023.

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**Robert A. Graesser**  
**J.C.K.B.A.**

### **Appearances:**

Gabor Zinner, Zinner Law Office  
for the Applicant



Caireen Hanert, Gowling WLG  
for the Respondent

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**Corrigendum of the Decision  
of  
The Honourable Justice Robert A. Graesser**

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Removed Robert J. Hawkes, KC, JSS Barristers as Counsel for the Respondent and replaced with Caireen Hanert, Gowling WLG.