CITATION: Métis National Council Secretariat Inc. v. Chartier, 2025 ONSC 6150
COURT FILE NO.: CV-22-00675899-0000
DATE: 20251124

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
Métis National Council Secretariat Inc. Plaintiff	*Robert Cohen, Ted Frankel, Robert Sniderman*, *David How* for the Plaintiff
– and –	
Clement Chartier, David Chartrand, Manitoba Métis Federation Inc., carrying on business as Manitoba Métis Federation, Wenda Watteyne, Storm Russell, Kristina Monette, Marc LeClair, LeClair Infocom Inc., Celeste McKay, Celeste McKay Consulting Inc., John Weinstein, Public Policy Nexus Group Inc., Kathy Hodgson-Smith, Infinity Research Development and Design Inc., Wei Xie and SystemWay Consulting, Inc. Defendants	*James Renihan Tiffany O'Hearn Davies* for the Defendant Clement Chartier *Rahool P. Agarwal, Michael Currie, Tyler Morrision Azzam Cheema* for the Defendants Manitoba Métis Federation Inc., carrying on business as Manitoba Métis Federation and David Chartrand *Ilan Ishai, Mehak Kawatra Phoebe Goldig* for the Defendant Wenda Watteyne *Shane C. D'Souza Ljiljana Stanic* for the Defendants Marc LeClair, LeClair Infocom Inc., Celeste McKay, Celeste McKay Consulting Inc., John Weinstein, Public Policy Nexus Group Inc., Kathy Hodgson-Smith, Infinity Research Development and Design Inc., Wei Xie and SystemWay Consulting, Inc.
	HEARD: January 13 – 24, January 28 – February 27, March 3 – 11, March 17. and September 2.

REASONS FOR JUDGMENT

MERRITT J.

OVERVIEW

[1] The Plaintiff Métis National Council Secretariat Inc. (the "MNC")[1] seeks equitable relief arising from alleged breaches of fiduciary duties by the following employees between 2019 and the end of September 2021:

- Former President Clement Chartier;
- former Vice-President and Minister of Finance David Chartrand[2];
- and former Executive Director Wenda Watteyne,

[2] The new administration took over the MNC at the end of September 2021.

[3] The MNC alleges that the Defendants and Ms. Watteyne conspired with the MNC's former member, the Manitoba Métis Federation Inc., carrying on business as Manitoba Métis Federation (the "MMF")[3], to intentionally cause severe harm to the MNC and confer unlawful benefits on themselves, the Consultants[4], the MMF and two former employees when they departed from the MNC. The Plaintiff refers to this conspiracy as a "scheme" and "scorched earth policy".

[4] The Plaintiff alleges that the Defendants and Ms. Watteyne orchestrated a series of secret, unauthorized and self-serving transactions with respect to the administration of the Métis Veterans Legacy Program ("MVLP"), the transfer of the Métis Nation Historical Online Database (the "Database"), MNC's office lease, various employment and consulting agreements and the termination of same, and a retirement allowance for Mr. Chartier.

[5] The claims against the Consultants are based on knowing receipt, knowing assistance and unjust enrichment.

[6] The Plaintiff settled the action against the two former employees Storm Russell and Kristina Monette.

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[1] The parties and witnesses frequently used MNC and Métis National Council Secretariate Inc. interchangeably. I will use "MNC" except where I am specifically referring to the corporate entity.
[2] I refer to Mr. Chartier and President Chartrand collectively as the "Defendants".
[3] I refer to MMF and President Chartrand collectively as the "MMF Defendants".
[4] I refer to Marc LeClair, LeClair Infocom Inc., Celeste McKay, Celeste McKay Consulting Inc., John Weinstein, Public Policy Nexus Group Inc., Kathy Hodgson-Smith, Infinity Research Development and Design Inc., Wei Xie and SystemWay Consulting, Inc. collectively as the "Consultants".

[7] The MNC is an organization whose very nature is disputed. The Defendants say that it is the government of the Métis Nation in the Métis Homeland which largely operated pursuant to an unwritten constitution and practices. They say that the Métis National Council Secretariat Inc. is the administrative arm of the MNC and was incorporated only because they were required to incorporate to receive funding and assert the MNC's legal rights against Canada. They say Canada required the Métis, including the MNC and each of the Governing Members, to subject themselves to a corporate form as a condition of being recognized and supported. Incorporation was not done willingly because it was not consistent with the Métis right to self-government and self-determination, but they had no choice.

[8] The Plaintiff says that the MNC is a non-profit corporation made up of its three founding members; the MMF, the Métis Nation of Alberta ("MNA") and the Métis Nation-Saskatchewan ("MNS"), and its two other members: the Métis Nation of Ontario ("MNO") and the Métis Nation British Columbia ("MNBC"). The Plaintiff says the MNC is governed by its corporate by-laws and other documents and is nothing more than the "sum of its parts".

[9] For many years there has been a political dispute among the Governing Members concerning the identification and recognition of citizens of the Métis Nation. The dispute concerns the application of the National Definition of Métis and strikes at the very heart of Métis identity, nationhood and culture. The identity issue came to a head in 2017 – 2018, when the MNO recognized six new Métis regional communities in Ontario and refused to comply with resolutions of the MNC's General Assembly ("GA") requiring the MNO to comply with the National Definition adopted by the GA in May 2014. Mr. Chartier[5] suspended the MNO. During the suspension, the MNC was unable to hold meetings of its Board of Governors ("BOG") because there was a stalemate with the MNO, MNS and MNA (collectively the "Tri-Council") refusing to meet without the MNO and Mr. Chartier refusing to allow the MNO to attend BOG meetings while suspended.

[10] During the stalemate the Tri-council wrote a series of letters to the Defendants, to Canada and to others in which it made various allegations against the Defendants, demanded "transparency and accountability" from them and asserted that it was the mandate of the BOG to govern the affairs of the MNC.

[11] While the identity issue was coming to a head, the MNC, the Governing Members and Canada signed the Métis Nation Accord in 2017. The Métis Nation Accord recognizes that the Historic Métis Nation is represented by the MNC and its Governing Members and lays the groundwork for several sub-accords worth over $2 billion in funding to the Métis Nation.

[12] The Plaintiff's theory is that the impugned transactions further President Chartrand's plan to destroy the MNC and have the MMF take over from the MNC as the national body for all Métis

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[5] I refer to the witnesses by the titles they currently hold, and if none, by Mr. or Ms. At the material times, President Chartrand was the President of the MMF and also the Vice President and Minister of Finance of the MNC. I refer to him as President Chartrand as that is his current title.

persons in Canada because of the political dispute with the MNO concerning the identity issue. The Plaintiff alleges that President Chartrand rewarded Mr. Chartier, Ms. Watteyne and the Consultants for assisting him with the transfer of the Database and the MVLP from the MNC to the MMF and keeping these transactions secret and for their loyalty in standing with him against the MNO on the identity issue. The Plaintiff alleges that the Defendants had no authority to enter into the impugned transactions because they did not have BOG approval or authority under Métis National Council Secretariat Inc.'s By-Laws and breached their fiduciary duties in doing so.

[13] The Defendants say that as democratically elected political leaders exercising public law functions, they did not owe fiduciary duties. In any event, they vehemently deny all of the allegations of breach of any fiduciary duty or wrongdoing. Mr. Chartier and President Chartrand say they have decades of loyal service to the Métis Nation, they did nothing to harm the MNC and there was no scheme or scorched earth policy. They say they have always been committed to advancing the interests of the Métis Nation. They say that the MMF had and has no plan to take over the MNC's position as the national representative of the Métis Nation. The MMF is the Indigenous government of the Red River Métis only.

[14] The Defendants submit that BOG approval was not required for the impugned transactions because the President has significant decision-making authority and the power to delegate his authority. The By-Laws were never strictly followed, and the Defendants had no fiduciary duty to seek BOG approval for the impugned transaction. The Defendants say they carried on and conducted MNC business as best as they could during the stalemate which occurred between 2017 and 2022 when there were no BOG meetings while the MNO was suspended from the MNC. The Defendants say that all of the impugned decisions and transactions were made in good faith, in a manner consistent with their past practices, common law and statutory obligations and Métis tradition. They say that they acted in the best interests of the MNC and the Métis Nation at all times.

[15] The Defendants say that the Tri-Council acted unreasonably and tried to undermine the MNC with false allegations of financial impropriety and other wrongdoing in correspondence to Canada in order to advance their own political agenda of establishing direct relationships with Canada. When the Accord was signed in late 2017, Canada committed to unprecedented funding for the Métis Nation and there was much important work to be done. The Defendants made commitments to key consultants and employees to secure their services because they were critically important to implementing the over $2 billion in funding commitments and to procure additional funding. The Defendants say it was reasonable for them to give letters to employees including Ms. Russell and Ms. Monette assuring them of the security of their employment in the face of significant turmoil and unrest. When the employees and consultants said they could no longer work at the MNC, the Defendants negotiated severance packages. The severance packages were justified and made with the benefit of legal advice and in accordance with the agreements previously made and the MNC obtained comprehensive full and final releases which absolved it of any further liability.

[16] The Defendants say that the Service Delivery Agreement ("SDA") with the MMF regarding the MVLP, and the transfer of the Database to the MMF were in the best interests of the Métis Nation. The MNC did not have the capacity or mandate to deliver the MVLP or host the

Database. The MMF was best suited to deliver the MVLP given President Chartrand's long-standing involvement in, and commitment to, the program and the MMF's resources and experience. The MMF and President Chartrand did not receive any benefit from delivering the MVLP. When the previous host of the Database, the University of Alberta (the "U of A"), said it had to be moved, the MMF was best suited to host the Database, having invested millions of dollars in a new IT infrastructure and having the ability and willingness to assume the significant ongoing financial obligation. The MMF has assumed a significant burden in taking on the Database.

[17] The Defendants submit that Mr. Chartier's retiring allowance payment was reasonable and justified, as was the gift of a watch to him, because of his long service and significant contributions to the Métis Nation and the MNC. Honouring one of the Métis Nation's greatest leaders advances the cause of the Métis Nation and does not undermine it. President Chartrand authorized the retiring allowance after obtaining financial and legal advice.

[18] President Chartrand and Mr. Chartier say they have devoted their lives to advancing the interests of the Métis Nation, the impugned decisions and transactions furthered those interests and did not adversely impact the operations of the MNC. When the Defendants left the MNC it had more money than it ever had before. They say there was no scorched earth policy.

[19] All of the Defendants submit that this action is a politically motivated vindictive attempt to punish political enemies, to harm the Consultants, Ms. Watteyne, and the Defendants' reputation, and to advance the political interests of Audrey Poitras, Margaret Froh and the MNO.

THE ISSUES

[20] There are ten issues as follows[6]:

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[6] The Plaintiff identified the 13 issues it its written closing submissions, listed in Appendix A below. These issues are, in effect, substantially the same as the issues identified in the Plaintiff's written closing submissions with the exception of my issue 9) that was raised by the Defendants. All of the issues listed in Appendix A arise from the Amended Statement of Claim and these the issues that I will decide. In the Plaintiff's written closing submissions other issues are raised that were not pled; for example, the Plaintiff submits that when Mr. LeClair was acting as counsel for the MNC, he acted in transactions where he was in a conflict, and he breached the Law Society of Ontario's *Rules of Professional Conduct*. None of these issues were pled. Mr. LeClair did not give *viva voce* evidence at the trial and the issues are not addressed in his discovery evidence that the Plaintiff read-in at trial. Had he known that the Plaintiff intended to raise these additional issues he might have testified. Another example includes the submission that Mr. Chartier breached his fiduciary duties to the MNC when he "unilaterally suspended MNO in contravention of the Bylaws instead of following the General Assembly resolution that required the General Assembly to revisit the matter following the probationary period." This allegation is not contained in the Statement of Claim. This allegation was also the subject of the applications before Justice Belobaba addressed in my decision below. Justice Belobaba declined to rule on whether Mr. Chartier's suspension of MNO was lawful. For the first time in its Reply Submissions, the Plaintiff raises a new allegation of "inducement to breach contribution Agreements". The pleadings define the issues, and it is unfair to the Defendants for the Plaintiff to raise issues for the first time in its written closing submissions: *Rodaro v. Royal Bank,* 59 O.R. (3d) 74, at paras. 60-61, citing *460635 Ontario Ltd. v. 1002953 Ontario Inc.*, [1999] O.J. No. 4071 (Ont. C.A.), at para. 9.

1) Did the Defendants and Ms. Watteyne breach their fiduciary duty by entering into the Service Delivery Agreement with the MMF regarding the MVLP?

2) Did the Defendants and Ms. Watteyne breach their fiduciary duty by transferring the Métis Nation Historical Database to MMF?

3) Did the Defendants and Ms. Watteyne breach their fiduciary duty by entering into, or making payments pursuant to the consulting agreements, employment contracts and/or severance agreements, with the employees and Consultants?

4) Did the Defendants and Ms. Watteyne breach their fiduciary duties by providing Mr. Chartier with a retirement allowance and gift upon his retirement?

5) Did the Defendants and Ms. Watteyne breach their fiduciary duties by paying excessive compensation to Glorian Chartrand?

6) Did the Defendants and Ms. Watteyne breach their fiduciary duties by entering into the LRI and GDI Agreements?

7) Did the Defendants breach their fiduciary duties by entering into the Lease? And did President Chartrand and the MMF induce the landlord to breach the lease?

8) Did the Consultants knowingly assist the Defendants in, or knowingly receive benefits from, the Defendants' breaches of their fiduciary duties or were they unjustly enriched?

9) Are the Defendants and Ms. Watteyne entitled to indemnity for their legal fees?

10) Does the MNC have standing to bring this action when there are only two remaining Governing Members?

DECISION

[21] For the reasons that follow, the action is dismissed. Mr. Chartier, President Chartrand and Ms. Watteyne did not breach their fiduciary duties. They acted honestly and with a view to the best interests of the MNC and the Métis Nation.

[22] Mr. Chartier and President Chartrand devoted their lives to the Métis Nation. They viewed the MNC as the national government of the Métis Nation. They did not set out to destroy the MNC and harm it financially to benefit themselves, the Consultants or the employees.

[23] The Plaintiff has not proven that there was any "scheme" or "scorched earth policy". At best, the Plaintiff has shown that the impugned decisions were made without the express approval of all members of the BOG, and without two signatures which the Plaintiff says were required. I do not accept that BOG approval or two signatures were required for the impugned decisions. The MNC operated as an Indigenous government and as President and Vice President and Minister of Finance, Mr. Chartier and President Chartrand had significant decision-making authority. The By-Laws were never strictly followed. The Defendants were under no fiduciary duty to seek BOG

approval for matters that had never historically required such approval and under no obligation to have two signatures on contracts when this was not the practice.

[24] While the new administration of the MNC may not agree with Mr. Chartier's and President Chartrand's decisions, this disagreement does not establish a breach of fiduciary duty. Political disputes are best resolved at the ballot box.

[25] Ms. Watteyne is a non-Métis person who has served the Métis community for nearly thirty years, working in various roles, including at the MNO. Ms. Watteyne had no political position or personal stake with respect to the identity issue or the political dispute among the Governing Members. Ms. Watteyne did not make any of the impugned decisions; at most, she made recommendations to Mr. Chartier and President Chartrand. Ms. Watteyne did not breach her fiduciary duties when she made those recommendations or at any other time.

[26] The Consultants did not owe any fiduciary duties. The Plaintiffs have not made out a case for knowing assistance or knowing receipt against the Consultants because they have not established that the Defendants breached their fiduciary duties.

THE EVIDENCE

[27] The trial was conducted between January 13 and March 17. The parties submitted a joint exhibit book containing 1254 exhibits totaling almost 7,800 pages (the "JEB") with an agreement regarding its use at trial. The parties marked an additional 169 documents as exhibits at trial, almost always without objection. After the evidence was completed, the parties submitted just over 1,100 pages of written closing submissions after which they attended for a final day of closing arguments on September 2, 2025.

[28] At the trial, eight witnesses gave viva voce evidence. The Plaintiff called Audrey Poitras who was the President of MNA at the material times, President Froh who was and still is the President of MNO, Cassidy Caron who was the President of the MNC immediately after the Defendants left the MNC and two witnesses from Veterans Affairs Canada, Jeff Gallant and Dennis Manning. President Chartrand, Mr. Chartier, and Wenda Watteyne testified for the defence. There were no expert witnesses.

[29] During the trial I ruled that portions of the transcript of the examination of discovery of Dr. Storm Russell were admissible pursuant to r. 31.11 (6) and (7) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 because she was unavailable to testify in person due to a medical condition: *Métis National Council Secretariat Inc v. Chartier*, 2025 ONSC 4456.

[30] The Defendants marked as an exhibit the Plaintiff's response to the MMF Defendants' Request to Admit dated December 17, 2024, and Ms. Watteyne's Request to Admit dated December 17, 2024.

[31] In addition, the parties filed as "read ins" pursuant to r. 31.11(1) briefs of portions of the transcripts from the examinations for discovery. The Plaintiff filed briefs of read ins from the discoveries of President Chartrand, Mr. Chartier, Ms. Watteyne, Wei Xie, Marc LeClair, John

Weinstein and Celeste McKay. The Defendant filed a brief of read ins from the discovery of Ms. Caron.

[32] The primary witnesses were each examined and cross examined over several days or weeks: President Chartrand testified for close to two weeks, Ms. Poitras, Mr. Chartier and Ms. Watteyne each testified for over a week and President Froh and Ms. Caron each testified for several days.

Ms. Poitras

[33] Ms. Poitras is Métis. She grew up in northeast Alberta and comes from a long lineage of Métis ancestors. She registered as a Métis citizen in Alberta as soon as the MNA devised a registry system in 1990.

[34] At the age of about fifteen Ms. Poitras started attending MNA General Assemblies. She attended annual meetings and various cultural activities for many years.

[35] In 1996, Ms. Poitras decided to run for election as President of the MNA. Prior to that, she had been MNA's Director of Finance for a number of years, which is the most senior position within the MNA Finance Department.

[36] Ms. Poitras was the MNA President from 1996 to 2003 and a member of the BOG during this time. Ms. Poitras described the mandate of MNA, generally speaking, as "supporting Métis people" socially, economically, and financially to improve the conditions of MNA's citizens within Alberta. During her years as MNA President, MNA's citizenship grew from less than 10,000 to approximately 70,000 registered citizens.

[37] While sitting on the BOG, Ms. Poitras also held various positions within the MNC Cabinet, including Minister of Finance and Minister of Economic Development.

[38] Ms. Poitras was interim President of the MNC for approximately nine months in 2003.

President Froh

[39] President Froh is Métis and is the President of the MNO. She grew up in Fort Qu'Appelle, Saskatchewan. Her family lineage has a settlement in the Red River Valley.

[40] President Froh is a lawyer. During law school she joined the Indigenous Bar Association, and eventually, she served as its President.

[41] From 2000-2004, President Froh worked for the Law Society of Ontario as the first ever Aboriginal Issues Coordinator.

[42] President Froh then joined a prominent Ontario First Nation Government, the Chippewas of Rama First Nation, as in-house legal counsel.

[43] In 2013, Froh began working for MNO as a Director of Policy, Law and Compliance under the Presidency of Gary Lipinski. She also worked as Associate Chief Operating Officer.

[44] President Froh was elected as MNO President in 2016, re-elected in 2020, acclaimed in 2024 and is serving her third four-year term. During this time, she has been a member of the BOG.

[45] President Froh currently teaches courses in Indigenous leadership at the Banff Centre for Arts and Creativity.

Ms. Caron

[46] Ms. Caron was the MNC's President from September 30, 2021, to September 29, 2024.

[47] Ms. Caron is Métis and is from Rossland, British Columbia. Her family comes from the Historic Métis Communities of Batoche and St. Louis Saskatchewan.

[48] Ms. Caron was a youth leader for the Kootenay South Métis and the MNBC.

[49] Ms. Caron graduated from Vancouver Island University in 2014 with a Bachelor of Arts degree in Indigenous Studies and History. She worked for Reciprocal Consulting from 2014-2018, where she supported Indigenous communities across the country with program evaluations and research projects as an Indigenous consultant.

[50] Ms. Caron attended GAs between 2016 and 2020 and became familiar with the Bylaws of the MNC to understand her role as a delegate at General Assemblies.

[51] In 2018, Ms. Caron began her own contracting business which included contracts with northern remote Indigenous communities for resiliency planning against climate change and other program evaluation contracts.

[52] Ms. Caron also consulted with the First Peoples Group from 2019 to 2021 until her election as the MNC's President.

Mr. Chartier

[53] Mr. Chartier is Métis. He has dedicated over 50 years to advancing the Métis Nation's right to self-determination. He grew up in a Métis community, Buffalo Narrows, in Saskatchewan. He described growing up with a distinct culture including distinctive foods, dance, and music, and learning that he was part of a larger Métis nation that shared that culture.

[54] When he was only five years old, Mr. Chartier was taken to the Île-à-la-Crosse Métis Residential School where he and the other students were subjected to sexual, physical and psychological abuse.

[55] After residential school, Mr. Chartier was sent to a Catholic high school. While there, he learned that his mother was raped and murdered. After his residential school experience and the death of his mother, Mr. Chartier began to act out and rebel against authority.

[56] After he finished school, Mr. Chartier worked as a welfare worker for the Saskatchewan Government where he learned about the lack of supports for the Métis community. At trial he described being able to give only $12 per child to each Métis family, and his failed advocacy efforts to secure more funding. In an act of defiance, and as an expression of his frustration, Mr. Chartier drove his government vehicle into the window of a Hudson's Bay Company in an unsuccessful attempt to effect change.

[57] Mr. Chartier next worked with his family in a commercial fishery. He then returned to Saskatoon and eventually worked with the newly established Native Youth Association of Canada in Ottawa. Their funding was cut off after Mr. Chartier and another youth staged a peaceful demonstration at the Department of Indian Affairs and Mr. Chartier lost his job. He went back to Saskatchewan and continued his advocacy work and activism on behalf of Indigenous communities including staging a series of occupations of government buildings in protest of government policies and the conditions faced by Indigenous peoples.

[58] Mr. Chartier decided to go to law school to "learn the rules" rather than continuing to "spout off rhetoric". After law school, Mr. Chartier moved back to Ottawa to conduct research on Métis scrip for the Association of Métis and Non-Status Indians of Saskatchewan ("AMNSIS"). In 1979, Mr. Chartier accepted a Directorship with AMNSIS and ran for Vice-President in the first ballot-box election of any Métis organization. After losing the election, Mr. Chartier left AMNSIS to complete his articles and was called to the bar in 1980.

[59] Mr. Chartier was hired by the Saskatchewan Indian Federated College to develop and teach their "Indian law" program. He then joined AMNSIS as their constitutional lawyer to head up the Native Council of Canada's ("NCC") Constitution Commission during the repatriation of Canada's Constitution. He participated in constitutional committees and played an instrumental role in recognizing rights of Aboriginal peoples under section 35 of the *Constitution Act, 1982* and the inclusion of Métis people within the language of section 35.

[60] In May 1982, Mr. Chartier was elected Vice-President of AMNSIS and sat on the Board of the NCC. A conflict arose between the Métis representatives and the Non-Status Indian representatives at the NCC regarding the appropriateness of including Métis-specific issues on agendas for meetings with the federal government. That conflict gave rise to the exclusion of Métis representatives from a critical meeting with other federal government and Indigenous groups.

[61] It became clear to Mr. Chartier and others that advocating for Métis rights through a pan-Aboriginal organization was not possible, and so they formed a representative body specifically for the purpose of advocating for the Métis people. That body came to be named the Métis National Council. Mr. Chartier explained that, in leaving the NCC, the founding members agreed that "never again would we allow any other nation of people, Indigenous people, to speak on our behalf. It was a Métis voice for Métis people".

[62] Mr. Chartier served as the MNC's first National Representative, which was the title for the leader of the MNC prior to it adopting the position of the presidency. Later, he was elected President of the MN-S, and served as Vice-President of the MNC during that time. He stepped

down as President of the MN-S after being elected as President of the MNC in 2003. He was repeatedly re-elected as President until he stepped down in September 2021.

[63] Mr. Chartier served as President of the World Council of Indigenous Peoples, and spent significant time in Nicaragua, assisting Indigenous peoples in their conflict with the Sandinista government. He later became the President of the American Council of Indigenous Peoples (ACIP), a position he still holds today.

[64] Mr. Chartier has dedicated his life to the Métis people, their pursuit of self-government and the protection of their identity. His commitment to the Métis Nation is strong and includes thousands of hours of pro bono legal work over 40 years across the Métis Nation Homeland. This work aimed at protecting and advancing Métis rights through his foundation Métis Legal Research and Education Foundation ("MLREF"). He has also donated money to Métis causes, paying retainer fees out of his own pocket to enable Métis groups to obtain legal counsel when he cannot act on their behalf.

[65] Mr. Chartier is a self-described Métis nationalist, who cares deeply about Métis rights and identity. During his tenure as the MNC's President, Mr. Chartier along with his co-Defendants, were able to build the MNC from a grass-roots government with limited annual funding, to a sophisticated government with very substantial funding guaranteed by the Canadian federal government.

President Chartrand

[66] President Chartrand is Métis. He grew up in a small Métis town, Duck Bay, in Manitoba. He was raised by a single mother with seven siblings. He remembers his mother telling him "never forget where you came from and who you are". President Chartrand has great pride in his upbringing and the values of family, culture and identity that were instilled in him. He credits his upbringing for his strong sense of community and belief in Métis identity. Growing up, President Chartrand faced discrimination, prejudice and hate. He says that these experiences gave him greater pride in his Métis identity.

[67] Before finishing high school, President Chartrand worked as a counsellor for youth in sports and as a bartender, and eventually manager, of a hotel. He also volunteered with Indigenous organizations around Winnipeg and MMF locals which are the grassroots branches of the MMF. After high school, President Chartrand went to college to become a probation officer which he did for four years. He was promoted to a director position in the Department of Justice, Courts Division, reporting to the Assistant Deputy Minister and the Provincial Chief Justice.

[68] In 1988 (the year he graduated college) President Chartrand was elected to the MMF Board of Directors (now called the MMF Cabinet).

[69] In 1996 President Chartrand was appointed spokesperson for the MMF and in 1997 he won the election for President of the MMF and gave up his career at the Department of Justice. President Chartrand won eight consecutive elections (with three acclamations) making him the longest sitting contemporary Métis leader.

[70] President Chartrand has been an advocate for Métis rights for over three decades and his accomplishments have been recognized with the highest of honours including the Order of Manitoba, the Order of the Métis Nation, Her Majesty the Queen's Golden Jubilee Medal, and an honorary Juris Doctor from the University of Winnipeg.

Wenda Watteyne

[71] Ms. Watteyne is a non-Métis person who has dedicated the vast majority of her career to the service of the Métis community. She has almost 30 years of experience working with Métis organizations.

[72] Ms. Watteyne served as the MNC's Executive Director between 1998-2004, briefly in 2008, and then again between 2009-2011.

[73] From 2011 to 2017 Ms. Watteyne worked for MNO, first as the Director, Wellness, and then later as Acting Chief Operating Officer. Ms. Watteyne worked under President Froh when she was newly elected.

[74] Ms. Watteyne left the MNO in 2018 and returned to the MNC to pursue exciting opportunities at the national level created by the Canada-Métis Nation Accord. She served as the Executive Director of the MNC until September 2021.

[75] Ms. Watteyne had no political position or personal stake with respect to political dispute or the National Definition.

[76] Ms. Watteyne returned to the MNC at a critical period for the Métis Nation. In 2017 the Accord was signed; the Métis Nation secured breakthrough funding from Canada to advance essential policy priorities regarding service and program delivery to the Métis Nation and the Permanent Bilateral Mechanism ("PBM") process was established for Canada and the Métis Nation to jointly establish and identify priorities.

[77] As Executive Director, Ms. Watteyne had both an administrative role and a policy mandate. On the administrative side, subject to the approval and direction of MNC's leadership, Ms. Watteyne had oversight over employees and some consultants. Ms. Watteyne ensured the MNC met its reporting requirements associated with the Contribution Agreements[7] and worked closely with the Finance team on financial administration. In her policy role, Ms. Watteyne had a critical role helping to steer the PBM process. She was the initial point of contact with Canada and liaised with her counterparts within the Governing Members. She worked with MNC's staff and consultants to develop proposals for funding from Canada on various program initiatives impacting the Métis Nation.

[7] Contribution Agreements are contracts with the federal government to deliver funding.

Assessing Credibility

[78] Assessing credibility is not a science. It is very difficult to precisely articulate the "complex intermingling of impressions that emerge after watching and listening to witnesses…": *R. v Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621, at para. 20.

[79] Credibility is evaluated based on many factors, including general human characteristics such as general integrity and intelligence, powers of observation, capacity to remember, and accuracy, which are assessed in light of the direct and cross-examination, consistency of testimony, and correlation with other evidence: *Canadian Encyclopedic Digest,* "Credibility, Generally", (Thomson Reuters Canada, 4th ed.) at § 105; *White v. The King*, [1947] S.C.R. 268, at p. 272.

[80] There are numerous factors that a court can consider when assessing the credibility of witnesses, including whether the evidence is "sincere, complete and truthful", whether witnesses are "biased, dishonest or careless with the truth", or "reticent or evasive" with their evidence. Similarly, a judge will consider the degree of consistency in the evidence – while minor inconsistencies "are, of course, normal", material inconsistencies "can demonstrate carelessness with the truth": *R v. Hall*, 2021 ONSC 28, at paras. 29-31. A trial judge may also consider a witness's demeanour while testifying, including whether a witness failed to answer questions directly, responded to questions by making argument, or by "using the opportunity to gratuitously attack the complainant": *R. v. G.M.C.*, 2022 ONCA 2, 159 O.R. (3d) 561, at paras. 68-71.

[81] The accepted view is that demeanor is of limited value and the substance of a witness' evidence and its relationship to the other trial evidence are better guides to assessing credibility and reliability than demeanor: *R. v. MacKinnon*, 2021 ONSC 2749, 155 O.R. (3d) 81, at para. 69.

[82] In this case, many of the facts are not disputed and are well documented in the contemporaneous documents. However, there are some fundamental issues which turn on the credibility of the witnesses. The most significant issue which turns on credibility is whether the Defendants, Ms. Watteyne, and the Consultants were engaged in what the Plaintiff has referred to as the scheme to destroy the MNC or a "scorched earth policy" or whether, as they submit, they were acting in the best interests of the MNC and the Métis Nation. Another very significant issue that turns on credibility is how the MNC was governed. The Plaintiff submits that the Defendants and Ms. Watteyne are liars.

[83] In some instances, the reliability of the witnesses' evidence was impacted by their strong political views and interest in the outcome of the case. The only witnesses who gave *viva voce* evidence who are not politicians are Ms. Watteyne and the two witnesses from Veterans Affairs Canada. Overall, my impression was that Ms. Poitras' and President Froh's evidence was influenced more by their political views and interest in the outcome, than was the evidence of President Chartrand and Mr. Chartier.

[84] After their evidence in chief was complete, both Ms. Poitras and President Froh left this court with incorrect impressions of certain matters because key facts were not addressed. It was only during cross-examination that the full picture was revealed on certain topics. For example, after her examination in chief, President Froh left me with the impression that Mr. Chartier did not

ask the MNO to participate in his report. This impression was not correct. There was documentary evidence that Mr. Chartier asked for input on two different occasions. Ms. Poitras left me with the impression that the MNC was governed solely by its By-Laws; she made no reference to the various policies and procedures until she was cross-examined.

[85] Both Ms. Poitras and President Froh were evasive at times when confronted with previous inconsistent evidence or flat out refused to admit when their evidence was clearly wrong.

[86] I have concerns about the reliability of Ms. Poitras' evidence. As stated above, there was a critical matter where Ms. Poitras' evidence in chief did not give me the full picture. Ms. Poitras testified in chief for more than two days and never once mentioned the MNC's Cabinet Terms of Reference, the 2004 Policies and Procedures or the 2009 Finance Policy all of which directly bear on the authority of the BOG, the President and the Minister of Finance which are core issues in this case. She also never referred to the numerous contracts that have only one signature and which she agrees are binding on the MNC. Whether there was a requirement that all contracts have two signatures is a key issue. These were very significant omissions.

[87] Ms. Poitras only conceded that there were unwritten rules that governed the MNC's operations when it was helpful to the Plaintiff's case. It was only when she was confronted with the fact that none of the By-Laws, MNC's Cabinet Terms of Reference, the 2004 Policies and Procedures or the 2009 Finance Policy say that BOG approval is required for any budgets, that Ms. Poitras say that there were unwritten rules.

[88] Ms. Poitras was impeached on important matters with documents, her evidence in chief, the Plaintiff's claim and her discovery evidence. Some matters upon which she was impeached go to the core issues in the case such as whether the MNC operated as a government or was simply a corporate advocacy organization consisting of its five provincial members and nothing more than the sum of its parts. Another example included whether President Chartrand had authorization from the BOG to sign the MVLP Contribution Agreement. Whether President Chartrand required BOG authorization is a very important issue in this case.

[89] At times, in her cross examination, Ms. Poitras seemed to be unwilling to concede the obvious. In cross-examination, she resisted acknowledging the clear meaning of some of the Tri-Council's letters. Ms. Poitras resisted conceding that the letters were criticizing Mr. Chartier, accusing the Defendants of mismanaging funds, saying that the MNC was not legitimate, wanting Canada involved in the dispute, and were trying to enhance the credibility of the Tri-Council. Ms. Poitras resisted agreeing that "national spokesperson" and "chief spokesperson" were the same thing and then, when it seemed untenable to keep resisting, she changed course suggesting the term was not meaningful because it was not in the By-Laws.

[90] At other times Ms. Poitras gave words in a document an interpretation that they could not reasonably bear. For example, she said the Manitoba Métis Self-Recognition and Implementation Agreement Article 19 both gives and takes away the right of people to choose to be a citizen of the MMF or another government. This evidence did not make sense.

[91] On occasion Ms. Poitras gave confusing answers when confronted with an inconsistency; for example, in her examination in chief, she said it was wrong for the MMF to sign an agreement which allowed them to represent citizens outside of Manitoba. When cross-examined on why the MNA adopted a similar agreement, Ms. Poitras gave a confusing answer when attempting to rationalize the obvious inconsistency of supporting one agreement but not the other.

[92] My main concern about President Froh's evidence was that at times, she seemed to be advocating her position rather than answering the questions asked. At times President Froh gave long answers which were not responsive to the question posed and on one occasion when her counsel tried to steer her back on course, she resisted, saying she wanted to complete her answer.

[93] At other times, President Froh added information to her answers to bolster the Plaintiff's position. For example, although she agreed that only a simple majority was required to pass a resolution, on several occasions, when asked about the content of various resolutions, President Froh pointed out that the resolution was carried by a narrow margin. This appeared to be an attempt to cast doubt on the legitimacy of the resolutions and was not responsive to the questions asked. President Froh also pointed out occasions where a majority of the governing members voted against a GA resolution which was passed because it was supported by a majority of the delegates. This seemed to be an attempt to justify the MNO's non-compliance with the GA resolution concerning the identity issue.

[94] President Froh was very reluctant to admit inconsistencies in her evidence, and outright denied an obvious inconsistency. For example, she refused to concede that it was inconsistent to say that having an external body appointed by the MNC to conduct a review of the MNO's registry was an "affront to the integrity of its registry" while at the same time saying that the MNO had already arranged a review of its registry by another body. At first President Froh said that she should have said providing <u>that</u> body access was an affront instead of <u>any</u> body. Then she immediately denied that she was really saying providing the MNC access is an affront. Later, she reverted back to saying that providing any external body access to the registry is an affront to its integrity.

[95] Another example where President Froh denied an obvious inconsistency was with respect to her knowledge of the existence of the Priorities and Planning Committee (the "PPC"). In her evidence in chief, President Froh testified that the first time she heard of the PPC was in the April 9, 2019 letter from Mr. Chartier to her requesting access to MNO's registry that referred to the PPC. In her witness statement President Froh says that prior to Ms. Caron's election she was generally unaware of the existence and use of the PPC. She says that she first learned of the existence of the PPC in this litigation. When confronted with the inconsistency in cross-examination, she refused to admit that her witness statement is incorrect. She was asked the question many times and said she did not know when she got the April 9, 2019 letter, as if to suggest that her evidence was not inconsistent because she did not actually receive the letter in 2019. This position was inconsistent with her evidence in chief. Then she said she did not recall noticing the reference to the PPC when she got the letter. When confronted with the email dated February 22, 2018 from Mr. Chartier to her and others that refers to the PPC, President Froh refused to admit that both her evidence in chief and her witness statement were wrong and she

actually learned about the PPC in 2018. President Froh said she doesn't remember getting the email.

[96] The point is not that President Froh forgot about knowing about the PPC in 2018. Anyone could make that mistake. The point is her steadfast refusal to admit that her evidence in her witness statement that she learned about the PPC in the litigation was wrong and that her evidence in chief that she learned of the PPC when she got the April 2019 letter was also wrong because she received the email referencing the PPC in 2018. President Froh struggled to make all of her evidence fit together without admitting that she provided incorrect information in her witness statement. Doing so undermined her credibility.

[97] At times, President Froh refused to admit the obvious. One example relates to her evidence on the validity of the GA's probation resolution and one year condition for MNO to comply. In December 2018 President Froh accepted that the probation resolution was valid. In July 2019 she said it was invalid because it was contrary to the By-Laws. In late 2019 and 2020 she took the position that it was valid and the MNC should comply with it. When asked, President Froh denied that her changing position on the validity of the resolution reflects her political interests at various times.

[98] At times President Froh provided explanations that were not logical. For example, at trial she said that the reason that the MNO refused to comply with the GA resolution concerning the review of MNO's citizens registry was that the MNO was already conducting its own external review. I accept that the MNO may have been conducting its own review, but that review was not likely the reason for the MNO's refusal. If the external review were the true reason for the refusal to comply, the MNO surely would have said that at a BOG meeting or in the correspondence on the issue of the MNO's non-compliance with the GA resolution, or it would have been recorded in the minutes of the November 28, 2018 GA where President Froh says she raised it. The reason why MNO refused to comply with the GA resolution is not an issue to be decided in this case, but President Froh's evidence on this point raises concerns about her credibility.

[99] Ms. Caron's evidence was not very helpful. She had very limited involvement at the material times (i.e. 2017 to 2021), her memory was poor and she was impeached several times with inconsistencies from her discovery evidence.

[100] Overall, I found Mr. Chartier, President Chartrand and Ms. Watteyne's evidence more credible and reliable.

[101] I found President Chartrand to be an honest, straightforward, and sincere witness. He readily admitted when he was wrong and when he explained why he made an error, his explanation made sense.

[102] I found Mr. Chartier to be an honest, reliable and genuine witnesses.

[103] While at times Mr. Chartier and President Chartrand tended to give long answers, they were generally responsive to questions and often, the background information and explanations they provided were helpful and relevant. At times their responses were defensive or argumentative,

but this generally occurred when they were insulted by the questions. It is not entirely surprising that they were defensive, angry or hurt, given that the Plaintiff's position is that they are liars and they have been accused of having "stolen" from the MNC and betraying the MNC and the Métis Nation.

[104] Unlike the other main witnesses, Ms. Watteyne is not a politician and is removed from the political dispute which gave rise to the events leading to this litigation. Ms. Watteyne was a straightforward, credible and reliable witness. She answered questions directly and her answers were logical.

[105] The evidence of each of Mr. Chartier, President Chartrand and Ms. Watteyne was internally consistent, consistent with each other, consistent with the evidence read in by the Plaintiff (i.e. portions of the discovery evidence of the Consultants) and the discovery evidence of Dr. Russell which I allowed to be read in pursuant to r. 31.11. None of these three witnesses were impeached during their cross-examinations with any of their discovery evidence. Most importantly, the evidence of these three witnesses was consistent with the contemporaneous documents including minutes of BOG and GA meetings, and various contracts and agreements.

[106] In its closing submissions, the Plaintiff submits that President Chartrand and Mr. Chartier's trial evidence is inconsistent with certain evidence they gave at discovery which was read in as part of the Plaintiff's case but not put to them in cross-examination. Their discovery evidence cannot be used to impeach their credibility because they were not given an opportunity to explain any apparent discrepancies.

[107] Sections 20 of the *Evidence Act*, R.S.O. 1990, c. E.23 requires that prior inconsistent statements be put to the witness before their introduction into evidence. A party may read in evidence from the opposing party's discovery but not for the purpose of impeachment without complying with the *Evidence Act*: *Chandra v. CBC*, 2015 ONSC 8140 at para. 3; citing Watson and McGowan, *Rules of Civil Procedure*, Rule 31.11(2).

[108] The Plaintiff made extensive submissions on the demeanor of the Defendants and Ms. Watteyne. As set out above, demeanor is of limited value in assessing credibility. Also, the Defendants' and Ms. Watteyne's demeanor must be evaluated in the context of the Plaintiff accusing them of betraying the Métis Nation and calling them liars.

[109] The Plaintiff asks that I draw general adverse inferences that the evidence of the Consultants, Glorian Chartrand and Francis Poulin would not be helpful to all of the Defendants' cases because of their failure to call these people as witnesses at trial. The Plaintiff submits that their silence is "deafening".

[110] When a party fails to call a material witness, a court has the discretion to draw an inference that their testimony would have been unfavorable to (or at least, would not support) that party. In exercising that discretion, a court may consider various factors, including: (i) whether the witness has material evidence to give at trial; (ii) whether the witness is best placed to provide, or the only person who can provide, the evidence; (iii) whether the witness is available to both parties equally; and (iv) whether there is a legitimate explanation for the decision to not call a witness: *Canadian*

National Railway Company v. Holmes, 2022 ONSC 1682, 77 E.T.R. (4th) 167, at paras. 215 and 218; *Parris v Laidley*, 2012 ONCA 755, at para. 2.

[111] In view of the broad disclosure obligations under the rules, the circumstances in which adverse inferences may be drawn from the failure to call a witness are rare and made only with the greatest of caution: *Bishop-Gittens v. Lim*, 2015 ONSC 3971, 75 C.P.C. (7th) 121, at para. 24, citing *R. v. Ogunsakin*, 2006 ONCJ 117.

[112] I decline to draw the requested adverse inferences. While the Consultants, Glorian Chartrand and Francis Poulin may have been able to provide relevant evidence, they were not the only witnesses who could provide the evidence on any of the various issues. The Plaintiff read in extensive portions of the discovery evidence of the Consultants and therefore I had the benefit of those portions of their evidence which the Plaintiff felt was helpful to its case. The Plaintiff could have called any of the Consultants, Glorian Chartrand and/or Mr. Poulin as witnesses but chose not to do so.

BACKGROUND

[113] In order to provide context for the issues in this case, some background is necessary. I will set out 1) some of the history of the Métis people, 2) the role and organization of the MNC and 3) the significance of the Métis Nation Accord. I will also address the political dispute among the Governing Members concerning the identity issue and the Tri-Council's allegations of financial impropriety and calls for transparency as this context is necessary to understand the case.

The Métis People

[114] The Métis are an Aboriginal people of Canada whose rights are recognized and affirmed by section 35. They are a distinct Indigenous people with a unique history, culture, language, way of life and self-government.

[115] The Métis came from and settled across the historic northwest which is a geographic territory comprising primarily of the provinces of Manitoba, Saskatchewan, and Alberta, and includes contiguous parts of Ontario, British Columbia, the Northwest Territories, and the United States of America (the "Historic Métis Nation Homeland") prior to Canada's westward expansion following Confederation.

[116] The "Historic Métis Nation" is the collective of the Métis people who emerged from the Historic Métis Nation Homeland.

[117] The Red River Métis, also known as the Manitoba Métis, have deep ties to the Red River Settlement, which was located where Winnipeg is today. The Red River Settlement was the birthplace of the Red River Métis.

[118] The Métis have fought for hundreds of years to preserve their identity and autonomy. The story of Louis Riel is well known, and I will not re-tell it here.

[119] After the Battle of Batoche in 1885, attempts were made to disappear the Métis people from Canadian history. John A. Macdonald said: "There will be no such thing as a Métis or a Half-Breed." Despite this, the Métis people remained united, continued to gather, kept their music, their food, their art and their culture.

[120] After World War II the Métis veterans returned from war and reunited the voice of the Métis people. At this time, the Métis' fight for recognition, self-government and identity took on a new dimension, in the legislature and the court room.

[121] The history of the Métis people is marked by the sacrifices and struggles of the ancestors of the Historic Métis Homeland who fought and died to protect the Métis peoples' place in Confederation. To Mr. Chartier and President Chartrand, the identity of the Métis peoples is inextricably linked to their ancestors of the west.

The MNC

[122] At the core of this case is a fundamental disagreement about the nature of the MNC and how it functioned. The Plaintiff submits that the BOG had exclusive authority over the operation and management of the MNC and that Mr. Chartier, President Chartrand, and others could not act on behalf of the MNC without approval from the BOG. The Plaintiff relies on article 7 of the By-Laws, which states that the BOG "shall manage the business and affairs of the Association". The Defendants submit the BOG did not have exclusive authority over the MNC. They say that the President and Minister of Finance had authority to make the impugned decisions and enter into the impugned transactions without BOG approval.

[123] As set out above, the parties view the MNC differently. The Plaintiffs sees the MNC as a corporation while the Defendants see it as a government. What is not disputed, is how the MNC came to be and its basic organizational structure.

[124] The MNC was initially formed in 1983 by three Founding Members: the MMF; the Métis Association of Alberta (later the MNA); and the Association of Métis and Non-Status Indians of Saskatchewan (later the MN-S). Mr. Chartier testified that the Founding Members made a conscious decision not to incorporate under any federal or provincial law because they were acting on their inherent right of self-government on the basis of self-determination.

[125] The MNC's mandate was to represent and advocate for Métis rights and interests in Canada nationally and internationally. Subsequently the MNC expanded to include two other members, from BC and Ontario, the MNBC and MNO respectively, to account for the historic migration of the Métis from the Homeland into Ontario and BC. The five members collectively are the "Governing Members".

[126] The Founding Members of the MNC incorporated the MNC Secretariat Inc. to ensure that they would have a corporate entity to act as an administrative arm that would have standing to bring a legal action to include it at the First Ministers' Conference on Aboriginal Constitutional Matters of March 15-16, 1983.

[127] The MNC represented the Métis Nation at the 1984 and 1985 First Ministers' Conferences on Aboriginal Constitutional Matters.

[128] The MNC Secretariat Inc. was dissolved and the Métis National Council Secretariat Inc. was incorporated on December 19, 1985, as a corporation without share capital under Part II of the *Canada Corporations Act* [Repealed, 2009, c. 23, s. 313]. The Governing Members were identified as "members" of the corporation. The Board of Directors consisted of the Presidents of each of the Governing Members.

[129] The MNC represented the Métis Nation at the 1987 First Ministers' Conferences on Aboriginal Constitutional Matters and participated in the 1992 Charlottetown Accord constitutional negotiations.

[130] The MNO joined the MNC in 1994.

[131] The Governing Members, through their registries, and democratically elected governance structures at the local, regional and provincial levels are mandated and authorized to represent the citizens of the Métis Nation. The Governing Members are responsible for supporting their citizens through the delivery of programs and services and representing their rights and interests.

[132] The MMF is the only Governing Member whose administrative arm is a Defendant in this lawsuit. The MMF is the democratically elected self-government and representative body of the Red River Métis. It represents the claims, rights and interests of the hundreds of thousands of Red River Métis located inside and outside Manitoba. The MMF represents 60,000 registered citizens and employs 1,400 people.

[133] It is also not disputed that the MNC was, at all material times, mandated by the GA to represent the Métis Nation at the national and international levels to advance its rights and issues of collective importance.

[134] The MNC's organizational structure is based on representational democracy and consists of three parts: the President, the BOG and the GA, which is the parliament and democratic voice of the MNC.

[135] The GA is the central governmental organ and highest authority within the MNC. President Chartrand referred to it as the "MNC's mother" and President Froh and Ms. Poitras agreed it had "primacy" over the BOG. The GA has authority over all other bodies and individuals at the MNC and passed resolutions mandating Governors, Governing Members, the President, and others to complete tasks and take positions.

[136] The GA consists of delegates from each of the Governing Members. The delegates are elected officials in their respective provincial governments. Each of the three founding members have 15 delegates while MNBC and MNO each have 5 delegates. The GA meets annually and is responsible for setting national policies. Decisions of the GA are made by a vote of 50% plus one.

[137] The President of the MNC is the only position within the MNC that is elected by the MNC itself. The President is elected by a majority vote of the delegates of the Governing Members at a

GA. The President of the MNC is accountable to the GA which sets the President's mandate. The President is responsible for the management of the MNC and is the "Chief Spokesperson for the MNC, responsible for enhancing and promoting the cultural, social, economic and political interests of the Métis Nation in the spirit of the Riel Government."

[138] The BOG is made up of the President of the MNC and the Presidents of each of the Governing Members. The BOG carries out the directives of the GA, receives financial reports, approves annual audits, sets the dates for the GA meetings and deals with urgent matters as they arise. The President sets the dates for BOG meetings.

[139] The President is responsible for calling meetings of the BOG, including where three Governing Members (two of whom must be Founding Members) request a BOG meeting in writing.

[140] The BOG is responsible for calling meetings of the GA at least every 12 to 18 months.

[141] The BOG is responsible for setting the date for the election of the President at a GA within the second or third year of the President's term.

[142] At the material times, the MNC maintained an office in Ottawa with a staff of about 10-12 employees. The MNC received funding from Canada for various programs and initiatives in support of the Métis Nation.

The Métis Nation Accord

[143] The impugned decisions giving rise to this litigation were made in 2019, 2020 and 2021. In order to properly assess those decisions, one must understand that 2017-2019 was a critical period for the Métis Nation in its quest for recognition of its inherent right to self-government.

[144] On April 13, 2017, the MNC, each of the Governing Members and Canada signed the Canada-Métis Nation Accord (the "Accord"). The Accord was a historic development and product of years of advocacy by the MNC and specifically Mr. Chartier and President Chartrand.

[145] The Accord affirmed the distinct roles and functions of the MNC and the Governing Members. The Preamble confirmed the role of the MNC was "to represent the Métis Nation at the national and international levels to advance issues of collective importance." The Preamble described the Governing Members as representing Métis Nation citizens, including "dealing with collectively held Métis rights, interests and outstanding claims against the Crown."

[146] In the Accord, Canada recognized the Métis inherent right to self-government and self-determination and committed to a nation-to-nation, government-to-government relationship through establishing the PBM process for Canada and the Métis Nation to jointly establish and identify priorities. The MNC secured breakthrough, billion-dollar funding from Canada to the Métis governments to advance essential policy priorities requiring service and program delivery to the Métis Nation to close the socio-economic gap between Métis citizens and other Canadians.

[147] The PBM was a structured process setting out how Canada and the Métis Nation would work together to set priorities and develop policy in specific areas, including employment and training, housing, homelessness, early learning and childcare, education, child and family services, and health. The PBM process involved semi-annual meetings between elected officials from Canada and the Métis Nation, and more frequent quarterly meetings between "senior officials" on both sides (i.e., various assistant deputy ministers from Canada as well as consultants and executive directors from the MNC and its Governing Members).

[148] The Accord called for: (a) the establishment of Terms of Reference; (b) the formation of joint working groups; (c) quarterly meetings of relevant Assistant Deputy Ministers from Canada and senior officials from the MNC and the Governing Members; (d) bi-annual meetings between the Minister of Indigenous and Northern Affairs Canada, other Canadian Ministers and the MNC and Governing Members; and (e) annual meetings between the MNC, the Governing Members and the Prime Minister.

[149] The PBM started immediately and the MNC led the process for the Métis Nation as the "national voice" for the Métis Nation to negotiate with Canada. By negotiating with the MNC, Canada had the assurance that there would be consistency between Governing Members.

[150] The MNC "dream team" or "core team" of Mr. LeClair, Mr. Weinstein, Ms. Xie and Ms. Watteyne took the lead on the negotiations and meetings with the bureaucracy, identifying which priority areas to tackle and developing the rationale for the budget "asks". The negotiations on the political side were primarily handled by President Chartrand.

[151] The MNC also established working groups with the Governing Members for each of the specific priority areas. The working groups met often, both formally and informally, between meetings with Canadian officials. The working groups were led by one of the MNC consultants, usually either Mr. LeClair or Mr. Weinstein, and the MNC minister responsible for that policy area, usually President Chartrand or Mr. Chartier.

[152] The MNC core team was given an enormous amount of responsibility due to the MNC's lack of resources.

[153] The BOG Minutes from June 14-15, 2018, and October 24, 2018, illustrate the central role that the MNC played in the PBM process. The discussions for each of the PBM priorities were led almost exclusively by Mr. LeClair as chief negotiator and President Chartrand.

[154] The 2017 Federal Budget made substantial financial commitments to the Indigenous community, but it failed to provide specific allocations for the Métis Nation. The Métis did not receive any of the committed funding. They were told that without specific allocations in the budget, there was no mechanism to deliver funding to the Métis, because historically the federal government did not provide direct funding to the Métis.

[155] President Chartrand expressed his disappointment directly to Prime Minister Trudeau. The Prime Minister promised him that the error would be fixed in the next budget, and it was. The federal government's commitments were groundbreaking. The 2018 budget provided the first ever

distinctions-based funding and allocated over $1.7 billion specifically to the Métis Nation in the areas of housing, early learning and childcare, and employment skills and training.

[156] The MNC's Consultants and policy staff including Ms. Watteyne worked to implement the first year of funded priority areas and co-develop budget submissions which resulted in successful Budget 2019 announcements. The 2019 budget committed an additional $600 million to the Métis Nation in the areas of economic development, post-secondary education and governance, and support for Métis WWII veterans.

[157] By 2018-2019, the MNC had, through the work of its key consultants and staff paved the way for groundbreaking investments by Canada into the development and advancement of the Métis Nation. The MNC team took the lead in working with Canadian officials to prepare Sub-Accords.

[158] In 2018 and 2019 the following Sub-Accords were signed:

1) June 15, 2028: Skills and Employment Training worth approximately $625 million over 10 years.

2) July 19, 2018: Housing worth $500 million over 10 years.

3) March 6, 2019: Early Learning and Childcare worth approximately $450.7 million over 10 years.

4) June 10, 2019: Post-Secondary Education worth approximately $362 million over 10 years plus $40 million ongoing.

5) June 13, 2019: Homelessness worth approximately $43 million over 10 years.

6) June 13, 2019: Interim Governance worth approximately $187 million.

7) June 13, 2019: Economic Development worth approximately $50 million over 10 years.

8) June 13, 2019: Métis Veterans Sub-Accord worth $30 million.

[159] The Métis Nation had never before received this level of funding from the government. The multi-year funding gave the Métis governments long-term certainty to plan for the future. Canada agreed that the Governing Members would have discretion over the development, management and delivery of the programs for each area. The Accord and Sub-Accords were an important acknowledgement by Canada of the Métis right to self-government and self-determination and provided funding that has impacted the lives of tens of thousands of people.

[160] The PBM process also resulted in unprecedented funding for the MNC itself.

[161] When President Chartrand first joined the MNC BOG in 1997, it had approximately ten employees. It received limited year-to-year funding from the federal government, and it was subject to onerous use and reporting restrictions.

[162] Over the years, after Mr. Chartier was elected President and President Chartrand was appointed Vice-President and Minister of Finance, the MNC was able to secure additional funding, as well as some multi-year funding commitments with added flexibility and discretion. In 2016, the MNC had current assets listed at $799,599 with current liabilities of approximately $2.8 million and revenue of approximately $3.4 million.

[163] The year-to-year funding model was the main reason why the MNC relied heavily on consultants; it was difficult to hire permanent staff when few qualified people were willing to take on uncertain employment.

[164] The PBM process was a “game-changer” for the MNC because it received 10% of the Governance funding which was an escalating amount through to the 2021-22 fiscal year and then an ongoing minimum commitment of $4.125 million per year, in perpetuity. Also, this funding was classified “FLEX” funding meaning that the MNC had broad discretion over how to use the funding for its operations.

[165] President Chartrand also negotiated for the MNC 1% of the annual funding from the skills and employment training, post-secondary education and early learning and childcare funding to support the MNC’s responsibilities for national coordination, research and policy development.

[166] Overall, Mr. Chartier and President Chartrand secured over $5 million per year in funding for the MNC. This funding continues to the present and has put the MNC in a strong financial position as demonstrated by its financial statements. The MNC is in its strongest financial position ever with almost $22 million in cash as of March 1, 2024, and a yearly revenue of approximately $19.5 million.

[167] After the funding commitments in the Federal budgets were made and the Sub-Accords were signed, they had to be implemented through binding Contribution Agreements with each Governing Member. That process required the MNC leadership to take various steps to advance the funding and policy commitments to the Métis Nation, notwithstanding any internal conflicts within the MNC.

[168] Ms. Watteyne described that work as including a “ten step process” that would involve research, policy conferences and forums, working groups, and business plans. All the while there continued to be engagement with MNC’s federal counterparts, sometimes bilaterally (i.e. between the MNC and federal officials) and sometimes in the context of senior officials’ meetings (i.e. with the involvement of senior officials from Governing Members).

[169] Each of the Sub-Accords provided that the Governing Members (not the MNC) were responsible for developing, managing and delivering the programs and services contemplated by the funding commitment.

[170] Several of the Sub-Accords also provided that Canada would enter into separate agreements with the MNC “to support national coordination, research and policy development”. In other words, although the funding was provided directly to the Governing Members, the MNC retained an important function consistent with its role to represent the Métis Nation nationally.

[171] The MNC team also worked with Canada to develop framework Contribution Agreements which could be subsequently modified for each Governing Member, as needed. This ensured that there was a baseline level of consistency between the agreements with each Governing Member.

[172] While the 2018 and 2019 budgets were being implemented, President Chartrand and the MNC team turned their attention to the 2020 budget. Canada had not yet come to the table on several key priority areas, the most significant being health.

[173] At the same time that the Métis Nation was making historic gains with Canada, an internal conflict was occurring. For many years there has been a political dispute concerning the identification and recognition of citizens of the Métis Nation. The definition of who is a Métis person strikes at the very heart of Métis identity, nationhood and culture. The core dispute was between Mr. Chartier, President Chartrand and the MMF on the one side, and the MNO and the MNA on the other side. The MN-S and the MNBC took different sides at different times for various reasons.

The Political Dispute over the Identity Issue

[174] As set out above, in 2017-2019 while the Métis nation was making historic gains with Canada signing the Accord and Sub-Accords, the internal dispute concerning the identity issue was coming to a head.

[175] Mr. Chartier and President Chartrand believe that the Métis people face a threat of cultural dilution in the form of claims by those with no connection to the Métis Homeland that they are also Métis and should have the benefits of being Métis, including the significant financial benefits secured for the Métis Nation by the MNC through the PBM. Mr. Chartier and President Chartrand say that MNO's actions in seeking to unilaterally expand their citizenship and the definition of Métis is an example of this new threat.

[176] The Plaintiff submits that the MNO was wrongly suspended over the identity issue and from 2019 to 2021 the MNA, MN-S and MNO were legitimately calling for transparency and accountability in the face of serious allegations of financial impropriety against the Defendants.

[177] Fortunately, I do not need to decide who is or is not a Métis person or who is right in the political dispute over the identity issues in order to decide the issues before me. However, it is necessary to understand the political dispute and related issues in order to assess the impugned decisions and transactions.

[178] On September 27, 2002, the GA passed a resolution adopting the following as the National Definition of Métis:

> "Métis" means a person who self-identifies as Métis, is of historic Métis Nation Ancestry, is distinct from other Aboriginal Peoples and is accepted by the Métis Nation.

[179] Also at the September 27, 2002 GA, the following defined terms were adopted for the National Definition:

> "Historic Métis Nation" means the Aboriginal people then known as Métis or Half-Breeds who resided in Historic Métis Nation Homeland;
>
> "Historic Métis Nation Homeland" means the area of land in west central North America used and occupied as the traditional territory of the Métis or Half-Breeds as they were then known;
>
> "Métis Nation" means the Aboriginal people descended from the Historic Métis Nation, which is now comprised of all Métis Nation citizens and is one of the "Aboriginal peoples of Canada" within s.35 of the Constitution Act of 1982;
>
> "Distinct from other Aboriginal Peoples" means distinct for cultural and nationhood purposes. (the "National definition").

[180] In 2002, there was no dispute about the National Definition or the required connection to the Historic Métis Nation Homeland. The Founding Members make up the vast majority of the Historic Métis Nation Homeland.

[181] The MNC required all of the Governing Members to adopt the National Definition into their constitutions and apply it to their citizenship registries. Although all other Governing Members complied with this requirement, the MNC faced continuing issues with MNO's registry practices. The MNO registered individuals as MNO citizens who the Defendants allege had no connection to the Historic Métis Nation Homeland.

[182] In 2013, the GA passed a resolution clarifying the definition of the Historic Métis Nation Homeland. The resolution confirmed that the term "west central North America" in the 2002 definition of Métis means the "historic Northwest". The primary purpose of the resolution was to address attempts by the MNO to stretch the existing definition to include individuals with no connection to the Historic Métis Nation Homeland.

[183] On June 7, 2015, the GA unanimously adopted a resolution ratifying a citizenship registration standard developed in conjunction with the Canadian Standards Association and requiring that all Métis Nation citizens meet the National Definition of Métis with no allowance for "grandfathering" i.e., regardless of their prior registration. The "no grandfathering" provision was aimed at the MNO. At the time, the MNO, unlike the other Governing Members, had failed to re-register its citizens to ensure that they all met the National Definition.

[184] By 2017 MNO was still "grandfathering" and on July 20, 2017 the GA adopted a resolution re-affirming the prohibition on grandfathering. The resolution passed 35-20. It appears that the MMF and MN-S delegates voted in favour and MNA and MNO delegates voted against.

[185] On August 17, 2017, the MNO announced the identification of six new[8] Historic Métis regional communities in Ontario. These six communities were well outside of the Historic Métis Nation Homeland. One was on the Mattawa/Ottawa river on the Quebec border.

[186] From President Chartrand's perspective the announcement was a shock. Only one month before MNO's announcement, the GA resolution directed the MNO to comply with the National Definition. MNO had never objected to the GA's jurisdiction over the definition of who is Métis. Rather than complying, the MNO ignored the GA's resolution and decided for themselves who is Métis.

[187] On December 13, 2017, at a special sitting to address the MNO announcement, the GA adopted a resolution acknowledging that the MNO had engaged in grandfathering, acknowledging the announcement of MNO's recognition of the six new Métis regional communities, and mandating Mr. Chartier to conduct an examination into the matter and table a report at the next GA. The debate on the resolution was "heated". The MMF, the MNA, the MN-S and MNBC had all re-registered their citizens and removed non-compliant individuals and the MNO was still grandfathering and now expanding the Métis Nation contrary to the National Definition.

[188] On March 8-9, 2018, there was a meeting of the MNC Métis Rights Panel (the "Panel") where the Panel recommended that a panel of experts be constituted. The experts were to be academics with expertise related to the history of Métis lands and genealogy, coupled with a legal perspective, and were to inform and advise the Panel on the geographic homeland boundary of the Métis Nation. The members of the panel of experts were to be mutually agreed upon by all Governing Members. The names of potential candidates were to be submitted to Mr. Chartier by March 16, 2018.

[189] At the July 18-19, 2018, GA President Chartier reminded the GA delegates that he had not received any names of potential candidates for the panel of experts. President Chartier advised that if anyone has anything to contribute to the report, it would be welcomed.

[190] Prior to presenting his report to the GA, Mr. Chartier reviewed the executive summary and key findings with the BOG on November 27, 2018. His report included recommendations that the GA adopt a Homeland Map and suspend the MNO from participation in the government of the Métis Nation until MNO complied with conditions for re-admission which included participating in a review of its members registry to be conducted by a BOG committee.

[191] At the November 28, 2018, Special Sitting of the GA, Mr. Chartier presented his report. President Froh testified that she spoke extensively at the meeting and outlined MNO's position.

[192] On November 28, 2018, the GA passed a resolution adopting Mr. Chartier's report and the Homeland Map which included only one of the communities recognized by the MNO:

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[8] These six additional communities were "new" in the sense that they had not been previously recognized.

[193] The GA also passed a resolution placing the MNO on probation for one year to give it time to meet certain conditions to comply with the National Definition, including organizing the review of its registry rather than suspending MNO as Mr. Chartier recommended. President Chartrand testified that there was strong support for immediate suspension of the MNO but that there was also concern for legitimate Métis Nation citizens living in Ontario who would be denied representation at the national level if the MNO were suspended. Therefore, the GA gave MNO one last chance to comply with the National Definition.

[194] The resolution says: "Whereas the General Assembly is prepared to entertain a period before the suspension becomes effective" and placed the MNO "on probation for one year while it meets the conditions listed below failing which the General Assembly will revisit this matter at the conclusion of the probation period and decide on further action." The resolution was passed with a vote of 31 for and 24 against. It appears that the MN-S voted with MMF in favour of the resolution.

[195] In October 2018, the MN-S and the MMF held a joint summit on Métis identity and signed the Regina Declaration which President Chartrand understood to mean that MN-S would support pushing back on MNO's attempts to expand the Métis Nation.

[196] In January 2019, Mr. Chartier asked President Froh to confirm that the MNO would provide the MNC access to the MNO's registry and President Froh refused. In April 2019, Mr. Chartier repeated his request for access to the MNO's registry.

[197] On May 6, 2019, President Chartrand sent a letter on behalf of the MMF to Mr. Chartier, stating that the MNO had triggered the conditions for its suspension from the MNC. The same day Mr. Chartier sent a letter to the BOG advising that the MNO could not participate in collective decision making at the MNC and that the MNO was suspended from the MNC. Even though one year from the date of the MNO's probation had not passed, Mr. Chartier said it was clear to him that the MNO would not comply with the probation terms.

[198] The Plaintiff suggests that Mr. Chartier breached his duties by suspending the MNO and refusing to hold BOG meetings with it in attendance. It says that he did so in order to affect the

scorched earth policy and push forward the impugned transactions. The evidence does not support this theory.

[199] Mr. Chartier suspended the MNO because he had a good faith, deeply held belief that allowing the MNO to participate in the decision-making processes of the MNC would be harmful to the Métis Nation. He believed that the MNO's refusal to comply with the National Definition and properly register its citizens threatened to revert the MNC into a pan-Indigenous organization and undermine the progress the MNC had made in nation re-building. As MNC's President, Mr. Chartier felt he had a duty to enforce and uphold the will of the GA. He believed that suspending the MNO was consistent with that mandate, and that allowing it to violate the will of the GA would be a breach of his duties to the Métis Nation.

[200] Disagreements among the MNC's Governing Members on the application of the National Definition, ultimately led to the creation of the "Tri-Council" – comprised of MN-S, MNA and MNO in July 2019. The Tri-Council members wanted to depart from the National Definition whereas the MMF, MNBC, and the executive leadership of the MNC (Mr. Chartier and President Chartrand) insisted that the MNO comply with the GA resolutions concerning the National Definition.

[201] There was a standstill between 2019 and 2021 with the Tri-Council demanding a BOG meeting with MNO present and Mr. Chartier trying to schedule a BOG meeting with all members except MNO. Mr. Chartier and President Chartrand called for BOG meetings, but MNA and MNS refused to attend without MNO.

[202] During the standstill, the Tri-Council engaged in a public letter writing campaign alleging that there was a complete lack of accountability by the MNC and financial impropriety. They challenged Mr. Chartier and President Chartrand's authority and their personal integrity and questioned the legitimacy of the MNC. They disputed the legitimacy of the MNO's suspension. Some of the contents of these letters were also contained in press releases issued by the Tri-Council.

[203] On August 9, 2019, the Tri-Council first wrote to Mr. Chartier calling for a BOG meeting with MNO present, to address MNO's suspension.

[204] Over the next six months, the Tri-Council wrote letters to members of the federal government and accused the MNC leadership of financial mismanagement and a lack of transparency. For example, on January 25, 2020, the Tri-Council wrote to Minister Carolyn Bennett asking that all future funding relating to programs and services for Métis citizens go directly to the Governing Members and not to the MNC. In response, President Chartrand wrote to Presidents Poitras (MNA) and McCallum (MNS) raising concerns about their letters to Canadian Government Ministers and the impact on Métis people for the 2020 budget.

[205] At the MMF's September 2019 General Assembly, the MMF General Assembly passed a resolution entitled "Authorization for Manitoba Métis Federation to Withdraw from the Métis National Council". The resolution provided that President Chartrand was to continue to take all reasonable steps to ensure that the MNO complies with the National Definition. It authorized him

to withdraw from the MNC if he determined that MNO refused to cooperate and comply and continued to grant citizenship to individuals who do not meet the National Definition and/or continued to receive support from MNA and MNS which permitted MNO to do so, and/or the MNC was unable to protect the integrity of the Métis Nation identity and citizenship and MMF withdrawal was the reasonable course of action.

[206] President Chartrand testified that he held out hope until the very end (i.e., September 2021) that MN-S would stop supporting the Tri-Council.

[207] After Mr. Chartier suspended the MNO on May 6, 2019, Mr. Chartier wrote to the GA on November 6, 2019, recommending the next GA be scheduled for April 28 and 29, 2020. He also tried to schedule sittings of the GA on July 27-29, 2020, and August 15-16, 2020.

[208] On January 20, 2020, Mr. Chartier wrote to President Froh and confirmed the one-year probationary period provided for if the November 28, 2018 probation resolution had expired.

[209] In February 2020, President Chartrand, as Vice President of the MNC, wrote to the GA delegates announcing a conference to be held on March 9-10, 2020 in Saskatoon to discuss the identity issue which was causing the political dispute. The Tri-Council objected, taking the position that a GA could only be scheduled at a BOG meeting.

[210] On January 25, 2020, and again on March 10, 2020, the Tri-Council wrote to Minister Bennett again accusing the MNC of a lack of transparency and accountability, saying it did not act for the Tri-Council in the negotiation of the MNC 2020 budget, and requesting that funding to the MNC be frozen.

[211] In the March 10, 2020 correspondence, the Tri-Council referenced the two-signature requirement in Article 21 of the By-Laws and said that the Tri-Council could not be held responsible for the mismanagement of any funds provided to the MNC. The Tri-Council made no reference to the fact that the two-signature requirement had not been followed for many years, if ever. This issue is canvassed more fully under the heading “The 2003 By-Laws-Alleged Two Signature Requirement”.

[212] Ms. Poitras testified that they sent the March 10, 2020 letter because the Tri-Council had no other options. I find it very curious that Ms. Poitras would think there was “no option” but to make that serious allegation when she knew the Ernst and Young audit report was well underway and in fact was released the following day.

[213] At trial, Ms. Poitras also suggested that the request that Minister Bennett negotiate directly with the Tri-Council was related to their self-government agreements. This is not what the letter says or implies. While the letter does reference that Canada had recognized the Tri-Council members as Métis governments, the letter references only “the MNC’s complete lack of accountability…” as the justification for the requests to freeze funding and negotiate directly with the Tri-Council.

[214] On March 11, 2020, Mr. Chartier wrote to the Presidents of MNA, MMF, MNBC, and MNS to convene a Special Sitting of the GA to address the role of the MNO in the MNC’s

governance structure and find a path forward. The Tri-Council refused to attend and continued writing public letters attacking the MNC.

[215] On March 12, 2020, President Chartrand wrote to all of the Presidents (including President Froh) inviting them to participate in an urgent meeting to discuss the development of a COVID - 19 strategy for the Métis Nation. The Tri-Council did not respond but two days later issued a press release criticizing the MNC for its failure to hold a "sanctioned" BOG meeting or a GA.

[216] Mr. Chartier sent notice of two BOG meetings (without the MNO) in April and June 2020 to instigate a GA. Mr. Chartier specifically said that attendance at, or statements made during the meeting would be without prejudice to any positions taken in the future regarding MNO's suspension. The Tri-Council refused to attend and continued writing its public letters attacking the MNC.

[217] One example of the letters sent by the Tri-Council includes a May 11, 2020 letter to Canada regarding COVID-19 funding support from Canada which stated: "the MNC is currently not working with our governments and we are operating in an information vacuum" without mentioning that the Tri-Council had not responded to President Chartrand's request for an urgent meeting to discuss a COVID-19 strategy. Another example includes a May 21, 2020 letter to Canada asking that the Tri-Council members be removed from the PBM process with the MNC, and that Canada establish a relationship directly with them. This letter says that the Tri-Council has "no knowledge, input, influence or control over the spending of millions of dollars that are transferred to the MNC for the benefit of our Métis Governments". The letter does not mention Mr. Chartier's repeated attempts to have a BOG meeting or GA which the Tri-Council refused to attend.

[218] On June 9, 2020, President Chartrand invited the Tri-Council, including President Froh, to an informal meeting of the MNC and the Tri-Council leaders to "look at matters of mutual interest and benefit without prejudice to our respective position on the MNO status within the MNC". The Tri-Council refused to attend.

[219] In November 2020, the Tri-Council wrote further letters to Canada seeking its own direct relationship with Canada and trying to convey that the MNC was ineffective, dysfunctional, and did not have a mandate to represent the Métis Nation. They also wrote a disparaging letter to Mr. Chartier, President Chartrand, the President of MNBC and copied Canada.

[220] On November 17, 2020, Mr. Chartier wrote to the Governors seeking to hold a BOG meeting to set the date for a GA where an election for the MNC President would be held. Again, MNA and MN-S refused to attend, making further attacks on the MNC.

[221] Mr. Chartier's term as President had expired in April 2020 but an election could not be held because a GA could not be scheduled without a BOG and a BOG was impossible because of the stalemate.

[222] The By-laws do not "automatically" vacate the President's position except in very narrow circumstances, which never applied. Article 8(b)(vii) states:

8(b)(vii) The Office of the President shall be automatically vacated:

(1) upon death; or

(2) where the President resigns.

[223] In the past, where the election for the MNC President was not called before the expiry of Mr. Chartier's three-year term as MNC's President, the BOG passed a resolution that he remain on as MNC President beyond his three-year term. Doing so during the stalemate was also obviously impossible as there were no BOG meetings in 2020 or 2021 until September 30, 2021. The Tri-Council challenged Chartier's ongoing authority as MNC's President in their correspondence after April 2020 even though they were refusing to attend BOG meetings and saying there could be no GA without a BOG meeting.

[224] On December 2, 2020, Mr. Chartier wrote to the Governors including MNO, inviting them to an emergency briefing with Canada on the COVID-19 vaccine plans and urging them to set aside their political differences in order to address the pressing health and economic threat caused by the pandemic. The Tri-Council did not attend.

[225] I do not find that Mr. Chartier breached his fiduciary duties by failing to call BOG meetings as alleged by the Plaintiff in its closing submissions. There is no evidence to support the Plaintiff's allegation that Mr. Chartier refused to hold BOG meetings because he wanted to execute a "secret plan" to harm the MNC. The Plaintiff blames the Defendants entirely for the lack of BOG meetings and attributes no blame to the Tri-Council. Mr. Chartier tried repeatedly to hold BOG meetings, but without the suspended MNO. The MNA and MNS refused to participate, even when Mr. Chartier proposed to hold the meetings without prejudice to the MNO issue. In the face of this stalemate, holding a BOG meeting required one side of the dispute to relent. Neither was willing to do so. This was the reason the BOG did not meet – not because Mr. Chartier and President Chartrand were trying to advance a secret agenda.

[226] The MNC had to keep operating in the midst of this stalemate, particularly in view of the opportunity presented by the ongoing PBM process. Mr. Chartier's decision to continue leading the MNC in the absence of BOG meetings was not motivated by dishonesty, bad faith or self-interest. To the contrary, it was an entirely reasonable decision made in unusual and difficult circumstances. There was work to be done, and it was in the best interest of the MNC and the Métis Nation that the work continued.

The Court Applications

[227] In the spring of 2021 three court applications were brought:

1) The April 8, 2021 Application by MNO and President Froh to declare MNO's suspension unlawful and grant MNO full participation rights in MNC's governance, and taking the position that the MNC is a corporation:

2) The April 21, 2021 Application by MN-S to remove Mr. Chartier as President of the MNC and for declaration that his term ended on April 30, 2020 and he had no lawful authority as of then: and

3) The June 14, 2021 Application by the MNC seeking relief opposite to the MNO and MN-S Applications, a declaration that the MNC is the representative body of the Métis Nation, and an order scheduling a GA to revisit the MNO suspension and taking the position that the MNC is a government.

[228] Justice Belobaba heard all three Applications on July 20, 2021, and on July 21, 2020 he held that the November 2018 GA Resolution did not suspend MNO, and ordered a Special Sitting of the GA. He deferred any judicial decision regarding MNO's status to vote (including regarding the suspension) until after the GA, intending to "let the membership decide at the GA". Justice Belobaba did not determine whether the MNC was a corporation or an Indigenous government, and he did not decide whether Mr. Chartier had legal authority to suspend the MNO or to act for the MNC. Justice Belobaba did not make any interim orders to restrain the conduct of the MNC or the authority of the Defendants pending the GA. On consent, the GA was scheduled for September 29, and 30, 2021.

[229] The political dispute seeped into the day-to-day work of MNC's staff and Consultants, creating tensions and hostility between the MNC and the officials of certain Governing Members at a time when the MNC had secured unprecedented financial commitments for the Métis Nation, had a corresponding heavy workload and the COVID-19 pandemic impacted the frequency of meetings.

[230] By July 2021, the working environment at the MNC had become hostile because of the political dispute concerning the identity issue, the Tri-Council's public letter writing campaign and the litigation. The Consultants as well as the employees suffered the impact of the political dispute. As the political tension grew during the stalemate, the staff and Consultants continued to work with the Governing Members and their staff in ongoing meetings with Canada's officials and on funding and other advocacy initiatives.

[231] At times Governing Members did not show up to meetings and when they did participate their representatives were hostile towards MNC staff and Consultants and undermined the MNC in front of federal partners.

[232] Shutting down the operations of the MNC during the stalemate was not an option. The MNC had ongoing commitments under Contribution Agreements with Canada, it was continuing to negotiate with Canada for inclusion in the federal budgets and other funding and the PBM process was ongoing.

[233] In the summer and fall of 2021 a number of employees and Consultants advised that they wanted to leave the MNC because of the hostile environment created by the identity issue and litigation, fear of reprisals from a new administration controlled by the Tri-Council and/or concern that their agreements would not be honored. With the assistance of Power Law, President Chartrand negotiated and entered into minutes of settlement with each of the departing consultants

and employees. The particulars of the hostile work environment and the terminations are set out below where I address the employees and Consultants.

[234] On September 28, 2021, MMF sent a letter to the MNC notifying them of MMF's withdrawal from the MNC effective the following day. In the letter, President Chartrand said that the reason for the withdrawal was the MNO's refusal to abide by GA resolutions, the inaction of the Presidents of MNA and MN-S and the resulting adverse effect on Métis citizenship and identity.

[235] At trial President Chartrand further explained the reasons for MMF's withdrawal. He said that despite the direction from the GA to do so, the MNO had not taken any steps to address their registry issues and with the other Governing Members supporting the MNO, it was apparent that the MNO would be allowed to continue not complying with the National Definition. President Chartrand said he feared that the MNC would be transformed into a "pan-aboriginal" organization, and the MNC's purpose and organization would change. He said that, in these circumstances MMF could no longer be a part of the MNC.

[236] Everyone knew that there was a possibility that MMF could withdraw from the MNC if the identity issue with MNO was not resolved. There were many ongoing discussions about what that would mean for the Métis Nation and what would happen if MMF left the MNC.

[237] President Chartrand said that he did not submit the withdrawal letter until the last minute because, until then, he had not made up his mind to withdraw. He held out hope that the MN-S would support the MMF and agree to sanction MNO and stop their registry practices because the MN-S had signed the Regina Declaration with the MMF and previously supported the GA resolutions concerning the National Definitions and sanctioning MNO's actions. President Chartrand also explained that he was talking to some members of the MN-S's Board of Governors who were pushing hard to get the MN-S to commit to standing with the MMF on the identity issue. When he did not get confirmation from MN-S that they would support MMF's position on the identity issue, President Chartrand decided to withdraw MMF from the MNC. He said that until he made the announcement on September 28, 2021, "nobody" knew of this decision.

[238] The evidence at trial was that there was no certainty about whether the MMF would withdraw until it was actually announced on September 28, 2021. Mr. Chartier, Ms. Watteyne and Mr. Weinstein all testified that President Chartrand never told them that the MMF was withdrawing from the MNC before the September 28-29, 2021 GA. In fact, Ms. Watteyne booked rooms at the hotel for the MMF delegates.

[239] The Plaintiff submits that President Chartrand, MMF, and indeed the entire Métis Nation were aware of Justice Belobaba's direction that a meeting of the GA would take place in the coming months, "which would formally elect a new MNC President to replace Chartier (and to remove whatever control that Chartier, Chartrand, and their associates were exerting on MNC's affairs without notice to the BOG since 2019)". I do not agree. First, as Mr. Chartier said, anything can happen in politics, and he was considering a last-minute run for another term as President. President Chartrand was waiting until the very last minute to see if MN-S would get on board with

enforcing the National Definition, in which case, there would be no reason for the MMF to leave the MNC.

[240] On September 30, 2021, Cassidy Caron was elected as President of the MNC at the GA and the new administration took over. Ms. Caron testified that President Froh and Ms. Poitras approached her just before the election and told her they would support her.

[241] After her election Ms. Caron immediately retained Cassels Brock & Blackwell LLP to conduct the investigation which gave rise to this action which was commenced on January 27, 2022.

[242] After this lawsuit was commenced both the MNBC and the MN-S also withdrew from the MNC leaving only the MNA and the MNO as Governing Members.

Alleged Financial impropriety

[243] The Plaintiff submits that it had legitimate concerns about financial impropriety at the MNC. The Plaintiff says the concern regarding financial improprieties, combined with a lack of transparency during the standstill is the reason for its public letter writing campaign.

[244] The main allegation arose from the complaint of a former, disgruntled employee concerning the expenses claimed by one of the Consultants who is the employee's brother. President Chartrand said the employee threatened to "hurt us" when he left the MNC. Ms. Poitras was also concerned about $33,000 owing to the MNA not being properly recorded in the financial statements. Both Ms. Poitras and President Froh wanted information about the money paid to the Consultants. The evidence suggests that these concerns were adequately addressed.

[245] President Chartrand said that Ms. Poitras and President Froh were meeting with the disgruntled employee and writing letters, and he was concerned they were wrongly siding with the employee, so he asked the MNC's auditor to investigate the allegation concerning the expenses and the auditor did not find any issues of concern. This finding was reported to the BOG in July 2018.

[246] At the BOG meeting on July 18, 2018, President Froh and Ms. Poitras did not approve the MNC's audited financial statements for the year ending March 31, 2018, because they wanted information about the Consultants. The Plaintiff now submits that the Defendants refused to provide copies of the Consultants' agreements. The BOG minutes do not say that President Froh and Ms. Poitras asked for copies of the Consultants' agreements; rather, the minutes say that the request was for information on the "value of contracts and their details or deliverables."

[247] In response, on July 30, 2018, Ms. Watteyne sent an email to Ms. Poitras on behalf of the Minister of Finance enclosing a list of contractors and a list of all of the invoiced amounts paid in fiscal year 2017-2018 as well as a summary of the work performed. Neither Ms. Poitras nor President Froh followed up with any request for further information or for copies of the actual agreements.

[248] When asked at trial why she did not follow up, Ms. Poitras gave evidence which did not make sense. Ms. Poitras said that by that point she had "given up" on getting accurate information because of the issue with the cheque for $33,000 which happened later in November 2018.

[249] The disgruntled employee made complaints alleging financial impropriety to the RCMP and CIRNAC. CIRNAC initiated an audit with Ernst & Young LLP. There was CBC press coverage in 2019 and 2020.

[250] The Ernst & Young audit covered the time period from April 1, 2015, to March 31, 2018. President Chartrand characterized the audit as "clean". The Ernst and Young audit report dated March 11, 2020, was a trial exhibit but was not admitted for the truth of its contents, but merely to prove what the parties were told. The audit report was shared with the GA. The audit report ought to have alleviated any concerns regarding the allegations of financial impropriety:

> Based on the work completed to date we did not identify any evidence to substantiate the concerns/allegations raised regarding consulting contracts for IT services. Although, we had concerns around approximately $2.02M (102 of the 229 transactions selected for testing) in CIRNAC funding as a result of MNC's procedures, record keeping and certain relationships and payments to MNC's primary consultants we did not identify any unsupported or ineligible expenditures which would require a recovery of CIRNAC funds from MNC.

[251] Based on what they found with respect to the 102 transactions, Ernst & Young made recommendations to improve the MNC's internal controls and financial oversight and administration of CIRNAC funding. After receiving the audit Ms. Watteyne set about implementing its recommendations.

[252] On April 23, 2020, President Chartrand provided a copy of the Ernst & Young audit to MNA, MMF, MNS and MNBC.

[253] In its submissions, the Plaintiff suggests that there was something wrong with Ms. Watteyne and Mr. LeClair providing comments on the report seeking to remove some of the limitations and qualifications. There was nothing improper regarding the suggestions made. The suggestions were reasonable, and the evidence does not support the conclusion that Ms. Watteyne and Mr. Clair were trying to hide anything.

[254] The Plaintiff submits that the audit was "far from clean" because Ernst & Young made recommendations. I do not agree. The audit was clean in the sense that the investigation did not uncover any evidence to substantiate the complaint. The recommendations on how the MNC could make its procedures more robust does not undermine this conclusion. For example, Ernst and Young recommended that travel reimbursement procedures ensure that expenses were traced to specific events to allow the MNC to quantify the costs associated with each event. They also recommended updated formal written policies and procedures for approval and payment of expenses.

[255] I do not agree with the Plaintiff's suggestion that President Chartrand was not being transparent with the BOG when he reported the audit as being "clean". I also do not agree that President Chartrand's press release entitled "Federal Financial Review Clears Métis National Council of Baseless Allegations" was misleading. The report did clear the MNC of the allegations made in the complaint and President Chartrand referenced the recommendations in the press release.

[256] At trial, Ms. Poitras maintained that she was concerned about the limitations expressed in the report even when there did not appear to be a reasonable basis to do so. Ms. Poitras testified regarding her ongoing concerns:

> But I will tell you, as a finance person, I was still worried, and I am still worried today, because when we have an audit and the audit person says there is $2 million that we can't account for because we didn't have access to the records, that tells me there is something wrong.

[257] Ms. Poitras' evidence is a significant mischaracterization of the limitations in the audit report. The limitation set out in the audit was that Ernst & Young was not provided complete access to MNC's books and records; however, the MNC provided electronic copies of all documents requested and Ernst and Young agreed to accept electronic copies after having analyzed original hard copies for a subset of transactions for testing. Ernst and Young said they included this limitation only because it deviated from their standard procedure. Ms. Poitras knew this, and suggesting that there was an unaccounted for sum of $2 million mischaracterizes the findings in the audit report.

[258] It was telling that at trial, President Froh continued to refer to the disgruntled employee as a "whistleblower" even after the audit did not find evidence to substantiate the complaint and Ms. Froh had reviewed the audit report.

[259] Ms. Poitras also testified that she was concerned about financial impropriety because in November 2018 she saw that the audited financial statements showed a payment of $33,000 to the MNA when she knew that the MNA had not actually received this payment. Ms. Poitras testified that a couple of days after she raised this issue, a cheque was delivered to her.

[260] Ms. Watteyne provided a perfectly reasonable explanation. She testified that the financial statements reflected that the payment had been made because in fact the cheque had been prepared. The only reason that it had not been delivered to Ms. Poitras was that Ms. Watteyne was waiting until President Chartrand and Mr. Chartier were together in person to sign the cheque. This was done at the GA a couple of days later, once she had two people with authority to sign cheques in the same physical location. I accept Ms. Watteyne's explanation. There is no evidence, other than Ms. Poitras' suspicions, to contradict it.

[261] The Plaintiff also pointed to an issue from 2006 to 2008 with Canada concerning health funding to justify its allegations of financial impropriety. There was evidence led at trial regarding the MNC using some funding for operational purposes that had been allocated for health. President

Chartrand said that the MNC used the health money for things not authorized by the health contribution agreement, but that most of the money went to the provinces for healthcare purposes.

[262] President Chartrand explained that this use of funds occurred because operational funding which Canada has promised to provide had not yet arrived. President Chartrand explained that funding from Canada was often delayed until the fall after being promised much earlier in the year. In this instance the MNC had to repay the health funding, in part because the funding was cut off because Ms. Poitras lobbied against the health file, and also because there was a change in government. Canada acknowledged that the situation was partly its fault because of the delay in delivering funding and came to an agreement with the MNC. President Chartrand said that Canada fully understood the problem with the timing of transferring funds. Canada was not upset, and realized that a change in governments meant that funding which was to come in did not come in. President Chartrand said that Canada was doing what it had to do, but they knew they were part of the problem. President Chartrand said that the MNC had discussions about possibly not repaying Canada and disputing the repayment, but ultimately decided to not fight with Canada on the issue.

[263] The evidence does not support a finding that there was a reasonable basis for the ongoing allegations of financial impropriety.

Alleged Secrecy

[264] The Plaintiff submits that the Defendants acted in secret to hide their actions from the Tri-Council. The Plaintiff says that the PPC acted as a "shadow government" and conducted "secret meetings". I do not accept these submissions. I do not find that Mr. Chartier breached his fiduciary duties by calling and chairing meetings of the PPC during the stalemate, or that Mr. Chartrand and Ms. Watteyne breached their fiduciary duties by attending and/or participating in PPC meetings.

[265] There is no dispute that one of the PPC's responsibilities was to address urgent matters where calling a BOG meeting was not possible. There is no evidence that anyone took issue with the PPC's existence or role in assisting the President to decide issues prior to the events giving rise to this litigation. It was in the context of the stalemate that the PPC met and assisted President Chartier in making decisions which the Plaintiff now challenges. The PPC meetings included the same Presidents of Governing Members that were previously appointed by the President whose job it was to appoint them.

[266] The Plaintiff submits that the fact that the Defendants did not use the formal minute taker RainCoast to take notes of PPC meetings during the stalemate is evidence that the PPC was a shadow government. The evidence does not support a finding that it was the usual practice to use RainCoast to take notes of PPC meetings prior to the stalemate. There is evidence that RainCoast took notes on one occasion, but evidence that this occurred on one occasion falls far short of establishing a practice. I decline to infer, as the Plaintiff submits I should, that the lack of formality was by design and intended to ensure there would be no formal record and to keep the PPC meetings a secret.

[267] Had Mr. Chartier and President Chartrand actually wanted to keep their decisions and the impugned transactions secret, they would not have been calling for meetings of BOG and/or GA

with MNA and MNS and MNBC during the stalemate in March, April, June and November 2020. Each of these attempts were rejected by the Tri-Council.

[268] Even the MNO was invited to participate in some discussions; for example, with respect to the COVID-19 response and also in ongoing senior officials' meetings as part of the PBM.

[269] The Plaintiff says the Tri-Council was demanding transparency and accountability from Mr. Chartier and President Chartrand and asserting the mandate of the BOG to govern the affairs of the MNC. However, the Tri-Council was refusing to attend BOG meetings without MNO.

[270] Ms. Poitras agreed in her cross examination that she chose not to attend the BOG meetings that Mr. Chartier and President Chartrand were trying to schedule during the stalemate. She agreed that had she done so, the MNC would have had a quorum and the MNA and MN-S would have had the opportunity to ask questions and receive information about the operations of the MNC including the MVLP and MNC's dealings with Canada.

[271] The Tri-Council chose not to attend the meetings for political reasons: they took the position that the MNO's suspension was unjust, and that the MNO should attend any BOG and GA meetings. As a result, they missed the opportunity to obtain information about the operations and activities of the MNC.

[272] The Tri-Council refused to attend BOG meetings without the MNO and the Plaintiff now complains that the Defendants acted in secret. The Plaintiff submits that MNA and MNS did not accept the invitations to BOG meetings because the agendas "did not expressly include a discussion or review of MNC's financial affairs". There is no support in the record for this proposition. Neither Ms. Poitras, nor President Froh complained about the proposed agenda items. Had they attended, any of the Governors could have asked questions about MNC's finances.

[273] The conduct of the Tri-Council in refusing to attend a BOG meeting and now complaining that there were no meetings should not be condoned. Had the MNA and MN-S accepted any of Mr. Chartier's invitations to hold a BOG meeting, even without the MNO, the meeting would have had quorum, and a majority of the Governing Members would have been present and represented. The BOG could have conducted its business as usual and the MNA and MN-S, would have had the opportunity to ask any questions. The Tri-Council had multiple opportunities to attend BOG meetings, including on a "without prejudice" to its position on the MNO's suspension basis. The Plaintiff's complaints that a BOG meeting was not held are without foundation. The Tri-Council attempted to force the MNC to allow the MNO to attend a BOG meeting and was unwilling to participate under any terms other than their own. President Chartier felt bound to uphold the will of the GA. He did not capitulate and the MNC needed to continue to operate.

[274] The Plaintiff submits that the fact that Mr. Chartier did not want the Interim President Smith from MNBC on the PPC in place of Ms. Dal Col is evidence that he was using the PPC for improper purposes. I do not accept this submission. At trial, Mr. Chartier explained that in his view, Ms. Smith's appointment as Interim President was improper because there had been a coup at the MNBC and Ms. Dal Col had been improperly suspended after she was duly elected and, in his view, she remained the President of the MNBC. Regardless of whether Ms. Smith was properly

appointed or whether Ms. Dal Col was improperly suspended, it was within Mr. Chartier's purview to determine the membership of the PPC. I do not need to decide whether the PPC was properly constituted because the Defendants do not rely on the decision-making power of the PPC to say there was authorization for the impugned transactions.

[275] It was not a secret that the PPC was meeting between 2019 and 2021. Mr. Chartier referenced a PPC meeting in correspondence to President Froh on April 9, 2019. Mr. Chartier sent letters to or copied the GA in letters on November 6, 2019, September 4, 2020, and August 3, 2021, in which he references PPC meetings.

[276] There are notes of discussions regarding the impugned transactions in PCC minutes. There are documentary records of the impugned transactions which the Defendants and Ms. Watteyne left for the new administration. Had they wanted to keep their meetings and decisions secret the Defendants would not have referred to the meetings in public correspondence and would not have documented the PPC meetings and left the various signed contracts readily available to the new administration.

[277] Had Mr. Chartier and President Chartrand wanted to keep their activities secret, knowing that the finance team was aware of the impugned transactions, they would not have offered the Director of Finance Claire Laliberte (who had openly questioned some of their decisions), and the finance team, letters of assurance during the last week of September 2021 to persuade them to stay on to support the new administration. Had Ms. Watteyne wanted to keep the Defendants' activities a secret she likely would not have offered to stay on for an extra month to assist with the transition.

[278] The Defendants submit that the Tri-Council's letter writing campaign was not really about MNO's suspension, concerns about financial impropriety, and lack of accountability and secrecy. The Defendants submit that after the MNC secured hundreds of millions in committed funding for the Governing Members, and the Tri-Council members had signed self-government agreements such that they no longer needed the MNC, and used the MNO suspension as an opportunity to secure a political benefit in the form of a direct relationship with Canada.

[279] I do not need to determine the Tri-Council's true motivation for making allegations of financial impropriety after they had been adequately addressed or why they made complaints about the MNC operating in secret while refusing to attend meetings and risked jeopardizing the MNC's relationship with Canada to the detriment of the Métis Nation. I do not need to determine the Tri-Council's motivation in order to decide the issues in this case. However, understanding the environment and surrounding circumstances is important to assessing the allegations of breach of fiduciary duty in this case.

ANALYSIS

Fiduciary Duty

[280] The Plaintiff submits the Defendants and Ms. Watteyne breached their fiduciary duties by entering into the impugned transactions relating to the MVLP, the Database, the agreements with

the Consultants and employees, and the Lease because they were in a conflict, benefited from the impugned transactions, and acted outside of their authority.

[281] The Plaintiff submits that as directors or officers of the Métis National Council Secretariat Inc. (the "Corporation") the Defendants owed the usual statutory and common law fiduciary duties which directors and officers owe to corporations. These duties include duties such as; a duty to act honestly and in good faith with a view to the best interests of the Corporation, a duty to avoid using their position to gain a personal benefit, a duty to avoid conflicts of interest, a duty to disclose actual or potential conflicts, and a duty not to vote on matters where a conflict exists.

[282] The Defendants submit that they did not owe fiduciary duties because they were elected political leaders carrying out public law duties. Alternatively, if they did owe fiduciary duties, the Defendants agree that a fiduciary has a duty to act in the best interests of the person(s) or entity to whom the duty is owed. The Defendants and Ms. Watteyne submit that the nature and scope of the obligations imposed on a fiduciary vary depending on the relationship. They submit that because the MNC is an Indigenous government, they owed fiduciary duties to the citizens of the Métis Nation and a breach of fiduciary duty can only be found where there has been "self-dealing, misappropriation, or serious unsanctioned conflicts of interest", and malice and bad faith. In the further alternative, the Defendants and Ms. Watteyne submit that even if conventional corporate law applies because the Corporation is incorporated, the scope of the fiduciary duties is determined by the not-for-profit status of the corporation and the corporation's purpose as stated in its Articles of Continuance, which is to promote the rights and aspirations of the Métis people in Canada. The Defendants and Ms. Watteyne submit they did not breach their fiduciary duties because they were not in a conflict, they did not profit, and the impugned decisions were made and the impugned transactions were entered into in good faith and with a view to the best interests of the MNC and the Métis Nation.

[283] Generally, a fiduciary duty is breached where the fiduciary betrays the trust of the beneficiary: *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, [2011] 2 S.C.R. 261, at para. 22. A fiduciary relationship is made up of trust, loyalty and confidentiality and carries with it corresponding duties of loyalty, skill and competence: *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377, at p. 379.

[284] In a corporate context, the obligation of a fiduciary has been described as the fiduciary duty of loyalty and often will include the avoidance of a conflict of duty and interest; and a duty not to profit at the expense of the beneficiary: *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574, at p. 646-647.

[285] The content of the fiduciary duty is contextual: *Canadian Aero Services Ltd.* at p. 620; *The Toronto Party v. Toronto (City)*, 2013 ONCA 327, 115 O.R. (3d) 694, at para. 40.

[286] There are well-established categories of fiduciary relationships including, executor-beneficiary, solicitor-client, agent-principal, director-corporation, guardian-ward, and parent-child, where the nature of the duty is often self-evident and the scope of the duty is well established: *Elder Advocates,* at paras. 33.

[287] As set out above, the Plaintiff submits that the usual fiduciary duties of corporate directors and officers apply in this case.

[288] Directors have a fiduciary duty to act in the best interests of the corporation. In *Peoples Department Stores Inc. (Trustee of) v. Wise,* the Supreme Court of Canada described the statutory obligation to "act honestly and in good faith with a view to the best interests of the corporation" as requiring directors to avoid conflicts with the corporation, avoid abusing their position to gain personal benefit and to serve the corporation selflessly, honestly and loyally: 2004 SCC 68, [2004] 3 S.C.R. 461, at para. 35.

[289] Under the *CBCA*, a fiduciary has a duty to act honestly and in good faith with a view to the best interests of the corporation: s. 122(1). A corporate fiduciary has a duty to avoid conflicts of interest, a duty to disclose actual or potential conflicts, and not to vote on matters where a conflict exists: *Canadian Aero Services Ltd.* at p. 606-607; *CBCA,* at ss. 120(1) and s. 120(5).

[290] Both in corporate and non-corporate contexts, the content of the duty varies depending on the context: *BCE Inc. v. 1976 Debentureholders,* 2008 SCC 69, [2008] 3 S.C.R. 560, at para. 38; *Toronto Party,* at para. 40.

[291] In considering what is in the best interests of the corporation, directors may look to the interests of various stakeholders to inform their decisions. Courts should give appropriate deference to these decisions so long as they fall within a reasonable range of alternatives: *BCE,* at para. 40 and cases cited therein.

[292] Actual harm is not necessary to find a breach of a corporate fiduciary duty: *Lac Minerals Ltd,* at p. 663. Considerations of harm throughout this decision relate to the plaintiff's allegation that the Defendants and Ms. Watteyne were engaged in a scheme to destroy or cause severe harm to the MNC.

[293] In cases involving directors and officers, a breach of fiduciary duty does not require a finding of malice or bad faith. It is sufficient if there was some form of betrayal or breach of trust: Mark Ellis, *Fiduciary Duties in Canada*, (Toronto: Thomson Reuters Canada, 2025) at §20.5, citing *D'Amore v. McDonald*, [1973] 1 O.R. 845 (Ont. H.C.), aff'd [1973] 1 O.R. (2d) 370, 1973 (Ont. C.A.). See also *Boer v. Cairns*, [2003] 65 O.R. (3d) 343 (Ont. S.C.), at para. 108.

[294] The Plaintiff submits that directors are obligated to disclose "all information of importance to the corporation" and that concealing such information is a breach of fiduciary duty because secrecy is manifestly not in the best interests of the beneficiary. The Plaintiff also submits that directors who are not "transparent" or do not keep the other directors fully informed do not act in good faith. The Plaintiff relies on *Colborne Capital Corporation v. 542775 Alberta Ltd*, 1999 ABCA 14, 69 Alta. L.R. (3d) 265; *Bhadra v. Chatterjee*, 2016 ONSC 4845, 61 B.L.R. (5th) 113; *UPM-Kymmene Corp v. UPM-Kymmene Miramichi Inc.*, [2002] 214 D.L.R. (4th) 496 (Ont. S.C.); and *Midland Resources Holding Ltd v. Shtaif*, 2017 ONCA 320, 135 O.R. (3d) 481.

[295] In *Colborne*, the director signed and concealed a right of first refusal agreement from the corporation in order to ensure he received payment, and argued that his fiduciary relationship

"gave validity to his action": at paras. 87 and 180. The court said "[a] more spurious attempt to justify the unjustifiable is difficult to imagine": at para. 180. The court found that the director acted unilaterally, secretly and for improper motives and that his activities were covert: at para. 219.

[296] In *Bhadra,* two directors secretly hired an independent corporate lawyer to draft by-laws for the corporation. The court found that the manner in which the directors retained Mr. Box and instructed him was not in good faith. The court specifically found they acted in bad faith and had not been authorized by the board to act: at paras. 120, 122.

[297] *UPM-Kymmene Corp* dealt with the level of disclosure required to satisfy the statutory obligation to disclose the nature and extent of any interest a director has in a material contract with the corporation: at paras. 117-120.

[298] The disclosure required is context specific. The scope of the fiduciary duty requires a case-by case analysis: *Canadian Aero Services Ltd.,* at p. 620.

[299] While the leading case law on fiduciary duties arises in the context of for-profit corporations, the principles are applied in the context of not-for-profit and charitable organizations: *London Humane Society (Re)*, 2010 ONSC 5775, 77 B.L.R. (4th) 119, at para. 19, citing *BCE,* at paras. 36-38. See also *Cannon v. Funds for Canada Foundation*, 2012 ONSC 399, 13 C.P.C. (7th) 250, at paras. 164-165, leave to appeal ref'd [2012] 112 O.R. (3d) 641 (Div. Ct.), and *Davey v. Hill*, 2018 ONSC 5274, 40 E.T.R. (4th) 232, at para. 50.

[300] Like directors in the corporate context, directors of not-for-profit corporations owe a fiduciary duty to the corporation. They do not owe a fiduciary duty to the members of the corporation: *London Humane Society (Re)*, at paras. 19-23.

[301] In a case involving a not-for-profit corporation, it may be appropriate for the fiduciary to consider the impact of their decisions on various stakeholders: *BCE,* at paras. 38-40; *Kamloops-Cariboo Regional Immigrants Society v. Herman*, 2015 BCSC 886, 44 B.L.R. (5th) 214, at paras. 144 and 152.

[302] The nature and scope of the fiduciary duty of a not-for-profit director is necessarily different than for a director of a for-profit corporation. Not-for-profit corporations are not driven by the objectives of profit and financial gain, and the obligations of a director of a not-for-profit are necessarily informed by the stated purpose of the corporation: *The Campaign for the Inclusion of People who are Deaf and Hard of Hearing v. Canadian Hearing Society*, 2018 ONSC 5445, at para. 34; *Kamloops-Cariboo,* at para. 152.

[303] In this case, the stated corporate purpose of the Métis National Council Secretariat Inc. in its Articles of Continuance is the advancement and aspirations of the Métis people in Canada:

> Without limiting the Corporation's purposes and its rights, powers and privileges and having regard to the fact that the Metis people of Canada are recognized as a distinct people in the Constitution of Canada, the primary purpose of the Corporation shall be to determine and express the rights and aspirations of the Metis people

> of Canada both nationally and internationally as they relate to the Constitution of Canada.

[304] This purpose reflects MNC's governmental character, which is context that must be taken into account when determining the content and breach of any fiduciary duties in this case. The purpose of the MNC and the duty of its Governors is to advance the interests of the Métis Nation. The MNC's purpose is not to maximize the MNC's profit or financial position.

[305] The existence, scope and nature of a fiduciary duty owed by Métis government political officials has never been reviewed or established in Canadian law.

[306] Ad hoc fiduciary duties may arise where the relationship does not fall within a traditional category, in which case, if a fiduciary duty is found to exist, the scope of that duty is derived from the nature of the relationship: *Elder Advocates*, at para. 36.

[307] In *Elder Advocates,* at paras. 29 to 36, the court set out the test to establish a fiduciary duty, which requires the evidence to show the following:

1. an undertaking by the fiduciary to act in the best interests of the beneficiary;

2. a defined beneficiary (or class of beneficiaries) vulnerable to the fiduciary's control; and

3. the fiduciary's exercise of discretion or control can adversely affect the beneficiary's legal or substantial practical interests.

[308] Fiduciary duties generally arise in a private law context. The exercise of public law duties does not typically give rise to a fiduciary relationship because performing public law duties commands the exercise of discretion: *Toronto Party.* at para. 39, citing *Guerin v. Canada*, [1984] 2 S.C.R. 335. Imposing fiduciary duties on political actors would impair their ability to make decisions about the use of public resources because providing benefits to one group may not be in the best interests of another.

[309] Courts have been reluctant to impose fiduciary duties on the Crown. The government generally acts in the interests of all citizens but has the power to make distinctions between different groups in conferring benefits or imposing burdens and interests. Fiduciaries do not mediate between interests: they protect the beneficiary's interests. Imposing a fiduciary duty on the Crown is "inherently at odds with its duty to act in the best interests of society as a whole, and its obligation to spread limited resources among competing groups with equally valid claims to its assistance": *Elder Advocates*, at para. 44.

[310] The Crown does not owe a fiduciary duty to the public as a whole. A fiduciary duty can exist towards a particular person or group, but this is rare. "Group duties have not often been found; thus far, only the Crown's duty toward Aboriginal peoples in respect of lands held in trust for them has been recognized on a collective basis": *Elder Advocates*, at para. 50.

[311] At para. 52 in *Elder Advocates*, the court addressed the difficulty in establishing that a government power affects a legal or significant practical interest:

> Access to a benefit scheme without more will not constitute an interest capable of attracting a fiduciary duty. Although the receipt of a statutory benefit may affect a person's financial welfare, absent evidence that the legislature intended otherwise, the entitlement is a creation of public law and is subject to the government's public law obligations in the administration of the scheme.

[312] Also, the government must exercise control equivalent or analogous to direct administration of that interest before a fiduciary relationship arises:

> The type of legal control over an interest that arises from the ordinary exercise of statutory powers does not suffice. Otherwise, fiduciary obligations would arise in most day to day government functions making general action for the public good difficult or almost impossible: *Elder Advocates* at para. 53.

[313] The Plaintiff submits that the Defendants admitted, in their cross-examinations, that they owe fiduciary duties. This admission is not binding because it is an informal admission rather than formal admission, and is therefore just a piece of evidence: *Rosenberg et al v. Securtek Monitoring Solutions Inc,* 2021 MBCA 100, 465 D.L.R. (4th) 201, at para. 53.

[314] The Defendants submit that if they do owe fiduciary duties, these duties are informed by the context and fact that the MNC is an Indigenous government.

[315] Courts in British Columbia have considered the fiduciary duties applicable to First Nation governments and found breaches where there is "self-dealing, misappropriation and serious, unsanctioned conflicts of interest" *Blueberry River First Nation v. Laird*, 2020 BCSC 1615, at para. 271; *Webb v. Genaille*, 2023 BCCA 443, 82 B.C.L.R. (6th) 173, at para. 34; *Gadwa v. Joly*, 2018 FC 568, at paras. 35-41; *Gilbert v. Abbey*, [1992] B.C.W.L.D. 1783 (B.C. S.C.).

[316] *Blueberry* involved a claim for breach of fiduciary duty by a First Nation, that was the trustee of a trust for the First Nation's members, against members of two past governments of the First Nation who were also directors of the trust and the former Band administrator. The trust was set up to hold and manage $76 million that the band received from Canada with respect to a land claim. The allegations related to the transfer of $11 million from the trust to the First Nation and related entities in a number of transactions over four years.

[317] In *Blueberry* the court found that the Chief and Council, as the governing body of the First Nation, exercised the public law duties of a government: at para. 251. The Nation faced many pressing social issues which the Chief and Council were tasked to address and alleviate. The Chief and Council had to balance and prioritize some objectives over others in their financial management and discretionary decision making. The court found that "prioritizing one interest over another is a matter of policy and discretion, and is at odds with the fundamental duty of a fiduciary of undivided loyalty": at para. 261.

[318] The court found that, in the absence of personal gain from wrongdoing or misappropriation, the Council members were not acting within the structures of an undertaking of undivided loyalty in managing the First Nation's finances. Under the second branch of the test in *Elder Advocates,* the court found that a claim for breach of fiduciary duty could not succeed because it was being advanced on behalf of the First Nation as a whole and not a specific group. The court also found that the third branch of the test was not met because the interests affected were not private law interests: at paras. 264-267.

[319] In *Blueberry* the court said that normally the proper remedy for governance disputes including reconciling financial priorities with other concerns as well as political disagreements is for the electorate to resolve at the ballot box: at paras. 170 and 286.

[320] In *Louie v. Louie*, 2015 BCCA 247, 77 B.C.L.R. (5th) 73, the court found that individual Band Council members had a fiduciary duty to the band itself which they breached. Band Council members engaged in self-dealing when they received money for a road allowance and paid themselves $5,000 each as an honorarium. The Council members were in a conflict because none of the councillors abstained from voting. At para. 21, the court held that "once a conflict of interest has been shown, the onus generally shifts to the defendant to show he was acting in the best interest of the plaintiff". In *Louie,* the Band Council did not comply with s. 2(3) of the *Indian Act,* (R.S.C., 1985, c. I-5), which requires band powers to be exercised pursuant to the consent of the majority of the electors of the Band. The Band Council's actions were therefore unauthorized: at para. 25. With respect to the no-profit rule, the court said the Band Council should be held to the high standard to which other fiduciaries are held: at para 29.

[321] In *Solomon v. Alexis Creek Indian Band*, the court held that a band councillor is in a fiduciary relationship with the band as a whole: 2007 BCSC 459, at para. 59. At para. 60, the court considered the content of the fiduciary duty of a band councillor and set out the following principles:

- The fiduciary must not personally take advantage of a relationship of trust or confidence for her direct or indirect personal advantage;
- Disloyalty or dishonesty is the foundation of a breach of fiduciary duty;
- Persons doing their best in difficult circumstances are protected from the stigma of disloyalty or dishonesty;
- The nature of the fiduciary obligation determines the nature of the breach;
- Failure to obtain the best result does not constitute breach unless there is also the stench of dishonesty or disloyalty; and
- Simple failure to act in the best interests of the band may not be sufficient to found a breach of fiduciary duty. (Citations omitted).

[322] The Plaintiff submits that I need not determine whether the MNC is or is not an Indigenous Government because the *Canada Not-for profit Corporations Act*, SC 2009, c. 23 ("CNCA") still applies. The Plaintiff relies on *Blake v. Kyikavichik and Gwich'in Tribal Council*, 2025 NWTSC 2, where the Tribunal Council argued against the strict application of corporate law principles because the Tribunal Council is first an "Indigenous Nation". The court in *Blake* accepted that the

Tribunal Council was only incorporated under the CNCA in order to be recognized as a legal entity in Canadian law, but refused to ignore the legal regime under which it was incorporated.

[323] *Blake* is not of assistance here because it did not concern the existence, scope or content of a fiduciary duty owed by political leaders of a national government or representative body. In *Blake* the issue was alleged violations of elections rules, the proper avenue for recourse and the standard of review. The Court rejected the Tribunal Council's argument that judicial review was the appropriate avenue for recourse because "a judicial review is a discretionary remedy, and the existence of an adequate alternative remedy, such as a statutory recourse, is a reason to deny an application for judicial review": at para. 21, citing *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713. Also, in *Blake,* the Tribunal Council was not a national government or national body. It was "an Indigenous organization that represents participants to the Gwich'in Comprehensive Land Claim Agreement": at para. 4.

[324] Although malice or bad faith are not required to find a breach of fiduciary duty in corporate law cases, this standard has been applied in the case of an alleged breach of fiduciary duty by municipal councillors.

[325] In *Toronto Party,* the City of Toronto council passed a by-law that indemnified certain councillors for expenses they incurred in resisting applications for compliance audits of their campaign expenses. The court later found the by-law to be *ultra vires*. The plaintiff sued the councillors who voted in favour of the by-law for breach of fiduciary duty. The City of Toronto is both a corporation and a municipal government. The court said that fiduciary duties generally only arise in connection with obligations arising in a private law context and public law duties do not typically give rise to fiduciary obligations: at para. 39. The court recognized the City's role as a government at para. 50:

> Second, the nature of the obligations imposed upon a fiduciary are variable, taking into account the nature of the fiduciary's duty. The fiduciary obligation of municipal councillors is a duty of loyalty towards the electorate that includes the avoidance of conflicts of duty and interest, and the duty not to profit at the expense of the beneficiary.

[326] The court said that a breach of fiduciary duty involves an element of disloyalty and that there was no presumption of a lack of good faith from the mere passage of a by-law that was later declared to be *ultra vires*. The presumption is to the contrary; that the vote was made in good faith and for a proper motive: at para. 42. To succeed, the plaintiff had to establish the conduct was done maliciously or in bad faith: at para. 43.

[327] I do not need to decide whether the Defendants owed no fiduciary duties because they were elected political leaders carrying out public law duties, because, for the reasons set out below, I find that even if they did owe fiduciary duties, they were not breached. Whether the MNC is viewed as an Indigenous government or a not-for-profit corporation with core government functions and a stated purpose of advancing the rights and interests of the Métis Nation, its governmental character is part of the context that must be considered in any breach of fiduciary

duty analysis. The Métis Nation is the most important stakeholder. Other stakeholders would include the GA and the Governing Members. To succeed, the Plaintiff must show there was some element of dishonesty, disloyalty or bad faith in the impugned decisions and transactions. As set out below, I find that the Defendants did not have conflicts of interest, did not engage in self-dealing, and at all times acted honestly and in good faith with a view to the best interests of the MNC and the Métis Nation.

[328] Before turning to the specific impugned decisions and transactions, in order to determine whether the Defendants breached any fiduciary duties, I address the governmental character of the MNC and how it was governed, including the Defendants' authority, because the answers to these questions inform the content, and potential breach, of any fiduciary duties which the Defendants' owed.

The MNC Operated as an Indigenous Government

[329] I find that at all material times, the Defendants operated the MNC as an Indigenous government; the national government of the Métis Nation.

[330] President Froh's fundamental disagreement with the Defendants about how the MNC was governed was brought into sharp focus when she and Mr. Chartier gave evidence about information she expected to receive when she was first elected President of the MNO and joined the BOG. It was clear that President Froh expected that she would receive some form of "onboarding" when she joined the BOG. When counsel for the Plaintiff cross-examined Mr. Chartier on this point, there was a long exchange where Mr. Chartier insisted that onboarding new Presidents to the BOG was not his role. The exchange culminated in Mr. Chartier asking the rhetorical question: Do you think Justin Trudeau "onboards" Doug Ford when he is elected Premier of Ontario?

[331] Mr. Chartier's and President Chartrand's evidence on this point was consistent and unequivocal. They testified that the MNC was conceived as a national government for the Métis nation and was always operated, presented and treated as such by all Governing Members.

[332] The Métis Nation chooses to organize and govern itself through the MNC. The Métis National Corporation Secretariat Inc. was incorporated only because it was required to do so to have legal standing in response to the Government of Canada's position that a corporate entity was required to engage with Canada and the courts, and to receive funding.

[333] The Governors, the GA delegates and even Ms. Poitras herself referred to the MNC as the national government of the Métis Nation. The MNC passed resolutions declaring itself a national government.

[334] At the August 28-29, 1998 GA, a resolution was passed to draft an MNC Constitution and to address the role and mandate of the MNC as the Métis Nation national government within the constitution. The preamble states: "Whereas; Métis Nation is asserting the inherent right to self-government and whereas the Métis National Council as the government of the people of the Métis nation does not have a constitution". Ms. Poitras was a delegate at this GA and agreed in cross

examination that she did not object or disagree with the suggestion that the MNC was a government.

[335] There are many other examples over the years up until 2017 of GAs and BOG meetings, where Ms. Poitras was present and where the MNC was referred to, in resolutions or in discussions, as representing the Métis nation, or being the "governing body", the "national body", the "national government" or "self-declared government" of the Métis Nation. On some occasions Ms. Poitras was the mover of and/or voted the motion. She never once objected to or disagreed with the characterization of the MNC as the government of the Métis Nation.

[336] In one instance, at the April 28-29, 2017 GA, President Chartrand specifically distinguished between the MNC as a government versus an organization: "As the Métis Nation moves forward, it is important to show the rest of the world that it is a government, not an organization. The lexicon must change and it is the duty of all Métis citizens to correct people who continue to mistakenly refer to the Métis Nation as an organization."

[337] The MNC's purpose was not to carry out the business of the corporation; it was to represent and advance the rights and interests of the Métis Nation as an Indigenous people.

[338] The role of the MNC was to determine and express the rights and aspirations of the Métis people of Canada and represent the Métis Nation at the national and international levels in order to advance issues of collective importance. The MNC's constating corporate documents confirm that it was an Indigenous government. As set out above, the 2014 Articles of Incorporation say the primary purpose of the Corporation is to determine and express the rights and aspirations of the Métis people of Canada both nationally and internationally as they relate to the Constitution of Canada.

[339] MNC's By-Laws reflect that it was a government. They provide for the BOG with Governors, not a "board of directors". The GA is comprised of elected delegates from the provincial governments who are not the corporation's members but have voting privileges and responsibility for formulating national policies. The President is responsible for "enhancing and promoting the cultural, social, economic and political interests of the Métis Nation in the spirit of the Riel Government."

[340] The MNC organized itself as a government with Cabinet Ministers, a democratically elected President, and a representative GA from which it took ultimate direction.

[341] The Cabinet Terms of Reference which were adopted in 2003 refer to the Métis Nation moving towards implementing its inherent right of self-government and the need for the MNC's structure to evolve to meet the needs of a self-governing nation.

[342] The MNC was treated by Canada on a government-to-government and nation-to-nation basis, as demonstrated by the Accord and Sub-Accords. It received funding from the federal government and made decisions about the allocation of those public funds.

[343] The Accord was intended to reflect a government-to-government relationship between Canada and the Métis provincial and federal governments. It expressly states that the "Métis

National Council is mandated by the Métis Nation General Assembly to represent the Métis Nation at the national and international levels to advance issues of collective importance." All of Mr. Chartier, President Chartrand, Ms. Poitras and President Froh as well as the Presidents of the other Governing Members signed the Accord.

[344] It may well be that the new administration sees the MNC as simply a corporation, but the weight of the evidence establishes that, at the material times, the MNC was an Indigenous government.

[345] Assuming the Defendants owed fiduciary duties, those duties were owed to the MNC and the Métis Nation as a whole. As publicly elected officials making decisions about the allocation of public resources, the Defendants' decisions are owed deference because they are obligated to balance the interests of the Métis Nation as a whole.

[346] The Plaintiff submits the impugned decisions and transactions were unauthorized, and this is a relevant factor to consider in determining whether the Defendants breached their fiduciary duties. In order to determine if the decisions and transactions were authorized, I must consider how the MNC was governed.

MNC Governance

[347] The Plaintiff submits that the Defendants did not have authority to enter into the impugned transactions because they were not approved by the BOG and they did not meet the requirement under the By-Laws that contracts have two signatures. The evidence establishes that the historical practice did not include BOG approval or two signatures for contracts. I do not find that the impugned transactions were unauthorized because they did not have BOG approval or two signatures. If a party acquiesces to a practice, they ought not to later object that something done in accordance with said practice was unauthorized: *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147, 81 R.P.R. (5th) 172, at paras. 116-117.

[348] Acting without authority may be a breach of fiduciary duty: *Webb v. Genaille*, 2023 BCCA 443, 82 B.C.L.R. (6th) 173, at para. 26.

Alleged Required BOG Approval

[349] The Plaintiff submits that the Defendants required approval from the BOG to bind the MNC because Article 7 of the By-Laws gave the BOG exclusive authority over the management and operations of the MNC, and the Plaintiff also relies on Ms. Poitras' evidence that the BOG oversaw the management of the MNC. The Plaintiff argues that the BOG was kept in the dark during the standstill and that the impugned transactions were done in secret.

[350] The Defendant submits that the BOG did not have exclusive authority to govern the operations of the MNC. The By-Laws, the Cabinet Terms of Reference, the Policies and Procedures Manuals and historical practices all establish that the President and Cabinet Ministers had significant authority over the MNC's operations. Each of the impugned transactions was authorized by the President, the Vice-President or responsible Minister. There was no need for the

BOG to approve these transactions and the absence of a BOG meeting does not give rise to a breach of fiduciary duty.

[351] For the reasons set out below, I find that, even in the time preceding the stalemate, it was the President and not the BOG, who managed the day-to-day affairs of the MNC including hiring employees and consultants. The President had authority to, and did, delegate particular responsibilities. The President did not seek BOG approval for budgets, consulting agreements, employment contracts, Contribution Agreements or expenditures.

[352] When the Métis National Council Secretariat Inc. was incorporated as a not-for-profit corporation, it was required to have by-laws. Those by-laws were amended from time to time and eventually consolidated.

[353] On July 23, 2003, MNC's by-laws were consolidated (the "By-Laws"). The consolidation was not substantive; it was simply a consolidation of the previous by-laws and amendments.

[354] There is no allegation that the Defendants were not aware of the existence or content of the By-Laws or that some of the By-Laws were followed; rather, the Defendants contend that the By-Laws were never strictly followed; for example, the two-signature requirement was never followed.

[355] There are some important matters concerning the MNC's governance which are not addressed in the By-Laws. The By-Laws contain some of the core characteristics of the GA including its composition, voting structure, and the required timing for GA meetings. However, the By-Laws do not reflect the GA's controlling function within the MNC's organizational structure. For example, the By-Laws do not say that the GA has "primacy" or that the BOG is subordinate to the GA, even though the MNC was governed by such a hierarchy in practice for decades. The By-Laws do not mention the establishment and functions of the Resolutions Committee and Electoral Committee, and appointment of co-chairs, even though it was a core practice of the MNC with respect to the conduct of the GA.

[356] The By-Laws do not mention the role of the Vice President or the Cabinet structure of the MNC even though the Cabinet structure was established in 2003, the same year the By-Laws were consolidated. The By-Laws also do not mention the PPC, which met on an ad hoc basis to assist the President with strategic planning and overseeing administration and operations.

[357] Article 7 of the By-Laws states that the BOG "shall manage the affairs and business of the Association". Article 7 does not say that the BOG shall "exclusively" manage operations of the MNC or that the BOG cannot delegate management responsibilities.

[358] The Plaintiff submits that because Article 7 refers to the "Association" and Article 8(b)(iii) refers to the "Secretariat", the Court should interpret "Association" to refer to the affairs and business of the MNC as distinct from the Métis National Council Secretariat Inc., and therefore the BOG has the exclusive authority to manage the MNC. I reject this argument. The inclusion of the word "Association" in Article 7 is obviously an error. There is no "Association" – there is only

the MNC, which includes the Métis National Council Secretariat Inc. and the By-Laws do not distinguish between the two.

[359] This is not the only error in the By-Laws. They also provide that the registered office of the MNC shall be in Saskatoon, but the MNC moved to Ottawa many years prior to the 2003 Consolidation of the By-Laws and this error was never corrected.

[360] The By-Laws expressly contemplate that the BOG does not have exclusive authority over MNC's operations. By-Law s.8(b)(iii) gives the President wide-ranging responsibilities and does not provide that the President must take direction or obtain approval from the BOG.

[361] The By-Laws assign most, if not all of the MNC's key responsibilities to the President. Article 8(b)(iii) states that the President "shall be responsible for the management of the Secretariat" and "shall be responsible for enhancing and promoting the cultural, social, economic and political interests of the Métis Nation". Combined, these two functions encompass practically all of the MNC's operations and corporate purpose which is "to determine and express the rights and aspirations of the Métis people of Canada" as set out in the Articles of Continuance.

[362] If I were to accept that the BOG had exclusive authority to manage the MNC, then Article 8(b)(iii) would be rendered meaningless. I should avoid an interpretation which renders part of the By-Law meaningless or commercially unreasonable: *Mann v. Mann,* 2023 SKCA 99, at para. 66; *Dublin (Police Village) Continuation School Board v. Seaforth (District) High School Board*, [1952] O.R. 229 (Ont. H.C.), at p. 233; *Subilomar Properties v. Cloverdale*, [1973] S.C.R 596, at p. 603.

[363] There is no reason why the BOG cannot delegate its responsibility to manage the MNC to the President, as is the case here. The *CNCA* permits a board to delegate authority. Section 124 of the *Act* provides that the directors "shall manage or supervise the management of the activities and affairs of a corporation". Sections 138(1) and 142(a) permit a board to delegate any of their powers to an appointed managing director or a committee of directors. In the case of the MNC, Governors are the "directors" and the President is both a Governor and a director.

[364] Delegation of responsibility for managing the MNC to the President makes good, practical sense. The BOG is made up of the President and the other five Governors who are volunteers and live in various parts of the country. The BOG typically met only 2-3 times per year. It would not be convenient or practical for the BOG to be involved in the day-to-day management of the MNC.

[365] The Terms of Reference were adopted at virtually the same time as the By-Laws and are part of the factual matrix. Ms. Poitras was aware of the provisions of the Cabinet Terms of Reference when the By-Laws were finalized and adopted. As noted below, the Terms of Reference set out the authority and responsibilities of the President within the MNC governance structure. The Terms of Reference also contain this "conflict" provision:

> The creation of the Métis Nation Cabinet does not amend with [sic] the bylaws of the MNC Secretariat Inc. Nothing in this document

> should be construed to alter the authority of the MNC Annual Assembly, MNC Board of Governors or MNC President.

[366] The Plaintiff has argued that this provision in the Terms of Reference setting out the President's responsibilities is of no importance because it conflicts with the By-Laws. But that position presumes the correctness of the Plaintiff's interpretation of the By-Laws, i.e., that the BOG had exclusive authority. And it would mean that the MNC adopted the Terms of Reference and then voided an entire section one month later. The logical, preferable interpretation is that the Terms of Reference are consistent with the By-Laws and are contemporaneous evidence that everyone understood that the President had a broad scope of authority.

[367] I find that the By-Laws do not give the BOG exclusive authority to manage the affairs and business of the MNC. The By-Laws delegate specific responsibilities for managing the MNC to the President to advance its purpose of promoting and enhancing the rights and interests of the Métis Nation. I find that the By-Laws largely support the Defendants' evidence regarding the President and Vice President and Minister of Finance's authority.

[368] Mr. Chartier's evidence was that the MNC had an unwritten constitution and governed itself by its "practices, customs, conventions and traditions." He said that some elements of the By-Laws were quasi-constitutional and were closely followed – such as the allocation of votes to each governing member – other elements were viewed as administrative and not followed and, some provisions were antiquated and completely ignored.

[369] In her examination in chief, Ms. Poitras said that the approval of the BOG was required for contracts because the By-Laws say so. She said that the approval consisted of the BOG reviewing contribution agreements and budgets and determining if the MNC needed to hire someone to fulfill a particular mandate. Ms. Poitras suggested that the BOG would consider whether to hire someone to do the work and how much that person was to be paid. For the reasons set out below, I do not accept this evidence.

[370] In cross examination Ms. Poitras agreed that the BOG was not directly involved in hiring or in setting the remuneration of employees and consultants.

[371] Ms. Poitras resigned as Vice-President and Minister of Finance in 2006 and no longer sat on the PPC. From 2006 onwards Ms. Poitras only attended BOG meetings and was not involved in the daily operations of the MNC. Ms. Poitras' position that BOG approval was required for employee and consultant contracts is not supported by the contemporaneous documents, particularly the BOG Minutes.

[372] I prefer the evidence of Mr. Chartier, President Chartrand and Ms. Watteyne, who were responsible for the day-to-day operations of the MNC, and were in a better position to have a fulsome understanding of the governance of the MNC between 2017 and 2021. The contemporaneous BOG Minutes and other documents corroborate their evidence. President Froh also testified "that there were things that the President would take care of that didn't actually come to the Board of Governors".

[373] The Minutes of the BOG meetings demonstrate that the BOG did not have exclusive authority over the operations of the MNC and was never involved in the day-to-day decision making of the MNC. In fact, the minutes from the BOG on July 18, 2018 (i.e. before MNO's suspension and the standstill) specifically says: "Note that the Board does not have a role in the day-to-day operations of the MNC, but that the Minister did personally look into the concerns".

[374] In practice, the BOG usually met 2-3 times per year depending on the availability of the Governors. The meetings focused on reports from the Governors about developments within their governments and discussions about issues affecting the whole Métis Nation.

[375] Approving the MNC's annual audited financial statements before they were presented to the GA for ratification was the only "governance" function consistently performed by the BOG. The Minister of Finance would provide a report presenting the audited financial statements and points for discussion. The Governors would have the opportunity to ask questions of the auditor and the Minister of Finance. The BOG was also briefed on key actions taken by the President and Minister of Finance such as signing Contribution Agreements, and was given the opportunity to ask questions.

[376] Mr. Chartier, President Chartrand and Ms. Watteyne testified that the BOG did not direct the mandate of the President, and did not approve budgets, consulting agreements, employment contracts, Contribution Agreements nor expenditures. The Minutes of the BOG meetings from 2004 to 2018[9] corroborate this evidence. There are no motions or resolutions approving any of these items in any of these BOG Minutes.

[377] Mr. Chartier, President Chartrand and Ms. Watteyne gave evidence that they and the senior management of the MNC conducted the day-to-day operations of the MNC without the need for BOG approval. This evidence is consistent with the BOG Minutes which do not show the President, the Vice-President/Minister of Finance or other MNC employees or consultants presenting or seeking approval for the decisions they made between meetings. The Minutes also do not show that the Governors frequently, or even regularly, asked questions about such decisions.

[378] The Plaintiff submits that in Mr. Chartier's discovery evidence which the Plaintiff read in at trial, he agreed that if a contract was a significant commitment on the part of the MNC, the Defendants should make a presentation to the BOG for the BOG to consider and approve "before any substantial contract was signed" on behalf of the MNC. I do not agree with the Plaintiff's characterization of the evidence. First, the context was a discussion about the Accord and President Chartier said it would be difficult to bind the Governing Members into a significant process to which they were integral (referring to the PBM) without their input. Second, Mr. Chartier was responding to a question about what President Chartrand should do regarding a "significant commitment on the part of the MNC, whatever he understood it to mean". I do not find that Mr. Chartier was agreeing that all "important contracts" required BOG approval. There was no

[9] The BOG did not meet after 2018 because of the stalemate.

clarification of whether "significant commitment" meant Accords or employment agreements or something in between. This evidence was not put to Mr. Chartier at trial, and he has not been provided with an opportunity to clarify to what type of contracts he was referring. I give this evidence little weight for the reasons set out below relating to the requirement to put an alleged inconsistency to a witness under the heading "Mr. Chartier's Retiring Allowance".

[379] In 2018 the BOG had an unusually high number of meetings. However these meetings were primarily focused on the ongoing PBM process, which was new and exceptional. The 2018 Minutes do not reflect a change in the way the MNC was operated and do not demonstrate that the BOG was instructing or overseeing the President, the Vice President/Minister of Finance, the MNC staff or consultants.

[380] The Defendants' witnesses all testified that the President had the authority, and did not require BOG approval, to make operational decisions with respect to financial matters, communications, administration and human resources including *inter alia* entering into employment and consulting agreements, hiring and firing employees, and entering into and implementing Contribution Agreements. The President routinely delegated his authority and responsibility for many of these matters to Cabinet Ministers and to Ms. Watteyne as Executive Director. The BOG Minutes corroborate this evidence.

[381] The Governors were aware of the actions being taken by Mr. Chartier and President Chartrand on behalf of the MNC because they received reports from Mr. Chartier and President Chartrand at BOG meetings and they approved the audited financial statements. On one occasion they asked for and received information regarding the work of and payments to the Consultants whose contracts President Chartrand entered into on behalf of the MNC in consultation with Mr. Chartier. It was not until the political dispute and stalemate that the Tri-Council started challenging Mr. Chartier's and President Chartrand's authority to act on behalf of the MNC without BOG approval.

[382] In practice, the BOG did not oversee the management of the MNC or approve budgets, expenditures, consulting agreements, staff employment contracts, or Contribution Agreements.

[383] The Plaintiff submits that the President of the MNC was subservient to the BOG. The evidence does not support this proposition. At trial, Mr. Chartier testified that he was the leader of the Métis Nation. The President is elected by the delegates of the GA. The evidence proves that the President was regarded, presented and viewed as the leader of the Métis Nation.

[384] The mandate of the MNC to represent the Métis Nation is expressly set out in the 2005 Métis Nation Framework Agreement and the Accord. There are other contemporaneous documents which also set out that the President represents the Métis Nation including the 2003 By-Laws, the 2003 Cabinet Terms of Reference, the 2004 Policies and Procedures Manual, the Accord and the Sub-Accords. In these documents the President is referred to as the "representative of", or the "national spokesperson for" the Métis Nation or as being "responsible for enhancing and promoting the cultural, social, economic and political interests of the Métis Nation in the spirit of the Riel Government".

[385] Mr. Chartier testified that throughout his 18 years as President and his time before that as a member of the BOG, the BOG played "virtually no role" in the administration of the MNC. The President, Vice President/Minister of Finance and the Executive Director handled day-to-day decision-making. The BOG sometimes got involved when there were "major" events, but it was not consulted on every administrative decision, even those that related to matters of national scope. I accept this evidence because it is credible and it is consistent with President Chartrand and Ms. Watteyne's evidence and the contemporaneous documents as set out above.

[386] The overwhelming preponderance of the evidence demonstrates that in practice the BOG did not oversee the day-to-day operations of the MNC, and BOG approval was not required for budgets, expenditures, consulting agreements, staff employment contracts, or Contribution Agreements.

[387] I will now address the two-signature requirement in the By-Laws. I will then turn to the Cabinet Terms of Reference, the 2004 Policies and Procedure Manual and the 2009 Finance Policy, which also demonstrate that Mr. Chartier and President Chartrand had authority to conduct the affairs of the MNC.

The 2003 By-Laws - Alleged Two Signature Requirement

[388] The Plaintiff submits that the Defendants did not have authority to enter into the impugned transactions because the By-Laws had a strict two-signature requirement, and the impugned transactions did not have two signatures. I do not accept that that there was a strict two-signature requirement because the two-signature requirement was not followed in practice.

[389] Article 21 of the By-Laws requires two signatures:

> Contracts, documents or any instruments in writing requiring the signature of the Corporation, shall be signed by any two Governors of Founding Members and all contracts, documents and instruments in writing so signed shall be binding upon the Corporation without any further authorization or formality. The Governors shall have power from time to time by resolution to appoint a person or persons on behalf of the Corporation to sign specific contracts, documents and instruments in writing.

[390] None of the documents involved in the impugned transactions had two signatures, including the letters of assurance, the employment and consulting agreements, the MVLP SDA and the SDA Amendment Agreement, and the Database Purchase agreements.

[391] The Plaintiff relies on *Lewis v. Niagara Regional Native Centre,* 2024 ONSC 5196, 54 B.L.R. (6th) 123, for the proposition that violations of governing legislation or by-laws will not be sanctioned by a court—even in Indigenous governance contexts, and even where the organization never strictly complied with its governance documents.

[392] *Lewis* is distinguishable from the circumstances here. It was not a case involving allegations of breach of fiduciary duty. The court in *Lewis* invalidated the removal of a not-for-

profit board because the process (i.e. an ad hoc motion to dissolve the board) was not contemplated by the organization's by-laws or the *CNCA*, and the respondents in Lewis offered no evidence of a shared assumption or long-standing organizational practice of removing directors in this manner to justify the substantial deviation from the by-laws.

[393] The evidence in the case before me establishes that the By-Laws were not consistently followed. The Defendants' evidence was that the By-Laws were rarely considered and never strictly followed. Ms. Poitras confirmed that they were "lenient" with respect to enforcement of the By-Laws.

[394] Ms. Watteyne testified that throughout the entire time she worked at the MNC under different leadership, her consistent experience was that the By-Laws were not strictly complied with and were not reflective of the MNC's actual practices. She said the two-signature requirement in Article 21 was not complied with. President Froh agreed that the MNC was not strictly governed by its By-Laws.

[395] Mr. Chartier testified that the MNC never complied with the two-signature requirement, and no one ever raised concerns about compliance with the By-Laws in the over 20 years he was involved with the MNC's senior leadership. He said that contracts were often signed with only one signature and the two-signature requirement was never brought to his attention.

[396] President Chartrand said he could not recall one occasion where the two-signature requirement was followed.

[397] President Froh agreed that the two-signature requirement in the By-Law was not followed.

[398] There are many important agreements with Canada with only one signature on behalf of the MNC which the Plaintiff agrees are binding including funding agreements, contribution agreements, and amending agreements. Ms. Poitras testified that these agreements are valid even though they do not comply with the two-signature requirement because the BOG was aware of them, the BOG was harmonious at the relevant time and the agreements were for the financial benefit of the MNC and its Governing Members. If there was in fact a strict two-signature requirement, discussion at the BOG, the favourable content of the agreement, or the degree of harmony among the Governing Members would not excuse non-compliance with the By-Laws. There was no evidence that the BOG members were aware of a two-signature requirement and chose to override non-compliance with the By-Laws.

[399] I also note that the previous one-year consulting agreements from 2018 which were executed before the stalemate, and which the Plaintiff does not challenge, also have only one signature for the MNC.

[400] Celeste McKay Consulting's one year consulting agreement dated October 3, 2018, and System Way's one year consulting agreement dated April 1, 2018, were signed on the MNC's behalf only by President Chartrand. The Plaintiff submits that these employment contracts were different because they were not five-year agreements. I do not accept the submission that the

requirement of two signatures depended on the content or term of the agreements. There was no evidence to support this proposition.

[401] Nor do I accept the submission that the Defendant's obligations changed because the Tri-Council was "calling for transparency". In the absence of a breach of fiduciary duty, the appropriate venue for challenging the decisions of the elected politicians was at the ballot box.

[402] The Plaintiff submits that President Chartrand and Ms. Watteyne were on actual notice in March 2021 that Canada was raising a concern about President Chartrand's authority to bind the MNC and specifically referred to Article 21 of the By-Laws. I do not accept this submission. It is unclear what caused Canada to raise this issue after many years of accepting agreements with only one signature for the MNC. It could well have been because the issue was raised in the Tri-Council's letter writing campaign. In any event, when Canada asked Ms. Watteyne to provide confirmation of BOG approval for President Chartrand's authority to sign, Ms. Watteyne declined to do so and brought the matter to President Chartrand's attention. She said she did this because Canada's request was "outside of the norm" and inconsistent with MNC's ordinary practice, spanning decades. Ultimately, the matter was escalated to the relevant federal Deputy Minister, who was satisfied that the proper authorities were in place. The agreement was ultimately accepted by Indigenous Services Canada and CIRNAC.

[403] I do not accept the Plaintiff's submission that the fact that there is only one signature on behalf of the MNC is evidence that the Defendants were operating in secret. It would have been just as easy for both President Chartrand and Mr. Chartier to sign the agreements had they turned their mind to the alleged two-signature requirement in the By-Law. I accept their evidence that in their view, the President or Vice-President and Minister of Finance alone were authorized to sign contracts.

[404] It is not surprising that President Froh's evidence was that the MNC is governed by the By-Laws. President Froh is a self-described "governance nerd" and she was not aware of the Cabinet Terms of Reference until after this action was commenced in 2022. The Cabinet Terms of Reference confirm that the President had significant authority and the power to delegate this authority.

The Métis Nation Cabinet Terms of Reference

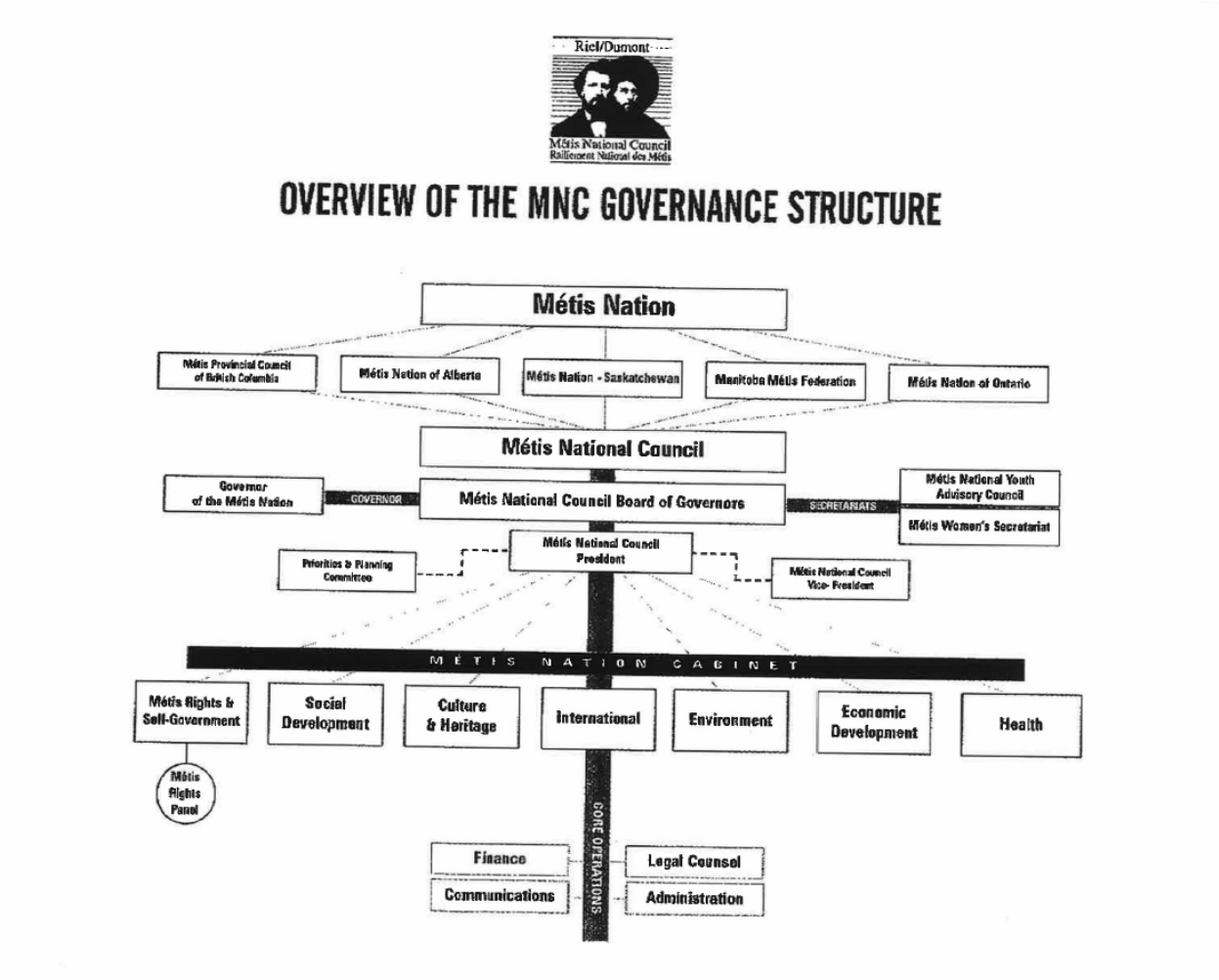
[405] In the early 2000s the MNC fundamentally changed its structure. The MNC first established the Métis Nation Cabinet (the "Cabinet"), and then subsequently prepared a first draft of the terms of reference for the Cabinet in 2001. The terms of reference for the Cabinet were revised by the MNC's senior management team and legal counsel. The Cabinet Terms of Reference are dated June 2003. The evidence does not establish that the BOG was required to or did approve the Cabinet Terms of Reference. The only reference in the BOG minutes to the Cabinet Terms of Reference is at the July 23, 2003 BOG meeting where there is an item "for action" which says: "It was agreed that the MNC Board of Governors, as per Article 6.2 of the Métis National Cabinet Terms of Reference, will review the Cabinet structure at the next MNC BOG meeting."

[406] The MNC established the Cabinet because the number of issues the MNC was addressing and its initiatives on behalf of the Métis Nation had increased dramatically. A stronger internal governance structure was needed to respond to this growth and to evolve to meet the needs of a self-governing nation.

[407] The Cabinet Terms of Reference established the following Ministries to be led by corresponding Cabinet Ministers:

1) Social Development
2) Economic Development
3) Health
4) Environment
5) Métis Rights & Self-Government
6) International Issues
7) Youth
8) Women's Issues

[408] The Cabinet Terms of Reference contain an organizational chart of the governance of the MNC:



[409] Article 3 provides that the creation of the Cabinet was not intended to amend the MNC By-Laws to alter the authority of the GA, the BOG or the President. Nor was it intended to interfere with the authority of the Governing Members to pursue bilateral negotiations and initiatives with Canada or other institutions. The Governing Members maintained jurisdiction over their own memberships pursuant to their respective governance structures.

[410] The President had the prerogative to appoint the Cabinet Ministers. The Cabinet Ministers were responsible for making recommendations relating to their respective Ministries, to the President, the BOG and the Cabinet regarding national initiatives and policies affecting the Métis Nation as a whole.

[411] The evidence established that President Chartrand took on much more work at the MNC than the other Governing Members, who did not take as active a role in the MNC. President Chartrand held numerous ministerial portfolios including Finance, Health, Veterans and others, many simultaneously. President Chartrand testified that his Cabinet members at the MMF were

increasingly critical of the amount of time he dedicated to the MNC, but he continued to do so because of his vision for the Métis Nation.

[412] The MNC maintained the Cabinet structure until the Defendants left the MNC. After the Defendant left the MNC, it moved away from the Cabinet structure.

[413] The Cabinet Terms of Reference are consistent with the Defendants' evidence concerning the President's authority. They provide that the President will continue to oversee and manage the day-to-day operations of the MNC. They say the following areas will remain as core operations of the MNC overseen by the Executive Director under the Direction of the President:

A. Finance (i.e., control over all disbursements through established financial approval system [pre-approved purchase orders for all disbursements, budget monitoring and control, etc.], the Director of Finance will report directly to the MNC President etc.)

B. Communications (i.e. issuance of press releases, MNC corporate design and images, correspondence on MNC letterhead, media relations etc.). Where possible, the MNC shall consult and collaborate with Ministers responsible on communications that relates to their respective Ministry.

C. Administration (i.e., office management and procedures, fulfilling terms and conditions of MNC's contribution agreements with various agencies, regular reporting on such contribution agreements to agencies)

D. Human Resources (i.e. staff will report directly to the management of the MNC while maintaining on-going liaison with Ministers, MNC management will be responsible for all hiring, contracts, evaluation, termination issues etc. within the MNC subject to Article 4.5, MNC management will determine the establishment of new positions and/or organization of the MNC human resources)

[414] Articles 4.5.4 and 4.5.5 provide that before incurring expenditures, signing on behalf of or binding the MNC, Ministers had to have prior approval of the President and/or designate. They do not require BOG approval.

[415] The Defendants' evidence was that after the creation of the Cabinet, the President delegated authority for certain matters to the Cabinet Ministers so they could conduct the business of their ministries.

[416] The role of Minister of Finance is not provided for in the Cabinet Terms of Reference or in the By-Laws even though that position existed for years. Mr. Chartier appointed Ms. Poitras as Vice-President and Minister of Finance in October 2003, and she accepted that role.

The 2004 and 2009 Policies and Procedures

[417] The MNC used its own policies, procedures, and practices for its operations. Over time the policy and procedures evolved as the MNC grew and evolved in its developing relationship with Canada. Over time, the MNC sought to establish written policies and procedures; first, the 2004

Policies and Procedures Manual and then, the 2009 Finance Policy. These policies are not reflected in the By-Laws. Additional draft policies were prepared in 2013 and 2014 but never implemented.

[418] President Chartrand's evidence was that the policies were part of the ongoing structural change at the MNC. The MNC now had a Cabinet and implementing these policies was part of the ongoing evolution to strengthen their self-government.

[419] President Chartrand described these documents as "aspirational" and said they were developed to address the MNC's vision and future goals. They were not regularly referred to or strictly adhered to. Some of the policies did not align with the reality of MNC's operational needs and practices; for example, the role of the Chief Administrative Officer which has significant responsibility under these documents, was never filled.

[420] In 2004, Ms. Poitras developed the Policies and Procedures Manual as part of her mandate to conduct an organizational review when she was the MNC's Vice President and Minister of Finance. Mr. Chartier asked her to look at the current mandate, infrastructure, public perception, staffing, policies and procedures of the MNC.

[421] At the November 7, 2004, BOG meeting, Ms. Poitras presented the Policies and Procedures Manual dated August 27, 2004. Ms. Poitras advised that the manual had been revised following multiple reviews by senior staff, Mr. Chartier and herself. At that meeting, the BOG approved the Policies and Procedures Manual in principle; however, it was not complete. The table of contents indicated that certain sections such as, Organizational Structure, MNC's Goals and Objectives, Financial Administration were "to be developed". These sections have no content.

[422] President Chartrand's uncontradicted testimony was that the 2004 Policies and Procedures Manual was not strictly followed. From 2007 when he was appointed Vice-President and Minister of Finance, President' Chartrand's focus was relations with Canada and seeking opportunities for funding but that the MNC had a "small unit" at the time working on the relations with Canada and funding. As a result, the MNC continued to operate following its historical governance practices. He was aware of the 2004 Policies and Procedures Manual, but he did not look to it for guidance.

[423] Ms. Watteyne confirmed that certain provisions were not followed, such as the requirement that non-budgeted requests in excess of $10,000 be brought to the BOG for their review and approval. Ms. Watteyne's evidence was that this was not done, and no objections were ever raised. The BOG meeting minutes do show two examples where expenses over $10,000 were approved by the BOG, but it does not appear that doing so was a regular practice.

[424] I accept that the 2004 Policies and Procedures Manual is not evidence of all of the operative policies and practices that were understood and followed by the MNC. However, it does provide insight into what the BOG understood the various roles and authority of the Defendants to be.

[425] President Chartrand testified that the 2004 Policies and Procedures Manual and the 2009 Finance Policy accurately reflected the level of authority held by the President, Vice President and Minister of Finance.

[426] The 2004 Policies and Procedure Manual gives the President or his Designate authority to enter into contracts with consultants. It gives the President and the Vice President and Minister of Finance authority to enter into employment contracts.

[427] The 2004 Policies and Procedures Manual states that the President is responsible to oversee and manage the day-to-day operation of the MNC. It also specifically provides that the President may delegate particular responsibilities. President Chartrand testified that this provision is consistent with the President's historical practice of appointing Cabinet Ministers and providing them with authority to complete their mandates.

[428] Under the policy related to Professionals and Consultants, the 2004 Policies and Procedure Manual provides that "[t]he terms and conditions for the contracting of professionals and consultants will be covered by contract and approved by the President, and are subject to the terms of the ongoing funding contract." President Chartrand testified that this provision is consistent with the MNC's practice and that as time progressed, the President delegated his role with respect to certain contracts to Ministers.

[429] In October 2009, the BOG approved a Finance Policies and Procedures manual. This was the Financial Administration section from the 2004 Policies and Procedures Manual which was "to be developed".

[430] President Chartrand gave evidence that the 2009 Finance Policy was an attempt to respond to requests from auditors and Canada to put into writing the MNC's finance practices and policies, and to develop more robust financial policies. He testified that, like the 2004 Policy Manual, the 2009 Finance Policy was not strictly adhered or relied on. However, like the 2004 Policies and Procedures Manual, the 2009 Finance Policy provides insight into the authority of the Defendants.

[431] The 2009 Finance Policy provides that the President may appoint a Minister of Finance with the responsibility of overseeing finance and administrative matters of the Métis National Council Secretariat Inc. as set out in the Cabinet Terms of Reference. President Chartrand's evidence was that from 2009 to 2021, the President provided greater authority to the Minister of Finance.

[432] The 2009 Finance Policy provides for the development of budgets by the President, Minister of Finance, Chief Executive Officer, Director of Operations, Programs Directors, and Director of Finance. President Chartrand's evidence was that this is consistent with how budgets were developed from 2009 to 2021 and that the BOG did not play any role in developing budgets. The BOG minutes do not suggest otherwise.

[433] The 2009 Finance Policy provides that the President, in consultation with the Minister of Finance, has authority to approve work plan and Contribution Agreement budgets. President Chartrand's evidence was that between 2009-2021 the practice was consistent with this policy in that budget approval rested with the President in consultation with the Minister of Finance.

[434] The 2009 Finance Policy provides that consulting contracts shall be authorized by the President or Minister of Finance, based upon recommendations from the "Chief Executive

Officer". President Chartrand's evidence was that this was consistent with the practices of the MNC with the exception that it was the "Executive Director" who provided the recommendations.

[435] Together, the 2004 Policy and Procedures manual and the 2009 Finance Policy, which were approved by a resolution of the BOG, give the President and the Vice-President and Minister of Finance the power and authority to manage the MNC. This power includes dealing with employee compensation and termination, consulting contracts, and budgets. Neither the 2004 Policy and Procedures manual nor the 2009 Finance Policy say that BOG approval is required to do any of these things.

The Priorities and Planning Committee

[436] The Cabinet Terms of Reference establish the PPC "to assist [the President] in strategic planning and overseeing the administration and operations of the MNC".

[437] The PPC was established in 2003 on the recommendation of then Interim MNC President Poitras to assist her in strategic planning and overseeing the administration and operation of the MNC. At that time, there was discussion as to whether the BOG had to have input or whether the President had sufficient power. It was decided that the President had sufficient power under Article 6.1 which provided that "[m]inistries may be re-grouped, evolve and include additional initiatives as determined by the MNC President", and the PPC was created without a BOG resolution. This comment also applied to the proposed changes in the Cabinet Ministries, and appointment of a Cabinet Minister.

[438] Contrary to Ms. Poitras' evidence at trial, the purpose of the PPC as set out in the Cabinet Terms of Reference was not limited to addressing routine ongoing matters between BOG meetings that did not require the BOG's consideration, and to addressing urgent matters.

[439] The President appointed the members of the PPC from the members of the BOG.

[440] Initially the PPC members were Mr. Chartier (then Vice President of the MNC), Ms. Poitras (then Interim President of the MNC) and President Chartrand (then Minister of Social Development). In 2007, the PPC members were Mr. Chartier, President Chartrand and Ms. Dal Col who was President of MNBC at that time.

[441] In 2017 the President and Vice-President of the MN-S attended a meeting of the PPC and did not raise any concerns that it had been established or was assisting the President.

[442] Even though, as President of the MNO, President Froh was on the BOG from 2016, she testified she was not even aware the PPC existed until 2020 or 2021. This evidence shows how little involvement the BOG actually had in terms of the management of the MNC.

[443] The PPC minutes show that from time to time a variety of individuals from the Governing Members attended PPC meetings.

[444] At trial, Ms. Poitras gave evidence that the PPC had no decision-making power. I need not decide whether the PPC had decision making approval because, while the Defendants maintain

that the PPC as a sub-committee of the BOG had decision making authority, they do not rely on resolutions of the PPC for the authority to enter into any of the impugned transactions.

[445] The Plaintiff submits that that the Defendants were "on notice" that they needed BOG approval to bind the MNC, including entering into five-year agreements and other impugned transactions because of the Tri-Council's letter writing campaign where the Tri-Council demanded transparency, collective decision-making, and governance in accordance with the By-Laws. I do not accept this submission.

[446] The Tri-Council did not have the power to change the governance structure of the MNC by making accusations and demands in its letter writing campaign, particularly when its allegations of financial impropriety were not reasonable. The Tri-Council could not change the way the MNC operated in this fashion. The proper way to achieve this objective was via an election. In any event, the Defendants were not "on notice" that the Tri-Council was demanding that practices and procedures be changed. The Tri-Council was calling for a BOG meeting with MNO present. It was a political dispute over the identity issue.

[447] Even if the impugned decision and transactions normally would have been mentioned at BOG meeting, of which I remain unconvinced, it was impossible for the Defendants to do so in the circumstances here. BOG meetings could not be held because of the stalemate.

[448] I find that the Plaintiff's position that the Defendants required BOG approval for the impugned transactions is inconsistent with the evidence adduced at trial regarding the MNC's governance, how the MNC operated in practice, including the role of the GA, the authority of the President and Vice-President/Minister of Finance, and the functions of the BOG, as well as the internal governance documents (the Métis Nation Cabinet Terms of Reference, the 2004 Policy Manual, and the 2009 Finance Policy). In practice, Mr. Chartier and President Chartrand did not require BOG approval to conduct the affairs of the MNC. No one challenged their authority until this litigation was commenced.

[449] The By-Laws and written policies were never strictly followed. But both the By-Laws and the internal governance documents do show that, as MNC's President, Mr. Chartier had significant decision-making authority and the power to delegate that authority.

[450] The Defendants had authority to manage the affairs of the MNC and to enter into agreements for the benefit of the MNC and the Métis Nation. The Defendants were under no obligation to seek BOG approval for matters that had never historically required such approval.

[451] Simply because the impugned transactions did not have two signatures or were not approved by the BOG does not mean the Defendants breached their fiduciary duties. The issue is whether the impugned decisions were made, and the impugned transactions were entered into, honestly and in good faith, with a view to the best interests of the MNC and Métis Nation with no conflicts or self-dealing. It cannot be a breach of fiduciary duty to operate in the same manner that the MNC and its Governing members had accepted for more than 20 years, particularly in view of the fact that it was impossible to hold BOG meetings during the standstill.

Conflicts of Interest

[452] The Plaintiff alleges that President Chartrand was in a conflict because he wore two hats; he was both the President of the MMF on the one hand, and on the other hand he was the MNC's Vice President, Minister of Finance, Minister for Veterans and BOG Governor.

[453] The Plaintiff submits that President Chartrand was also in a conflict because the MMF planned to leave the MNC if the ongoing political dispute over the identity issue and MNO's status was not resolved and also because the MMF signed a Self-Government Agreement with Canada on July 6, 2021, whereby Canada recognized the MMF to be the representative of the Red River Métis, both nationally and internationally, creating a conflict with the MNC's mandate and a jurisdictional conflict with the MNC's remaining Governing Members.

[454] The Plaintiff submits that the *CNCA* required disclosure of the alleged conflicts.

[455] The Defendants submit that there were no conflicts of interest. Conflicts do not arise in the same way in a government setting as in a corporate setting and to apply corporate conflict standards to governments would impair the ability of political actors to discharge their duties. The Defendants submit that a perceived or actual conflict of interest is not sufficient by itself to ground liability for breach of fiduciary duty. The court must still be persuaded that the decision at issue was not made in good faith and was contrary to the interests of the MNC. The existence of an actual or perceived conflict is a factor, but not determinative. The Defendants say there was no breach of the *CNCA*.

[456] For the reasons that follow, I find that there was no overarching conflict that applied to all of the transactions.

[457] In the context of the MNC, where each provincial president was keeping the interests of their respective government in mind, conflict and disclosure practices are different than in the usual corporate setting. Given the MNC's structure, mandate, constituency and the types of decisions it was making, President Chartrand cannot be in a conflict simply because he wore two hats. All Governors wore two hats; they were each the Presidents of the Governing Members as well as Governors on the BOG. Each of the Governors sat on the BOG to represent the interests of their home governments. It cannot be a conflict of interest for an elected political leader to advocate for and support or lobby for policies that benefit the constituency that they represent.

[458] Taking on additional roles as a cabinet minister of various ministries did not create a conflict for President Chartrand. As a cabinet minister President Chartrand took on the role of advocating for the Métis Nation as a whole. Most of the Cabinet ministers were Governors. It was accepted by everyone that these Cabinet ministers would have two roles: representing their home governments and representing the broader interests of the Métis Nation in connection with their portfolios as Cabinet Ministers.

[459] The MNC did not consider the dual role of Governors and Cabinet ministers to be a conflict of interest. In 2017, President Froh brought a motion to modify the funding formula for a specific funding agreement in order to give the MNO a larger share of the funding. President Froh

participated in the discussion and supported the resolution. The motion was approved. There was no discussion that President Froh was in a conflict of interest because she was advocating for a motion that benefited her home government.

[460] It was never the MNC practice to have Governing Members formally declare an interest in a contract or transaction by virtue of a Governor's position as President of a Governing Member. The MNC regularly entered into transactions where the Governors were in their dual roles, including negotiating the division of billions of dollars of funding in the Sub-Accords, contribution agreements and funding agreements. Many decisions and transactions over the last 20 years engaged a Governor's dual role, and yet there was evidence of only one instance where a conflict of interest was discussed at a BOG meeting. This was a discussion regarding a conflict regarding the 2011 Lease which is discussed more fully below.

[461] The reason conflicts based on the dual role of Governors was never discussed at BOG meetings is obvious: everyone was aware of the dual role, and no one considered it to be a conflict.

[462] It is part of the Plaintiff's theory of the case that MMF's scheme/scorched earth policy was to destroy the MNC and take over as the national representative of the Métis Nation, and the Defendants were accordingly in a conflict of interest.

[463] The Plaintiff submits that President Chartrand's conflict was heightened by 1) the MMF's 2019 resolution authorizing President Chartrand to withdraw from the MNC if the MNO issue was not addressed, and 2) the MMF's execution of its self-government agreement in 2021. I do not accept that these events are evidence that President Chartrand viewed the MNC as a competitor, intended to harm the MNC, or created a conflict of interest.

[464] In order to put that allegation in context, it is necessary to review some background regarding MMF's ability to represent Métis people who live outside Manitoba.

[465] President Chartrand was first elected as President of the MMF in 1997. At that time the MMF was a small government, it was bankrupt and had no federal funding. President Chartrand was able to secure modest financial support from Canada. President Chartrand had a vision for a self-sustaining Métis government with a "strong economic engine" to produce its own revenue so that the MMF would not be dependent on funding from Canada. He realized that vision. As of March 31, 2023, the MMF had over $320 million in assets and over $130 million in yearly revenue. A substantial portion of its revenue is generated through profit-making ventures such as, pharmacies, construction projects, and real estate investments. The MMF uses its assets and revenue to support social and service programs for MMF citizens.

[466] On November 16, 2014, the MMF General Assembly passed a constitutional amendment authorizing the MMF to receive and process citizenship applications from Red River Métis who live outside Manitoba. Previously, the MMF Constitution required that an individual reside in Manitoba to apply for citizenship.

[467] The constitutional amendment addressed the historical fact that the existence of the Red River Métis community pre-dated Manitoba's admission into Confederation and that the Red River

Métis lived throughout the Historic Northwest, and that Red River Métis live in all parts of Canada and around the world.

[468] The MMF's constitutional amendment allowing citizenship applications from outside of Manitoba was not a secret. It was widely publicized through various channels at the time, including international press releases.

[469] The MMF does not represent all Métis across Canada or throughout the world. Under the MMF's Constitution and Self-Government Treaty, no one is automatically a citizen of the MMF; they must elect to apply for Citizenship and meet the eligibility requirements. Among other things, eligibility for MMF Citizenship requires an ancestral connection to the Historic Red River Métis Community. Not all Métis people have this necessary ancestral connection. For example, some Métis people who do not have this connection would qualify for citizenship with the MNA or the MN-S and form part of the Métis Nation.

[470] On July 6, 2021, the MMF and Canada signed the MMF Self-Government Agreement which recognizes the MMF as the democratic representative of the government of the Manitoba Métis, and provides for continued negotiation and conclusion of a Manitoba Métis Treaty and legislation.

[471] The MMF Self-Government Agreement had been in the works for years. Before 2019, the MMF, the MNA, the MN-S and the MNO had all been negotiating self-government agreements for their respective governments. Originally, these four governments worked collaboratively on the terms and spirit of the self-government agreements. However, a fundamental dispute over the terms of the agreement led the MMF to refuse to execute Canada's proposed agreement. Instead, the MMF negotiated with Canada directly for an MMF-specific agreement.

[472] MMF objected to Canada's proposed agreement because, in their view, it undermined the Métis inherent right to self-government because its wording suggested that the Métis people's right to self-government was contingent on the agreement being signed, a new constitution being established, federal legislation ratifying the agreement being passed, the execution of other agreements and an Order-In-Council being issued.

[473] President Chartrand viewed those conditions on the right to self-government as dangerous and contrary to his view that the Métis inherent right to self-government arises out of the Métis' status as a distinct people and nation, their history of self-government pre-Confederation, and is enshrined in section 35. He cautioned MNA, MNO and MN-S against executing Canada's proposed agreement.

[474] MNA, MNO and MN-S each executed Canada's proposed self-government agreements in July 2019.

[475] In July 2021, Canada agreed to execute the MMF Self-Government Agreement, which placed no conditions on the inherent right to self-government of the Red River Métis, but rather expressly acknowledged that right.

[476] The MMF Self-Government Agreement provides that MMF Citizens may be located within Manitoba as well as elsewhere inside and outside of Canada, that individuals must elect to be a Citizen and does not require someone who is eligible for Citizenship to become a Citizen. These provisions are consistent with the MMF General Assembly's November 16, 2014, constitutional amendment authorizing the MMF to receive and process citizenship applications from Red River Métis who live outside Manitoba.

[477] The Plaintiff relies on remarks made by Mr. Chartier at a signing ceremony for an agreement between MMF and the Alberta Métis Federation on July 21, 2021, to suggest that the MMF was to become the MNC's competitor.

[478] At the signing ceremony, Mr. Chartier described the MMF as the bedrock, guardians and champion of Métis nationalism. Mr. Chartier believed then, as he does now, that the MMF stood up for the National Definition of Métis against the MN-S and the MNA who sided with MNO on the issue. He testified that he was advocating for the MMF as the national government of the Red River Métis. He testified that there is no reason why the MMF and the MNC cannot co-exist.

[479] Mr. Chartier submits that the Plaintiff's argument demonstrates a fundamental misunderstanding about the relationship between the MMF and the MNC, and the role that Mr. Chartier saw the MMF playing in advancing Métis interests. Mr. Chartier was clear in his evidence that his views about the MMF as a guardian for Métis nationalism were not "new". He had always seen the MMF as a leader in the fight for Métis rights and a driving force in the pursuit of self-determination. This was a view he had held for many years and expressed publicly in his role as President.

[480] There is no doubt that Mr. Chartier, President Chartrand and the MMF were aligned on the identity issue. Mr. Chartier's views about the identity issue and the role played by the MMF in protecting Métis identity are not relevant unless those views motivated him to act against the best interest of the MNC. As set out below, the evidence does not support a finding that Mr. Chartier was motivated to act against the best interests of the MNC.

[481] On May 2, 2022, MMF withdrew from the Accord between Canada and the MNC.

[482] On November 30, 2024, the MMF and Canada executed the Red River Métis Self-Government Recognition and Implementation Treaty. The MMF Treaty reaffirms the Red River Métis' right to self-government and self-determination and the MMF's right to pass laws that apply to its Citizens that meet their needs, goals and traditions. Like the MMF Constitution and the MMF Self-Government Agreement, the MMF's Treaty defines Red River Métis Citizens as being located both inside and outside of Manitoba. The Treaty also provides that individuals who may be entitled to be Red River Métis Citizens can choose to be a citizen of any collectivity, government or organization, and are not bound to become a Citizen of the MMF, regardless of where their heritage can be traced or where they currently reside.

[483] I do not find that the Defendants plotted to have MMF take over as the national leader of the Métis people or were otherwise in a conflict with the MNC's mandate or in a jurisdictional

conflict with the other Governing Members. MMF represents only the Red River Métis. President Chartrand has acted to advance the interests of the Red River Métis for decades.

[484] Like the MNA, the MN-S and the MNO, the MMF was working towards a self-government agreement with Canada since before 2019. The MNA, the MN-S and the MNO signed Canada's proposed agreement in 2019, but the MMF held out for what it viewed as more favourable terms.

[485] It was 2014 when the MMF General Assembly passed the constitutional amendment authorizing the MMF to represent from Red River Métis who live outside Manitoba. The fact that MMF allows Red River Métis who live outside Manitoba to apply for citizenship is not evidence of a plot to destroy the MNC.

[486] I reject the allegation that the Defendants were engaged in a scheme or scorched earth policy, with the intention of destroying the MNC in order to bolster the MMF in its quest to take over as the national leader of all Métis people. The MMF is not and cannot be the national leader of all Métis people because not all Métis people have an ancestral connection to the Red River Métis. I also reject the proposition that President Chartrand and Mr. Chartier, after devoting all of their lives to the Métis people, would decide that only MMF citizens matter. This proposition defies logic. Also, if they were trying to destroy the MNC using financial means, the Defendants would not have left the MNC with more money than they ever had before.[10]

[487] As set out above, I accept President Chartrand's unequivocal evidence that he held out hope until late September 2021 that the political dispute concerning the identity issue could be resolved if MN-S got on board with requiring the MNO to abide by the National Definition and the MMF would not leave the MNC. If he hoped to stay, it would not make sense to destroy the MNC.

[488] I do not find that the MMF's resolution authorizing its withdrawal created a conflict or provided "notice" to anyone that a conflict existed.

[489] I also accept that even if the MMF left the MNC, President Chartrand did not view the MNC as the MMF's competitor because the MMF could never be the national representative of all of the Métis Nation. The MMF represents only the Red River Métis. There will always be a role for a national Métis government that represents all Métis people. I do not accept that President Chartrand, who has devoted his life to the Métis people and volunteered tirelessly at the MNC for the benefit and future of the Métis Nation, decided that only MMF citizens are worthy of support and representation and no longer cared for Métis people who are not MMF citizens. I accept the President Chartrand cares deeply for the Métis Nation.

[490] The Plaintiff submits that the MMF's Self Government Agreement created a huge jurisdictional conflict among the Governing Members, which would provide yet another rationale for MMF's planned departure from the MNC. I do not accept this proposition. The MNA's Self

[10] The MNC's audited financial statements for the year ending March 31, 2022 show a cash balance of over $9 million.

Government Agreement dated February 24, 2023, also recognizes the MNA's right to represent citizens living outside of Alberta. No one suggests that the MNA's Self Government Agreement has created a huge jurisdictional conflict among Governing Members even though the MNA has not left the MNC.

[491] I do not accept that the MMF's self-government agreement in 2021 created a conflict. Although the self-government agreement recognizes MMF's practice of allowing Red River Métis who live outside of Manitoba to apply for MMF citizenship, that practice had been in place since 2014. The MMF's Constitution and Self-Government Treaty did not create a conflict of interest with the MNC because the MMF is not and cannot be the national government of all Métis people in Canada or the world.

[492] Even if I am wrong, and the Defendants did have these overarching conflicts, acting where there is a conflict does not necessarily give rise to a breach of fiduciary duty. Where the plaintiff establishes a prima facie conflict of interest, the onus shifts to the defendant to show they acted in the best interest of the plaintiff: *Louie,* at para. 21; *Pirani v. Pirani*, 2020 BCSC 974, at para. 172. For the reasons that follow, I find that the Defendants acted in the best interests of the MNC and the Métis Nation.

[493] The Plaintiff alleges that President Chartrand breached the provisions of the *CNCA* by failing to "formally disclose" his interest as President of the MMF in transactions that benefitted the MMF. I do not agree.

[494] The *CNCA* requires that directors and officers must disclose interests that they have in material contracts and transactions in certain situations:

> 141 (1) A director or an officer of a corporation shall disclose to the corporation, in writing or by requesting to have it entered in the minutes of meetings of directors or of committees of directors, the nature and extent of any interest that the director or officer has in a material contract or material transaction, whether made or proposed, with the corporation, if the director or officer
>
> (a) is a party to the contract or transaction;
>
> (b) is a director or an officer, or an individual acting in a similar capacity, of a party to the contract or transaction; or
>
> (c) has a material interest in a party to the contract or transaction.

[495] As set out below, the Defendants did not have any personal financial interest in the impugned transactions other than Mr. Chartier's interest in his retirement allowance and possibly Mr. Chartrand's interest in his wife's consulting agreements.

[496] The Plaintiff appears to suggest that President Chartrand's role as President of the MMF is an "interest" that was required to be formally disclosed under s. 141. That interpretation of s. 141 does not accord with the language of the statute. The fact that a director or officer is also a director or officer of a counterparty to a transaction is a condition that triggers the disclosure requirement

– it is not the interest that must be disclosed. The plain meaning of the statute is that it is directed at material interests of officers or directors.

[497] In any event, President Chartrand's role as President of the MMF was of course known and disclosed to the BOG at large. All of the meeting minutes (GA, BOG and PPC) disclosed that Governors had dual roles as Presidents of the Governing Members.

[498] Additionally, both the SDA and the Database transactions were discussed and approved at PPC meetings, where it was also recorded that President Chartrand was the President of the MMF and the counter-party to the transaction was the MMF. Within the confines of the *CNCA*, looking at the MNC as a corporation, the PPC is plainly and obviously a committee of directors. The disclosure of President Chartrand's interest in the impugned transactions was recorded in the PPC minutes contemplating those transactions.

752. Even if, as the Plaintiff argues, the disclosure needed to be to the BOG and not the PPC, the *CNCA* provides for an exception in these circumstances:

> 141(4) If a material contract or material transaction, whether entered into or proposed, is one that, in the ordinary course of the corporation's activities, would not require approval by the directors or members, a director or an officer shall, immediately after they become aware of the contract or transaction, disclose in writing to the corporation, or request to have entered in the minutes of meetings of directors or of committees of directors, the nature and extent of their interest.

[499] Section 141(4) allows for disclosure to the corporation as opposed to disclosure to the directors or recording in the minutes of a committee of directors. The *CNCA* states that "[c]orporation" "means a body corporate incorporated or continued under this Act and not discontinued under this Act." Therefore, written notice to the President of the MNC is sufficient. Many of the impugned transactions were discussed in writing with Mr. Chartier who was aware of any interest President Chartrand would have by virtue of his position with the MMF.

[500] The Plaintiff suggests that s. 141 applies more broadly to interests of the MMF. The plain language of s. 141 does not support that interpretation. However, even if the Plaintiff's interpretation is correct, the MMF did not have any disclosable interest. The Plaintiff argues that simply by virtue of receiving MVLP funds or the obligation to host the Database, the MMF had an interest in these transactions. An interest must mean that the MMF would be receiving something of value. As set out below, in both the MVLP and the Database transactions, the MMF was taking on an obligation, it did not receive a financial benefit. The Plaintiff submits that the MMF or President Chartrand or President Chartier received some reputational benefit from the impugned transactions. I do not agree. The specifics of the alleged reputational benefits are addressed under the MVLP and Database headings below.

[501] Even if I am wrong and the Defendants had an interest which they ought to have disclosed, I would not exercise my discretion under s. 141(10) to set aside any of the impugned transactions

because 1) the Defendants complied with the MNC's historical governance practices, 2) the stalemate created by the political dispute over the identity issue meant that there were no BOG meetings at which the conflicts could be disclosed, and 3) because of my findings that the impugned transactions were in the best interests of the MNC and the Métis Nation as set out below.

[502] I will address the specific conflicts alleged regarding Mr. Chartier's retiring allowance and Glorian Chartrand's consulting agreement when I deal with those items below.

No Scheme or Scorched Earth Policy

[503] The Plaintiff alleges that the impugned decisions and transactions were part of a "scheme" or "scorched earth policy" aimed at destroying or causing severe harm to the MNC to benefit the MMF and confer unlawful benefits on the Defendants and others. The Plaintiff's theory is that the purpose of the scheme was to further President Chartrand's plan to have the MMF take over from the MNC as the national body for all Métis in Canada. The Plaintiff alleges that President Chartrand rewarded Mr. Chartier, Ms. Watteyne, and the Consultants for assisting him with the removal of important assets (i.e. the Database and the MVLP) from the MNC to the MMF before the MMF withdrawal from the MNC, for keeping these transactions secret, and also for their loyalty in standing with him against the MNO on the identity issue.

[504] To state the obvious, if the Defendants made the impugned decisions or entered into the impugned transactions as part of the alleged scheme or scorched earth policy in order to harm the MNC, they would clearly be acting in bad faith and breaching their fiduciary duties. If their purpose in making the impugned decisions was to position the MMF as the new national government of the Métis Nation, they would not be acting in the best interests of the MNC.

[505] The alleged scheme was put to the Defendants at trial and at their examinations for discovery and vehemently denied by all of them.

[506] The Plaintiffs have not proven that the impugned decisions and transactions were part of a "scheme" or "scorched earth policy" aimed at destroying or causing severe harm to the MNC. When it commenced the action, the Plaintiff did not have proof of the alleged scheme. Ms. Caron's evidence at her examination for discovery was that the MNC was relying on evidence they hoped to obtain from the Defendants. The Plaintiff now relies on handwritten notes taken by President Chartier during PPC meetings which the Plaintiff calls its "smoking gun".

[507] The notes do not contain any references to quid-pro-quos, political favours, an intention to harm the MNC or an intention to advance the MMF at the MNC's expense.

[508] Mr. Chartier was asked about the notes in his cross-examination. He was asked to and did identify authoring some, but not all of the notes. While Mr. Chartier testified that generally the notes reflected what was said, or what he understood about what was said in the PPC meetings, he testified that his notes were "not a transcript" of the discussions at the PPC meetings. Mr. Chartier also testified that the notes contained his own personal thoughts which occurred to him during the PPC meetings. When specific notes were put to him, he was often unable to recall who or what he was paraphrasing when he took the notes.

[509] The notes themselves reflect Mr. Chartier's own form of shorthand. There was no evidence that anyone else who was present at the PPC meetings had an opportunity to review or revise the notes.

[510] The Plaintiff submits that where the notes conflict with Mr. Chartier's evidence about them, I should give greater weight to the notes. The Plaintiff relies on *Borrelli v. Chan*, 2018 ONSC 1429, 58 C.B.R. (6th) ,1 at para. 858; *Rebello v. Ontario*, 2023 ONSC 3574, at para. 5; *2730453 Ont. Inc v. 2380673 Ont. Inc*, 2022 ONSC 6660, 51 R.P.R. (6th) 259, at para. 91; *Owala v. Makary*, 2021 ONSC 7476, at para. 150; *Look Communications v. McGoey*, 2017 ONSC 2165, 139 O.R. (3d) 366, at para. 47 and footnote 7. In each of these cases the court preferred the evidence of one witness over another because the preferred evidence was more consistent with contemporaneous documents.

[511] In the present case, the Plaintiff is asking me to accept its interpretation of the notes over the evidence of Mr. Chartier and President Chartrand. The Plaintiff has not cited any case where the court preferred contemporaneous notes over uncontradicted *viva voce* evidence.

[512] The notes themselves are hearsay and are not admissible for the truth of their contents. I do not find they are admissible under the principled exception to the hearsay rule.

[513] In *R. v. Khan,* the court said hearsay is inadmissible unless there are sufficient indicia of necessity and reliability: [1990] 2 S.C.R 531, at p. 542.

[514] The Plaintiff submits that the notes are necessary because they are the only contemporaneous accounts of the discussions from the PPC meetings. The notes are not necessary; Mr. Chartier was the author of the notes, and he testified. Other people who attended the PPC meetings testified, still others could have been called as witnesses. The notes were not sufficiently reliable to be admitted for the truth of their contents. Mr. Chartier testified that they were not a transcript of what was said at the meeting, he did not always accurately record what was being said and he included his own thoughts as well.

[515] The Plaintiff submits that even if they are not admissible for the truth of their contents, the notes are probative of who was present at the PPC meetings. I do not understand there to be any dispute as to who was present. The Plaintiff submits that the notes are also probative of what was said and by whom. There is no relevance to the notes if they are not admissible for their truth.

[516] To the extent they contain prior inconsistent statements, the notes can be used to impeach the evidence of witnesses. However, they can only be admissible for the truth of their contents to the extent that a witness testifies to their truth and adopts their contents.

[517] The notes which were not put to any witnesses are inadmissible.

[518] The Plaintiff relies on a note dated June 3, 2020. The Plaintiff submits the note is evidence that the MMF's Chief of Staff Al Benoit "was discussing how the Métis National Council Secretariat Inc.'s assets (including the Database) would be divided upon MMF's plan to "go on (its) own" and to "start to build a new nation".

[519] The June, 2, 2020 notes says:

> "lets not hang on any longer, let's not delay",
>
> "MMF to go on own!"
>
> "start building a new nation!"
>
> …
>
> "Al - the MN will live on, so may the MNC, but not the MNC Sect. Inc., we need to lk at the assets, e.g., Desautel + MNC Hist online database"
>
> ….
>
> "ultimately what are we trying to do?
>
> "save the MNC not MNC Sect. Inc. etc.

[520] Mr. Benoit did not give evidence at trial.

[521] Mr. Chartier gave evidence that the comments in the note were part of a discussion about what would happen if the MMF acted on its 2019 resolution to leave the MNC if the MNO was brought back in. Mr. Chartier said he had strong feelings on this issue, but had no control over the MMF's decision. He said that *Desautel* is a case decided by the Supreme Court of Canada where at least one person from Washington State was acquitted of harvesting in British Columbia. He said the reference to the Database was part of a wide-ranging discussion about the nation and he believed the discussion was focused on s. 35 rights and how the Database could be used to advance those interests. He expressly denied ever discussing the removal of the MNC's assets.

[522] Aside from the hearsay problems, Mr. Chartier's notes simply do not establish that the Defendants were scheming to destroy the MNC or that the impugned decisions were made for the purpose of advancing the MMF as the "new" national government of the Métis Nation. If they were admissible, at best, some of the notes show that there were some discussions at PPC meetings regarding the national definition dispute, potential impacts of MNO's continued non-compliance and the MMF's potential departure from the MNC. Some of the notes expressly contradict the Plaintiff's theory, for example there are notes that reference the MNC "living on", saving the MNC and a statement that the MMF "will or will not" attend the GA at the end of September.

[523] Mr. Chartier and President Chartrand were very clear that any reference to a "national body" in Mr. Chartier's notes was not a reference to President Chartrand talking about the MMF taking over from the MNC as the national representative of the Métis Nation.

[524] Both Mr. Chartier and President Chartrand testified that President Chartrand was not of the mindset to be looking at building a new nation. Both testified that "national body" or "new nation" is not a term that President Chartrand would use in speaking of the MMF; rather, he talked about "the Red River National Métis Government".

[525] As set out above, the Red River National Métis Government was not and could not be the representative of all Métis people. It is a reference to the fact that after the November 16, 2014, MMF constitutional amendment the MMF was representing MMF citizens outside of Manitoba and after July 6, 2021 MMF and Canada signed the Self-Government Agreement which recognizes MMF as democratic representative of the government of the Manitoba Métis. It is not evidence of a scheme to harm the MNC.

[526] I simply cannot rely on inadmissible hearsay and I do not accept the Plaintiff's interpretation of, and inferences concerning, Mr. Chartier's notes over the direct evidence of President Chartrand and Mr. Chartier which I find to be credible.

[527] Mr. Chartier's notes are not evidence of an intention to harm the MNC or to prop up the MMF and they are not evidence of an exchange of political favours. Mr. Chartier's notes do not prove that any of the impugned decisions were made for the purpose of harming the MNC and advancing the MMF.

[528] The Defendants testified that, of course, they were discussing MNO at the PPC meetings, they talked about what would happen to the MNC if the MMF withdrew and how do deal with these ongoing issues. There is nothing improper about the Defendants discussing these critically important issues that had broad ranging implications for the Métis Nation. The fact that the Defendants were discussing these issues does not establish that these issues were the motivation behind any of the impugned decisions and transactions or that there was a scheme or scorched earth policy.

[529] It is also inherently unlikely that if the Defendants were engaged in a scheme or scorched earth policy, Mr. Chartier would make and keep notes of it.

[530] The fact that some of the Consultants attended PPC meetings is not evidence that they participated in a scheme with the Defendants. Mr. Weinstein and Mr. LeClair attended PPC meetings to provide senior advisory support and advice. Ms. McKay and Ms. Xie attended PPC meetings to address issues pertaining to their portfolios.

[531] The timing of events undermines the Plaintiff's theory. President Chartrand did not decide that the MMF would withdraw from the MNC until the very end of September. While there is plenty of evidence that withdrawing was an issue on the table which was known to everyone, the evidence establishes that President Chartrand held out hope until the very end that MN-S would come around and support enforcing the GA resolution on the identity issue and require MNO to comply. If that happened, the MMF would not withdraw from the MNC.

[532] Mr. Chartier did not know whether the MMF would leave the MNC until the announcement was made right before the GA at the end of September 2021. Mr. Chartier said that he hoped the MMF would stay and the MNC could continue as the national government of the Métis people. He said he was counting on the MMF's votes for a possible last minute attempt to be re-elected as MNC President and to address the issue of MNO's compliance with the National Definition. There is no reason why President Chartrand and Mr. Chartier would set out to destroy the MNC when there was a good chance that the MMF would stay in the MNC.

[533] The Plaintiff's theory that the purpose behind the plan to destroy the MNC was for the MMF to take over as the national government of all Métis people, simply does not hold water. The MMF cannot be the national government because it does not and cannot represent all Métis people. There are Métis people who do not qualify for citizenship in the MMF. I do not accept that President Chartrand and Mr. Chartier care only about the citizens of the MMF (i.e. the Red River Métis). These men have been Métis leaders for decades and spent much of their lives advocating for the Métis Nation as a whole. Their accomplishments with Canada benefit all Métis people. The Accord and Sub-Accords benefit all Métis people. There was no evidence that they simply changed their minds one day and decided that only the MMF citizens matter and it does not make any sense that they would do this.

[534] There is much evidence that the Defendants were not trying to hurt the MNC:

> If the SDA was meant to harm the MNC, it would not contain an agreement by the MMF to indemnify the MNC.
>
> If the Database transfer was intended to harm the MNC, the MMF would not have agreed to take over the substantial costs.
>
> If the intent was to harm the MNC, it would have been better not to extend the lease and to force the MNC to find alternate premises or to increase the rent significantly.
>
> If the intent was to harm the MNC, the Defendants would not have settled with the employees or Consultants as they did. They could have left the MNC exposed to litigation. If the intent was to both harm the MNC and benefit the employees and Consultants, Mr. Chartrand would not have obtained comprehensive full and final releases.
>
> If the intent was to harm the MNC, the Defendants would not have given letters of assurance to employees to encourage them, particularly the finance team, to stay on to assist with the transition.
>
> If the intent was to harm the MNC, Ms. Watteyne would not have offered to stay on for a month to assist with the transition.

[535] The Plaintiff alleges that Mr. Weinstein authored draft letters that sought to harm the MNC and favour the MMF. This allegation is based on an email dated July 22, 2021, from Mr. Benoit to Mr. Weinstein and copied to others in which he shares edits to draft letters to the Prime Minster and the GA notifying them of MMF's withdrawal from the MNC and reasons for the withdrawal.

[536] There was no direct evidence that Mr. Weinstein authored the letters. President Chartrand said the letters were authored by Mr. Benoit who was the MMF's Chief of Staff. President Chartrand said he did not instruct Mr. Benoit to write the letters. He said Mr. Benoit was likely trying to prepare in case President Chartrand called him and told him to take a position and prepare an immediate response. President Chartrand said Mr. Benoit was likely just doing his due diligence as Chief of Staff.

[537] It is unclear who first authored the letters. From the email, it appears that Mr. Benoit was sending his edits to Mr. Weinstein. From the tracked changes on the letter, it looks like Mr. Weinstein and someone else are making changes. There are also handwritten notes on the typed letters.

[538] Regardless of who first authored the draft letters, I do not find that Mr. Weinstein was seeking to harm the MNC. The letters request that Prime Minster Trudeau "impress upon [his] ministers the importance of working with the MMF government to adjust the relationship between the Métis Nation and Canada accordingly. This will require reallocation of MNC resources to ensure the MMF government can provide representation and advocacy for the Red River Métis at the national level."

[539] If the MMF were going to leave the MNC, then the relationship between the MMF and Canada would have to be a direct one and any resources flowing from Canada to the MMF would no longer go through the MNC. It is not surprising that draft letters notifying Canada of the MMF's departure from the MNC would address these issues. It is not surprising that these letters would be drafted in advance. The letters are not evidence of an intent to harm the MNC.

[540] The Plaintiff submits that certain invoices tendered by Mr. LeClair and Mr. Weinstein's consulting corporations prove that they assisted the MMF with its plans to withdraw based on a few docket descriptions. This theory was not advanced at trial and these invoices were not put to any witness at trial, even though Ms. Watteyne and Mr. Chartier were cross examined about the invoice approval process. Ms. Watteyne was not given an opportunity to explain why she approved invoices that had a reference to the MMF in them.

[541] Courts may afford little weight to documents not put to any witness at trial: *JCL Concrete Pumping Ltd. v. SEMA Railway Structures Inc.*, 2024 ONSC 6419, at paras. 60-61; *GTA Structural Steel Ltd. v. 20 Ashtonbee Holdings Limited and Hady Construction (Toronto) Inc.*, 2012 ONSC 7158, 21 C.L.R. (4th) 1, at para. 57. If documents are not put to a witness, it is often not clear what they mean: *Heywood Innovative Solutions Inc. v. The State Group Inc.*, 2025 ONSC 1927, at para. 155.

[542] I do not infer that the reference to the MMF in the invoices means that Mr. LeClair and Mr. Weinstein were plotting with the MMF to destroy the MNC.

[543] Mr. Weinstein's July 2021 invoice includes "planning discussions with President", attendance at PPC meetings, transition planning, and work with the MMF. Mr. Weinstein's September 2021 invoice records "planning meeting with President" and "meetings with President re: transition to new leadership" and emails and discussions with MMF officials.

[544] Working with Governing Members such as the MMF was within the Scope of Work for Mr. Weinstein's consulting corporation:

> The Senior Advisor is responsible for providing strategic advice and support to the MNC Executive and form implementation of MNC's objectives as a member of the senior policy and priorities team.

…

> The Senior Advisor provides writing services to MNC President on a range of correspondence, speeches, presentations to parliamentary committees, news releases, briefings for Ministerial meetings, and reports as required. He participates in meetings with MNC President and Vice-President as required including Governing Member assemblies, inter-governmental processes… In addition, the Senior Advisor participates in on-going Métis nation meetings and processes (e.g. weekly meetings of MNC/Governing Members, Métis Nation committees and working groups).

[545] Mr. LeClair charged the MMF consulting fees while he was engaged by the MNC. His agreement was not exclusive with the MNC. The Consultants were third-party service providers who provided services to a range of clients. The fact that Mr. LeClair also did work for the MMF is not evidence that he plotted with MMF to destroy the MNC.

[546] The Plaintiff alleges that Ms. Xie was complicit in evidence spoilation. There is no evidence of what, if any of MNC's data was deleted. There was no evidence from the Plaintiff concerning the alleged data deletion. Ms. Xie's read in evidence was that she had no recollection of deleting MNC's data other than what she did on her own initiative as part of routine IT maintenance when they were out of space. She did not recall Mr. Chartier asking her to delete his data but agreed it could have happened.

[547] I do not find that Mr. Chartier breached his fiduciary duties by directing Ms. Xie to delete his data. Mr. Chartier testified that he did not separate MNC's business from his personal life and his law practice; all his emails were intermixed. When he was leaving the MNC, he asked Ms. Xie to delete his personal emails containing his personal information or his clients' information. He did not know if Ms. Xie actually complied with his request but assumed that she did. At the time, he did consider that if she complied with his request, Ms. Xie might delete some of MNC's information; but, at trial he explained that his practice was to print and file hard copies of anything that was important.

[548] The Plaintiff submits that Ms. Watteyne acted in bad faith and was disloyal to the MNC by breaching her fiduciary duties and by assisting the Defendants in the breach of their fiduciary duties with respect to the impugned transactions. The Plaintiff submits that Ms. Watteyne was part of the scorched earth policy. I do not accept this submission because I find that there was no scorched earth policy and that Ms. Watteyne and the Defendants did not breach their fiduciary duties with respect to the impugned transactions.

[549] Before turning to the specific impugned transactions, I will address Ms. Watteyne's role and evidence of her loyalty to the MNC and good faith efforts to advance the MNC's interests.

[550] Ms. Watteyne reported to the President and Vice President and Minister of Finance. Her administrative duties as Executive Director included taking care of day-to-day administrative matters such as supervising employees and some of the Consultants, managing financial operations

including reviewing payables and supporting documents and preparing the MNC's annual budget with the oversight of the Minister of Finance.

[551] Ms. Watteyne also played a policy role in advancing the Métis Nation's priorities with Canada. She was a key member of the PBM team and served as a point of contact with Canada. She worked with external partners on funding, attended senior officials' meetings and bi-weekly check ins with the Assistant Deputy Minister at CIRNAC responsible for Métis partnership and policy.

[552] All of the recommendations which Ms. Watteyne made with respect to the impugned transactions were approved by Mr. Chartier and/or President Chartrand.

[553] I do not accept the Plaintiff's submission that Ms. Watteyne made payments to certain consultants "without serious or meaningful scrutiny, oversight, or inquiry". The evidence does not support this conclusion. Ms. Watteyne testified that she reviewed invoices to identify and correct errors and ensure that the services were rendered in accordance with the contracts. Ms. Watteyne testified that there were occasions where she rejected invoices. This evidence was uncontradicted.

[554] The Plaintiff submits that Ms. Watteyne was loyal to the Defendants and not the MNC. Ms. Watteyne was consistent and steadfast in that she did not act out of loyalty to President Chartrand or Mr. Chartier; rather, she was loyal to the MNC at all times. I accept her evidence because it is supported by and consistent with the actions she took, which is evidenced by documents.

[555] Between 2018 and 2020, Ms. Watteyne took many steps to enhance transparency, ensure consistency in MNC's practices, and generally improve the MNC's day-to-day operations such as working with legal counsel to implement proper contracts for all employees and consultants, modernizing MNC's finance operations and facilitating the Ernst and Young audit and implementing its recommendations.

[556] In 2021 Ms. Watteyne worked with Dr. Russell to create a virtual collaborative space called COLLAB SPACE to house "all of the relevant documents related to the PBM process, all of the work that was underway, Records of Discussion, agreements, instruments…" and make them accessible to each of the Governing Members and their senior officials so as to be "operating in a very transparent and open way". Dr. Russell's read in discovery evidence also refers to the COLLAB SPACE.

[557] Numerous witnesses, including Ms. Poitras, praised Ms. Watteyne for her knowledge, professionalism and integrity, and described her role as important and "instrumental". President Chartrand described her as working diligently to do what was best for the Métis Nation and showing professionalism even to the end as she was leaving the MNC.

[558] After providing notice of her intention to leave the MNC, Ms. Watteyne expressly asked President Chartrand to keep her pending departure confidential to maintain calm among the MNC staff, as she "did not want [her] decision to impact on others".

[559] Ms. Watteyne coordinated and attended the September 2021 GA to ensure it took place in accordance with the terms of Justice Belobaba's order.

[560] Ms. Watteyne made efforts to assist the incoming administration and ensure continuity, including the following: recommending to President Chartrand that key staff including the finance and policy teams be motivated to stay on to support the new administration; soliciting briefing reports from the departing Consultants; and offering to be available for an additional month following her departure to provide assistance to the new administration.

[561] Ms. Watteyne knew that all of the impugned decisions and impugned transactions would be available to the new administration, and she actively participated in ensuring documentation related to the impugned transactions was kept and made available to the new administration. She recommended enticing the finance group, who had knowledge of and access to all of the details of the impugned transactions, to remain at the MNC to assist the new administration. It makes no sense that Ms. Watteyne would do these things if she were engaged in a secret plan to destroy the MNC.

[562] The Plaintiff submits that Ms. Watteyne ought to have reported the impugned transactions to the Tri-Council. I do not accept this submission. Ms. Watteyne's role was not political. It was not her job to get involved in the political dispute. Ms. Watteyne observed BOG and PPC meetings but had no role in calling those meetings or setting their agendas. It is not reasonable to expect Ms. Watteyne to have questioned internal political decisions or discussions, or those discussed at PPC meetings and report those matters to the Tri-Council who were actively seeking to undermine the MNC and her, particularly since the Tri-Council members would not normally be privy to those discussions. There is no evidence to suggest that Ms. Watteyne ever reported to Governing Members in this manner, even before the stalemate.

Issue 1: MVLP

[563] The Plaintiff says the Defendants unlawfully, and in breach of their fiduciary duties, assigned the MVLP Contribution Agreement from Canada by entering into the SDA agreements whereby the MNC transferred federal funding to the MMF for the MMF to use to facilitate the MVLP. The Plaintiff alleges the Defendants did not have the authority under the By-Laws to enter into the SDA for the following reasons:

- The SDA lacks two signatures contrary to the two-signature requirement;
- The SDA was entered into in secret;
- President Chartrand was in a conflict when he executed the SDA; and
- there was self-dealing because President Chartrand and/or the MMF received a benefit from the SDA.

[564] The Plaintiff alleges that the MMF benefited from the SDA agreements because it can charge rent, it gained a reputational or political advantage, it used MVLP funds to benefit friends and allies, and it can charge a 15% administration fee.

[565] The Plaintiff says that Veterans Affairs Canada ("VAC") was unaware that the MMF was administering the MVLP and that VAC takes the position that the SDA is an unlawful assignment of the MVLP Contribution Agreement. The Plaintiff also says that the MMF is violating the terms of the MVLP Contribution Agreement by making individual recognition payments to children of Métis WWII veterans because only payments to spouses are authorized. Finally, the Plaintiff says it is unable to meet its reporting obligations to VAC because MMF refuses to provide the documentation necessary to verify and validate the information MNC must convey to VAC.

[566] The Defendants say that the SDA was in the best interests of the MNC and the Métis WWII veterans. There is no dispute that the MNC did not have the capacity or mandate to administer the MVLP because Governing Members historically delivered programs and services. The MMF was best suited to deliver the program given President Chartrand's decades-long leadership of the Veteran's file, the MMF's infrastructure, and the MMF's experience with large-scale outreach and distribution programs. VAC and the other Governing Members knew that the MMF was delivering the MVLP and did not object. There was no self-dealing because neither the MMF nor President Chartrand received any financial benefit. All funds transferred from the MNC to MMF have been accounted for and there are no improper transactions. The SDA and its amendment memorialized the MMF's duty to administer the MVLP and provided numerous benefits to the MNC, including: a minimum 10-year commitment to deliver the program; a comprehensive indemnity from the MMF; and the obligation to provide full financial disclosure and reporting. The delivery of the MVLP has been a success and the only complaint about its administration has arisen in this litigation.

[567] For the reasons below, I find that the Defendants did not breach their fiduciary duties by entering into the SDA and its amendment. The SDA was in the best interests of the MNC. The purpose of the SDA was to formalize the existing role of MMF in delivering the MVLP, to facilitate the transfer of funds, to set out the parties' responsibilities and to provide stability, and to ensure longevity for the program. It provides benefits and protection to the MNC, and it facilitated MMF's successful administration of the MVLP for the benefit of the MNC and the veterans.

[568] Thousands of Métis people fought for Canada during World War II. After the war, Métis veterans did not receive the support, resources, or benefits that were promised to them and that were given to non-Métis veterans.

[569] President Chartrand and his wife Glorian Chartrand have advocated for support and recognition for Métis veterans for more than two decades. Over the years, President Chartrand advocated for individual Métis veterans or their estates and also a national trust fund for legacy programs which would be administered by the veterans themselves. Their work was well known to the Métis Nation, and President Chartrand provided the BOG and GA with status updates over the years. There is no dispute that President Chartrand was instrumental in, if not primarily responsible for, obtaining funding from Canada for the MVLP.

[570] President Chartrand, in his capacity as Minister of Veterans and Minister of Finance for MNC, executed a Contribution Agreement on behalf of MNCS Inc. with the Government of Canada ("MVLP Contribution Agreement") on June 13, 2019, the same day that the

Homelessness, Interim Governance and Economic Development Sub-Accords were signed, and 3 days after the Post-Secondary Education Sub Accord was signed. Lawrence MacAulay, the Minister of Veterans Affairs and Associate Minister of National Defence executed the MVLP Contribution Agreement on behalf of Canada. No one has challenged the validity of the MVLP Contribution Agreement.

[571] President Chartrand negotiated the overarching principles of the settlement with the Minister of Veterans Affairs but left the negotiation of the specific terms of the MVLP Contribution Agreement to others.

[572] Under the MVLP Contribution Agreement, Canada agreed to provide an apology and $30 million for the purpose of making individual recognition payments of $20,000 to Métis Veterans or their survivors, and to support commemorative initiatives to promote awareness and appreciation for the sacrifices of Métis Veterans (i.e. events, learning materials, memorials and scholarships and bursaries) and an apology. Section 4.2(d) provided that, after the one-year term expired, the MNC was entitled to retain any unexpended funding remaining for purposes consistent with the MVLP's objectives.

[573] President Chartrand testified that it was always the intention to set up a trust fund or "legacy fund" that would be used to support commemorative initiatives in perpetuity. It was for this reason that the funding under the MVLP was not split among the Governing Members after it was received from Canada.

[574] President Chartrand testified that the MVLP Contribution Agreement was made in the spirit of government-to-government and nation-to-nation relationships. In practice, this meant that the Métis Nation would have control over the program without Canada's intervention.

[575] A witness from VAC, Jeff Gallant, testified at trial that the MVLP Contribution Agreement was entered into on a nation-to-nation basis and was intended to be in the spirit of and consistent with the principles of self-government.

[576] MNBC, MNA, MN-S and MNO did not play any role in negotiating the MVLP Contribution Agreement.

[577] Canada provided the $30 million funding under the MVLP Contribution Agreement on September 30, 2019, and the money was invested with Richardson Wealth.

[578] There is no dispute that the MNC did not have the capacity or the mandate to deliver programs and services including the MVLP. Delivering programs was the business of the provincial governments. Therefore, the MNC required a third party to deliver the MVLP. The MNC's objective was the effective administration of the program, and the MMF was best suited for that task. Mr. Chartier selected MMF to be the administrator of the MVLP.

[579] Everyone knew that the MVLP would be administered by the MMF. The MMF began administering the program with its own funds even before Canada provided the funding. President Chartrand explained there was urgency because the Métis veteran population was aging, and they wanted to deliver as many individual payments as possible while the veterans were still living. The

MVLP Contribution Agreement identifies Don Roulette, Executive Director of the MMF as the primary contact person with MMF's address and Ms. Watteyne as the secondary contact.

[580] The MMF administered the MVLP from June 2019 until September 2020 without a contract in place, and no one raised any concerns. No other Governing Members expressed any interest in participating in the administration of the MVLP. In fact, no other Governing Member even bothered to go into the next room to witness the signing of the MVLP Contribution Agreement even though they were all present in the hotel and signing Sub-Accords in the next room.

[581] Ms. Watteyne's evidence was that she had confidence that the MMF would deliver the MVLP to the highest standard and it did. She said a lot was accomplished in a very short time.

[582] On November 5, 2019, the MMF hosted an MVLP Roundtable in Winnipeg, Manitoba to consult with the Métis Nation about the MVLP. The MMF had 16 representatives at the Roundtable including MMF legal counsel, the MMF Chief of Staff, President Chartrand's Executive Assistant and other Ministers. The other Governing Members sent one to five people each, mostly veterans.

[583] The MMF took the lead at the Roundtable, with President Chartrand explaining the proposed mechanics for delivering the MVLP. There was a presentation by MMF's legal counsel about the distribution policy and tax considerations. There was a presentation by a representative from Richardson Wealth who was retained as the investment advisor for the legacy fund which would invest to maintain purchasing power while financing projects or making grants in perpetuity.

[584] On February 6, 2020, the MMF hosted a second MVLP Roundtable in Winnipeg. Again, the attendee list and the minutes demonstrate that MMF took the lead. The MNA could not attend but the other Governing Members had three to five participants each, while the MMF had 13. Again President Chartrand, with his team from MMF, explained various items related to the administration of the MVLP.

[585] There were no complaints about the MMF taking the lead role regarding the administration of the MVLP.

[586] At the second Roundtable, President Chartrand recommended that his wife Glorian Chartrand resume her work on the Veteran's file. He thought she was right for the position because of her familiarity with the veterans and their families and her previous experience working with him on the Veteran's file. He invited participants to express any concerns or objections over this recommended appointment during the meeting or to him later. No such concerns were raised.

[587] After making the recommendation, President Chartrand was not involved in negotiating or approving the agreement between the MNC and Glorian Chartrand and did not see it before this litigation.

[588] Ms. Watteyne testified that everyone knew that Glorian Chartrand was married to President Chartrand and had been for many years. She had worked for the MNC before and she was well

known to the Governing Members. At trial, the Plaintiff suggested to Mr. Chartier, without any foundation whatsoever, that Glorian Chartrand's previous consulting agreement with the MNC in 2001 was a "wedding gift" because it was signed around the time of her wedding. There was no evidence to support this allegation.

[589] The Plaintiff's allegations of conflict of interest regarding Glorian Chartrand's consulting agreement are addressed under the heading "Consulting Agreement with Glorian Chartrand" below.

[590] Ms. Watteyne testified that Glorian Chartrand's role was important to assist the MNC in meeting the objectives set out in the MVLP Contribution Agreement; it was a "big role" with a heavy amount of work to do to establish the program.

[591] Between June 2019 and September 2020, the MMF administered the MVLP on behalf of the MNC with the assistance of MNC's staff. This work included developing policies, locating veterans, making payments, and establishing an infrastructure to administer the legacy fund. This process required the MMF to expend its own funds and seek reimbursement from the MNC which created unnecessary work.

[592] On June 24, 2020, the PPC discussed and approved the transfer of funds from the MNC to the MMF to facilitate MMF administering the MVLP based on a briefing note which outlined the three phases of the MVLP: Phase 1- delivery of recognition payments to living Métis veterans; Phase 2 - identifying and providing recognition payments to surviving spouses, common-law partners and children of Métis veterans; and Phase 3- design, development and implementation of the Commemoration Program. The briefing note states that Phase 1 was underway, Phase 2 was to begin shortly, and Phase 3 was to launch later.

[593] The briefing note states that the MMF was seeking the transfer of funds to continue administering the program and a budget was attached. The budget estimated that the cost of the program from April 1, 2020, to March 31, 2021, would be $3,145,754.68. This included $2 million estimated for the provision of recognition payments, other costs to set up the program (including computer hardware/software, office supplies, etc.) and ongoing costs of the program (staff salaries, advertising and promotion, office space, etc.).

[594] On September 2, 2020, the PPC discussed preparing an agreement which would facilitate the transfer of funds and outline MMF's obligations. Mr. LeClair drafted the SDA. He and President Chartrand both gave evidence that the intention was to create a long and stable relationship or legacy program between the MNC and the MMF for the benefit of the veterans.

[595] The MMF and the MNC signed the SDA on September 4, 2020. It was executed on behalf of the MMF by Anita Campbell (Minister of Finance and Human Resources), and the Chief Administrative officer of MMF. It was executed on behalf of the MNC by President Chartrand, Vice-President & Minister of Finance MNC.

[596] As set out in the MNC Governance section above, as MNC President, Mr. Chartier had the power to delegate authority to President Chartrand as Minister of Veterans Affairs and Minister of Finance to execute the SDA and two signatures were not required on contracts.

[597] MMF's administration of the MVLP was well known to the Governing Members, Canada and the Métis Nation. A copy of the SDA was available to the new administration on its first day in office. There is no evidence of any attempt by anyone to keep the SDA a secret.

[598] President Chartrand said that in his discussions with veterans, they told him to ensure there was a plan in place that would continue in perpetuity. The veterans wanted the program to be a "continuation of their memory" to ensure they were never forgotten. President Chartrand said he took this to heart and promised the veterans there would be a long-term plan and strategy in place to ensure they were remembered, and they ended up calling the program the "Legacy Fund".

[599] The SDA provides:

1) The MMF is the "Service Delivery Agent" to deliver MVLP related services in accordance with the Contribution Agreement, including the delivery of individual recognition payments;

2) The term is five years, with the MMF having a right to renew for a further five years;

3) An initial payment of $3.15 million is to be transferred to the MMF and subsequent payments would be made in an amount equal to the interest earned on the legacy fund with Richardson GMP (now called Richardson Wealth).

4) The MNC retains property rights over the work product.

5) The MMF is responsible for having insurance.

6) The MMF agrees to indemnify the MNC for any claims, demands, losses, liabilities, damages, costs of expenses caused by the MMF or its employees in the course of administering the MVLP.

7) The MMF will provide the MNC with all necessary information required for the MNC to comply with its financial reporting requirements under the MVLP Contribution Agreement.

[600] The Plaintiff submits that President Chartrand ought to have disclosed the fact that he had a conflict of interest to the BOG. President Chartrand did not have any personal interest in the SDA. All of the Governing Members knew from the outset that the MMF was delivering the MVLP on behalf of the MNC.

[601] From September 2020 to April 2021, the MMF administered the MVLP under the SDA and provided the required reporting under the MVLP Contribution Agreement to the MNC and to VAC.

[602] In April 2021, (the last month of the original MVLP budget provided to the PPC), Glorian Chartrand recommended, and President Chartrand requested, an additional transfer of funds of $5.5 million because the MVLP was preparing to launch Phase 3 which was always expected to require significantly more funding that the first two phases.

[603] On April 20, 2021, the PPC passed a resolution to transfer the $5.5 million to the MMF and stated that the MMF would prepare a budget. In connection with this transfer the SDA was amended.

[604] The MNC and the MMF signed the Service Delivery Agreement Amendment Agreement ("SDA Amendment Agreement") on April 22, 2021. The SDA Amendment Agreement provides for the transfer of the $5.5 million, extends the terms from five years to 10 years with an option to renew for a further 5 years, and provides that the MMF may charge a service fee of 15% of the annual budget.

[605] The Plaintiff submits that the SDA Amendment Agreement was made for no *bona fide* reason and was made to tighten MMF's grip on controlling the administration of the SDA by extending its term. I do not accept this submission.

[606] The SDA Amendment Agreement facilitated the transfer of the funds for Phase 3. President Chartrand explained that deposits were needed for contractors for commemorative projects. President Chartrand testified that the term was extended to provide more long-term certainty and stability to the MVLP which was intended to operate in perpetuity. Extending the term aligned with that objective.

[607] President Chartrand testified that charging a 15% administration fee for programs and services it delivered was MMF's standard practice. The 15% administration fee normally covers MMF's operational costs such as finance, accounting and human resources support that are otherwise not reimbursed.

[608] President Chartrand explained that he was under pressure from his MMF Cabinet not to deviate from the MMF's standard practice, so he included the 15% fee in the SDA Amendment Agreement. However, he directed the MMF not to actually take the 15% for this specific program. President Chartrand says that the MMF has not taken the 15% fee or any fee for delivering the MVLP. There is no evidence that the MMF took a 15% fee. The only other evidence on this point is contained in an answer to undertaking which the Plaintiff read in at trial. The undertaking says, in part:

> There is no flow of funds because the management fee is never removed from the MVLP bank account. Despite that funds never move from one bank account to another, an accounting exercise is conducted in the MMF's general ledger to show the charge of a fee and a corresponding credit of the fee back to the MVLP.

> The MMF accounting department has created the spreadsheet at Tab 2 which includes excerpts from the MMF's general leger corresponding to the accounting exercise described above.

[609] Because the fee is not charged, the MMF is covering the administrative costs of the program. There was no evidence that if the MMF were to charge the 15% that would not be a reasonable amount to cover its administrative costs or that it would exceed the actual administrative costs of the program. I do not find that the 15% fee in the SDA is a benefit to the MMF.

[610] On July 16, 2021, the MNC received a five-year budget for the MVLP from the MMF outlining the cost of the MVLP. The cost was approximately $2 million per year, but decreasing each year to account for the likely decrease in number of recognition payments and commemorative events over the years.

[611] Mr. Chartier had limited involvement in the SDA. He did not draft, negotiate or sign the SDA or the SDA Amendment Agreement. President Chartrand briefed Mr. Chartier on the SDA, and he reviewed it. Mr. Chartier did not analyze the SDA closely and entrusted the matter to President Chartrand. Mr. Chartier authorized the payment of the amounts due under the SDA because the agreements required them, and the funds were needed to administer the program. Mr. Chartier played no role in the administration of the MVLP once the MMF took over this responsibility.

[612] There is no evidence that Mr. Chartier's involvement in the SDA was motivated by any improper purpose. As set out above, the MNC required an agent to deliver the MVLP. Mr. Chartier testified that the MMF was the natural choice because President Chartrand had worked tirelessly to secure the MVLP funding, and he and the MMF had spent decades advocating for Métis veterans.

[613] Mr. Chartier supported the SDA Amendment Agreement which extended the term and added the 15% delivery fee because he understood the MMF had an internal policy which required the administration fee for the delivery of any program or service. All of the Governing Members charge service delivery fees when administering programs. Mr. Chartier understood that in the case of the MVLP, the MMF would donate the fee back to the program so that the money stayed in the legacy fund.

[614] Mr. Chartier supported extending the term to ensure the stability of the program. He testified that his view was "that in order to carry out such an initiative, that for stability, 15 years was a good amount of time".

[615] Mr. Chartier did not believe that President Chartrand had any conflict of interest regarding the SDA or the SDA Amendment Agreement or that any of its terms were disadvantageous to the MNC. He testified that these agreements were a benefit to the MNC. He expressly denied that the agreements were entered into for an improper motive or to harm the MNC or benefit the MMF.

[616] Ms. Watteyne's only role with respect to the SDA agreements was administrative in nature. She made minor typographical edits to the draft agreements and facelifted signatures. She was not involved in the decision making or negotiation of the agreements. Ms. Watteyne did not ignore concerns that were brought to her attention as the Plaintiff alleges. Where the finance team raised concerns regarding the SDA agreements, Ms. Watteyne considered them and passed them on to President Chartrand where she felt it was appropriate to do so.

[617] One of the MNC's employees, Ms. Hamill, raised concerns about the reporting requirements, and that there was no termination or insolvency provisions. Ms. Watteyne was not concerned that under the SDA there was no provision for the MNC to terminate the agreement and no insolvency clause because she was not concerned about the MMF being unable to perform its obligations or going bankrupt. The MNC and the MMF had a long history of intergovernmental relationships and a track record of executing programs and delivering services in a professional way. Ms. Watteyne had confidence that the MMF would perform well.

[618] Ms. Watteyne shared Ms. Hamill's concern about the need for proper financial reporting and that concern was addressed by explicitly setting out the reporting obligations of the MMF in the SDA which incorporated the terms of the MVLP Contribution Agreement by reference.

[619] Ms. Laliberte also sent Ms. Watteyne a briefing note on April 14, 2021, pursuant to Ms. Watteyne's request. Ms. Watteyne sent the briefing note to President Chartrand. Ms. Watteyne did not agree with Ms. Laliberte's recommendation of more onerous reporting obligations than those provided in the MVLP Contribution Agreement because imposing additional reporting requirements on the MMF would be inconsistent with the MNC's advocacy for and Canada's agreement to reduced reporting obligations. Ms. Watteyne did not have any concerns regarding the MMF's provision of supporting documents for expenditures under the terms of the Contribution Agreement because the documents described in the briefing note aligned with the SDA requirements. Ms. Watteyne agreed that records should be in place in the event that Canada requested them, but she thought that quarterly bank reconciliations of the MVLP account were unnecessary because such reporting was not required under the MVLP Contribution Agreement.

[620] Ms. Watteyne was satisfied that the reporting requirements under the MVLP Contribution Agreement were adequately covered.

[621] The Plaintiff does not allege that the MMF had not properly fulfilled its obligations under the SDA Amendment Agreement or failed to properly administer the MVLP. The evidence shows that the MMF has diligently administered the MVLP for the benefit of the Métis veterans. Ms. Watteyne testified that after the SDA was executed the MMF assumed the significant workload for delivering the MVLP, provided very good service and that the MVLP is going very well. The MVLP has advanced to Phase 3. The MMF has prepared yearly reports for the MVLP from 2020 to 2022 for VAC. The reports contain more extensive financial reporting than what is required under the MVLP Contribution Agreement. The purpose of the MVLP has been achieved and the Métis veterans have received the benefits contemplated by the MVLP.

[622] The Defendants did not rush to amend the SDA in an effort to "tighten MMF's grip on the MVLP". President Chartrand was briefed by Glorian Chartrand that the MVLP was moving to

Phase 3 and she provided an estimate of $5.5 million and promised to provide a budget, which she did. The $5.5 million represents two years of operations and allows flexibility to approve and fund commemorative projects. President Chartrand took the proposal to the PPC and it was approved. The idea remains that the interest earned on the endowment will fund the MVLP and commemorative events in perpetuity.

[623] The Plaintiff submits that the VAC was not aware of the SDA and considers the SDA to be a breach and in violation of the MVLP Contribution Agreement. The Plaintiff submits that the Defendants breached their fiduciary duties by entering into the SDA when they knew it was an unlawful assignment. The Plaintiff does not provide any caselaw to support its allegation that the SDA is an assignment.

[624] The recitals state that it is understood that the SDA is not an assignment of the MVLP Contribution Agreement but rather an agency agreement to provide the services described in the MVLP Contribution Agreement. President Chartrand testified that the MVLP was intended to be and is still an MNC program.

[625] Although VAC did not see the SDA and was not aware of its specific terms, VAC was aware that the MMF was delivering the MVLP. Mr. Galant from VAC testified that Al Benoit, the MMF's Chief of Staff, was the primary individual with whom VAC was in contact regarding the negotiation of the terms of the MVLP Contribution Agreement. Mr. Gallant also knew Mr. Benoit was the MMF Chief of Staff and did not have a formal role with the MNC.

[626] Mr. Gallant testified that he knew that Mr. Roulette from the MMF was to be the primary contact for any questions or concerns about the MVLP Contribution Agreement. Mr. Gallant also testified that VAC was aware the MNC had designated the MMF as administrator for the MVLP and the MMF was making decisions on the administration of the MVLP.

[627] Section 23 of the MVLP Contribution Agreement prohibits assignment.

[628] Dennis Manning at VAC is currently responsible for the MVLP Contribution Agreement. Mr. Manning testified that VAC had never seen a copy of the SDA until Mr. Manning was given a copy when preparing to testify in this case. He testified that VAC's concern that the SDA was a breach of the MVLP Contribution Agreement was based on advice received from Ms. Caron's new administration that the SDA was an assignment of the MVLP Contribution Agreement. At trial, Ms. Caron did not explain why she did not give a copy of the SDA to VAC.

[629] During their testimony, the VAC witnesses did not take the position that the SDA is in breach of the MVLP Contribution Agreement and said that the issue of whether the SDA is an assignment is an issue for the courts.

[630] I do not need to decide if the SDA is an assignment of the MVLP Contribution Agreement with Canada. The issue before me is whether the Defendants breached their fiduciary duties by entering into the SDA. Both Mr. Chartier and President Chartrand testified that they do not understand the SDA to be an assignment of the MVLP Contribution Agreement.

[631] The Plaintiff also submits that VAC considers the payment of individual recognition payments to children of Métis WWII veterans to be a breach of the MVLP Contribution Agreement and that the MMF should indemnify the MVLP for all payments to children.

[632] Mr. Chartier was not involved in the decision to provide payments to children of Métis veterans.

[633] VAC has acknowledged that payments to children are outside the scope of a strict reading of the Contribution Agreement but have not taken the position that these payments are a breach. VAC has been aware of the payments to children since June 29, 2020, when President Chartrand publicly announced the intention to do so.

[634] There is an internal VAC email from 2022 that says the former MNC administration (i.e. the Defendants) made modifications to the MVLP that were outside of the original terms of the MVLP Contribution Agreement e.g. including payments to children, and the new administration (i.e. Ms. Caron's administration) suggested to VAC that they would expect the same flexibility if they chose to make changes. This suggests that VAC allowed the Defendants to make payments to children. President Chartrand testified that, it was his understanding, as a result of discussions with Minister of VAC Lawerence MacAulay, that Canada did not object to payments to children.

[635] Canada has not made any claim against the MNC for damages for breach of the MVLP Contribution Agreement arising from the SDA or from payments to children, and the limitation periods for doing so may have expired. It may be that payments to children are authorized under s. 4.2(d) of the MVLP Contribution Agreement regarding use of funds after the term expires.

[636] If Canada makes a claim that the MNC has breached the MVLP Contribution Agreement, the MMF may be required to indemnify the Plaintiff. It is premature for the Plaintiff to seek indemnification under the SDA when no claim has been made by Canada: *G.R.T. Genesis Inc. v. Gaska*, 2020 ONSC 537, at paras. 31-33.

[637] The Plaintiff says that it cannot comply with its reporting obligations to Canada under the MVLP Contribution Agreement because the MMF has refused to provide MNC with its bank statements showing MVLP transactions, including recognition payments and expenses related to Commemoration Projects.

[638] The MMF provided the MNC and Canada with more information than required under the MVLP Contribution Agreement. The MVLP Contribution Agreement only requires MNC to provide the following:

1. Number of recognition payment applications received;

2. Number of recognition payment applications processed;

3. Number of recognition payment applications approved;

4. Dollar amount of payments made to eligible recognition payment recipients;

5. Number and type of commemorative initiatives undertaken; and

6. Dollar amount of funding paid for commemorative initiatives.

[639] MMF submitted Annual Reports on the MVLP up to 2023 and the VAC witnesses confirmed that these reports contain more financial reporting than what is required.

[640] In 2024, the MMF provided the MNC with the information required in items 1-6 above.

[641] Canada was not content to receive the information from the MMF but rather required the information from the MNC directly. It seems that the MNC was not content to pass along to Canada the information the MNC received from the MMF without verifying it, but never contacted the MMF directly for this information. Instead, in the context of this action, the Plaintiff requested copies of the MMF's bank statements. The Plaintiff points to the fact that it was not allowed to mark hearsay documents as evidence at trial as a justification for why it takes the position that only the underlying documents are sufficient. It is unclear to me how the admissibility of documents at trial relates to the reasonableness of the Plaintiff's demands for bank statements to verify the information that MMF has provided to the Plaintiff to meet the reporting requirements under the MVLP Contribution Agreement.

[642] In the MMF's answers to undertakings which the Plaintiff read in at trial, the MMF explained that it pays MVLP expenses from its general account and then reimburses itself for those expenses and this procedure allows the MVLP bank account to accrue significant interest. Instead of providing the bank statements from its general account, the MMF undertook to produce the underlying invoices, receipts and supporting documentation for each expense incurred and charged to the MVLP. The Plaintiff did not take issue with the adequacy of the production, which is more detailed than the bank statements.

[643] I do not accept that the Plaintiff cannot meet its reporting obligations under the MVLP Contribution Agreement. The MMF has provided all of the information that the MNC requires to comply with its reporting obligations under the MVLP Contribution Agreements.

[644] The Plaintiff submits that the fact that the MMF cannot file Service Verification Requests directly with VAC is "yet another huge obstacle created by MMF commandeering the MVLP". This obstacle can be addressed by the MNC simply forwarding any of the MMF's Service Verification Requests to VAC.

[645] There is no evidence that MMF taking over the administration of the MVLP caused any harm or prejudice to the other Governing Members. In fact, taking over the administration of the MVLP has imposed substantial obligations on the MMF. Even if there were evidence of prejudice to the other Governing Members, that is not the issue. The issue is whether MMF's administration of the MVLP was in the best interests of the MNC and whether the Defendants breached their fiduciary duties.

[646] I find that the Defendants did not breach their fiduciary duties by entering into the SDA and its amendment. The Defendants did not have a conflict of interest, there was no self-dealing. President Chartrand had no personal interest in the SDA. The Plaintiff submits that the MMF

received benefits from entering into the SDA. I do not agree. MMF did not receive a benefit from the SDA, rather it took on an obligation.

[647] One of the benefits that the Plaintiff alleges the MMF received is the rent MMF charges to the MVLP. This is not a benefit; it is an expense incurred by the MMF. There is no dispute that there are staff who work on the MVLP and need a place to work. The staff work from the MMF's premises. The MMF pays for a mortgage on the building and incurs other costs associated with running the building. The MMF is paid from the MVLP funds to provide a working space for employees who provide services to veterans. If the MMF was not delivering the MVLP it would not need that space or incur those costs. The Plaintiff did not allege in the claim that the costs were not incurred or were overstated. The Plaintiff has not established that the MMF is recovering costs in excess of its necessary operating expenses.

[648] In its closing submissions, the Plaintiff raised that in addition to rent being a benefit, the MMF charging rent is improper. The Plaintiff raised that Canada does not approve of MMF charging rent to federally sponsored programs, and that charging rent is a breach of the MMF's statutory limits of its corporate status as a not-for-profit. I do not decide whether the MMF charging rent is proper or improper because the evidence was insufficient on this point, and the witnesses from VAC were never asked to comment on this issue.

[649] The Plaintiff alleges that the MMF has reaped considerable reputational benefits by virtue of administering the MVLP and points out that the MMF has "expended MVLP funds on various promotional materials and campaigns" that identify the MMF as the MVLP administrator. This "creates huge political advantages to MMF in its efforts to undermine the mandate and jurisdiction of the MNC and the other Governing Members." The Plaintiff references copies of the 2022 MVLP Yearly Report and other expenses for advertising and promotion. As set out above, I have not found that the MMF engaged in a scheme or scorched earth policy to undermine the MNC or compete with the MNC as the national representative of all Métis people.

[650] The evidence was that the MMF advertises the MVLP so that veterans and others are aware of it and can apply for contribution payments, and presumably be aware of the opportunity to submit proposal for commemorative initiatives. There was very little evidence about these promotional materials and expenses and certainly no evidence that the amounts spent were not reasonable.

[651] It is unclear what political advantages MMF is alleged to have gained. There was no evidence at trial that the SDA created a political advantage for MMF. The only attempt at trial to establish a reputational advantage was when Plaintiff's counsel cross examined President Chartrand about having his picture in the newspaper when presenting the individual recognition payments to veterans. President Chartrand was quite clear that he doesn't need his picture in the paper to enhance his reputation. Having won eight consecutive elections as the MMF President, and advocating for over 20 years for veterans, President Chartrand and his contributions to the Métis people generally, and veterans specifically, are very well known in the Métis Nation. There is no evidence of any reputational increase due to the MMF's administration of the MVLP.

[652] I note that the Presidents of other Governing Members also attended the presentation ceremonies and had their pictures in the newspaper, so presumably they also benefited from this potential enhancement to their reputation.

[653] The Plaintiff alleges that the MMF spent MVLP funds to benefit affiliated entities and individuals, namely the Métis Legal Research and Education Foundation Inc. and the Louis Riel Institute. The MVLP entered into contribution agreements with both of these Métis educational institutes. There was no evidence that these contribution agreements were improper or that there was any conflict of interest.

[654] The Métis Legal Research and Education Foundation Inc. (the "MLREF") was formed by Mr. Chartier and Ms. Hodgson-Smith and is aimed at defending the Métis people by conducting studies, writing books, publishing materials, providing seminars and conducting other educational activities.

[655] In 2022, the MLREF applied for funding from the MVLP by way of a contribution agreement to convert raw footage of WWII Métis veterans, in the form of photographs, cassette recordings, CD's and other forms of media, to process all of this content into digital formats. The Plaintiff alleges that this contribution "smacks of favoritism" and "rewarded Mr. Chartier for his loyalty" on the identity issue. There was no evidence that Mr. Chartier was involved in any decision regarding this contribution agreement or that there was some political quid-pro-quo. There was also no evidence about the extent of the work to be done and no evidence that the fee is not reasonable.

[656] The Plaintiff alleges that the Louis Riel Institute is an "affiliate" of the MMF. The MMF did start the Louis Riel Institute. It is a charitable not-for-profit formed by the Manitoba Legislature in 1995 under *The Louis Riel Institute Act*, C.C.S.M c. L230. The legislation provides that the institute has an independent board, which must include a member appointed by the Lieutenant Governor in Council, and members from the academic staff of the University of Manitoba, the University of Winnipeg and Brandon University.

[657] There is a contribution agreement between the MVLP and the Louis Riel Institute for $1.422 million to create a book series titled *Métis Veterans Memorial Collection: The Journey to Recognition.*

[658] The MVLP annual reports submitted to VAC describe the series as having four books, with the first book being a learning tool for history and literature at the high school and university level, and the third and fourth books preserving true stories and accounts of Métis veterans.

[659] There was no evidence at trial about the MMF's alleged affiliation with the Louis Riel Institute. There is no evidence that the MMF exerts control over the board and no evidence of political favours. There is no evidence that the MMF benefited from this contribution agreement or that the amount of the contribution agreement is unreasonable.

[660] The Plaintiff alleges that the MMF benefited from the SDA because it retained Glorian Chartrand and Jack Park to work on the MVLP. The MMF did not retain Glorian Chartrand. As

set out above, the MNC entered into a consulting agreement with Glorian Chartrand before the SDA was executed. The MVLP funds transferred to the MMF under the SDA were not used to pay Glorian Chartrand's consulting agreement. The MNC's consulting agreement with Glorian Chartrand is addressed in the section "Consulting Agreement with Glorian Chartrand" below.

[661] Jack Park is currently an MVLP Commissioner. The Plaintiff alleges that Mr. Park received payments from MVLP funds, and that this is a benefit to MMF. There is no evidence of the following: that Mr. Park receives any funds from the MVLP for his role as a commissioner; that President Chartrand was involved in any way in Mr. Park's appointment as commissioner; that Mr. Park benefits from his role as an MVLP commissioner; or that the MMF or President Chartrand has received any benefit from Mr. Park's role as a commissioner. The Plaintiff did not examine any witnesses on these points.

[662] There is no evidence that Mr. Park's appointment was inappropriate.

[663] There is no evidence that President Chartrand executed the SDA in order to control appointment to the MVLP commission. The MMF does not have the power to appoint commissioners.

[664] The Métis Veterans Legacy Commission Terms of Reference dated June 18, 2021 (after the execution of the Service Delivery Agreement and its amendment) states that the commission is to be appointed by the Minister of Veterans Affairs of the MNC:

> All Commissioners, including the Elder Commissioner, shall be appointed by the Minister of Veterans Affairs of the Métis National Council.

[665] The MNC retained control of the appointment of commissioner after the execution of the SDA. However, Ms. Caron testified that no one from her administration contacted the MMF regarding the MVLP after she took over as President of the MNC, and she has taken no steps to appoint commissioners.

[666] The MNC has not taken any steps to communicate with the MMF to exercise its control over the MVLP. However, according to President Chartrand, he still considers the MVLP to be an MNC initiative and there is evidence to support this position. The MNC is still charging some employee benefits to the MVLP. Presumably, they are working on the MVLP and the MNC is paying a third-party consultant, Antu-Mapu, using MVLP funds, and presumably, that consultant is currently assisting the MNC with administering elements of the MVLP.

[667] There was no conflict and no self-dealing with respect to the MVLP. President Chartrand and the MMF did not receive a benefit from the SDA.

[668] The Plaintiff alleges that Mr. Chartier approved of the SDA agreements and the transfers of funds under them, in exchange for financial benefits including a retiring allowance, a job with the MMF and approval of the grant to the MLREF. There is no evidence to support these allegations and the timing of the various events suggests otherwise.

[669] The retiring allowance was first raised long after the MVLP agreements were made and the funds transferred. The SDA was signed on September 4, 2020, and the funds were transferred in October 2020. The SDA Amendment Agreement was signed on April 22, 2021, and the funds under that agreement were transferred April 2021. President Chartrand first raised the possibility of a retiring allowance at the PPC meeting on July 29, 2021.

[670] President Chartrand and Mr. Chartier both testified that there were no discussions about Mr. Chartier working with the MMF until the late fall of 2021 after Mr. Chartier stepped down as MNC's President. They both vehemently denied that the MMF offered Mr. Chartier the job in exchange for other favours.

[671] The Plaintiff relies on a letter that Mr. Chartier wrote to Prime Minister Trudeau in August 2021 in which he said that he would be working in close collaboration with President Chartrand after his term as MNC's President ended. The letter shows that Mr. Chartier sent it in his capacity as President of American Council of Indigenous Peoples ("ACIP") and wrote that he would continue in that role. Mr. Chartier explained that as President of ACIP, he would continue doing international work including work with communities in Colombia where the MMF was also doing work, and that this is what he meant when he said that he would be working in close collaboration with President Chartrand. Mr. Chartier said he had not been offered a role at the MMF before he left the MNC and there was no such plan in the works. I accept Mr. Chartier's evidence; it is consistent with the contents of the letter.

[672] There is no evidence that Mr. Chartier approved of the SDA agreements, and the transfers of funds under them, in exchange for the approval of the grant to the MLREF. The timing of the events does not support the Plaintiff's allegation in this regard. The application was in 2022, long after the agreements were signed and the funds transferred and after Mr. Chartier retired as President of the MNC. Also, President Chartrand testified that the application process for MVLP funding is anonymous and adjudicated by an independent committee.

[673] The Defendants acted honestly, in good faith and with a view to the best interests of the MNC and the Métis Nation company when they entered into the SDA agreements and transferred the funds under them. The SDA agreements were in the best interest of the MNC and the Métis Nation because the MNC could not deliver the MVLP and needed an agent. The MMF was well suited to deliver the MVLP because of President Chartrand's extensive experience with and dedication to it.

[674] Having the MMF deliver the program may not have been the only available option, but it was a reasonable, and probably the best, option. The Defendants honestly and reasonably believed that it was the best option, and their decision should be afforded deference because it is not the court's role to second guess decisions made honestly and with a view to the best interests of the MNC and the Métis Nation.

[675] As it turns out, the MMF has delivered the MVLP successfully for the benefit of the Métis veterans. The MNC and the Métis Nation have received the benefit of the SDA agreements. There have been no claims for damages or otherwise under the Contribution Agreement, and millions of

dollars have flowed into the hands of Métis veterans and recognition programs celebrating Métis veterans' contributions.

[676] The SDA agreements were not part of a scheme to harm the Plaintiff, as alleged by the Plaintiff. The Plaintiff has not suffered any harm as a result of the agreements because the 15% administration fee was never actually paid by the MNC, and because there is no allegation that eligible veterans have been denied payments or that the MMF has not satisfied its reporting obligations. The MMF has submitted yearly financial reports to the MNC and to VAC and provided the underlying documents for all expenses to the MNC. Canada has not taken issue with any expenses claimed. Canada has not exercised its audit power under the MVLP Contribution Agreement. Canada has not claimed that there is any breach of the MVLP Contribution Agreement and if it does, there is an indemnity under the SDA.

[677] The MMF is not liable for knowing assistance or knowing receipt because the Defendants and Ms. Watteyne did not breach their fiduciary duties with respect to the MVLP.

[678] The MMF Defendants counterclaim for a declaration that the SDA is binding. The Plaintiff has not advanced any theory that the SDA is not binding other than that it was executed as a result of the Defendants' breach of fiduciary duty. In fact, the Plaintiff claims indemnity under the SDA for payments to children.

[679] I find that the SDA is binding.

Issue 2: Métis Nation Historical Database

[680] The Plaintiff submits that the Defendants breached their fiduciary duties by transferring the Métis Nation Online Historical Database to the MMF for nominal consideration without BOG approval and in violation of the two-signature requirement. The Plaintiff says that Mr. Chartier transferred the Database to the MMF as some political favour or act of loyalty to President Chartrand and to harm the MNC.

[681] The Defendants say that the transfer of the Database was in the best interests of the MNC. Once the Database could no longer be hosted by the U of A, it was at risk of being effectively decommissioned and no longer accessible. To maintain the Database, the MNC would have had to either build the necessary IT infrastructure in-house or find a third-party host. Both options were uncertain and would have been very costly for the MNC. Mr. Chartier approached President Chartrand and proposed that the MMF take over hosting and maintaining the Database because the MMF had the necessary technical infrastructure and financial resources. MMF took responsibility for the future ongoing costs of the Database. The Defendants did not receive any personal benefit from the transfer of the Database. The Database is freely available to the Métis Nation at no cost to the MNC.

[682] For the reasons below I find that the Defendants did not breach their fiduciary duties with respect to the transfer of the Database.

[683] Historical geographer Professor Frank Tough has experience in Métis land entitlements (i.e., scrip). In 1993, Professor Tough moved to the U of A and founded the Métis Archival Project

Research Lab (the "MAP Lab"). The MAP Lab initially used funding from MNA, MMF and MN-S (i.e. $30,000 each) to do archival research using the National Archives of Canada and collect scrip documentation and other documents to help support the litigation of Métis section 35 rights and other claims. A significant amount of data that is relevant to Métis people and the Historic Métis Nation Homeland was collected over the years.

[684] Mr. Chartier testified that they decided to put the information accumulated by the MAP Lab into a single database to be housed at the U of A. Professor Tough began creating the Database to store, organize and make searchable the publicly available historical records which the Map Lab had in its possession. The purpose of the Database was to make thousands of high-resolution colour archival documents available and accessible to the average computer user. The Database was owned by MNC and available to the public at no cost. The Database assisted Métis people with searching back through historical records to find connections with the Métis Homeland and connections with family members.

[685] Historically, an unknown amount of funding was obtained from Canada for the Database.

[686] Between August 2009 and October 2020, the MNC paid approximately $1.6 million to the U of A. These funds came from Canada.

[687] The oldest funding agreement from Canada marked as an exhibit in this trial is dated August 31, 2017, and provides funding over three years of just over $600,000 to the MNC for the Database and also to support the Map Lab and its research. The funding agreement provides for the following funding: (i) $106,892.50 for fiscal 2017 – 2018; (ii) $266,851.75 for fiscal 2018 – 2019; and (iii) $230,626.75 for fiscal 2019 – 2020.

[688] It is unclear how much of the funding was for the Database and how much was for supporting the Map Lab. There was no evidence of the actual cost of creating the Database vs. the cost of acquiring the data that the Map Lab had accumulated.

[689] The evidence was that all of the money provided by Canada to the MNC for the Database was paid to the U of A. The MNC did not retain an administrative fee relating to the Database.

[690] In February 2016, the U of A's Information Services and Technology unit removed access to the Online Database for apparent security concerns and it was inaccessible to the public for a time. Around this time, Al Benoit from the MMF approached Mr. Chartier and advised him that the MMF had a new computer infrastructure and could host the Database. Mr. Chartier did not immediately pursue this opportunity but later contemplated the possibility of moving the MAP Lab to Winnipeg because it made sense to have the MAP Lab in the historic Red River Settlement.

[691] On April 1, 2020, the MNC and the U of A signed the Database Service Agreement for the U of A to continue work on the Database until March 31, 2021.

[692] Funding designated for the Database from Canada had stopped. There were some discussions between the MNC and Canada about whether MNC's governance budget could be used to fund the Database and MAP Lab research. However, Ms. Watteyne said that Canada told her they had concerns about using governance funding and she flagged the issue for Mr. Chartier

and President Chartrand and advised them that the sustainability of longer-term funding needed to be considered. By April 2021 they understood that Canada would not accept the use of MNC's governance funds to support the Database in the long term.

[693] On June 3, 2020, the PPC approved the transfer of the Database from the U of A servers to the MMF servers and for legal counsel to be hired to determine how to transfer the Database from the MNC to the MMF.

[694] Mr. Chartier gave evidence that it was his decision to transfer the Database to the MMF. Mr. Chartier testified that as of May 2020, Professor Tough was not happy with the U of A's IT department hosting the Database because the university was not being cooperative. Professor Tough thought that he and the lab would be better served elsewhere and that the Database should be housed by the Métis. The evidence of what Professor Tough told Mr. Chartier was not admitted for the truth of its contents, but rather to establish Mr. Chartier's understanding and belief regarding the need to find a host for the Database.

[695] Mr. Chartier testified that he believed the MMF would be the appropriate host because they had previously expressed a willingness to do so in 2016, they had invested several million dollars in a new IT infrastructure and had capacity to host the Database, and they were prepared to commit to funding the future upkeep of the Database including future ongoing research costs to enhance the Database, likely for the next 20 years. Mr. Chartier said moving the Database to the MMF conformed with the "2017-2020 Resolution to build up our national government at the Red River Settlement".

[696] Mr. Chartier testified that he believed that ownership of the Database should be transferred because of the significant cost of upkeeping and enhancing it. He viewed the transfer as a benefit to the MNC and a burden for the MMF.

[697] Mr. Chartrand's evidence is consistent with Mr. Chartier's evidence. He said that Mr. Chartier approached him because he was worried about losing the Database. Mr. Chartier talked about the Database's cultural value to the Métis people and how the Métis Nation would be harmed if the Database were lost. He said that Mr. Chartier asked him to help with the Database because of the MMF's significant IT infrastructure investment.

[698] Mr. Chartrand said that, after ensuring that the MMF had the necessary IT capacity and evaluating the ongoing costs, he agreed to host the Database. The U of A continues to do underlying research for the Database.

[699] The Plaintiff relies on one of Mr. Chartier's notes taken at a PPC meeting on June 3, 2020, where they discussed transferring the Database to Rupertsland. Mr. Chartier described Rupertsland as a research institute, but he said that he never visited it and does not know much about it. Mr. Chartier said that he believed that Rupertsland was an initiative between the MNA and the U of A. There was no other evidence regarding Rupertsland tendered at trial.

[700] Mr. Chartier said he chose to transfer the Database to the MMF rather than have the MNC host it because that would involve the MNC buying computers, and he did not believe the MNC

would have the capacity to do the required research and maintenance. None of the other Governing Members had expressed interest in the Database and he did not see them as having the same capacity as the MMF.

[701] At least four agreements were made to affect the transfer:

1. On March 26, 2021 - Database Purchase Agreement between MMF and MNC transferring the Database from MNC to MMF for $10 and requiring the MMF to pay all costs associated with the transfer and ongoing secured storage of the Database for the Métis Nation, including costs owing to the U of A for its ongoing services.

2. On June 22, 2021 - Amending Agreement between MNC and the Governors of the U of A to extend the term of their Database Service Agreement to March 31, 2022 (with payments as follows: immediate $314,066, September 1, 2021 $157,033 and December 15, 2021 $157,033).

3. On August 17, 2021 - Database Purchase Amendment Agreement between MMF and MNC to require MNC to make the first two payments under the June 22, 2021 agreement with the U of A, allow MNC to have continued access through the online portal of the MMF's servers until September 20, 2021 and to keep MNC's branding on the Database until the transfer to MMF is complete on September 30, 2021 and requiring MMF to make the December 15, 2021 payment to U of A.

4. On September 24, 2021 - Assignment of the MNC Service Agreement with U of A to MMF to assign MNC rights and U of A's obligations regarding Database service to MMF.

[702] There was no evidence called at trial regarding the technical details of what was required to affect the transfer to the Database.

[703] The Defendants gave evidence that they understood the purpose of the agreements was to transfer the Database, that they relied on MNC's legal counsel Murray Trachtenberg to prepare the agreements and that they were not particularly familiar with the specific terms of the agreements. Ms. Watteyne confirmed that Mr. Trachtenberg was hired to look after MNC's interests, and although she knew he had previously done work for the MMF, she was not concerned because she knew him to be honourable.

[704] Ms. Watteyne was not involved in making the decision to transfer the Database to the MMF but she believed that doing so was in the best interests of the Métis nation as the transfer ensured that the Database would continue to be publicly available at no cost to users. Ms. Watteyne agreed that the MMF was the "most viable option" for housing the Database because of its robust infrastructure and resources which would be required for the upkeep.

[705] Ms. Watteyne was not involved in drafting any of the agreements relating to the Database transfer, she only facilitated signatures and ensured that the nominal consideration was paid. She also facilitated the payments to the U of A pursuant to the Database Purchase Amendment Agreement. Ms. Watteyne facilitated the payments made in July and September 2021 to the U of A.

[706] Mr. Chartier had no role in negotiating or drafting the Database Purchase agreements but approved of the arrangement because it would save the MNC the costs of maintaining the Database, and he knew that the MMF had the resources to take on this responsibility.

[707] The Plaintiff alleges that Mr. Chartier approved the Database transfer because he was indebted to President Chartrand for the gift of the retirement allowance and watch. The only evidence to support this allegation is that Mr. Chartier signed the Database Purchase Amendment Agreement on August 17, 2021, which was the same day as his retirement dinner.

[708] The timing of the events does not support an inference that Mr. Chartier approved the Database transfer as a quid-pro-quo for the retirement allowance and watch because he supported the transfer of the Database to MMF before he knew about the retirement allowance. The decision to transfer the Database was made in 2020 and the idea of giving Mr. Chartier a retirement allowance was not raised until July 2021.

[709] The MMF made the payment of $157,033 in December 2021 and is responsible for the ongoing costs of hosting, monitoring and maintaining the Database (upwards of $500,000 annually). The Database is currently up and running and available to the public for free.

[710] The Plaintiff is asking me to assume the agreements were improvident. There is no evidence upon which I can make that finding.

[711] There is no dispute that while the Database is of cultural and historical value to the Métis Nation, it has no commercial value to its host. There is no evidence that hosting the Database is a benefit to the MNC. In fact, the evidence demonstrates that it is a significant financial burden.

[712] The Plaintiff seems to be suggesting that the Defendants should have spent a significant amount of MNC's funds to develop the infrastructure and commit to the ongoing costs of hosting the Database instead of asking the MMF which had the existing infrastructure and was willing to take on the ongoing responsibility and cost of maintaining it while keeping it available to the public for free.

[713] The Plaintiff also submits that it was possible that the MNC could have asked Canada for more funding for the Database, invested in its own infrastructure and had Wei Xie assist with the technology in order to host the Database at MNC.

[714] Since the new administration took over, the Plaintiff has not negotiated with Canada or invested in its own infrastructure to host the Database. Although Wei Xie provided some IT support to the MNC, her main function was to provide statistical information to be used as supportive evidence in proposals to Canada on various initiatives as part of the PBM process, and there was no evidence that she had the necessary skills to transfer or maintain the Database. The evidence at trial fell far short of establishing that the MNC could or should have taken on hosting the Database itself.

[715] The fact that the MNC never took steps to even consider hosting the Database, even when the U of A shut it down for security reasons in February 2016, speaks volumes. I do not accept that the MNC hosting the Database was a viable alternative.

[716] There is no evidence that the transfer of the Database to MMF was part of a scheme to harm the MNC. There is no evidence that the Database transfer caused any harm or prejudice to the MNC or the other Governing Members. Neither Ms. Poitras nor President Froh gave evidence that the MMF is using the Database to undermine the other Governing Members.

[717] The Database does not have monetary value; rather, it has value because it captures a large part of the history of the Métis Nation, as the scrip documents and related applications provide a wealth of knowledge. The Database is also valuable for people who want to research their history, their background, and sometimes develop family trees in the event that they wish to apply for citizenship in any of the Governing Members. It is a valuable educational and historical tool.

[718] The Database is freely accessible online and it is being maintained by the MMF at no cost to the MNC or the other Governing Members, and the MNC has a copy of it.

[719] Ms. Watteyne ensured that a copy of the Database was left at the MNC offices at the end of September 2021. She said that she thought that it was the "responsible thing to do due diligence to ensure that there was a copy maintained at the MNC", but she was unable to say specifically where the copy was kept. She asked Ms. Xie to retain a copy of the Database and followed up to ensure that was done.

[720] A second copy of the Database was produced to the Plaintiff in this litigation. The MMF Defendants have agreed to release the MNC from any implied undertaking so that it can use the Database as it sees fit. The MMF has never taken the position that the MNC cannot use the data in its possession to host its own version of the Database, and does not assert any ownership over the data itself.

[721] For the reasons set out above in the sections dealing with MNC's Governance, I do not find that the Database transfer was unauthorized because it did not have BOG approval and it did not have two signatures.

[722] There is no evidence that Mr. Chartier transferred the Database as a favour to President Chartrand or the MMF. Taking over the responsibility for the Database has imposed substantial financial obligations on the MMF. Hosting the Database is a burden, not a benefit. Even if there were evidence of prejudice to the other Governing Members, that is not the issue. The issue is whether the Defendants breached their fiduciary duties in transferring the Database to the MMF, and I find that they did not. The Defendants acted honestly, in good faith and with a view to the best interest of the MNC and the Métis Nation when they decided to transfer the Database to the MMF. They understood that the transfer of the Database from the U of A was necessary, and honestly believed it was in the best interests of the MNC. I find that choosing the MMF to host the Database was a reasonable decision in the circumstances. Ms. Watteyne also honestly believed that transferring the Database to the MMF was in the best interests of the Métis Nation. There is no evidence that she acted dishonestly or in bad faith or assisted the Defendants in any dishonest conduct or breach of fiduciary duty.

Issue 3: The Agreements with the Consultants and the Employees

[723] The Plaintiff says that the Defendants and Ms. Watteyne breached their fiduciary duties by entering into five-year consulting agreements with the senior consultants and Ms. Watteyne. The Plaintiff also says the Defendants and Ms. Watteyne breached their fiduciary duties by giving the employees letters of assurance telling them they would be entitled to 12 months' notice of termination. The Plaintiff also says the Defendants and Ms. Watteyne breached their fiduciary duties by entering into the settlement agreements with the Consultants, the employees and Ms. Watteyne. The Plaintiff says the Defendants did so to reward the consultants and employees for standing by them on the identity issue and for keeping their activities secret.

[724] The Defendants and Ms. Watteyne submit that they did not breach their fiduciary duties by entering into the five-year consulting agreements and the five-year agreement with Ms. Watteyne, or by giving the employees the letters of assurance or entering into the termination agreements. The Defendants say that in the summer of 2019, they were facing tremendous opportunity with Canada and tremendous adversity with the political dispute over the identity issue. President Chartrand says he was also facing tremendous pressure from his government at the MMF regarding the time he was spending at the MNC and he needed to secure the team capable of supporting the MNC's workload. President Chartier told President Chartrand to do whatever it took to secure the senior team because of the unprecedented opportunity for further funding from Canada.

[725] The Defendants say they were not required to play hardball with their long-standing Consultants and employees whose workplace had become intolerable, and risk exposing the MNC to liability and litigation. They acted with legal advice and obtained comprehensive releases that benefit the MNC. They say they were acting in good faith and with a view to the best interests of the MNC and the Métis Nation.

[726] Ms. Watteyne submits that her role with respect to the senior consultants was very limited, and her recommendations with respect to the other consultants and employees were made honestly in good faith and with a view to the best interests of the MNC.

[727] The Consultants say they owed no duties to MNC with respect to their agreements. The liability of the Consultants is addressed under the heading "Liability of Consultants" below.

[728] I find that the Defendants entered into the five-year agreements with the Consultants and Ms. Watteyne, gave the letters of assurance and entered into the termination agreements in good faith and with a view to the best interests of the MNC and the Métis Nation. The settlement payments under the termination agreements were required by the employment and consulting agreements, or the letters of assurance. I will begin with the five-year agreements. I will then address the letters of assurance given to the employees and then the termination agreements.

[729] As a preliminary matter, I will address the MNC's submission that the Consultants should have provided *viva voce* evidence at trial regarding the authenticity of the consulting agreements. I do not agree. There is no live issue about the authenticity of the consulting agreements raised in the pleadings, by any witness or during the MNC's opening statement. President Chartrand testified that he signed the consulting agreements on behalf of the MNC and the MNC read in, as

part of its case, the evidence from the Consultants that they had executed the consulting agreements.

The Five-Year Agreements

[730] As set out above, at the BOG meeting on July 18, 2018, President Froh and Ms. Poitras did not approve the audited financial statements because they wanted information regarding the Consultants. They did not follow up after receiving Ms. Watteyne's email, even though the MNO was not suspended until May 15, 2019, more than nine months later. Neither of them took the position that the consulting agreements were invalid or contrary to the By-Laws. Neither of them took the position that the consulting agreements had to be approved by the BOG. There were three BOG meetings after Ms. Watteyne's email, and the BOG minutes do not show that there were any further discussions regarding the information Ms. Watteyne had provided.

[731] In 2019, the MNC entered into a five-year consulting agreements with the consultants who made up its senior policy team: LeClair Infocom Inc. (Mr. LeClair), Public Policy Nexus Group Inc. (Mr. Weinstein), SystemWay Consulting Inc. (Ms. Xie), and Infinity Research Development and Design Inc. (Ms. Hodgson-Smith), and a five-year employment contract with Ms. Watteyne. These agreements were signed by President Chartrand in his capacity as Vice-President and Minister of Finance.

[732] As set out above under the MNC Governance section, the Vice President and Minister of Finance had authority to enter into these agreements.

[733] Articles 16 and 17 of the Bylaws provide the BOG with the authority to retain employees and other agents, and the authority to "fix" their remuneration:

> 16. The Board of Governors may appoint such agents and engage such employees as it shall deem necessary from time to time such persons shall have authority and shall perform such duties as shall be prescribed by the Board of Governors.
>
> 17. The remuneration of all officers, agents and employees and committee members shall be fixed by the Board of Governors.

[734] The Plaintiff submits that President Chartrand and Ms. Watteyne understood that agents as referenced in Articles 16 and 17 included the Consultants. President Chartrand also said the BOG never exercised these Articles. These are informal admissions. They are simply evidence and not binding: *Rosenberg*, at para. 53.

[735] To establish an agency relationship, it is necessary that the agent is authorized by the principal to act in a manner that binds the principal vis a vis third parties: G.H.L. Friedman, *Canadian Agency Law*, 3rd ed. (LexisNexis Canada: 2017), at §1.2, B-5-4.

[736] The Plaintiff has not pled that the Consultants were agents. There is no evidence that the Consultants were given or perceived to have authority to bind the MNC. The Consultants'

agreements expressly provided that they were independent contractors and not employees or agents and were not authorized to bind the MNC.

[737] Even if the Consultants were agents, articles 16 and 17 do not give the BOG exclusive jurisdiction to hire employees and agents and fix their remuneration. As set out above under the MNC Governance section above, the BOG could delegate its authority.

[738] As set out under the MNC Governance section above, the other internal governance documents provide authority for hiring employees and consultants to the President or his designate.

[739] The Cabinet Terms of Reference give the MNC's President responsibility for overseeing and managing the day-to-day operations of the MNC, and provide that the MNC's Executive Director will oversee human resources matters under the direction of the President:

> 2.1.2 The MNC's President will continue to oversee and manage the day-to day operations of the MNC. As well, the following areas will remain as core operations of the MNC, overseen by the MNC's Executive Director under the direction of the MNC's President:
>
> > Human Resources (i.e. staff will report directly to the management of the MNC while maintaining on-going liaison with Ministers, MNC management will be responsible for all hiring, contracts, evaluations, termination issues etc. within the MNC subject to Article 4.5, MNC management will determine the establishment of new positions and/or organization of the MNC human resources).

[740] Article 4.5 addresses the responsibility of Ministers to be involved in the hiring of staff and awarding contracts within their Ministry's jurisdiction along with the MNC's President and/or MNC's management.

[741] The 2004 Policies and Procedures Manual provides that "A written contract executed by the President or Designate is required" for agreements with Contract workers/Consultants.

[742] The 2009 Finance Policy provides that consulting agreements shall be authorized by the President or Minister of Finance.

[743] The 2004 Policies and Procedures Manual provides that employment contracts will be signed by the President or the Vice President.

[744] The previous one-year consulting agreements were not approved by the BOG and had only one signature.

[745] I reject the Plaintiff's submission that the five-year agreements were contrary to MNC's standard practice to enter into one-year agreements. The evidence was that one-year term agreements were not a standard practice but rather a relatively recent occurrence. Also, the one-year agreements reflected the prior limited nature of funding from Canada. Everything changed when Canada committed to long-term multi-year funding to the MNC for basic organizational

capacity and governance. This commitment provided an opportunity for the MNC to engage staff and consultants on a longer-term basis.

[746] President Chartrand explained that the Senior Consultants had decades of experience and knew the "ins and outs of government", knew the "players", knew how to write proposals, and how to "put the package together to make it viable and strong" so that it would make its way to Cabinet or to Canada's budgets.

[747] Mr. Weinstein is the principal of Public Policy Nexus Group, the corporation through which he entered into consulting contracts with the MNC for many years. Mr. Weinstein has broad knowledge and experience, having dedicated over four decades to advocating for the rights of the Métis Nation.

[748] Mr. Weinstein has been a long-standing strategic advisor for the MNC. He was the MNC's first Executive Director in 1983 and then again in 2008.

[749] Mr. Weinstein played an integral role in the PBM process which he co-led with Mr. LeClair. Mr. Weinstein was involved in the overall design and integration of the PBM work. He was responsible for assembling and writing the structural foundation of proposals and applications to the federal government, which included developing the necessary connection between the budget and the MNC's ask. He was responsible for preparing memos and briefing notes that inform various levels at the MNC of PBM priorities, as well as facilitating resolutions to advance these priorities. Mr. Weinstein drafted specialized policy papers, speeches and briefing notes for the President and Vice-President on the PBM priorities.

[750] Mr. LeClair is the principal of LeClair Consulting Inc., the corporation through which he entered into consulting agreements, and provided consulting services to the MNC on a non-exclusive basis for over 25 years. Mr. LeClair is a lawyer and relied on those skills and experience in his capacity as a consultant for the MNC, but the evidence does not show that he was ever retained as counsel for the MNC or provided services to the MNC in his capacity as a lawyer.

[751] In the decade prior to this litigation, Mr. LeClair led intergovernmental negotiations with Canada on behalf of the MNC, resulting in recognition of the Métis Nation through various nation-to-nation agreements. Mr. LeClair led key negotiations with the government of Canada on behalf of MNC during constitutional discussions in 1985 and 1987, as well as subsequent talks that led to the Métis Nation's involvement in the Charlottetown Accords in the early 1990s, and the Kelowna Accord in 2005.

[752] Mr. LeClair played a key leadership role in the PBM. He and Mr. Weinstein co-led the PBM process, and he was responsible for preparing Contribution Agreements and contracts that would affect the relationship between Canada and the MNC and addressing related legal issues. He was the lead negotiator with Deputy Ministers, Associate Deputy Ministers and Directors of the federal government. Mr. LeClair provided writing support and strategic advice in relation to coordinating and implementing the PBM and other bilateral processes with Canada.

[753] Ms. Xie is the principal of SystemWay Consulting Inc, the corporation through which she entered into consulting contracts with the MNC starting in 2009 until 2021 on a non-exclusive basis. Ms. Xie played a central role in advancing MNC's policy priorities, especially through the PBM. Her primary function and strength was in providing statistical data to support the proposals developed and set out by Mr. Weinstein and Mr. LeClair. Although Ms. Xie played a limited role in providing information technology support services to the MNC, the bulk of her work centered around policy and data analysis.

[754] President Chartrand negotiated the April 1, 2019 consulting agreements with the senior consultants with the assistance of Ms. Watteyne who facilitated communications. The agreements were with the consulting corporations of Mr. LeClair, Mr. Weinstein and Ms. Xie.

[755] President Chartrand approved the draft consulting agreements before Ms. Watteyne sent them to the consultants. The only significant difference between the draft April 1, 2019 consulting agreements and prior consulting agreements was their 5-year term and the 24-month termination provision. The initial drafts had a two-week notice of termination provision as was the case with prior agreements.

[756] President Chartrand testified that he proposed 5-year terms because of the success the team had achieved in securing multi-year funding from Canada, and his desire to have the senior team committed for the next five years. He did not want to risk the senior team leaving if a better contract came along. Mr. Chartier confirmed that he instructed President Chartrand to do whatever he had to do to retain the senior consultants.

[757] The Defendants believed that the MNC was facing an unprecedented opportunity to secure funding for the Métis Nation in several areas that would help the lives of generations of Métis. President Chartrand testified specifically about his belief that the MNC could secure significant funding for health care in the next five years because Canada was starting to see the importance of health funding for the Métis whose communities faced poor health conditions compared to other Canadians. Mr. Chartier testified that he thought there might be a short window for the opportunity, depending on the lifespan of the Liberal government.

[758] Mr. Chartier encouraged President Chartrand to take steps to retain the senior team but had no involvement in negotiating, drafting, reviewing the terms of any consulting agreements, assurance letters, employment agreements, or settlement agreements.

[759] Mr. Weinstein's evidence[11] confirmed that President Chartrand proposed the 5-year term and told him that he valued the work the senior consultants were doing, he talked about the funding they were obtaining and said that, despite the bad environment, the consultants were needed, and this period could be the last chance in decades to achieve further success.

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[11] The Plaintiff read in portions of Mr. Weinstein's discovery evidence as part of its case.

[760] Mr. LeClair's evidence[12] is consistent with the evidence of President Chartrand and Mr. Weinstein. His evidence was that the five-year term was intended to address the chaotic situation at the MNC, the unprecedented investments the team had successfully secured, and uncertainty at the leadership level.

[761] Mr. LeClair and Mr. Weinstein sought a longer notice period on termination. The parties negotiated back and forth over several weeks, and ultimately agreed to a 24-month notice period which provided security to the senior team.

[762] President Chartrand said the consultants were seeking assurance form MNC because of the effect on their lives of a five-year commitment.

[763] Mr. Weinstein gave evidence that he considered his own circumstances, including that he was 68 years old, the aggravation caused by dealing with the Tri-Council and what incentive he had to continue working. He said President Chartrand asked him to consider what terms would make it worthwhile for him to make a five-year commitment. Mr. Weinstein did some research, and he proposed the 24 months' notice of termination provision.

[764] Mr. LeClair's evidence was that he told President Chartrand that the senior consultants were getting antsy due to the political climate and they wanted security, and that in the private sector, security would normally come in the form of a lengthier notice provision. He said the parties negotiated and agreed on 24 months' notice of termination.

[765] The five-year consulting agreements contain the following Termination Provision:

> 12. Termination. Either party may terminate this Agreement at any time, for any reason, by providing 'twenty four months' written notice to the other party. 12.1 If the Consultant terminates this Agreement under the terms herein, the Council may elect to immediately terminate this Agreement by paying to the Consultant the equivalent amount remaining in the twenty-four months notice period calculated from the date that the Consultant originally provided notice of termination of the Agreement.
>
> …
>
> 12.3 In recognition of the five-year commitment of services being made by the Consultant and past meritorious services rendered, in the event of termination in accordance with Article 12 a payment

[12] The Plaintiff read in portions of Mr. LeClair's discovery evidence as part of its case.

> equivalent to compensation for services for 24 months as described in Article 5 shall be made to the Contractor.

[766] Section 12.3 was a new provision added in the 2019 five-year agreements. The Plaintiff submits that it was not commercially reasonable because it provides for double compensation. The Plaintiff says: "Even if MNC asks the terminating Consultant to stay on, 'compensation for services for 24 months' (section 12.3) is owed to the Consultant since there has still seemingly been a 'termination in accordance with Article 12.'" There is no evidence from any of the parties who were directly involved that this is how they interpreted the termination provision.

[767] The evidence of the parties who negotiated the 2019 five-year consulting agreements was uncontradicted on the meaning of s. 12.3. They all gave evidence that it imposes on the MNC a mandatory guaranteed obligation of the MNC to pay an automatic entitlement of the consultant to a lump sum of 24 months' pay in the event of termination. The 24 months' notice provision specifically provides that it is to recognize the Consultants' past service and five-year commitment. No one testified that if the Consultant terminated the agreement and the MNC elected to have the Consultant work the 24 months, they would get their regular compensation plus 24 months' pay.

[768] President Chartrand said that to avoid an absurd scenario such as a consultant terminating the agreement on the second day of the five-year term, the MNC retained discretion to elect to either have the consultant continue providing services for the full 24-month termination period or allow them to immediately end the agreement and pay the 24 months. President Chartrand said he could never imagine the Consultants doing something like that, but if they betrayed his trust or backstabbed him, he would have taken them to court.

[769] President Chartrand agreed in cross examination that these agreements were unprecedented. He said that he agreed to provide the requested security because maintaining the core team was key when he was trying to get the "biggest deal of our history" which presented an opportunity to change thousands of lives.

[770] The 2019 five-year consulting agreements did not increase compensation substantially, and there were no increases over the five-year term. The Plaintiff has not alleged that the compensation amount was unreasonable.

[771] I find that as the Vice President and Minister of Finance, President Chartrand had the authority to enter into the five-year agreements. He was authorized to do so by Mr. Chartier and BOG approval was not required by the MNC's governance documents or practices.

[772] The Plaintiff submits that the MNC proposed one-year consulting agreements in 2019 and that the five-year agreements have been coopered up "to make it look like these Consultant Agreements were signed before the Tri-Council was trying to wrest control back". I reject this submission. The Plaintiff relies on an email from Ms. Watteyne which attached the 2019 agreements and erroneously described them as being for "2019-2020" which suggests they were for a one-year term. However, the actual agreements attached to the email are for five-year terms, not just one year.

[773] Ms. Watteyne's evidence was consistent with the evidence of Mr. LeClair, Mr. Weinstein and President Chartrand. She said that after she gave the Consultants the draft agreements, they negotiated the terms directly with President Chartrand before signing. Ms. Watteyne had almost no involvement with the negotiation of the agreements with the Consultants; she only facilitated their execution and retained copies in MNC's records.

[774] President Chartrand gave evidence that Ms. Xie also ultimately received the same terms (i.e. five-year term with 24 months' notice) because she was also an essential member of the senior team.

[775] The Plaintiff alleges that the Defendants and Ms. Watteyne intentionally backdated the 2019 consulting agreements to 2018 to make it look like they were signed before the political dispute escalated in 2019. I do not accept this submission. There is no controversy about when the 2019 consulting agreements were signed. Ms. Watteyne explained the administrative error when she testified. The 2018-2019 consulting agreements for the core team had never been finalized even though work had been performed and the Consultants were paid under them. Therefore, Ms. Watteyne was also working to ensure that MNC had executed copies of these agreements as well as the 2019 agreements. During this process, the signature pages for the 2018 agreements were accidentally collated behind the 2019 agreements. These inaccurate versions of the agreements were discarded.

[776] The executed consulting agreements were backdated to April 1, 2019, but were actually executed sometime between May 27, 2019, when Ms. Watteyne first sent the drafts, and July 24, 2019, when Mr. Weinstein sent an executing copy of his agreement for printing.

[777] I do not accept that the Defendants were being deceptive when backdating the consulting agreements. The timeframe during which the agreements were executed is evident and was readily admitted by all parties to the agreements. President Chartrand was open and forthright about the dates on the agreements and why he believed they were backdated. Both he and Ms. Watteyne explained that backdating was not unusual, because of historical and ongoing issues with delays in funding from the federal government, and that the consulting agreements were executed twice because of a simple mistake on the dates. The suggestion of intentionally backdating to cover up when they were actually signed was not put to Ms. Watteyne on cross-examination contrary to the rule in *Browne v. Dunn* (1893), 1893 CanLII 65 (FOREP), 6 R. 67 (H.L.), at pp. 70-71. In any event, Ms. Watteyne's evidence is uncontradicted and it makes sense.

[778] The Plaintiff submits that the actual signing date of the consulting agreements is important because the Tri-Council put Mr. Chartier and President Chartrand on notice that they required BOG approval to bind the MNC by entering into the consulting agreements. I reject this submission because, I do not accept that the Tri-Council had the power to put the Defendants "on notice" that their usual practices should change. In any event, the letters which the Plaintiff relies on as "notice" do not suggest that Mr. Chartier and President Chartrand did not have authority to carry on the MNC's operations or to sign consulting agreements as they had been doing for many years without BOG approval. The issue here is whether Mr. Chartier and President Chartrand acted honestly and with a view to the best interests of the MNC and Métis Nation.

[779] The Plaintiff alleges that Mr. Chartier and President Chartrand had a conflict of interest that required BOG intervention because of their friendships with Mr. Weinstein and Mr. LeClair. The relationship between these men in advancing Métis rights dated back to the 1980s and was widely known. No one ever suggested there was a conflict of interest because of these relationships in the decades before the 2019 Consulting Agreements were signed.

[780] Also, the conflict of interest policy in the 2004 Policies and Procedure Manual applies to employees only, not consultants.

[781] I do not accept that President Chartrand and Mr. Chartier favoured the Consultants when they entered into the five-year consulting agreements. As I have said, there were valid reasons to enter into the five-year agreements.

[782] As set out above, Ms. Watteyne commenced her role as Executive Director of the MNC on May 28, 2018. Ms. Watteyne was also a member of the senior PBM team.

[783] On April 1, 2019, President Chartrand, as Minister of Finance and Administration, gave a letter of assurance to Ms. Watteyne regarding notice upon termination of employment.

[784] On December 11, 2019, MNC and Ms. Watteyne agreed to a five-year employment agreement. The Plaintiff alleges that Ms. Watteyne engaged in a scheme to injure the MNC in exchange for this five-year employment agreement. I do not accept this submission because, the Defendants and Ms. Watteyne entered into her five-year employment agreement for *bona fide* reasons, and it was in the best interests of the MNC.

[785] President Chartrand testified that giving Ms. Watteyne a five-year agreement was part of his plan to keep the senior team in place to obtain further funding through the PBM process. He also testified that Ms. Watteyne told him that she was facing significant hostility from the Governing Members and he wanted to provide her with security. Ms. Watteyne's agreement provided that it was subject to the availability of funds. President Chartrand was confident that funding would be available given that the MNC had secured multi-year funding, but this condition provided the MNC with extra comfort if something unexpected were to happen with their funding.

[786] Mr. Chartier testified that his reasoning for telling President Chartrand to do whatever it took to keep the senior team in place applied equally to Ms. Watteyne.

[787] It is not reasonable to conclude that Mr. Chartier and President Chartrand ought to have stopped conducting the affairs of the MNC and advancing the interests of the Métis Nation and in particular, pursuing funding opportunities, during the stalemate. In the face of the opportunity with Canada and the hostility and uncertainty created by the political dispute, it was reasonable and in the MNC's best interests to make efforts to ensure the core team remained in place by entering into five-year agreements.

[788] There is no evidence that any of the agreements were improvident, that Ms. Watteyne and the Consultants took the benefit of MNC's commitments and did not perform their duties, that there was an undisclosed *quid pro quo*, or that the Defendants engaged in self-dealing with respect

to these agreements. I do not accept that President Chartrand provided these agreements because the Consultants and Ms. Watteyne had been loyal to him or the MMF or for favours in the future.

[789] I accept that President Chartrand negotiated and entered into the five-year consulting agreements with the senior consultants and the five-year agreement with Ms. Watteyne to secure the support of the senior PBM team. Mr. Chartier, who instructed President Chartrand to do so, was similarly motivated. The five-year terms were reasonable given the longer-term funding from Canada under the Sub-Accords, the future funding opportunities and the need to secure the ongoing commitments of the consultants and Ms. Watteyne. The Defendants acted honestly and with a view to the best interests of the MNC/Métis Nation because it was in the MNC's best interests to secure the core team, who were the face of the MNC's PBM team, and Ms. Watteyne was an important team member.

[790] Before addressing the other consulting agreements, the letters of assurance given to the employees and the terminations of the Consultants and the employees, I will discuss the hostile work environment.

The Toxic Workplace

[791] As set out above, the working environment at the MNC had become toxic because of the political dispute concerning the identity issue, the Tri-Council's public letter writing campaign and the litigation between the Governing Members.

[792] Mr. Weinstein's read-in evidence was that he felt personally attacked by the Tri-Council's public statements because they reflected the senior team themselves.

[793] Mr. LeClair's read-in evidence was similar. He said that the "politics" that occurred at the board level seeped into the technical meetings and created a toxic work environment. The MNC no longer had a united voice in meetings with Canada and the division among the technical staff was palpable. He was embarrassed in meetings with federal officials when others talked over him and inserted political issues into the conversation. It was increasingly difficult for the core team to do their work effectively.

[794] Ms. McKay's read-in evidence also described the difficult working environment, including her difficulty scheduling meetings and collaborating with other Governing Members. She testified that there was swearing at meetings with federal officials and that the individuals from the Tri-Council were calling her abilities into question.

[795] Ms. Xie's read-in evidence also confirmed the increasing tension and deteriorating environment at the technical level. She said things were "going downhill" around 2021 and the toxic working relationship caused her significant stress.

[796] In her evidence, Ms. Watteyne described the "technical meetings" with Tri-Council staff and the federal government that took place in 2020-2021. These meetings included virtual meetings, policy forums, working groups, and workshops, all of which were aimed at various goals including the co-development of further sub-accords. She testified that they tried their best to keep working despite the growing tension at the political level, but this was becoming increasingly

difficult. Ms. Watteyne recounts that the Tri-Council staff demanded to join her bi-weekly technical meetings with Assistant Deputy Ministers at CIRNAC, which prevented her from completing her work.

[797] Ms. Watteyne testified about specific examples where she was personally targeted, discredited and undermined in meetings with federal partners and in technical meetings. She recalled others yelling, name-calling and making accusations against her for not sharing information and being untruthful. She said that she and other employees and consultants were being called liars in front of the federal partners.

[798] Ms. Watteyne explained that the Tri-Council's demands to be involved with the MNC's interactions with Canada meant that she was no longer able to participate in biweekly check-in meetings which took place typically between Ms. Watteyne alone (on behalf of MNC) and the CIRNAC assistant deputy minister.

[799] Policy priority meetings, which Ms. Watteyne organized were cancelled last minute for no apparent reason by Tri-Council representatives (for example, the Métis Nation Health Forum in February 2020). Ms. Watteyne gave evidence that there were fewer technical and working group meetings taking place which undermined commitments made for the co-development of sub-accords in various sectors.

[800] Ms. Watteyne explained how she was personally impacted and felt personally blamed by the Tri-Council's accusations about a lack of transparency and accountability, and she was concerned about her reputation which she had built for many years within the Métis Nation as well as across all levels of the Canadian government.

[801] Ms. Watteyne wrote to President Chartrand in September 2021 about the effect of the Tri-Council's letter writing campaign. She said that while Governors may claim that their criticisms are at the leadership level, unfair criticism towards MNC staff was causing stress in the workplace and a toxic environment. The MNC had been accused of withholding information and not acting in good faith, including in PBM meetings. She wrote that the Tri- Council called into question her integrity and the integrity of other senior team members.

[802] Dr. Russell participated in many of these technical meetings on behalf of the MNC. She gave extensive evidence at her discovery regarding the tension created at the technical level by the ongoing political dispute and how difficult the environment became. She testified that it was difficult to schedule meetings and when they did occur, they were heated and became dysfunctional; at times there was screaming and profanity, among the accusations. Dr. Russell said that there was also tension in the meetings with federal partners and similar interactions with arguing among the elected Métis leaders. Dr. Russell gave specific examples were she was personally attacked, insulted, interrupted and had her credibility called into question. She described it as "very ugly". She found the conduct in the public meetings with federal partners around the table to be unjust, unfair and unethical.

[803] Dr. Russell says she was disturbed and concerned, and her health was affected. She became ill, experienced severe chest pains and trouble breathing. She saw a cardiologist and was told it was severe work-related stress.

[804] Mr. Chartier and President Chartrand were both aware that MNC employees and consultants were being disparaged and undermined by senior officials of the Tri-Council.

The letters of assurance

[805] The Defendants submit that it was reasonable to give Ms. Monette, Dr. Russell and other employees letters of assurance to ensure the continued stability of the administration of the MNC in the face of staff concerns about job security and the risk of retaliation from any new management of the MNC because of the political dispute over the identity issue.

[806] I find that it was reasonable and in the best interests of the MNC to give letters of assurance to the staff. It was necessary to ensure that there were staff available to further the important work to be done concerning the Sub-Accords and the PBM. In some cases, staff expressly asked for assurance. For example, Ms. Laliberte sent an email to Ms. Watteyne requesting an assurance letter and expressing a fear of reprisal from the likely incoming MNC administration.

[807] Ms. Monette was employed by the MNC as an assistant to Ms. Watteyne. Ms. Monette assisted Ms. Watteyne in her day-to-day duties and was responsible for overseeing all of the travel and logistics required by in-person meetings between MNC members, meetings of the committees, public policy forums and conferences. Ms. Monette was responsible for coordinating with the administrative or Executive Assistants in the offices of the Presidents of the Governing Members, booking hotels, renting venues, catering, minute-taking, and the assembly meeting kits.

[808] Dr. Russell worked as a Senior Policy Advisor for the MNC, reporting to Ms. Watteyne. Dr. Russell conducted research, coordinated research assignments, drafted reports and briefing notes, and developed proposals aimed at advancing the Métis Nation interests, particularly in the priority areas contained in the Accord. Dr. Russell played an integral role in the PBM. Dr. Russell was responsible for leading the COLLAB SPACE online platform, ensuring that the hub was created and that documents were uploaded. In addition, she was the impetus behind MNC's move toward "holding the pen" on (i.e. doing the drafting for) Cabinet documents and briefings, which ultimately made federal Cabinet Ministers' jobs easier and benefitted the Métis Nation.

[809] On April 1, 2019, several staff including Ms. Watteyne, Lori-Ann Rivers, Carolina Montes and Lynette Davis were given letters of assurance to confirm that if their employment were terminated, they would be given 12 months' pay in lieu of notice.

[810] On May 28, 2021, Ms. Watteyne recommended to President Chartrand that various employees receive assurance letters. On June 16, 2021, she followed up. President Chartrand met with Ms. Watteyne and agreed with her recommendation concerning giving assurance letters to some other employees.

[811] Ms. Watteyne testified that she was recommending these letters of assurance be given to other employees because she, like President Chartrand, was trying to keep the staff intact to

stabilize the environment in uncertain times and ensure a smooth transition to a new administration. He agreed that it was a good idea to maintain a sense of calm in the face of staff concerns about the very public political dispute.

[812] Ms. Watteyne drafted the assurance letters for several employees including Dr. Russell and Ms. Monette, based on the assurance letter she had received. She said that the letters were well received and effective in carrying out their purpose.

[813] President Chartrand testified that the letters of assurance reflected the growing tension at MNC which was not only affecting the politicians and senior team but also impacting the more junior staff. People loved working at the MNC but were asking for some assurance about the security of their employment.

[814] Ultimately the letters of assurance were effective in maintaining stability and securing the staff. All of the employees who received letters of assurance stayed on at the MNC until September 2021 despite the hostile working environment, and many stayed on after the new administration came in.

[815] It is not a breach of fiduciary duty to consider and protect the interests of the employees as well as the not-for-profit corporation itself because the enterprise cannot function without employees: *Kamloops-Cariboo,* at para. 152.

[816] The Defendants and Ms. Watteyne did not act dishonestly or in bad faith and did not breach their fiduciary duties when they gave the letters of assurance to the employees. The letters of assurance, like the five-year contracts, were used to retain necessary staff at the MNC during a time when their employment was uncertain. The retention of the core staff, and ensuring that MNC could continue to function, was in the best interests of the MNC and the Métis Nation. There is no evidence to suggest there was any conflict or self-dealing with regard to the letters of assurance.

The Consulting Agreements with Infinity Research and Celeste McKay Consulting

[817] By the time the consulting agreements with Infinity Research and Celeste McKay Consulting were made in the spring of 2021, the workplace environment had deteriorated further because of the political dispute. Ms. Watteyne negotiated and received President Chartrand's approval for consulting agreements with Infinity Research and Celeste McKay Consulting.

[818] Ms. Hodgson-Smith is the principal of Infinity Research, the corporation through which she entered into consulting contracts with the MNC. Ms. Hodgson-Smith is a practicing lawyer that has provided many hours of pro bono legal services to the MNC and the Métis Nation. She has provided significant consulting services to the MNC since approximately 2002. These services included filling contract positions at the MNC as Interim Executive Director and MNC Chief of Staff.

[819] The MNC received funding from Canada to participate in global discussions related to climate change. From 2008 onward, Ms. Hodgson-Smith's mandate was to represent the MNC in those discussions and to advocate for the interests of Indigenous peoples. She managed all national and international policy discussions and financial relationships in the areas of climate change,

biodiversity, and broad environmental policy. Ms. Hodgson-Smith was the MNC lead on the Canada-Métis Nation Table on Climate Change established in 2016. She was responsible for advancing PBM priorities on Environment and Climate Change and representing the Métis Nation in the drafting and implementation of federal environmental legislation.

[820] On April 1, 2021, the MNC entered into a one-year consulting agreement with Infinity Research.

[821] Infinity Research's consulting agreement provides for "payment for the next six (6) months of invoices in lieu of Consultant loss of opportunity" in the event the Consultant provided notice to termination and MNC elected to terminate immediately. A similar termination provision was contained in Infinity Research's April 1, 2020, contract.

[822] Ms. Watteyne gave evidence that Ms. Hodgson-Smith requested this termination provision in her 2020 agreement. Ms. Watteyne's evidence was that she felt the request was reasonable given the negative environment at MNC at the time and Ms. Hodgson-Smith's concerns about being fired or given notice without warning. Ms. Watteyne said that Ms. Hodgson-Smith was a valuable member of the team and this agreement provided her with a sense of stability and certainty.

[823] Ms. McKay is the principal of Celeste McKay Consulting Inc., the corporation through which she entered consulting contracts with the MNC. Ms. McKay's background is in both social work and law, although she has not practiced law since 2002. Ms. McKay is a Métis woman who has devoted a significant portion of her career to working with Indigenous Peoples' organizations, governments, and UN entities, including the Native Women's Association of Canada.

[824] Ms. McKay provided several project-based consulting services to the MNC on annual contracts or short-term contracts in her areas of expertise, including human rights, homelessness, child welfare, sustainable development, and the Michif language. She was involved in the co-development of key federal legislation affecting the Métis Nation, including Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth, and families* and Bill C-91, *the Indigenous Languages Act*. She also was a key player for the MNC on important initiatives including Indigenous health legislation, and Bill C-15, *the UN Declaration on the Rights of Indigenous Peoples Act.*

[825] In November 2020 the Tri-Council wrote a letter to Canada that had a direct negative impact on Ms. McKay's work. The letter alleged that the MNC does not speak for the Métis Nation with respect to the implementation of the *Indigenous Languages Act*, which was in Ms. McKay's portfolio. As Ms. Watteyne explained, Ms. McKay would be in meetings negotiating amongst other National Representatives of Indigenous peoples and Nations, including the Assembly of First Nations and Inuit Tapiriit Kanatami, as well as the Department of Canadian Heritage. This legislation was intended to be transformative, but the position taken by the Tri-Council was undermining the MNC and Ms. McKay's work on behalf of the MNC. Ms. McKay feared potential retaliation from any new administration. She was not willing to forgo other contracts to preserve capacity for MNC work and did not want to finalize the terms of the 2021 agreement unless there was better compensation or more security against potential retaliation.

[826] Ms. Watteyne recalled that during the initial negotiations, Ms. McKay had a "big ask" and Ms. Watteyne negotiated her down so that her contract would be more in line with the other consultants. The 2021 agreement provided for a very small increase in compensation. Instead of increasing the compensation, they narrowed the scope of work and gave Ms. McKay security in the form of a six-month termination provision. Ms. Watteyne said they discussed the same six months' notice provision that Ms. Hodgson-Smith was given.

[827] On April 1, 2021, the MNC entered into a one-year consulting agreement with Celeste McKay Consulting without noticing that this agreement had only a 12-week notice period. Ms. Watteyne explained that they never discussed a 12-week notice of termination provision, and including that term in the signed agreement was an error. The intention was always to give Ms. McKay the same notice of termination provision as Ms. Hodgson-Smith because of the difficult circumstances under which Ms. McKay was expected to work, and as part of the consideration for not increasing the compensation as much as Ms. McKay wanted.

[828] Ms. McKay drafted her own consulting agreements using a different template than the one Ms. Watteyne used for the consulting agreement with Ms. Hodgson-Smith and others.

[829] Ms. Watteyne's evidence was that the error only came to light after Ms. McKay gave her notice on September 7, 2021.

[830] On September 13, 2021, the consulting agreement with Celeste McKay Consulting was amended to reflect the agreed upon six months' notice provision. Ms. Watteyne explained the agreement was revised again on September 20, 2021, when Ms. McKay brought to her attention that they had added the six months' notice provision but had not removed the 12 weeks' notice provision, which made no sense.

[831] I give little weight to the text messages which were not put to Ms. Watteyne at trial for the same reasons stated previously with regard to documents which were not put to witness and upon which the Plaintiff now relies for impeachment.

[832] The text exchange with Ms. McKay which was put to Ms. Watteyne at trial, and her email exchange with President Chartrand concerning the amendment to Ms. McKay's agreement, did not specifically say the amendment was being made to correct an error. However, Ms. Watteyne was absolutely certain that was the case. I accept her evidence in this regard. There is no other evidence to contradict it, and it is consistent with the contemporaneous documents.

[833] Ms. Watteyne's evidence is consistent with her Briefing Note on HR matters to President Chartrand on September 7, 2021, where she recommends that they accept Ms. McKay's request to be terminated:

> due to the extraordinary circumstances, the MNC approve the request for termination of the current contract for Celeste McKay Consulting. In this case, the MNC would pay to the consultant the amount remaining to be paid in the contract (equivalent to six months - October 2021 to March 2022).

[834] In the Briefing Note, Ms. Watteyne specifically says that Ms. McKay, Ms. Hodgson-Smith and another consultant all had very similar provisions.

[835] Ms. Watteyne said she had not looked at Ms. McKay's contract when she wrote the Briefing Note. In the Briefing Note, she was referencing what she understood the contract to include which was the six-month notice provision they had previously negotiated when the contract was first signed.

[836] President Chartrand was not involved in the amendments to the McKay Consulting agreement; he relied on Ms. Watteyne's recommendations when approving and executing the agreements.

[837] I do not accept the Plaintiff's submission that Ms. McKay was being opportunistic and Ms. Watteyne was obliging her. There is no evidence to contradict Ms. Watteyne's testimony regarding the terms of the initial agreements with Ms. McKay or the reasons for the corrections made to it.

[838] President Chartrand approved the six-month termination provision and followed Ms. Watteyne's recommendations. Ms. Watteyne's recommendation to provide compensation for six months' loss of opportunity to each of these consultants was made in the context of threats by the Tri-Council to their work and portfolios.

[839] The Plaintiff asked rhetorical questions in its closing submissions:

> Why was the MNC Executive Director moving mountains to retroactively provide six months' notice pay to McKay at the same time that Watteyne's counterpart (and predecessor) as MMF Executive Director (Don Roulette) was securing a deal stipulating for only five days notice to the same consultant? Why was McKay content with five days notice from MMF but supposedly expecting six months termination pay from MNC?

[840] The answer is that Ms. Watteyne was revising Ms. McKay's consulting agreement to reflect the terms upon which they had previously agreed and which had been promised in order to secure the MNC team. There was no evidence to suggest that such a term would be necessary at the MMF where, presumably, there was no toxic workplace.

[841] The retention of these consultants was necessary to continue the work of the MNC and was in the best interests of the MNC and the Métis Nation. It was important to continue the MNC's advocacy and other initiatives in the face of the growing tension in the workplace caused by the political dispute. As the work environment deteriorated and staff began to express concerns, incentives were required. With the ongoing financial commitments from Canada, the MNC had the means to enter into these consulting agreements.

[842] President Chartrand testified that he was absolutely satisfied with the work performed by the Consultants after they executed the 2019 consulting agreements. Their work was instrumental and included implementing the 2018 and 2019 federal budget commitments, preparing the "asks" for the 2020 budget in new priority areas such as health which they hoped could be as large as

$500 million, and preparing the sudden switch to obtaining funds of $30 million to address the COVID-19 pandemic. There was no 2020 budget due to the pandemic, so the Consultants reworked the 2020 "asks" for the 2021 budget.

[843] The Plaintiff has not raised any issues with the services provided under the agreements with the Consultants or the work done by the employees, including after they terminated their agreements.

[844] There is no evidence to suggest there was any conflict or self-dealing with regard to these consulting agreements. The Defendants and Ms. Watteyne did not breach their fiduciary duties in entering into the consulting agreements with Infinity Research and McKay Consulting.

The Termination Agreements

[845] In the summer and fall of 2021, a number of employees and consultants advised that they wanted to leave the MNC because of the hostile environment created by the political dispute over the identity issue and the litigation, and their fear of reprisals from a new administration controlled by the Tri-Council and/or concern that their agreements would not be honored.

[846] The Plaintiff says the settlement agreements were unauthorized, unprecedented and breached the By-Laws because they were not approved by the BOG and violated the two-signature requirement. The Plaintiff alleges that the settlement agreements were unreasonable because the employees and Consultants were not entitled to the payments and the Defendants were in a conflict of interest. The Plaintiff says the settlements with the employees were based on unauthorized letters of assurance. The Plaintiff says the settlements with the Consultants were based on unauthorized, backdated and unprecedented consulting agreements that were executed without BOG approval and in violation of the two-signature requirement. The Plaintiff says that the Defendants should have required the Consultants to work during their notice periods.

[847] The Defendants say they did not breach their fiduciary duties by entering into the settlement agreements with employees.

[848] For the reasons set out below, I find that the Defendants and Ms. Watteyne acted honestly and in good faith and did not breach their fiduciary duties with respect to the termination agreements. The settlements were required under the various letters or assurance, employment and consulting agreements. The Defendants obtained comprehensive full and final releases in favour of the MNC. The Defendants were not required to play hardball with their long-term employees and risk exposing the MNC to liability and litigation.

<u>Consultants and Employees Give Notice</u>

[849] Throughout the summer and early fall of 2021, the Consultants were increasingly concerned about the impact the political dispute was having at the MNC and within the Métis Nation. The working environment was becoming disrespectful and toxic, and they felt personally undermined and attacked by representatives of certain Governing Members who could form part of a new leadership. Several of the Consultants feared that the new leadership of MNC would

target them and seek to compel them to pursue initiatives that they believed were contrary to the best interests of the Métis Nation.

[850] In July 2021, Mr. Weinstein advised President Chartrand that he intended to terminate Public Policy Nexus Group's consulting agreement with the MNC. He was the first consultant to advise President Chartrand of his intention to terminate. He said he was leaving because he could not tolerate the constant criticism and attacks from the Tri-Council's staff and officials, he saw a change coming in the administration and he had a strong suspicion that the new administration would not honour his termination provision.

[851] President Chartrand told Mr. Weinstein that he would get legal advice before making a decision regarding his termination.

[852] On July 30, 2021, Dr. Russell made a request to Ms. Watteyne to be laid off from her position with the MNC. Ms. Watteyne said that Dr. Russell told her that she was being harassed and bullied in a very public forum and could no longer continue to work at the MNC.

[853] President Chartrand raised the concerns regarding the staff and Consultants at the PPC meeting on August 16-17, 2021, and said he would get legal advice, which he did.

[854] On August 25, 2021, Ms. McKay gave notice that she wanted to terminate Celeste McKay Consulting Inc.'s 2021 consulting agreement.

[855] On September 7, 2021, Ms. Watteyne advised President Chartrand that Dr. Russell had provided notice she wanted to terminate her agreement, that Ms. Monette would likely do so as well, and that Ms. McKay had also provided notice that she wanted to terminate her consulting agreement.

[856] On September 9, 2021, Ms. Watteyne also sent a three-page detailed letter to President Chartrand and Mr. Chartier alleging constructive dismissal because her employment was "no longer tenable". Her letter says that she was genuinely concerned about the damage to her professional reputation and ability to obtain future comparable employment. She wrote: "Such a toxic environment has been created that I am unable to imagine being able to effectively repair relationships within the Métis Nation and externally". She gave examples of the events that made her continued employment impossible. Ms. Watteyne specifically says that she was "advised that these circumstances are likely a constructive dismissal". With more than three years remaining on her five-year contract, Ms. Watteyne asked for 36 months' pay in lieu of notice and requested that the matter be kept confidential. At trial Ms. Watteyne confirmed that she was consulting a lawyer when she wrote the letter.

[857] On September 15, 2021, Kristina Monette asked to be laid off. Ms. Watteyne said that Ms. Monette was not the type of person to complain but Ms. Watteyne knew that she was under a lot of stress. Ms. Monette was quite concerned and shaken up over an extraordinary incident where Ms. Poitras scolded her in a harsh email and told her that she had no business speaking to one of the members of the MNA Board of Directors who had made an enquiry to her concerning travel

arrangements. Ms. Watteyne gave evidence that she was also concerned about Ms. Monette being present at a meeting and witnessing a very heated discussion that lasted for a couple of hours.

[858] On September 22, 2021, Ms. Hodgson-Smith provided notice of termination of her contract.

[859] On September 22/23, 2021, Ms. Xie provided notice of termination of her contract. Initially Ms. Xie was open to working with the new administration, but the escalating stress at the MNC caused her physical health issues. In September 2021 she fainted on a work trip and suffered a head injury. She was advised by medical professionals to manage her work-related stress better.

[860] On September 23, 2021, Mr. LeClair provided notice of termination of his contract.

[861] There is no evidence to suggest that the Consultants coordinated their notices of termination of their agreements or that the Defendants encouraged them to terminate their agreements or offered them benefits inducements to do so.

[862] Through August and September 2021, President Chartrand sought and received legal advice from Power Law regarding termination payments for the departing consultants and employees. Reasonable and good faith reliance on legal advice establishes that a director or officer acted honestly and in good faith with a view to the best interests of the corporation: *Blair v. Consolidated Enfield Corp.*, [1995] 4 S.C.R. 5, at para. 58.

[863] Mr. Chartier knew that President Chartrand had obtained legal advice from Power Law and was copied on correspondence with the firm.

[864] President Chartrand knew that Power law had intimate knowledge about the affairs of the MNC given its long history of advising the MNC and its involvement with the court applications concerning MNO's suspension and the uncertainty regarding the outcome of the pending GA.

[865] President Chartrand first spoke to Mark Power who referred him to Francis Poulin who he understood to be an "HR expert". President Chartrand understood that Mr. Poulin was aware of the ongoing issues and litigation between the MNC and the MNO because Power Law acted for the MNC in that litigation. President Chartrand testified that he sought advice about labour laws and other rules.

[866] He instructed Mr. Poulin to ensure he was not breaking any laws and that the MNC was protected from lawsuits by the employees and Consultants, but also said he wanted to show them gratitude and respect. President Chartrand explained that it was part of his culture to show the Consultants respect particularly after the significant contributions they had made to the MNC. He felt the Consultants had to be treated fairly because of their dedication and loyalty to the MNC and their accomplishments on its behalf.

[867] Mr. Poulin sent President Chartrand an email confirming these instructions. Mr. Poulin ultimately prepared Minutes of Settlement and releases for the departing employees and Consultants.

[868] President Chartrand testified that he sought legal advice to protect the MNC from potential future liability, he relied on Mr. Poulin's advice, and that Mr. Poulin did not raise any concerns with regard to the legality of or authority to enter into the settlement agreements.

[869] The Plaintiff submits that it is "extremely curious and telling" that Mr. Weinstein prepared draft instructions for President Chartrand to send to Power Law regarding the termination agreements. I do not accept that Mr. Weinstein was directing MNC's instructions to Power Law.

[870] President Chartrand testified that he provided the instructions to Power Law. Mrs. Weinstein's read-in discovery evidence confirms that President Chartrand told him that he would instruct Power Law.

[871] President Chartrand said that Mr. Weinstein prepared the draft email to Power Law for him on his own accord and that was "John's style. He'll do the work for you ahead of time. He'll write it up and prepare you."

[872] There is no evidence that Mr. Weinstein was involved in the preparation of the termination agreements and related documents, other than following up with President Chartrand to confirm that his own termination agreement was being prepared.

[873] The Plaintiff submits that the Defendants cannot rely on the fact that President Chartrand got legal advice from Power Law because the Defendants did not call Mr. Poulin as a witness, President Chartrand did not give Mr. Poulin complete and accurate information and Mr. Poulin's emails do not include all of the advice that Mr. Chartrand says he received.

[874] I accept President Chartrand's evidence about the legal advice he received from Mr. Poulin. His evidence was consistent with the contents of the emails from Mr. Poulin. President Chartrand was not cross-examined on his evidence concerning Mr. Poulin's advice. There was no other evidence to contradict President Chartrand's account.

[875] There is no reason why the Plaintiff could not have called Mr. Poulin as a witness. The Plaintiff was Mr. Poulin's client and the Plaintiff waived solicitor and client privilege with respect to Mr. Poulin's advice.

[876] The Plaintiff submits that Mr. Poulin was not fully informed about the circumstances giving rise to the terminations and that President Chartrand blindly accepted the Consultants' and employees' demands. President Chartrand was fully aware of the toxic work environment, and he knew that Mr. Poulin was also aware of it.

[877] President Chartrand testified that Mr. Poulin was aware of the ongoing situation at the MNC, including the MNO litigation because it was his firm who represented the MNC in the litigation and because Mr. Power and another lawyer from his firm Audrey Mayrand previously attended several PPC meetings. Mr. Poulin's email refers to the dispute among the Governing Members and the upcoming GA ordered by Justice Belobaba when he talks about the "uncertainty", "organizational change" and "workforce reorganization". Ms. Mayrand was involved in the settlements; she is copied on the emails and dealt directly with Ms. Watteyne on her settlement.

[878] The Plaintiff submits that President Chartrand did not give Mr. Poulin the full picture because he did not tell Mr. Poulin about all of the allegations that the Plaintiff is now making against the Consultants and the employees. The Plaintiff is suggesting that the advice was wrong because the lawyer did not know about the alleged wrongdoing which is the subject of this claim. I do not accept this submission. President Chartrand did not believe that the Consultants and employees were guilty of any wrongdoing and no such allegations had been made at the time President Chartrand obtained advice from Mr. Poulin.

[879] The Defendants did not seek a legal opinion on whether the MNC was required to honour the agreements with the consultants and employees, or whether there was a way to avoid them, for example by determining whether an alternative interpretation more favourable to the MNC might be available. If the MNC were a for-profit corporation where acting in its best interests meant maximizing profit and minimizing expenses, seeking such legal advice may have been the prudent, or even required thing to do. But, in the context of this case where the MNC operated as an Indigenous government determining and expressing the rights and aspirations of the Métis people, and in the particular circumstances in which the Defendants found themselves, including the toxic workplace as well as the Consultants' and employees' incredible contributions and accomplishments, it was not a breach of fiduciary duty to honour the agreements according to their meanings as intended and understood by everyone involved.

Settlements with the Senior Consultants

[880] On behalf of the MNC, Mr. Chartier and Mr. Chartrand entered into Minutes of Settlement effective on September 30, 2021, with the senior Consultants LeClaire Infocom Inc. (Mr. LeClair), Public Policy Nexus Group Inc. (Mr. Weinstein) and SystemWay Consulting Inc. (Ms. Xie). The Minutes of Settlement with the senior Consultants provide for lump sum payments in accordance with the termination provisions of their consulting agreements:

1) LeClaire Infocom Inc. $350,000 (24 months)

2) Public Policy Nexus Group Inc. $350,000 (24 months)

3) SystemWay Consulting Inc. $276,000 (24 months).

[881] In exchange for the termination payments, MNC received comprehensive full and final releases. The MNC did not provide releases to the consultants.

[882] The Plaintiff submits that the consulting agreements give the MNC the option of requiring the Consultants to work through the notice period and if they failed to do so, they would not be entitled to their termination payments.

[883] Mr. LeClair drafted the consulting agreements. His evidence was that the 24-month "severance" was automatic if he provided notice of termination. He said that this provision was obtained in exchange for the commitment the consultants were making to the MNC.

[884] President Chartrand also testified that he understood that the termination payments were a "guaranteed mandatory" payment. As set out above, he said that the Defendants provided this

commitment to the Consultants in exchange for the commitment the Consultants were making to the MNC which would ensure stability, and to show them respect because of the long-standing relationship between the parties and the relationship of trust they had developed. He said that if the Consultants betrayed that trust and sought to terminate the agreements without meeting his expectations and performing their obligations under the agreements, he would have taken them to court.

Settlement with Ms. Watteyne

[885] The Plaintiff suggests that the settlement with Ms. Watteyne was improper and a breach of fiduciary duty because she voluntarily resigned. I do not accept this submission. As set out above, Ms. Watteyne gave notice on September 9, 2021, alleging that she was constructively dismissed due to the activities of the Tri-Council and seeking payment equal to the value of the 36 months remaining on her five-year employment agreement plus 10% for lost RRSP contributions. At trial, Ms. Watteyne gave evidence that she had no doubt she would have been "fired immediately" by the new MNC administration without reasonable notice or pay. This belief was obviously correct, as MNC's counsel in oral closing submissions submitted that Ms. Watteyne "should have been fired". I do not find that Ms. Watteyne breached her fiduciary duty when she took the position she was constructively dismissed.

[886] Mr. Poulin advised that Ms. Watteyne was entitled to either 36 months or reasonable notice under the common law and suggested negotiating an amount with her, starting with an offer of 12 to 18 months' notice and anticipating a counteroffer from Ms. Watteyne of between 24- and 36-months' notice.

[887] After back-and-forth negotiations, ultimately Ms. Watteyne and MNC agreed to pay Ms. Watteyne $374,000 (i.e. 24 months' pay plus 10% for lost RRSP contributions) and signed Minutes of Settlement. Ms. Watteyne provided a full and final release to the MNC.

[888] The Plaintiff submits that President Chartrand specifically instructed Mr. Poulin not to assess Ms. Watteyne's constructive dismissal claim because he was not seeking advice about how to mitigate MNC's risk, and just wanted to reward Ms. Watteyne. The Plaintiff argues that President Chartrand should have obtained this advice, and if the advice was that the constructive dismissal claim was weak, President Chartrand should have used this advice to avoid paying Ms. Watteyne anything or negotiate a lower amount.

[889] The Plaintiff is correct that Mr. Poulin did not address the merits of Ms. Watteyne's allegation of constructive dismissal. Mr. Poulin did however advise that, if she resigned, Ms. Watteyne would only be entitled to two weeks notice and he did assess the MNC's risk with respect to the termination provision which he advised required common law notice.

[890] I accept the Defendants' submission that it was not necessary for President Chartrand to obtain a specific legal opinion on the merits of the constructive dismissal allegation or to litigate this issue with Ms. Watteyne. President Chartrand was well aware of the factual basis for Ms. Watteyne's allegations about the intolerable, hostile work environment. He obtained advice about

limiting MNC's exposure and negotiated a settlement that avoided the legal fees associated with a full assessment of the constructive dismissal allegation and/or litigation associated with it.

[891] Ms. Watteyne reasonably viewed the Tri-Council's conduct and its public letters as abusive, and serious threats to her employment. The risk of litigation and exposure to damages and costs to the MNC was objectively real. Courts have found constructive dismissal where the employee experienced abusive treatment, or treatment that renders continued employment intolerable: *Morland v. Kenmara Inc*. (2006), 48 C.C.E.L. (3d) 308 (Ont. S.C.); *Saunders v. Chateau Des Charmes Wines Ltd.* (2002), 20 C.C.E.L. (3d) 220, at paras. 107-119; *Potter v. New Brunswick Legal Aid Services,* 2015 SCC 10, [2015] 1 S.C.R. 500, at paras. 33, 162, citing *Shah v. Xerox Canada Ltd.* (2000), 131 O.A.C. 44 (Ont. C.A.); *Stamos v. Annuity Research & Marketing Service Ltd.* (2002), 18 C.C.E.L. (3d) 117 (Ont. S.C.), at paras. 60-61.

[892] The Plaintiff submits that Ms. Watteyne's settlement was unreasonable because she had a duty to mitigate her damages. This position is not correct. With fixed-term employment contracts, an employer is required to pay an employee until the end of the fixed-term and the employee is not required to mitigate: *Howard v. Benson Group Inc.*, 2016 ONCA 256, 129 O.R. (3d) 677, at para. 33; *McGuinty v. 1845035 Ontario Inc.*, 2020 ONCA 816, 154 O.R. (3d) 451, at para. 46. Ms. Watteyne was under no duty to mitigate and, even if she were, it was not a breach of fiduciary duty for President Chartrand to negotiate a lump sum settlement for significantly less than the balance of the five-year term[13], in exchange for a full and final release.

[893] The Plaintiff submits that Ms. Watteyne voluntarily resigned and planned her departure from the MNC as early as the spring of 2021. I do not accept this submission. Ms. Watteyne did apply for a position with the federal government. She described it as a unique opportunity and said she had never before seen a position like that open to the public for applications and she was interested enough to explore it but had not decided to leave the MNC. It is not surprising that Ms. Watteyne looked at another job opportunity given the Tri-Council's letter writing campaign and ongoing efforts to undermine the MNC. Ms. Watteyne was not successful in obtaining that position and she did not apply for any other positions before she left the MNC. Ms. Watteyne did conduct further job search efforts after she left the MNC.

[894] There was no evidence of any agreement between Ms. Watteyne and President Chartrand or promise of future employment for Ms. Watteyne with the MMF prior to February 2022. Both Ms. Watteyne and President Chartrand testified that they had never even discussed the possibility before December 2021. In late 2021 or early 2022, Ms. Watteyne approached President Chartrand about possible employment opportunities at the MMF and he told her that Don Roulette was likely to retire and he would make some enquiries. She followed up with him a couple of weeks later and he invited her to Winnipeg for an interview and she was hired by the MMF.

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[13] Ms. Watteyne's demand to be paid to the end of her contract would have resulted in a payment of over $500,000 and she ultimately settled for $374,000.

Settlement with Infinity Research Development and Design Inc. (Ms. Hodgson-Smith)

[895] As set out above, Infinity Research had a one-year consulting agreement commencing on April 1, 2020, and on September 22, 2021, Ms. Hodgson-Smith gave her notice of termination.

[896] The MNC and Infinity Research reached a settlement and entered into Minutes of Settlement on September 21, 2021, for a payment of $81,360 (6 months' fees) as required under the consulting agreement in exchange for a comprehensive full and final release.

Settlement with Celeste McKay Consulting Inc. (Ms. McKay)

[897] As set out above, Celeste McKay Consulting had a one-year consulting agreement commencing on April 1, 2020, and she gave notice on August 25, 2021 that she wanted to terminate her agreement. She later discovered that her consulting agreement contained an error that she brought to Ms. Watteyne's attention, and the agreement was rectified on September 13, and 20, 2021.

[898] The MNC and Celeste McKay Consulting entered into Minutes of Settlement on September 28, 2021, for a payment of $91,765.17 (6 months' fees) as required under the consulting agreement in exchange for a comprehensive full and final release.

Settlements with Ms. Monette and Dr. Russell

[899] President Chartrand received legal advice from Mr. Poulin who advised in writing that 12 months' notice would be more than common law reasonable notice, but providing 12 months' notice would honour the agreements in the letters of assurance and mitigate risk. President Chartrand spoke to Mr. Poulin who told him he could offer six or eight months but that would risk the employees rejecting the offer and create potential liability or prompt a lawsuit.

[900] On behalf of the MNC, Mr. Chartier and Mr. Chartrand entered into Minutes of Settlement effective on September 30, 2021 with employees Dr. Russell and Ms. Monette. The Minutes of Settlement with the employees provide for lump sum payments in accordance with their letters of assurance:

1) Dr. Russell $120,000 (12 months)

2) Ms. Monette $60,000 (12 months)

[901] In exchange for making the severance payments to the employees, the employees provided comprehensive full and final releases to the MNC which protect the MNC from future liability.

[902] Mr. Chartier approved of the payments under the settlements because they were required by the agreements.

[903] Making the payments under the settlement agreements did not cause any financial strain or hardship for the MNC. President Chartrand enquired of Ms. Watteyne whether the MNC was in a financial position to make the payments. Ms. Watteyne told him that the MNC had GST rebates

of $2.4 million which could be used to make the payments. President Chartrand testified that when he received this information from Ms. Watteyne, he believed he could make all of the settlement payments without using any of the MNC's governance funding and without negatively impacting MNC's financial position.

[904] The Plaintiff submits that two Governing Members were required to sign the settlement agreements since they were "out of the ordinary course". The evidence does not support this conclusion. There was no evidence of any practice of having two signatures of Governing Members on any agreements with employees or consultants. As set out above, the BOG Minutes show that agreements with employees were never approved by the BOG. The evidence falls short of establishing that the BOG was routinely even advised of agreements with employees or consultants that were "out of the ordinary". Mr. Clair was asked on discovery if the BOG would routinely be kept abreast of "any significant developments, anything out of the ordinary". Mr. LeClair's answer was that the BOG would have been involved in all "major policy questions." Ms. Watteyne's read in discovery evidence was that she could not think of any examples where the President or the Vice President sought BOG approval before making an expenditure and she did not agree that was ever done. Even if it were the usual practice to advise the board of "anything out of the ordinary", I do not find that the Defendants or Ms. Watteyne breached their fiduciary duties by failing to do so during the stalemate.

[905] It is certainly arguable that the Defendants could have taken a different course of action. They could have used whatever leverage they had and played hard ball. They could have advanced interpretations of the various agreements that were more favourable to the MNC and less favourable to the Consultants/employees. They could have disputed allegations of a hostile work environment and constructive dismissal. They could have taken the position that the employees who were given letters of assurance were not entitled to 12 months' notice. However, as an Indigenous government or a non-profit corporation whose object is to advance the interests of the Métis Nation, maximizing the MNC's financial position was not the Defendants' sole consideration.

[906] I accept that in stressful, difficult and uncertain times created by the political dispute which was filtering down to all levels at the MNC, the Tri-Council's letter writing campaign and the litigation among the Governing members, the Defendants did their best to keep the MNC intact by entering into the five-year agreements with the Consultants and Ms. Watteyne and giving the employees the assurance letters.

[907] When the Consultants and employees made it clear they could no longer tolerate the toxic environment, President Chartrand got legal advice, and negotiated settlements and full and final releases in favour of the MNC, in good faith, and in the spirit of respecting those who had served them well and contributed to the MNC's historic gains with Canada, and did so with a view to the MNC and the Métis Nation's best interests. There is no evidence that the Consultants or employees would have accepted less than their entitlements under their agreements.

[908] The Defendants did not breach their fiduciary duties by not grinding the Consultants or employees down or leaving it to the new administration to do so. President Chartrand testified that it was not part of the culture of Métis governments to beat people up. He said it was their culture

to honour, thank and respect the Consultants and employees for the work they did that changed people's lives. He wanted to honour the agreements, honour and thank the employees for their contributions, show the MNC's appreciation for their years of service and also ensure that he was following the law, not breaching the agreements, protecting the MNC from any liability or lawsuits, and protecting the MNC's reputation. I accept his evidence in this regard.

[909] There is no evidence that any personal relationships or friendships played any role in the decisions made. There is no evidence that the Defendants made the decisions regarding and entered into agreements with the Consultants and employees as part of a scheme intended to harm the MNC and benefit the MMF. Making these decisions and honouring these agreements was not a breach of fiduciary duty.

[910] Ms. Watteyne did not act disloyally or in bad faith and did not breach her fiduciary duty to the MNC. Ms. Watteyne made recommendations aimed at keeping the staff intact and that was in the best interests of the MNC.

[911] Given my findings that the Defendants did not breach their fiduciary duties, there can be no knowing assistance or knowing receipt on Ms. Watteyne's part and no finding that she breached her fiduciary duties by carrying out their instructions or facilitating the implementation of their decisions.

[912] Ms. Watteyne was not unjustly enriched by receiving her settlement funds.

[913] The termination of employee Ke Ning illustrates what might have happened had the Defendants, Ms. Watteyne, the Consultants and the employees chosen another route. President Chartrand gave Ke Ning a letter of assurance on March 9, 2019, and Ms. Watteyne gave Ke Ning a second one on May 28, 2021 to provide her with assurance that her job was secure, and to encourage her to stay on at the MNC to facilitate a smooth transition.

[914] Ms. Ning did not seek to terminate her employment in September 2021; rather she chose to stay on at the MNC.

[915] Approximately one and a half months after her election, the new President Ms. Caron terminated Ke Ning's employment on Nov 15, 2021. Ms. Ning was advised that the MNC would not honour her letter of assurance, and would pay her minimum entitlement under the Employment Standards Act of 18 weeks' pay, plus an additional 11 weeks' pay if she signed a release and the 11 weeks' pay would be reduced if Ms. Ning successfully mitigated her damages. Ms. Ning was given 11 days to make her decision.

[916] In response, Ms. Ning hired a lawyer and threatened litigation. Her counsel Alex Lucifero sent a demand letter dated November 26, 2021.

[917] Ultimately the MNC reached a settlement with Ms. Ning that was greater than the 12 months' notice promised in her letter of assurance. In the end result, having chosen not to have Ms. Ning work through a notice period, the MNC paid Ms. Ning, an additional pay of $110,361.45 for a total severance of almost $147,000 (representing 30 additional weeks' pay plus vacation pay,

benefits and compensation for lost pension entitlement) plus legal fees of $3,000. Also, MNC incurred its own legal fees in reaching this settlement with Ms. Ning.

Issue 4: Mr. Chartier's retiring allowance and watch

[918] The Plaintiff alleges that Mr. Chartier breached his fiduciary duty by arranging, orchestrating and accepting a retirement allowance equal to 18 months' salary and the gift of a watch. The Plaintiff says the retirement allowance was unauthorized because it was not approved by the BOG and violated the two-signature requirement. The Plaintiffs submits that the retirement allowance was improper because Mr. Chartier was in breach of his fiduciary duties with respect to other transactions such as the MVLP, and the consulting agreement with Glorian Chartrand and he was not entitled to a retiring allowance because he planned to and did go to work for the MMF after he left the MNC.

[919] Mr. Chartier was the longest serving leader of the Métis Nation and devoted his whole life to its advancement.

[920] On November 6, 2019, Mr. Chartier first announced that he did not intend to seek re-election as President of the MNC. However, he explained that his final decision was not made until the fall of 2021 because "in politics, you never know".

[921] President Chartrand testified that he wanted to provide Mr. Chartier with a retiring allowance because he wanted the MNC to recognize Mr. Chartier's many years of service, and outstanding contributions to the MNC and the Métis Nation and also because the MNC did not have a pension plan. President Chartrand explained that he also considered Mr. Chartier's considerable *pro bono* contributions to the Métis Nation before he was President. President Chartrand explained that he felt very strongly that the Métis Nation needed to honour its leader.

[922] Mr. Chartier played no role in proposing or approving the retirement allowance or watch.

[923] President Chartrand first raised the discussion of the retirement allowance in a PPC meeting on July 29, 2021. Mr. Chartier said he did not expect that discussion to occur, and he did not participate in it.

[924] In August 2021, President Chartrand received legal advice from Mr. Power at Power Law regarding a retiring allowance for Mr. Chartier and the formula for calculating the amount. Mr. Power did not tell President Chartrand that he was not permitted to provide a retiring allowance to Mr. Chartier.

[925] President Chartrand also obtained financial advice from MNP regarding the appropriate amount of the retiring allowance. MNP suggested he consider how governments address pension plans for elected officials and that federal MPs have lifetime pensions.

[926] On August 16-17, 2021, at a PPC meeting with Mr. Chartier and Ms. Dal Col, President Chartrand recommended a retirement allowance for Mr. Chartier in the amount of $244,710 minus the usual deductions for a net payment in the amount of approximately $164,000 which was the equivalent of 18 months' salary, representing one month per of year of service. Ms. Dal Col

supported President Chartrand's recommendation. Mr. Chartier did not participate in the discussion or vote on the decision. At trial, he said he did not have any expectations about receiving a retiring allowance.

[927] The PPC minutes of August 16-17, 2021, confirm that President Chartrand had received legal and financial advice concerning the retiring allowance and that his recommendation was based on Mr. Chartier's years of service, the fact that MNC did not provide a pension plan, and Mr. Chartier's contribution in bringing in over $3 billion in funding from Canada which had changed the daily lives of Métis citizens.

[928] Mr. Chartier and Ms. Watteyne's evidence was consistent with President Chartrand's evidence regarding the reasons for and decision-making process regarding the retiring allowance paid to Mr. Chartier.

[929] President Chartrand confirmed that Mr. Chartier had no role in the decision to give him a retiring allowance.

[930] The Plaintiff relies on a statement made by President Chartrand in his examination for discovery as evidence that Mr. Chartier arranged for his own retirement allowance. The Plaintiff overstates President Chartrand's evidence. President Chartrand simply stated that Mr. Chartier had mentioned "It would be nice … if somebody gave me some thought about my years of service." Based on that, President Chartrand took it upon himself to figure out a gift for Mr. Chartier and spoke with Power Law about the retirement payment. The Plaintiff never questioned Mr. Chartier or President Chartrand about this conversation during cross-examination. When Mr. Chartier was asked about the retirement payment, he was adamant it was unexpected, and he was not involved in the decision-making.

[931] Even if Mr. Chartier did make this comment, it does not establish that he was asking for a retirement allowance. I am reluctant to put much, if any, weight on this discovery evidence which was read in as part of the Plaintiff's case given that it was not put to either of Mr. Chartier or President Chartrand at trial for the purposes of impeaching them.

[932] The rule in *Browne v. Dunn* is a rule of fairness that requires a party be given the opportunity to comment on independent evidence which is introduced for impeachment.

[933] To the extent the Plaintiff is using this evidence to impeach Mr. Chartier's trial evidence that he was not involved in the decision to give him a retiring allowance, the Plaintiff ought to have complied with the rule in *Browne v. Dunn*, and failed to do so. It is unfair to Mr. Chartier to use this evidence to impeach him. He should have been given an opportunity to explain, especially as the evidence is capable of different meanings, and was also not put to Mr. Chartrand.

[934] To the extent the Plaintiff relies on this evidence to impeach President Chartrand's trial evidence that Mr. Chartier was not involved in the decision, his own evidence from his discovery is not independent evidence, but it is being used for impeachment.

[935] Sections 20 and 21 of the *Evidence Act* require that prior inconsistent statements be put to the witness before their introduction into evidence. As set out above, a party may not read in

evidence from the opposing party's discovery for the purpose of impeachment without complying with the *Evidence Act.*

[936] It is now too late to recall either President Chartrand or Mr. Chartier to afford them the opportunity to explain this alleged inconsistency. Their views on the contradictory evidence is not already apparent: *R v. Vorobiov,* 2018 ONCA 448, 147 W.C.B. (2d) 446, at para. 43. I do not know what they would say about the statement which Mr. Chartrand said Mr. Chartier made. As a result, I place little weight on this evidence, particularly because it falls short of establishing that Mr. Chartier was engaged in self-dealing giving rise to a breach of fiduciary duty.

[937] Article 17 of the By-Laws provides the following:

> The remuneration of all officers, agents and employees and committee members shall be fixed by the Board of Governors.

[938] Nothing in Article 17 gives exclusive power to the Board of Governors to fix remuneration.

[939] Article 8(b)(iv) of the By-Laws provides that the BOG has the authority to determine the remuneration of the MNC President:

> The position of President of the Métis National Council shall not be held by an elected person at the provincial level and will be a full-time salaried position with the remuneration determined by the Board of Governors.

[940] Articles 17 and 18 do not specifically address retirement allowances, bonuses or gifts.

[941] Mr. Chartier's evidence was that it was his recollection that it was the Minister of Finance who set his salary and President Chartrand, as Minister of Finance, had authority to make decisions regarding the President's remuneration. He did not believe that BOG approval was required.

[942] The Plaintiff did not call any evidence to contradict Mr. Chartier's recollection.

[943] There was no evidence of any resolution by the BOG to set or approve the President's salary.

[944] None of the By-Laws, Policies and Procedures or Cabinet Terms of Reference address retiring allowances, bonuses or gifts.

[945] There is no allegation that the payment of the retirement allowance caused any financial difficulty for the MNC. I do not find that it was paid as part of a scheme to harm the MNC.

[946] The Plaintiff submits that President Chartier should have excused himself from the PPC meetings when the retirement allowance was being discussed, even though he did not participate in the discussions or vote on the decision. The Plaintiff does not cite any authority for this proposition. The Canada *Not-for-Profit Act* does not impose this obligation, and does not even preclude a director from voting on their own remuneration if they disclose their interest in the

contract or transaction: s. 141(5)(a). The Plaintiff's relies on the Conflict of Interest Policy in the MNC's 2004 Policies and Procedures Manual which provides that Governors should withdraw from discussions that would place them in a conflict and absent themselves from the meeting during deliberations and decision making.

[947] However, the evidence is that the 2004 Policies and Procedures Manual was never strictly adhered to or referenced. Strict compliance with those procedures was not expected. I do not find that Mr. Chartier breached his fiduciary duty by not leaving the PPC meetings because he did not participate in the discussion or vote.

[948] The Plaintiff submits that Mr. Chartier approved his retirement allowance because Ms. Watteyne sent him an email advising him that the payment was being made by direct deposit to his bank account, provided the breakdown of the deposit and asked if he had any questions, to which he replied that he did not. This email is not evidence that Mr. Chartier approved the payment.

[949] Ms. Watteyne's involvement in Mr. Chartier's retirement allowance was limited. President Chartrand asked her to obtain opinions from MNC's finance team on procedures around end-of-term payments, which she did. Ms. Laliberte said that a severance payment did not apply because Mr. Chartier was not being dismissed, she had never seen payments to long standing employees who were leaving, she could not recommend deviating from the standard payroll terms and she recommended consulting a lawyer which President Chartrand did.

[950] President Chartrand also asked Ms. Watteyne to investigate an appropriate amount for a retirement allowance and she arranged for MNP to provide a report.

[951] Ms. Watteyne did not attempt to conceal the retirement allowance and ensured the decision authorizing the payment of the retirement allowance to Mr. Chartier was documented in an email to the finance team which would be available to any new administration.

[952] President Chartrand also approved Ms. Watteyne's recommendation of a watch costing $3,400 as a retirement gift for Mr. Chartier. President Chartrand explained the importance of gifts in Métis culture. He said that normally they would commission a hand embroidered Métis vest costing approximately $18,000 as a gift, like they did when Ms. Poitras stepped down after nine months as Interim President, but there was insufficient time to commission a vest, so they settled on the watch. It does not appear that the Plaintiff is claiming that the Defendants breached their fiduciary duties by giving Mr. Chartier the watch.

[953] I accept President Chartrand's evidence that he wanted to honour and acknowledge Mr. Chartier. There was no evidence that there was any conflict or self-dealing or that the retiring allowance was President Chartrand's *quid pro quo* payment to Mr. Chartier for assisting in the alleged scheme or scorched earth policy.

[954] The Plaintiff has not provided any authority for the proposition that as a fiduciary, Mr. Chartier was prohibited from receiving a retiring allowance or other gifts for his service, where he was not involved in making the decision. The fact that Mr. Chartier was not unemployed after leaving the MNC as President is irrelevant. The payment was not a payment in lieu of damages for

wrongful dismissal. It was a retiring allowance given to recognize and thank Mr. Chartier for his service and contributions.

[955] President Chartrand did not breach his fiduciary duty to the MNC or the Métis Nation by arranging the retiring allowance for Mr. Chartier. It was a reasonable decision, made on the basis of legal and financial advice. It was in the best interests and traditions of the MNC and the Métis Nation, to honour its longest serving President, who made a contribution that cannot be overstated, with a retiring allowance representing one month's compensation for every year of service and a watch when he retired as President.

Issue 5: Consulting Agreement with Glorian Chartrand

[956] The Plaintiff alleges that Mr. Chartier breached his fiduciary duty by approving a consulting agreement between the MNC and Ryley James (Glorian Chartrand's business) in 2020. It seeks reimbursement from Mr. Chartier of all amounts paid to Ms. Chartrand pursuant to that agreement. The Plaintiff submits that the agreement was kept secret and violated MNC's conflict of interest policies. The Plaintiff submits that President Chartrand orchestrated the agreement and that Ms. Watteyne and Mr. Chartier improperly and excessively facilitated payment to Glorian Chartrand to divert funds from the MNC and enrich Glorian Chartrand and President Chartrand.

[957] The contract related to Glorian Chartrand's work on the MVLP. As set out above, at the Second MVLPs Roundtable on February 6, 2020, President Chartrand recommended that Glorian Chartrand continue her work on the veteran's file.

[958] The MNC's Employment of Family Members Policy contained in the 2004 Policies and Procedures Manual provides that "the MNC will endeavor to ensure that the possibilities for bias or conflict of interest due to family ties between the BOG and/or employees are minimized." It provides that a Governor's family members may be employees of the MNC, but the BOG member must abstain from voting or making decisions regarding the family member. Even immediate family members may be hired, as long as there is no supervisory relationship.

[959] Applying the Employment of Family Members Policy to consultants does not make sense.

[960] The Employment of Family Members Policy expressly applies to MNC's employees. It does not refer to consultants who are independent contractors. It speaks of "tenure" which applies to employees and not consultants. There are other sections of the 2004 Policies and Procedures Manual that have provisions pertaining to consultants which do not contain any reference to conflicts.

[961] President Chartrand was not involved in negotiating MNC's consulting agreement with Glorian Chartrand and he did not see it prior to the lawsuit.

[962] Mr. Chartier was not involved in the negotiation or drafting of the agreement. He did not know who prepared it and he did not discuss it with Glorian Chartrand. He said that, as was the usual practice, the contract was prepared and vetted by members of his team, and presented by Ms. Watteyne to him for review and signature. There is no evidence that this was not the usual practice. In fact, the evidence was that it was President Chartrand who negotiated and signed the consulting

agreements with the senior consultants and Ms. Watteyne who negotiated the agreements with the other consultants.

[963] Ms. Watteyne's evidence was that the agreement was prepared by Mr. LeClair.

[964] President Chartrand agreed that it looked similar to the agreements for the other consultants which were prepared by Mr. LeClair.

[965] Mr. Chartier testified that he believed that Glorian Chartrand was very qualified, she had been working on veterans' issues for decades and had previously worked on veterans' projects for the MNC.

[966] Glorian Chartrand's consulting agreement was not approved by the BOG. As set out above, BOG approval was not required for consulting agreements. Glorian Chartrand also had a consulting agreement with the MNC in 2011 that was not approved by the BOG. The evidence was that the BOG did not approve consulting agreements.

[967] The Plaintiff submits that because Glorian Chartrand used her company Ryley James, this is evidence that there was a plan to keep Glorian Chartrand's identity a secret. President Chartrand explained that there was nothing nefarious about using the name Ryley James. The company was named after two of Glorian Chartrand's family members of whom she had fond memories. There was no secret that Ryley James was Glorian Chartrand's consulting company and no secret that she was working on the MVLP as was discussed at the MVLP Roundtable.

[968] The Plaintiff suggests that Glorian Chartrand was overpaid, and that Mr. Chartier admitted this at the trial. That is not how I understood his evidence.

[969] The terms of the contract provide as follows: "Compensation for Services. The Consultant will be paid $90,000 exclusive of HST in each fiscal year for work performed in accordance with this Agreement."

[970] Glorian Chartrand was paid $90,000 for each of the fiscal years in which she worked on the MVLP. This is not an unreasonable interpretation of the agreement.

[971] In cross examination, Mr. Chartier was asked to interpret the consulting agreement with Glorian Chartrand. Mr. Chartier interpreted the consulting agreement to mean $90,000 divided by 12 or $7,500 per month which is different than how Glorian Chartrand was paid. Mr. Chartier was unaware that Ms. Watteyne had clarified with Glorian Chartrand that Ms. Watteyne's interpretation of the agreement was that Glorian Chartrand was to be paid $90,000 for each fiscal year in which she worked was correct.

[972] I do not accept that Mr. Chartier admitted or believed that Glorian Chartrand was overpaid. Mr. Chartier testified that he was not involved in interpreting the contract and deciding how much to pay Glorian Chartrand under the agreement. His only role when it came to implementation of the contract was signing cheques. Mr. Chartier testified that he would have been presented with cheques to sign or emailed requests to approve payments, and he would have done so knowing the payments had been approved and vetted by his finance team and the Executive Director.

[973] Ms. Watteyne provided her explanation for her interpretation of Glorian Chartrand's consulting agreement and it is consistent with the express wording of the agreement. She explained that she understood that Glorian Chartrand would be paid $90,000 for each fiscal year for work performed in accordance with the agreement. That is what the agreement says.

[974] Because Ms. Watteyne was not involved in the negotiation of the contract she sought clarification from Glorian Chartrand. This was her usual practice; she similarly sought clarification form Mr. LeClair and Mr. Weinstein in 2019 regarding the consulting agreements of the senior Consultants.

[975] I do not accept the Plaintiff's submission that Ms. Watteyne should have consulted with members of MNC's finance team regarding the interpretation of Glorian Chartrand's consulting agreement because they were not involved in its negotiation, and they were in no better position to interpret it.

[976] I accept Ms. Watteyne's evidence that she understood that because the contract spanned three of MNC's fiscal years, Glorian Chartrand was entitled to $90,000 per fiscal year, for a total of $270,000, to be allocated over the 21-month term. Ms. Watteyne explained that she was not troubled by the amount to be paid to Glorian Chartrand. The quantum was in line with what other consultants were paid, considering both the quality and the quantity of work to be performed. Ms. Watteyne said that the MNC got good value for the work done and it was a "huge, huge undertaking to set up a whole infrastructure… and she did an excellent job at doing so".

[977] The Plaintiff submits that I should draw an inference regarding the timing and motivation behind the payment to Ryley James in March 2020. The payment made was for services rendered from February 1, 2020, which was the date of the consulting agreement. The payment was made at the same time invoices were being pre-approved in a batch so as to avoid a delay in payment. Ms. Watteyne explained that the MNC often paid consultants for work done while the statements of work under their consulting agreements were still being finalized and it was not unusual that this is what happened in Glorian Chartrand's case.

[978] There is no evidence that Ms. Watteyne or anyone else acted in bad faith or dishonestly in facilitating payments for valuable work done by Glorian Chartrand pursuant to her consulting agreement.

[979] The Plaintiff also submits that the payment should have been brought to the BOG because the 2009 Financial Policies, states that all "[n]on-budgeted requests in excess of $10,000.00 will be brought to the Board of Governors for their review and approval". Putting aside the fact that there were no BOG meetings because of the stalemate, there was no evidence at trial that any payment for expenses had ever been approved by the BOG. As set out above, Ms. Watteyne could not recall a single instance where that procedure was followed. I accept that this requirement in the 2009 Financial Policies was never followed.

[980] I do not accept that the amount paid or Ms. Watteyne's interpretation was unreasonable, or that she or Mr. Chartier breached their fiduciary duties by making payments to Glorian Chartrand under her company's consulting agreement.

Issue 6: The LRI and GDI Agreements

[981] The Plaintiff submits that Ms. Watteyne was rushing to improperly execute agreements for $125,000 payments to each of the Louis Riel Institute ("LRI") and the Gabriel Dumont Institute ("GDI") at the end of September 2021 to enrich MMF's affiliate at the MNC's expense.

[982] I do not accept this submission as there is no evidence to support it. I accept Ms. Watteyne's evidence that the agreements were entered into because she was doing her due diligence to ensure that there were contracts in place regarding the important long-standing work of these two Institutions.

[983] The LRI is an affiliate of MMF and the GDI is an educational institution and an affiliate of the MN-S.

[984] LRI and GDI were contracted by the MNC for fiscal year 2021-2022 to provide policy, technical and logistical services to the MNC regarding the implementation of the *Indigenous Languages Act* from April 1, 2021 to March 31, 2022.

[985] Ms. Watteyne's evidence was that these two organizations were doing extremely valuable work on behalf of the MNC to protect and advance the Michif language and the MNC had received funding from Canada to continue this work in 2022. She explained that she was doing her due diligence to ensure that the LRI and GDI agreements were in place before she left to leave the MNC in the best position she could.

[986] There is no evidence that Ms. Watteyne arranged for these agreements in bad faith with the intention of harming the MNC. In any event, the LRI and the GDI have not sought to enforce these agreements against MNC after the new administration took over.

Issue 7: The Lease

[987] The Plaintiff claims that the Defendants breached their fiduciary duties by entering into a lease for office space, without the approval of the BOG, which was overvalued and benefited the landlord, an MMF affiliate. The Plaintiff submits that the previous lease allowed the MNC to extend it for two further five-year terms and that the rent would have been the greater of the current rent or the prevailing market rent. The Plaintiff submits that the MNC should not have signed a new lease without first determining the then-current prevailing market rate, and that the market rate would have been lower than $19,448 because of COVID-19. The Plaintiff alleges that Mr. LeClair was in a conflict of interest when he negotiated the lease. The Plaintiff also submits that President Chartrand induced the landlord to unlawfully serve Notice of Termination and relies on a comment in a news article where he is alleged to have referred to the landlord as "we".

[988] The Defendant submits that there is no evidence that the 2020 lease was above market value. The rent was only a modest increase over the rent agreed to in 2011 and was less than the amount the MNC was paying before 2011 at a different location. The Plaintiff's reliance on the word "we" from a disjointed quote in a news article does not prove that President Chartrand orchestrated MNC's eviction in 2022, especially in the face of his denial and the absence of any other evidence. The landlord was entitled to evict the MNC because paying rent under a

"reservation of rights" and the threat of clawing back payment in the future is unfair and unreasonable. In any event, the MNC has not suffered any damages, and the landlord is not a party to this litigation.

[989] In 2011, the MNC moved into the premises at 340 MacLaren St., Ottawa. Before renting space at MacLaren St., the MNC rented office space in Ottawa from a different landlord.

[990] In 2011 the Métis Economic Development Corporation and Louis Riel Capital Corporation proposed to buy a building in downtown Ottawa and rent space to the MNC.

[991] The BOG Minutes reflect that the proposed move and new lease was discussed at a BOG meeting. The BOG requested that President Chartrand leave the meeting due to a perceived conflict of interest. President Chartrand did not agree there was a conflict but did testify that he left the meeting during the vote. The BOG decided to move into MacLaren St.

[992] The first lease at MacLaren St. ran for 10 years from October 20, 2011, until October 21, 2021. The landlord was 6106111 Manitoba Inc. (the "Landlord").

[993] At the beginning of the lease the basic rent was $18,500 per month. On November 1, 2016, the basic rent increased to $18,700 under the terms of the original lease. It was Mr. LeClair who was involved in securing the 2011-2021 lease.

[994] The lease was coming to an end in October, 2021, and the MNC did not want to move because the space at MacLaren St. was suitable. Mr. LeClair brought the lease extension to the PPC in early 2021.

[995] On January 12, 2021, the PPC directed that "the MNC secure office space by extending its existing lease agreement for another seven years."

[996] The MNC and the Landlord signed an Amended Lease dated April 6, 2021, and extended the lease term to April, 2028. The basic rent increased from $18,700 to $19,448 per month. The Plaintiff makes the bold assertion that the lease extension was done during COVID-19 and rental rates were down. There was no expert evidence of the market conditions during COVID-19, and no evidence that this rate was higher than the market rate.

[997] President Chartrand gave evidence that it was Mr. LeClair who brought the lease extension to the PPC and Mr. LeClair negotiated the terms of the Amended Lease with the Landlord. President Chartrand said he was not involved in the negotiation of the amended lease; he did not provide any instructions with respect to its terms and relied on Mr. LeClair.

[998] Obviously securing appropriate office space was in the best interests of the MNC. The Plaintiff's allegation with respect to the lease extension is that Mr. LeClair was in a conflict when he negotiated the Amended Lease because he had a relationship with N4 Construction which is an affiliate of MMF. N4 Construction is a separate company from the Landlord. The Landlord and N4 Construction operate at arm's length.

[999] The Plaintiff submits that President Chartrand, Mr. Chartier, and Mr. LeClair "were obviously motivated by the threat of the MNO's litigation to quickly attempt to bind MNC to a lease favorable to MMF's affiliate, the Manitoba Landlord, prior to losing their control of MNC's financial affairs, as contemplated by MNO's 2021 litigation". There is no evidence to support this conclusion.

[1000] President Chartrand testified that he never considered bringing the Amended Lease to the BOG for approval because it "was continuing our business as usual".

[1001] Mr. LeClair's consulting relationship with N4 was no secret. There was no conflict of interest with respect to the lease arising from Mr. LeClair's consulting corporation providing services to both MNC and N4 Construction. Mr. LeClair was a consultant serving multiple clients, performing distinct work for each. Mr. LeClair played a similar role in negotiating and executing other agreements for the MNC under the direction of the MNC's executive and doing so fell under the Scope of Work in his consulting agreement which included drafting services.

[1002] Mr. LeClair and the other Defendants did not have any interest in or benefit from the lease. There was no self-dealing and no conflict of interest. It was not in the best interests of the MNC to simply let the lease expire and possibly have to move offices because of the stalemate. The lease extension involved a modest increase, and in absence of any evidence it was over market, I find that it was in the best interests of the MNC.

[1003] The Plaintiff alleges that President Chartrand coerced or exercised undue influence over the Landlord to evict the MNC. The MNC was evicted because it insisted on maintaining occupancy of the premises at 340 MacLaren while paying rent under a full reservation of rights, meaning it reserved the right to claim back all of the rent. The Landlord demanded that the MNC stop the reservation of rights or move out.

[1004] A defendant is liable for inducing breach of contract where; 1) the defendant has knowledge of the contract between the plaintiff and the third party, 2) the defendant's conduct was intended to cause the third party to breach the contract, 3) the defendant's conduct caused the third party to breach the contract; and 4) the plaintiff suffered damages as a result of the breach: *Drouillard v. Cogeco Cable Inc.* (2007), 2007 ONCA 322, 86 O.R. (3d) 431, at paras. 26-38.

[1005] On October 29, 2021, counsel for the MNC wrote to the Landlord advising that it might bring an action to "seek a declaration that the Tenant is not bound by or may terminate the Amended Lease". MNC continued to pay rent.

[1006] On November 28, 2021, counsel for the MNC wrote to the Landlord:

> As such, any payments previously or hereinafter made by the Tenant to the Landlord in respect of the Premises, including any payments for rent, shall not in any way represent the Tenant's agreement with or acquiescence to the terms or enforceability of the Amended Lease or the Original Lease.

[1007] On March 28, 2022, the Landlord sent the MNC a Notice of Breach giving the MNC ten days to remedy the breach by acknowledging the Amended Lease as binding, and confirming that it would cease alleging that the lease was not binding and rescind any reservation of rights made with respect to rent payments.

[1008] On April 6, 2022, the MNC responded by disputing that it had breached the Amended Lease.

[1009] On April 12, 2022, the Landlord served a Notice of Termination requiring vacant possession by May 11, 2022.

[1010] On May 11, 2022, the MNC provided vacant possession of the premises.

[1011] There is no evidence that President Chartrand exercised any influence over the Landlord to evict the MNC.

[1012] The Landlord is a separate legal entity with its own board and management. The Landlord evicted the MNC because it was paying rent under the reservation of rights.

[1013] Mr. Chartrand gave evidence that he was not involved in the eviction in any way. There was no evidence to the contrary other than a May 5, 2022 article in the CBC where President Chartrand is quoted as saying:

> The most embarrassing part… we've given them notice… You don't want to pay me rent, then move here, go finds a place that you think is better out there. So that's the position they're in now.

[1014] The Plaintiff suggests that by referring to the Landlord as "we", President Chartrand was admitting that he was involved in the eviction.

[1015] President Chartrand's evidence was that he tends to use the global "we" when speaking. He agreed that he could have made the statement but the media puts their own spin on things. It is clear that there are words missing from the quote attributed to President Chartrand.

[1016] Even if President Chartrand did refer to the Landlord and himself and/or the MMF as "we", I do not find this reference sufficient to find that he orchestrated the eviction, particularly in the face of his clear evidence that he was not involved in the eviction in any way.

[1017] In any event, the Plaintiff does not suggest it was a breach of the lease for the Landlord to evict the MNC and has not sued the Landlord. It also is inconsistent for the Plaintiff to argue on the one hand that the Lease was overvalued and on the other hand argue that it suffered damages as a result of being evicted.

[1018] At trial, the Plaintiff conceded that it is not making a claim for damages based on the additional rent it paid under the Amended Lease. Rather, the Plaintiff now advances a claim for relocation expenses.

[1019] At the trial the MNC sought to introduce, through Ms. Caron, a brief of documents labeled "Relocation Expenses". Counsel for the Defendants object to the introduction of the brief, on the basis that it was leading (having been labeled before any of the documents were identified by the witness) and also because the Plaintiff required leave pursuant to r. 53.08 to use the documents at trial. On March 9, 2025, I released my decision denying the Plaintiff leave to use the documents at trial: *Métis National Council Secretariat Inc. v. Chartier*, 2025 ONSC 4458.

[1020] At trial Ms. Caron was unable to remember how much the Plaintiff spent on moving expenses.

[1021] The Plaintiff relies on a document prepared for litigation that contains excerpts from the MNC's general ledger. The general ledger may well be a business record, but it was not tendered as an exhibit in this trial. The excerpt document contained in the JEB is hearsay and was prepared for the litigation.

[1022] The parties' agreement regarding the use of the documents in the JEB was filed as an exhibit at trial. It provides that only business records are admissible for the truth of their contents. This excerpt document does not fit within the list of agreed business records in the parties' agreement: "accounting records made in the ordinary course of business (i.e., not made for the purpose of litigation)".

[1023] The parties' agreement states that other records may be tendered as business records:

> The parties agree that the parties are entitled to seek to tender at trial other documents as "Business Records" such that they are admitted as evidence of such act, transaction, occurrence, or event, but for such documents the party tendering the document will be required to prove that the document is a "Business Record" in accordance with the governing law, unless otherwise agreed by the parties

[1024] The Plaintiff did not prove that the extract document is a business record under s. 35 of the *Evidence Act* because it was not made in the ordinary course of business; rather, it was prepared for litigation using software that extracted data from the general ledger. The author of the document was not called as a witness. Ms. Caron did not enter the underlying invoices or receipts into the general ledger, or prepare the excerpt document contained in the JEB, and she could not testify as to its accuracy or testify what amounts were paid by the MNC to relocate its offices.

[1025] The Plaintiff has not proven its relocation expenses.

Issue 8: The Claim Against the Consultants: Knowing Assistance/Knowing Receipt/Unjust Enrichment

[1026] The Plaintiff has sued the Consultants in their personal capacities for knowing assistance, knowing receipt and unjust enrichment. The allegations relate to the settlement payments made pursuant to the agreements with the Consultants.

[1027] The Consultants submit there is no evidence to support a finding of personal liability. The Consultants say that there is no valid claim against their corporations because they only received

what they were legally entitled to receive under their agreements. After signing agreements with the Minister of Finance for over a decade, they had no reason to questions the MNC's compliance with its internal rules, especially when no one else did so. They also had no reason to question the *bona fides* of MNC honouring its obligations to them. They had every reason to question how they would be treated by the new administration, and demanded the termination payments as a result.

[1028] There is no evidence that any of the Consultants provided services to the MNC in their personal capacities. In its 85-page reply Submission, the Plaintiff references, for the first time, a trust statement of account, which attaches cheques, some of which are made out to some of the Consultants. I give these documents little weight as they were not put to any witness at trial and the Plaintiff did not point me to any authority for the proposition that if a company directs payment to its principal that makes the principal personally liable under the company's contracts. Paying an agent under a contract does not make the agent, rather than the principal, personally liable, barring a mistake of fact or wrongful act: *The Foundation Company of Ontario Limited v. Bartram*, [1947] O.R. 837 (Ont. C.A.) at p. 840; *Belmar Roofing Inc. v. Graham*, 2015 CarswellOnt 19855, at para. 9.

[1029] The MNC has not proven a viable cause of action against the individual Consultants. Both Ms. Poitras and President Froh confirmed that they understood that individual Collateral Defendants provided services through their consulting corporations. There is no evidence that the MNC paid the settlement payments to the individual Consultants. There is no basis to pierce the corporate veil; there is no suggestion that they did not perform bona fide services, were not established for legitimate purposes, or otherwise engaged in fraudulent activity: *Shoppers Drug Mart Inc. v. 64730360 Canada Inc*., 2014 ONCA 85, 372 D.L.R. (4th) 90, at para. 43; *Clarkson Co. v. Zhelka*, [1967] 2 O.R. 565 (Ont. H.C.), at para. 83.

[1030] As set out above, I have found that the Defendants did not breach their fiduciary duties. I will consider the other elements of the claims for knowing assistance, knowing receipt, and unjust enrichment in the event that I am wrong about the Defendants not breaching their fiduciary duties.

Knowing Assistance

[1031] The plaintiffs do not make out their claim for knowing assistance against the Consultants. In *Christine DeJong Medicine Professional Corp. v. DBDC Spadina Ltd*., 2019 SCC 30, [2019] 2 S.C.R. 530, the Supreme Court adopted van Rensburg J.A.'s dissenting reasons in *DBDC Spadina Ltd. v. Walton*, 2018 ONCA 60, 419 D.L.R. (4th) 409 (C.A.). At para. 211 of *DBDC,* van Rensburg J.A. set out the test for knowing assistance with breach of fiduciary duty:

1) a fiduciary duty;

2) a fraudulent and dishonest breach of the duty by the fiduciary that signifies a level of misconduct or impropriety that is morally reprehensible;

3) actual knowledge (or recklessness or willful blindness) by the stranger to the fiduciary duty relationship of both the fiduciary relationship and the fiduciary's dishonest conduct; and

4) participation by, or assistance of, the stranger in the fiduciary's fraudulent or dishonest conduct or an intentional wrongful act on the stranger's part.

[1032] The claim for knowing assistance requires "dishonest participation in a dishonest breach of trust": *Caja Paraguaya de Jubilaciones y Pensiones del Personal de Itaipu Binacional v. Obregon*, 2020 ONCA 412, 151 O.R. (3d) 529, at para. 32, or "an intentional wrongful act on the part of the stranger" *Original Traders Energy Ltd., (Re)*, 2024 ONSC 325, 11 C.B.R. (7th) 13, at para. 53, citing *DBDC,* at para. 216.

[1033] There is no evidence that the Consultants engaged in an intentionally wrongful act.

[1034] To establish recklessness, the stranger must have "knowledge of a danger or risk and persiste[d] in a course of conduct that creates a risk that the prohibited result will occur": *McDonald and Dickson v. TD Bank*, 2021 ONSC 3872, 17 B.L.R. (6th) 83, at para. 134, citing *Carriere Industrial Supply Ltd. v. Toronto-Dominion Bank*, 2015 ONCA 852, 14 E.T.R. (4th) 201, at para. 31.

[1035] The Consultants had no knowledge of a danger or risk. They had no reason to think that they should approach the negotiation and execution of their consulting agreements any differently than they had in the past.

[1036] The relationship between the MNC and the Consultants' corporations was always managed by the MNC's executive. They reported to the President and his staff. Mr. LeClair, Mr. Weinstein, and Ms. Xie primarily reported to the Minister of Finance, while Ms. McKay primarily reported to Ms. Watteyne.

[1037] The Consultants attended and presented at BOG meetings but did not report to the BOG, and the BOG did not review their work or play any role in the renewal of their agreements with the MNC. They had no reason to think that BOG approval was required for their agreements.

[1038] The evidence of the Defendants, Ms. Watteyne and the Consultants was consistent. The BOG was never involved in decisions to retain consultants. The BOG was not consulted on the terms of agreements with consultants. There are no documented discussions at BOG meetings on any particular consulting agreement. There is no evidence that the BOG ever perceived a conflict of interest in the negotiation or execution of any consulting agreements.

[1039] Consulting agreements were negotiated by the Minister of Finance or the Executive Director with the Minister of Finance's approval. The President granted the Minister of Finance the authority to negotiate and execute consulting contracts. As Minister of Finance, President Chartrand negotiated and executed consulting agreements for decades.

[1040] Ms. Poitras agreed that the BOG was not involved in approving consulting agreements or setting the remuneration of consultants.

[1041] As noted above, both Ms. Poitras and Ms. Froh confirmed that they never alleged that any of the consulting agreements were invalid or breached the By-Laws, even after they had received the email from Ms. Watteyne on July 30, 2018, with information about consulting arrangements

with the MNC for the 2017-2018 fiscal year. They did not suggest the payments to the Consultants should stop, or that there should be no further consulting agreements with the Consultants or that future agreements should be approved by the BOG.

[1042] There is no evidence that anyone ever told the Consultants that there were any issues with the manner in which their consulting agreements were negotiated or executed, or any issues with the services they performed.

[1043] As set out above, I have found that the agreements with the Consultants were authorized, even though they were not approved by the BOG and did not have two signatures. However, even if their agreements were not authorized, the Consultants could rely on the indoor management rule.

[1044] The indoor management rule provides that a third party dealing with a corporation, acting in good faith and without knowledge of any internal irregularity, is entitled to assume that a corporation's actions are duly authorized: *Inuksuk I (Ship) v. Sealand Marine Electronics Sales and Services Ltd,* 2023 FCA 170, at paras. 30 and 39; *AOD Corporation v. Miramare Investment Incorporated*, 2021 ONSC 4280, 18 B.L.R. (6th) 251, at para. 28, aff'd 2022 ONCA 95; s. 19 *CNCA*.

[1045] The Plaintiff submits that the indoor management rule is of no assistance to the Consultants because they were aware of the By-Laws. Even if they were aware of the contents of the By-Laws, given their long-term relationships with the MNC, their attendance at BOG meetings and meetings of the GA, the Consultants would also be familiar with the long-standing practices of not following the two-signature requirement and not seeking BOG approval for consulting agreements.

[1046] There is no evidence that the Consultants did not act in good faith when negotiating or executing their consulting agreements. They were entitled to act in their own self interests in negotiating the best deal possible for themselves.

[1047] The Consultants were entitled to assume the MNC's internal procedures were followed and had no obligation to investigate or worry about whether MNC's internal housekeeping was in order: *The Midas Investment Corporation v. Bank of Montreal*, 2016 ONSC 3003, at para. 4; *Campbell Pools Inc. v. The Seville Group Inc.*, 2015 ONSC 2314, 44 B.L.R. (5th) 312, at para. 76.

[1048] The indoor management rule does not protect a third party who knows or ought to know that a corporate actor does not have authority: *Walia v. 2155982 Ontario Inc.,* 2020 ONCA 493, 448 D.L.R. (4th) 125, at para. 23.

[1049] The Consultants had no reason to know or suspect that President Chartrand did not have authority. The Consultants had limited familiarity with the By-Laws. Each of the consulting agreements contained a clause under President Chartrand's signature saying, "I have authority to bind the corporation". There was a long-standing practice that the Consultants negotiated with the Minister of Finance or the Executive Director. There was a long-standing practice that consulting agreements only had one signature. There is no evidence that anyone at MNC ever questioned the validity of the Consultants' agreements including President Froh and Ms. Poitras who received information from Ms. Watteyne after they made enquiries. No Board members ever told the

Consultants that their agreements were invalid or contrary to the By-Laws or should be approved by the BOG. The BOG members knew that the Consultants were continuing to provide services and did not raise any concerns.

[1050] The negotiation and execution of the five-year agreements followed the same procedures as in prior years. As set out above, the Tri-Council's letter writing campaign did not change the governance structure by putting anyone "on notice" and it did not raise a red flag for the Consultants because none of the correspondence suggested that Mr. Chartier and President Chartrand did not have authority to sign consulting agreements as they had been doing for many years without BOG approval.

[1051] The Plaintiff alleges that the Consultants were willfully blind to their assistance in the scheme or scorched earth policy when they entered into the termination agreements. I do not agree. First, I have found there was no scheme. As set out above, the impugned consulting agreements were negotiated in the usual manner. The negotiations for the five-year terms and the various termination clauses in the consulting agreements were influenced by the circumstances I have described in detail above including the MNC's desire to secure the core team because of the tremendous opportunity for funding with Canada and the Consultants desire for security while continuing to work in the toxic work environment. The Consultants had no reason to think or suspect that there was a scheme or intention to harm the MNC.

[1052] The Consultants performed their services until September 2021, and there is no evidence that they did not do so as well as they had done in the past. This evidence is inconsistent with participating in a scheme to harm the MNC.

[1053] The settlement agreements were made in accordance with the provisions of the Consultants' agreements. The Consultants provided one-sided comprehensive releases and indemnities in favour of the MNC. Again, this evidence is not consistent with participating in a scheme to harm the MNC.

Knowing Receipt

[1054] The plaintiffs do not make out their claim of knowing receipt against the Consultants. Knowing receipt is made out if the following conditions are met:

1) the stranger receives trust property;

2) for his or her own benefit or in his or her personal capacity; and

3) with actual or constructive knowledge that the trust property is being misapplied.

In addition to actual knowledge, including willful blindness or recklessness, requirement (3) can be met where the recipient, having "knowledge of facts which would put a reasonable person on inquiry, actually fails to inquire as to the possible misapplication of the trust property:" *Caja Paraguaya,* at para. 57.

[1055] The termination payments were made pursuant to the terms of the consulting agreements which had been negotiated more than two years previously. The Consultants did not knowingly assist in a breach of trust by insisting the MNC honour the terms of their agreements. The agreements were not a sham. They were negotiated in good faith and there were valid reasons for the termination provisions. The Consultants provided services pursuant to the agreements for more than two and a half years and there are no complaints about the services provided. As set out above, the Consultants terminated their agreements at different times for valid reasons in the same circumstances which gave rise to their concerns and the negotiation of the termination provisions.

Unjust Enrichment

[1056] The plaintiffs do not make out their claim that the Consultants have been unjustly enriched. The elements of a claim in unjust enrichment are well-established:

1) the defendant has been enriched;

2) the plaintiff suffered a corresponding deprivation; and

3) there is no juristic reason for the enrichment and corresponding deprivation.

Moore v. Sweet, 2018 SCC 52, [2018] 3 S.C.R. 303, at para. 38, citing *Pettkus v. Becker*, [1980] 2 S.C.R. 834 (S.C.C.), at p. 848.

The "established" categories of juristic reasons include: a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations. If any of these categories applies, the analysis ends and the plaintiff's claim must fail because the defendant will be justified in retaining the disputed benefit: *Moore,* at paras. 57-58; *Kerr,* at para. 41.

[1057] Payment pursuant to a contract is an established juristic reason: *Moore*, at para. 57, citing *Garland v. Consumers' Gas Co.*, 2004 SCC 25, [2004] 1 S.C.R. 629, at para. 44; *Suntower Developments Limited v. Studios of America Corporation*, 2023 ONSC 2703, at paras. 25-34.

[1058] Here, there was a juristic reason for the termination payments because they were made pursuant to the Consulting Agreements which were valid and had benefited both parties for over two years.

Issue 9: Indemnity

[1059] President Chartrand, Mr. Chartier and Ms. Watteyne have counterclaimed against the MNC for full indemnity for their legal costs.

[1060] The By-Laws provide for indemnity for directors and officers:

> Every Governor or Officer of the Corporation or other person who has undertaken or is about to undertake any liability on behalf of the Corporation or any company controlled by it and their heirs, executors and administrators, and estate and effects, respectively, shall

from time to time and at all times, be indemnified and saved harmless out of the funds of the Corporation, from and against:

(a) all costs, charges and expenses whatsoever which any Governor, Officer or other person sustains or incurs in or about any action, suit or proceedings which is brought, commenced or prosecuted against him or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him, in or about the execution of the duties of his office or in respect of any such liability;

(b) all other costs, charges or expenses which he sustains or incurs in or about or in relation to the affairs of thereof, except such costs, charges or expenses as are occasioned by his own wilful neglect or default.

[1061] On August 18, 2022, President Chartrand requested indemnification from the MNC. On August 23, 2022, the MNC denied President Chartrand's request for indemnification.

[1062] This action relates to President Chartrand's role as a Governor of the MNC and is in respect of acts done or permitted by him in the execution of the duties of his office.

[1063] On September 1, 2022, Mr. Chartier requested indemnification from the MNC and the MNC denied his request on the same day.

[1064] This action relates to Mr. Chartier's role as President of the MNC and is in respect of acts done or permitted by him in the execution of the duties of his office.

[1065] On August 30, 2022, Ms. Watteyne requested indemnification from the MNC. On August 30, 2022, the MNC denied Ms. Watteyne's request for indemnification.

[1066] This action relates to Ms. Watteyne's role as executive director and is in respects of acts done by her in the execution of the duties of her office.

[1067] The Plaintiff's only defence to the counter claim for indemnity is that the legal costs incurred by the Defendants and Ms. Watteyne were occasioned by their own wilful neglect or default because they breached their fiduciary duties. For the reasons set out above, I have found that these parties acted honestly, in good faith with a view to the best interests of the MNC and the Métis Nation. Their legal fees have not been incurred as a result of their own wilful neglect or default.

[1068] President Chartrand, Mr. Chartier and Ms. Watteyne are entitled to indemnification for all costs that they have incurred in respect of this action.

Issue 10: Standing

[1069] The Defendants say that the Plaintiff does not have legal capacity to continue this action because the MN-S withdrew and there are no longer two founding members as required by the MNC's By-Laws.

[1070] The Plaintiff submits that the action was authorized by the MNA President, the MNO President, the MN-S President and the MNBC President when it was issued.

[1071] Effective September 30, 2021, the MMF withdrew from the MNC. The MN-S withdrew from the MNC on September 19, 2024. The MNBC withdrew from the MNC on November 30, 2024.

[1072] As of December 1, 2024, the MNO and the MNA are the only two remaining Governing Members.

[1073] On October 25, 2022, the BOG approved Amended and Restated Consolidated By-Laws which were ratified by the GA on October 27, 2022.

[1074] The 2022 By-Laws define the "Founding Members" to be the MNA and the MN-S: s. 3.

[1075] The 2022 By-Laws state that any member may withdraw from the Corporation: s. 5.

[1076] The 2022 By-Laws provide that the BOG shall manage the business and affairs of the MNC: s. 7.

[1077] "Any resolutions to alter, amend, delete or in any way change the By-Laws requires unanimous consent of the founding members": s. 9(d), and must be done at a BOG meeting with the Presidents of the Founding Members present: s. 12.

[1078] A quorum at BOG meetings is four Governors and shall include the President and two of the founding members: s. 11.

[1079] Once the MN-S withdrew from the MNC on September 19, 2024, it was impossible for the MNC to amend the By-Laws because the MNC no longer had two founding members. It was also impossible to have a quorum or to have unanimous consent of the founding members under s. 9(d) for the same reason.

[1080] On October 11, 2024, the MNC purported to pass a resolution amending ss. 11 and 12 of the 2022 By-Laws to remove references to two founding members. At that time the only founding member was the MNA and the MN-S did not consent to the proposed amendments. Also, there was no meeting to pass the resolution.

[1081] The Defendants argue that the MNC lacks legal capacity since the MNS-S withdrew.

[1082] Given my findings that the Plaintiff has not proven its case, I do not decide this issue.

REMEDIES

[1083] I have found that the Defendants and Ms. Watteyne did not breach their fiduciary duties and the Consultants are not liable for knowing assistance and knowing receipt.

[1084] In its written Reply Submissions, the Plaintiff submits that the "MNC claims broad equitable relief, including the imposition of various constructive trusts." The relief sought is based on allegations of "breach of fiduciary duties and the other unlawful conduct of each of the defendants."

[1085] In the Amended Statement of Claim, the Plaintiff pleads a constructive trust with respect to the MVLP and the settlements with the employees and consultants:

> 73. MNC pleads that the funds and other benefits transferred to MMF pursuant to the MMF Service Delivery Agreements or connected with the Métis Veterans Fund Contribution Agreement are impressed with a constructive or resulting trust…
>
> 96. MNC pleads that the unauthorized, excessive, inappropriate or unnecessary Purported Severance Payments are impressed with a constructive trust in favour of MNC.
>
> 107. MNC pleads that the unauthorized, excessive, inappropriate or unnecessary Lump Sum Payments are impressed with a constructive trust in favour of MNC.

[1086] The Plaintiff submits that the court may impose a constructive trust even where there is no breach of fiduciary duty.

[1087] Prior to trial, Centa J. ordered the Plaintiff to answer undertakings including advising the MMF of each and every cause of actions it is asserting against each Defendant. The Plaintiff answered this undertaking, and the answer does not contain any reference to a constructive trust. The Plaintiff made no reference to a constructive trust in its opening statement, during its oral closing statement or during its written closing argument. The Plaintiff only raised the issue of constructive trust in its reply submissions. The MMF Defendants filed Supplementary Closing Submissions addressing, *inter alia*, constructive trust, which I have reviewed.

[1088] The Plaintiff relies on *Soulos v. Korkontzilas,* where the court held that "the absence of a classic fiduciary relationship [does not] necessarily preclude a finding of a constructive trust; the wrongful nature of an act may be sufficient to constitute breach of a trust-like duty": [1997] 2 S.C.R. 217, at para. 19.

[1089] "Under the broad umbrella of good conscience, constructive trusts are available for unjust enrichment, and wrongful acts like fraud and breach of duty of loyalty": *Soulos*, at para. 43.

[1090] The Plaintiff submits that the court may grant constructive trusts based on the "good conscience" principle alone. The Plaintiff submits that the "numerous breaches of authority by the Primary Defendants in respect of the impugned contracts and transactions form part of the "wrongful act" argument of the plaintiff". The Plaintiff also relies on "a constellation of equitable and other wrongs (conflicts of interest, self-dealing, inducing breaches of Contribution Agreements with Canada, etc.), which warrant the imposition of constructive trusts and other equitable relief."

[1091] The Plaintiff submits that I can impose constructive trusts for conduct that falls short of breach of fiduciary duty, if there is other wrongful conduct that offends "good conscience".

[1092] I do not read *Soulos* as suggesting that a constructive trust may be imposed where there is conduct which falls short of an established cause of action.

[1093] *Soulos* has been interpreted to mean that a constructive trust may be imposed where there is unjust enrichment or where property is obtained wrongfully by the defendant (such as by breach of fiduciary duty or breach of loyalty). *Professional Institute of the Public Service of Canada v. Canada (Attorney General)*, 2012 SCC 71, [2012] 3 S.C.R. 660, at para. 145; *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, at para. 228.

[1094] No court has yet recognized a more elastic "good conscience" trust based on a sense of fairness: *Moore v. Sweet*, 2017 ONCA 182, at paras. 100-102.

[1095] Even if it were available to me, I would not impose a constructive trust with respect to the MVLP or the settlement agreements because I have found that there were no conflicts of interests, no self-dealing, no breaches of authority, no breach of the MVLP Contribution Agreement and the impugned transactions were in the best interests of the MNC and the Métis Nation.

[1096] If I were to find that the Defendants and Ms. Watteyne breached their fiduciary duties, and assess damages, there is no real dispute about the value of the following impugned transactions and I would award these amounts as damages:

1) Mr. Chartier's retiring allowance was $171,297,

2) Dr. Russell's settlement was $120,000, and

3) Ms. Monette's settlement was $60,000.

[1097] With respect to Ms. Watteyne's settlement, the Plaintiff invites me to award damages against Mr. Chartier, President Chartrand and Ms. Watteyne on a joint and several basis, in the amount of $374,000, or "for such lesser amount as this Court deems just (as if the Watteyne severance was negotiated by a person acting in fulfillment of their fiduciary duties to MNC)". The Plaintiff has made no submissions and provided no legal authorities that would assist me in assessing this lesser amount and in the absence of such assistance I decline to do so.

[1098] With respect to the Consultants' settlements the Plaintiff invites me to award damages against Mr. Chartier, President Chartrand and Ms. Watteyne, on a joint and several basis, in the amount of $1,149,125 being the amount of the settlements paid to the Consultants' corporations (i.e. Mr. LeClair Infocom Inc. was $350,000, Public Policy Nexus Group Inc. was $350,000, System Way Consulting Inc. was $276,000, Celeste McKay Consulting Inc. was $91,765, and Infinity Research Development and Design Inc. was $81,360), "or for such lesser amount as this Court deems just (as if these severances were negotiated by a person acting in fulfillment of their fiduciary duties)". The Plaintiff has made no submissions and provided no legal authorities that would assist me in assessing this lesser amount and in the absence of such assistance I decline to do so.

[1099] The Database and MVLP have no monetary value.

[1100] The Plaintiff seeks damages against the Defendants and Ms. Watteyne in the amount of $8.65 million in respect of the transfer of the MVLP. As against the MMF the Plaintiff seeks an order that the SDA and the SDA Amendment Agreements are void and unenforceable and seeks disgorgement of all fees and expenses charged by MMF as well as an order requiring the MMF to return all MVLP funds in its possession.

[1101] The Plaintiff has provided no basis for the entitlement to, or calculation of, the damages claimed against the Defendants and Ms. Watteyne.

[1102] In equity there is no capacity to award "damages" although courts use this term to denote monetary compensation for breach of fiduciary duty. Compensation for breach of fiduciary duty is awarded according to the principle of restitution—putting the Plaintiff in as good a position as it would have been in had the breach not occurred. In some cases, disgorgement of profits or exemplary compensation is awarded for a prophylactic purpose or deterrence. No matter the purpose of the award, there must be a causal link between the breach and the compensation: *Stirrett v. Cheema,* 2020 ONCA 288, 150 O.R. (3d) 561, at para. 68.

[1103] The Plaintiff has not proven that the alleged breaches of fiduciary duty concerning the SDA have caused any loss or that the Defendants have profited from the SDA.

[1104] The Plaintiff has not suffered any loss regarding the MVLP. There is no dispute that the MNC was required to use the funds under the MVLP Contribution Agreement for the purposes of the MVLP. Regardless of who administered the MVLP, there would be costs including the recognition payments, the commemoration projects and the overhead.

[1105] The MMF has provided the Plaintiff with all underlying documentation for all of MMF's expenses related to the MVLP. The Plaintiff has not suggested that any of the expenses were improper or excessive. Canada has not made any claim for damages, and if it does, the MNC has the benefit of the indemnity under the SDA.

[1106] As set out in the MVLP section above, the MMF has not obtained a benefit from the MVLP. There is no evidence that the Defendants or Ms. Watteyne have profited from the MVLP or the SDA so there is nothing to disgorge.

[1107] As against the Consultants, the plaintiff seeks disgorgement of their respective severances in full (Mr. LeClair - $350,000, Mr. Weinstein - $350,000, Ms. Xie - $276,000, and Ms. McKay - $91,765), or in such other amount as this Court deems just (as if those severances were negotiated by a person acting in fulfillment of their fiduciary duties to MNC). As set out above, I have found that the Consultants are not personally liable. With respect to the liability of the Consultant's consulting corporations, the Plaintiff has made no submissions and provided no legal authorities that would assist me in assessing any lesser amounts and in the absence of such assistance I decline to do so.

[1108] With respect to the Lease, the Plaintiff invites me to award damages against President Chartrand and the MMF, on a joint and several basis, damages in the amount of $405,000 for

inducing breach of the Lease, or in such other amount as this Court deems just. The $405,000 figure is the amount of the relocation expenses that the Plaintiff failed to prove at trial. The Plaintiff has made no submissions and provided no legal authorities that would assist me in assessing any lesser amount and in the absence of such assistance I decline to do so.

[1109] The Plaintiff claims punitive damages in the amount of $500,000 against Mr. Chartier, President Chartrand, Ms. Watteyne, and the MMF on a joint and several basis.

[1110] "Where there are multiple defendants, any award of punitive damages must be justified with respect to the acts of each defendant": *Krieser v. Garber*, 2020 ONCA 699, 70 C.C.L.T. (4th) 40, at para. 104.

[1111] Punitive damages are awarded "*only* if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct" and "where the misconduct would otherwise be unpunished or where other penalties are or are likely to be inadequate to achieve the objectives of retribution, deterrence and denunciation.": *Whiten v. Pilot Insurance Co*., 2002 SCC 18, [2002] 1 S.C.R. 585, at para. 94.

[1112] Even if I had found liability on any of these parties I would not have awarded punitive damages because their conduct was not high-handed, malicious, arbitrary or highly reprehensible and damages would be an adequate remedy.

COSTS

[1113] The parties may contact my judicial assistant to arrange a case conference to determine a procedure for submissions regarding costs.

Merritt J.

Released: November 24, 2025

Appendix A

a) Did the Primary Defendants (defined at Mr. Chartier, President Chartrand and Ms. Watteyne) breach their fiduciary duties in respect of the SDA, or the SDA Amendment, and if so, what relief should be ordered, and against whom?
b) Did the Primary Defendants breach their fiduciary duties in respect of the transfer of the Database from MNC to MMF, and if so, what relief should be ordered, and against whom?
c) Did Chartier and Chartrand breach their fiduciary duties in respect of Watteyne's Employment Agreement, or in respect of authorizing her $374,000 Severance Payment, and if so, what relief should be ordered against them?
d) Did the Primary Defendants breach their fiduciary duties in respect of undisclosed and/or excessive contractor payments to Chartrand's wife, Glorian Chartrand (aka Ryley James), and if so, what relief should be ordered, and against whom?
e) Did the Primary Defendants breach their fiduciary duties in respect of the Retirement Allowance to Chartier, and if so, what relief should be ordered, and against whom?
f) Did the Primary Defendants breach their fiduciary duties in issuing the Letters of Assurance to Russell and Monette, or in respect of their respective Severance Payments in September 2021, and if so, what relief should be ordered, and against whom?
g) Did Watteyne know or should have Watteyne known that her Employment Agreement was unenforceable, and was Watteyne unjustly enriched, in whole or in part, by her $374,000 Severance Payment in light of her breach of her fiduciary duties to or her voluntary resignation from MNC?
h) Did the Primary Defendants breach their fiduciary duties in facilitating the excessive or unauthorized Termination Payments to any of the Consultant Defendants & KHS Entities? If so, what damages were occasioned thereby, and what relief should be ordered as against the Primary Defendants?
i) Did any of the Consultant Defendants knowingly receive the excessive or unauthorized Termination Payments from MNC, knowing that the Primary Defendants were breaching their fiduciary duties to MNC in that respect, or were any of them wilfully blind to those breaches such that they are required to disgorge those Termination Payments, in whole or in part?
j) Did Chartrand receive or rely on any substantive advice provided by Power Law, and if so, does such advice provide Chartrand with a defence in respect of any of the Departure Payments or the Retirement Allowance made in September 2021?
k) Did Chartier and Chartrand breach their fiduciary duties in negotiating and executing the Amended Ottawa Lease in conflict of interest and without BOG approval? If so, what damages were occasioned thereby and how much?
l) Did Chartrand and the MMF induce and encourage the Manitoba Landlord to unlawfully evict the MNC from the MMF Ottawa Building, and if so, are Chartrand and the MMF liable for damages? If so, how much?
m) Are any of the Primary Defendants entitled to indemnification pursuant to section 18 of the Bylaws or otherwise in light of their impugned conduct?

CITATION: Métis National Council Secretariat Inc. v. Chartier, 2025 ONSC 6150
COURT FILE NO.: CV-22-00675899-0000
DATE: 20251124

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Métis National Council Secretariat Inc.

Plaintiff

– and –

Clement Chartier, David Chartrand, Manitoba Métis Federation Inc., carrying on business as Manitoba Métis Federation, Wenda Watteyne, Storm Russell, Kristina Monette, Marc LeClair, LeClair Infocom Inc., Celeste McKay, Celeste McKay Consulting Inc., John Weinstein, Public Policy Nexus Group Inc., Kathy Hodgson-Smith, Infinity Research Development and Design Inc., Wei Xie and SystemWay Consulting, Inc.

Defendants

REASONS FOR JUDGMENT

Merritt J.

Released: November 24, 2025