

2025 NBKB 073

COURT FILE NO: FM-19-2025

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

**JULMAC CONTRACTING LTD.,**

Moving Party,

- and -

**PROVINCE OF NEW BRUNSWICK**

Responding Party

**PRELIMINARY MOTION  
DECISION ON AVAILABILITY OF INJUNCTIVE RELIEF UNDER *PACA***

Date of Hearing: March 20, 2025

Date of Decision: March 28, 2025

Before: Justice Richard G. Petrie

Representation of Parties at Hearing:

David Outerbridge, Shalom Cumbo-Steinmetz, Natasha Williams, Counsel for the Moving Party;

Frederick C. McElman, K.C., Mark Heighton, Conor O'Neil and Lara Greenough, Counsel for the Responding Party

## **INTRODUCTION**

- [1.] The matter before the Court involves a Preliminary Motion for interlocutory injunctive relief and alternatively, interlocutory declaratory relief as requested by the Moving Party, Julmac Contracting Ltd. (“Julmac”), seeking to prevent the Responding Party, the Province of New Brunswick (“PNB”), from removing all work from Julmac under three (3) separate bridge contracts.
- [2.] The parties appeared before me on March 20, 2025. The Court noted the Record on Motion to be in excess of 2000 pages. Further, in the day or two leading up to the motion hearing, Julmac had purported to file two supplementary records with additional (supplemental) affidavits. Both parties filed lengthy briefs, indeed three (3) of them. Both parties also filed numerous objections to admissibility of various affidavits or, more particularly, portions of those affidavits.
- [3.] While noting the seriousness and urgency of the matter, the Court identified concerns over whether there was any practical way in which all matters could be fairly litigated on the scheduled day. The Court’s own schedule did not allow for the hearing to extend into the following day for instance.
- [4.] I also noted there to be a seemingly discrete and threshold issue concerning the Court’s jurisdiction to grant the requested relief by way of the *Proceedings Against the Crown Act*, RSNB 1973, c P-18 (*PACA*) and Crown immunity from injunctive relief.

- [5.] After discussion with Counsel, the parties proceeded to argue the Province's jurisdictional objection to Julmac's motion pursuant to s. 14(2) and 14(4) of *PACA*.
- [6.] Over the course of the day, the parties provided thoughtful and articulate arguments citing numerous authorities, all of which I have reviewed.
- [7.] I reserved my decision on the threshold issue and indicated my intention to give it priority in order to render a decision as soon as possible. Admittedly, while additional time might have allowed for an improvement in my decision for grammatical and stylistic purposes it would not have changed the outcome, thus I have released it at my earliest opportunity given the stated urgency.

## **FACTS**

For purposes of resolving the immediate issue before me, I can fairly summarize the facts to include:

- [8.] Julmac is a civil bridge construction and rehabilitation company and has several operations in New Brunswick along with other provinces across Canada.
- [9.] The Responding Party, PNB, through the Department of Transportation and Infrastructure (DTI), is *inter-alia* engaged in planning, designing, constructing, and maintaining public infrastructures including but not limited to highways and bridges within the Province of New Brunswick
- [10.] Over the course of the last four (4) years, Julmac has successfully bid on and been awarded seven (7) bridge construction/restoration projects for PNB.

[11.] At the time most central to this dispute, i.e. January/February 2025, Julmac was under (separate) contracts with PNB in regards to three bridge projects, described as follows:

- a. Anderson Bridge (Contract No. 22-0288) described as a new construction of a bridge to cross the Northwest Miramichi River and to replace an existing bridge that is near its end of life. Anderson was awarded through a public tender on or about February 27, 2023, at a then estimated cost to complete of \$15,675,615.00. At the time that contract was awarded, the completion date for Anderson was November 15, 2024.
- b. Approach Channel Bridge (Contract No. 22-0035) was described as a rehabilitation of the Approach Channel bridge, which runs perpendicular to the Mactaquac Generating Station (“Mactaquac”). This project was awarded through a public tender on or about September 1, 2022, at a then estimated cost to complete of \$17,740,872.00. The completion date for Approach Channel was November 29, 2024, at the time that contract was awarded.
- c. Centennial Bridge (Contract No. 22-0282) is the seventh phase of the rehabilitation of the Centennial bridge crossing the Miramichi river (“Centennial”). Centennial was awarded through a public tender on or about May 24, 2022, at a then estimated cost to complete of \$16,286,462.00. At the time that contract was awarded, the completion date for Centennial was November 30, 2023.

(Collectively the “three bridge contracts”)

[12.] From my review of the Record, and a review of the briefs, it is more than evident that the relationship between the parties soured.

[13.] Ms. Renee Morency-Cormier, is the Director of the construction section of DTI and oversees the administration of all of Julmac's contracts with PNB. According to Ms. Morency-Cormier, Julmac continued to work on the three bridge contracts throughout 2024; however, little progress was made, and contractual completion dates were not achieved. She asserts that throughout 2024, Julmac regularly took an adversarial approach to working with DTI staff in administrating the three bridge contracts. Additionally, according to her, Julmac refused in many instances to follow simple contractual directions on the stated basis that DTI was targeting Julmac and being unfair in its treatment but without refuting DTI's contractual basis for its requests.

[14.] At paragraph 89 of her Affidavit (pg. 1896 of the Record), she states:

As a result of these issues, the business relationship between DTI and Julmac has become completely hostile and is totally irreconcilable at this point. It is impossible to administer any of the contracts between DII and Julmac because Julmac consistently fails to provide accurate and reliable schedules, fails to meet those dates even when it does provide them, and fails or refuses to follow the directions of DTI staff.

[15.] While each of the three bridge contracts were in different stages, the alleged concerns of PNB over Julmac's performance were relatively similar.

[16.] PNB maintains that Julmac regularly failed to meet scheduling requirements in accordance with the three bridge contracts.

[17.] Ms. Morency-Cormier, in regards to the Centennial contract also identified issues involving possible false statutory declarations by Julmac in regards to subcontractors on that project. These subcontractors have sued both Julmac and PNB in regards to registered liens for failure by Julmac to pay.

- [18.] Further, she has alleged there to be quality issues over concrete panels to be used on the Centennial bridge and, combined with late inspection by Julmac, resulted in further delays to complete.
- [19.] In regards to the Approach Channel (Mactaquac) project, Ms. Morency-Cormier alleges unreliable and delayed work schedule issues, along with default on an expected completion date and failures by Julmac to remedy alleged workmanship issues related to the bridge.
- [20.] In regards to the Anderson project, again, Ms. Morency-Cormier refers to chronic failures by Julmac to provide reliable and updated work schedules along with an inability to meet the contract completion date.
- [21.] According to Ms. Morency-Cormier, when DTI requested that Julmac provide shop drawings for the barrier walls at Anderson, Julmac refused to do so. She asserts that DTI continually requested copies of the shop drawings between October 7, 2024 and December 16, 2024. Julmac did not dispute DTI's contractual basis for requesting the drawings in its refusals but simply took the position that it was being treated unfairly by DTI.
- [22.] As a result of the various concerns by DTI over the alleged performance deficiencies of Julmac, DTI for PNB, on January 31, 2025, issued virtually identical notices of default on each of the three bridge contracts, pursuant to General Condition (GC) 16(1) of each contract and provided Julmac with 6 days to cure the listed defaults.
- [23.] Julmac responded to each notice of default on February 3, 2025 with a denial of the defaults listed by DTI. According to Ms. Morency-Cormier, Julmac at this point made little effort to engage with DTI regarding the issues raised, nor provide a plan to cure the defaults.

[24.] On February 10, 2025, DTI (PNB) delivered “removal notices” removing the work from Julmac for each of the three bridge contracts. The contracts have **not** been formally terminated under GC 19.

[25.] Mr. Derek Martin, President of Julmac has provided multiple affidavits to suggest that, in all respects, PNB’s cited concerns are not accurate or are otherwise defensible, and none of which would amount to a default under the contracts in any event.

[26.] At paragraph 49 and 50 of the Moving Party’s brief and in large part, relying upon Mr. Martin’s evidence, Julmac addresses what they assess to be the “real motivation” for the Province’s actions in declaring default and removal of the work from Julmac:

49. The construction issues PNB identified in the Default Notices were neither new nor unacceptable to PNB. PNB’s contract management officials were aware of construction progress, were approving schedules, and were engaging with JCL to advance the very issues that PNB declared to be defaults – issues that, as explained above, arose from matters falling within PNB’s responsibility.

50. The real motivation for the Default Notices was not JCL’s performance. Rather, developments in December 2024 in litigation between the parties caused PNB to want to remove JCL from the Contract work. However, instead of following the Contracts’ termination provisions (which would have required PNB to compensate JCL), PNB looked for a way to end the relationship and not pay JCL.

[27.] It is evident that the parties are and have been engaged in multiple litigation fronts. Julmac’s brief also summarizes Mr. Martin’s evidence as to the history of ongoing litigation at paragraph 51, much of which is put forward to support Julmac’s assertion of a breach of PNB’s good faith obligation in its contractual relationship with Julmac:

51. The nature and timing of events in the litigation between JCL and PNB supports the inference that the Default Notices were motivated by a desire to achieve leverage over JCL in that litigation.

- (a) *CFTA complaint*. JCL has been pursuing a complaint against PNB for discriminatory conduct in the way it administers its contracts with JCL, compared to PNB's treatment of local New Brunswick bridge contractors. On December 19, 2024, JCL filed over 4,900 pages of evidence and legal arguments in the CFTA complaint. On January 14, 2025, PNB stated its intention to move for summary dismissal of the complaint.
- (b) Freedom of information disputes. On December 4, 2024, just weeks before JCL's CFTA submission deadline, PNB moved to unilaterally deny two important and longstanding requests JCL had made under the RTIPPA.<sup>38</sup> The requests seek information about how PNB treats local bridge contractors.
- (c) PNB challenge to Ombud order. In July 2024, the Ombud ordered PNB to respond to a separate JCL RTIPPA request, concluding it was a "proper mechanism" to "uncover improprieties" in PNB's "public business." Rather than comply with the Ombud's order, PNB served on January 31, 2025 an application seeking judicial review of the Ombud's decision.<sup>39</sup> PNB had issued the application in October 2024, but served it on JCL only on January 31, 2025.
- (d) JCL King's Bench actions. JCL has two King's Bench proceedings pending. The first was commenced December 27, 2023, claiming breach of the duty of good faith and honest contractual performance (the "Unfair Treatment Action"). The Unfair Treatment Action seeks damages for the way PNB administered certain procurements that JCL participated in, and the way PNB exercises contractual discretion under the Contracts. The second claim seeks damages for unapproved change orders under the Contracts. JCL gave statutory notice of the second claim on February 5, 2025.<sup>40</sup>
- (e) PNB motion for security for costs. Also in January 2025, PNB moved for security for costs in the Unfair Treatment Action.

[28.] According to Mr. Martin, the removal of its work by PNB was not only unjustified, it also threatens irreparable financial harm to the company by virtue of threatening its very existence; its reputation and good-will; the livelihood of its specialized workforce; and indeed PNB's; decision will have the effect of costing New Brunswick taxpayers more.

[29.] As a result, Julmac filed a Preliminary Motion seeking interim injunctive relief against PNB, including, according to its wording, ordering them to rescind the removal notices;

immediately reinstate Julmac's right to continue the contract work; and to not engage third party contractors to complete Julmac's work. Alternatively, Julmac requested an interim declaration in lieu declaring that the default/removal notices are not effective: that Julmac has the immediate right to continue the contract work under the three bridge contracts; and that PNB cannot engage third party contractors to replace Julmac in order to complete the work. The Preliminary Motion itself relies upon s. 14 of *PACA*.

[30.] PNB opposes the motion arguing neither injunctive relief, nor interim declaratory relief, is available in these circumstances and pursuant to s. 14 of *PACA*.

#### **SUBMISSIONS OF COUNSEL**

##### *Julmac*

[31.] Julmac's first pre-hearing brief acknowledges that injunctive relief is not available as against the Crown (s. 14(2) of *PACA*). However, it has advanced before me the position that the Court does have jurisdiction to grant injunctive relief against Crown officers or Crown agents which would include the Minister of DTI.

[32.] Mr. Outerbridge, on behalf of Julmac, also attempted to clarify that the Court has jurisdiction, even under *PACA*, to grant interim injunctive relief, or alternatively, interim declaratory relief, through DTI itself as a Crown servant or agent (s. 14(4) of *PACA*).

[33.] He maintains, the Province's objections to the Court's authority under *PACA*, is ostensibly because Julmac's Preliminary Motion names only the Crown in the style of cause and thus lacks seriousness as it is merely one of "form over substance".

- [34.] Mr. Outerbridge emphasizes the “genius” of *PACA* to be to put the Crown on a more equal footing as “any ordinary litigant” and in contrast to the historic principles developed through common law which recognized the Crown’s unique privilege as a litigant.
- [35.] Mr. Outerbridge reviewed numerous authorities with the Court in support of its position, beginning with, most importantly, *Smith v. Attorney General (Nova Scotia)*, 2004 NSCA 106. He relies upon *Smith* to establish the availability of injunctive relief as against Crown servants distinct from the Crown itself, and as reflected in a number of circumstances or by way of traditionally recognized qualifications and exceptions.
- [36.] Julmac referred the Court to paragraph 90 of *Smith* in which Justice Cromwell identifies two general principles of exception being: (1) where the Crown’s officer’s acts are unauthorized in the sense of acting in excess of valid statutory provisions and (2) an act of personal liability by the officer that would attract personal liability if done by a private person.
- [37.] Mr. Outerbridge emphasizes paragraph 107 of *Smith* wherein Justice Cromwell discusses common law authorities for, in particular, the “acting in excess of valid statutory powers” exception. These examples include when a Crown officer or servant exceeds her statutory authority or acts otherwise illegally. Examples of exceeding authority include committing civil wrongs not authorized by statute.
- [38.] Mr. Outerbridge maintains the exceptions emanating from *Smith* to have been accepted in New Brunswick, for instance in the *C.M.M. v. New Brunswick (Minister of Social Development)*, 2023 NBKB 87, a decision of my colleague, Justice Bélanger-Richard.

[39.] Mr. Outerbridge also argues the availability of injunctive relief where DTI, on behalf of the Province is acting in a purely commercial capacity. In this regard Julmac relies upon *Wittal et al. v. Saskatchewan Government Insurance* (1989) 51 DLR 4<sup>th</sup> 461.

[40.] Mr. Outerbridge also identifies PNB allegedly not acting in compliance with a duty of contractual good faith. He equates that to acting in bad faith. He says DTI or PNB has exceeded legal authority by:

1. Declaring unwarranted defaults under the contract; and
2. Failing to comply to its duty of good faith.

[41.] He maintains these to be “civil wrongs not authorized by statute”. He refers the Court to Justice Lavigne (now of the New Brunswick Court of Appeal) decision in *Saint-Quentin v. Her Majesty the Queen in right of Province of New Brunswick*, 2015 NBQB 169 where Justice Lavigne notes an exception to apply if there is some evidence of the “government acting in bad faith or abusing its powers”. (para. 74).

[42.] Mr. Outerbridge maintains Julmac to have provided sufficient evidence to allow the Court to determine a serious issue exists on the above assertions.

[43.] Mr. Outerbridge also emphasizes further exceptions arising from the Court’s inherent jurisdiction to maintain the *status quo* pending the litigation playing out. Mr. Outerbridge identifies interim declaratory relief to also be available and has cited a number of authorities by way of Julmac’s supplemental brief.

*PNB*

[44.] Mr. Heighton, on behalf of PNB, takes significant issue with the efforts at the hearing by Julmac to downplay their requested relief as per their Preliminary Motion and what he asserts to now be a “shifting” of Julmac’s position. Mr. Heighton says that the change in requested relief to be, now, against the Minister of DTI is not simply form over substance. He says it reflects an evolution of sorts by Julmac to purposely distinguish between the absolute Crown immunity under s. 14(2) of *PACA*, with the less absolute injunctive immunity for Crown officers or servants under s. 14(4).

[45.] Mr. Heighton emphasizes that the Preliminary Motion, affidavits in support, and Julmac’s initial brief all point to relief being requested as against PNB itself. Even though PNB acts through DTI, there is little, if any, mention of the Minister of DTI let alone his conduct in all Julmac materials before the Court.

[46.] In short, Mr. Heighton maintains Julmac has targeted PNB (or DTI) but not any officer or servant of the Crown and, as a result, the absolute immunity under s. 14(2) of *PACA* would apply.

[47.] Mr. Heighton argues even if the Court were to consider the request for injunctive relief by way of s. 14(4) as against a Crown officer or servant, i.e. Minister of DTI, the result would still be barred by s. 14(4) as the very narrow exceptions acknowledged through common law and codified by *PACA* are not available in these circumstances.

[48.] Mr. Heighton also emphasizes the not-so-subtle modification to the specific injunctive relief now sought and raised, for the first time, by Mr. Outerbridge. He refers to Julmac’s argument at the hearing to now be seeking to *prohibit* certain actions taken under the contracts by PNB, i.e.: “prohibiting the enforcement of” the default and removal notices. This is in stark contrast

- to the Preliminary Motion seeking to require PNB “to rescind” notices and other positive actions found in the Motion so as to reinstate Julmac back on to the three bridge contracts.
- [49.] The desired effect of this shift, Mr. Heighton reminds, of course, is to allow Julmac to make the case that their requested relief was not for a “mandatory” injunction but simply a “prohibitive” one. If it is, in fact, mandatory then that would likely disentitle Julmac under the *status quo* exemption to immunity from injunctive relief against the Crown. (See *Loomis v. Ontario*, 1997 CanLII 8625 and *Northstar Arrospace Inc. (Re)*, 2012 ONCA 6362)
- [50.] In terms of exceptions to immunity for Crown servants, Mr. Heighton identifies those to include a lack of statutory authority, bad faith, or abuse of power. He says none of these apply and he cites various authorities in support, all referenced in PNB’s brief.
- [51.] Mr. Heighton reminds the Court that even to enjoin a Crown officer in this instance, such relief would not be available to it because, in this circumstance, it would have the clear effect of enjoining the Crown itself in regards to the three (3) bridge contracts, which is expressly prohibited under s. 14(4) in any event.
- [52.] According to Mr. Heighton, before me there is no allegation of an abuse of statutory authority. This is a purely contractual dispute. Mr. Heighton argues that an alleged breach of contract alone cannot be the “civil wrong” referred to in the cases reviewed by Justice Cromwell in *Smith* at paragraph 107. The consistent thread in those cases is a civil wrong in relation to a purported exercise of statutory authority. There are no allegations of the excessive use of a particular statutory authority or any lack of statutory authority in this case. There are no allegations of a tort by a Crown officer or servant. There are only allegations of a breach of

contract and Julmac has not made out a case for the application of any exception to Crown servant immunity in any event.

## ISSUE

[53.] The issue before the Court is the availability of interim injunctive relief or interim declaratory relief in the circumstances and under *PACA*.

## LAW

[54.] Injunctive relief is extraordinary relief and is of an equitable nature.

[55.] Both parties raise, by way of their pre-hearing briefs, the question of whether an interlocutory injunction is available as against the Crown in these circumstances. Not surprisingly, they arrive at different conclusions.

[56.] Subsections 14(1), 14(2) and (4) of *PACA* state:

14(1) Subject to this Act, in proceedings against the Crown the rights of the parties are as nearly as possible the same as in a suit between person and person; and the court may make any order, including an order as to costs, that it may make in proceedings between persons, and may otherwise give such appropriate relief as the case may require.

14(2) Where, in proceedings against the Crown, any relief is sought that might, in proceedings between persons, be granted by way of injunction or specific performance, the court shall not, as against the Crown, grant an injunction or make an order for specific performance, but may, in lieu thereof, make an order declaratory of the rights of the parties.

...

14(4) The court shall not in any proceedings grant an injunction or make an order against an officer or agent of the Crown if the effect of granting the injunction or

making the order would be to give any relief against the Crown that could not have been obtained in proceedings against the Crown but, in lieu thereof, may make an order declaratory of the rights of the parties.

[57.] After due consideration of both parties' excellent arguments and briefs, my review of all the numerous authorities cited by both parties on the subject, and my consideration of the Preliminary Motion, I have decided to deny the requested relief and dismiss the motion.

[58.] First, the Motion is clearly framed as one requesting injunctive relief against PNB which is to say, the Crown (in right of the Province of New Brunswick). This is not simply a style of cause issue. Nor is PNB's objection by way of *PACA* a matter of form over substance in this instance.

[59.] Rule 37.03 states:

37.03 Content of Notice of Motion or Preliminary Motion

A Notice of Motion or Preliminary Motion shall

- (a) **state the precise order sought,**
- (b) **state the grounds to be argued, including a reference to any statutory provision or rule to be relied on,** and
- (c) list the documentary evidence to be used at the hearing of the motion.

**(Emphasis Added)**

[60.] The New Brunswick Court of Appeal has repeatedly emphasized the importance of pleadings to formally define the issues at play and the parties' respective positions including relief sought. (See Drapeau, CJNB (at the time) in *Guay v. Regional Health Authority*, 2014 NBCA 10, at paragraph 25).

[61.] I am of the view, even giving the Preliminary Motion a most generous reading, that I cannot reasonably conclude the relief sought to be anything other than a request for an injunction

- against the Crown itself. There is virtually no mention of the Minister, nor any other specific Crown officer or servant for which the allegations target nor by way of this Preliminary Motion has Julmac sought relief against any specific individual employed by PNB. While DTI is referenced as the government department which acts on behalf of PNB in relation to the contracts, DTI is not itself a Crown servant, officer, agent or Crown corporation for that matter. DTI, as a government department, is effectively the Crown itself.
- [62.] There was no request to amend the Preliminary Motion. There was however, a valiant effort by Counsel for Julmac to recast their requested relief into one directed at a Crown servant or agent.
- [63.] Ostensibly, this was in order to be able to avoid the absolute immunity for the Crown from injunctive relief under s. 14(2) of *PACA* and to characterize the relief as applicable to one of the recognized, qualified exceptions for Crown officers and agents, historically recognized through the common-law and as now codified under s. 14(4) of *PACA* (see *Smith*).
- [64.] In *Smith*, Cromwell, JA (as he then was) confirmed that injunctive relief may *only* be granted against a Crown officer, as opposed to the Crown itself, and only in exceptional circumstances such as where the officer exceeds their statutory power or commits acts that might attract personal liability. (see paragraph 6, 99, and 101)
- [65.] Again, in the matter before me, the Moving Party is seeking relief against PNB and not against a Crown officer or agent.
- [66.] As PNB points out, s.6 of the *Highway Act*, RSNB 1973, C.H-5, states that all contracts made by the Minister of DTI are contracts with the Crown:

*Contracts and leases to be made in name of the Crown*

*6 All contracts and leases made by the Minister shall be made in the name of the Crown in right of the Province.*

- [67.] In *Smith*, the Court granted an interim injunction restraining the Nova Scotia Deputy Minister of Justice from terminating a provincial employee pending the determination of his action for damages resulting from his purported dismissal. It is noteworthy that in *Smith*, the specific request for relief included that of enjoining the Deputy Minister of Justice as a Crown officer or servant.
- [68.] In *Smith*, Justice Cromwell reviewed the history and development of Crown immunity from common law through to statutory enactments such as the *Proceedings Against the Crown* legislation. Nova Scotia appears to have essentially identical provisions to the New Brunswick legislation.
- [69.] As confirmed by Justice Belanger-Richard, in *C.M.M.*, *Smith* represents a fulsome discussion by Justice Cromwell to the context, purpose, and scheme of modern proceedings against the Crown legislation including their historical background.
- [70.] Justice Cromwell determined s. 16(2) of the Nova Scotia *PACA* (identical to s. 14(2) of New Brunswick) to contain absolute, all-encompassing language prohibiting injunctive relief against the Crown. He contrasted that language to s. 16(4) (14(4) of New Brunswick) in regards to officers or agents of the Crown which he found reflect a less absolute prohibition and which allows for some (narrow) exceptions based upon recognized common law precedents.

[71.] The exceptions, he then clarified, are to be considered extraordinary but can include, where the officer has acted beyond his authority or where there is evidence of bad faith or abuse. (See also *Saint-Quentin (Municipality) v New Brunswick*, 2015 NBQB 169 at para 73.

[72.] Justice Cromwell found that while Crown officers and agents are generally entitled to the immunities of the Crown itself, s. 16(4) (s.14(4) in New Brunswick), of *PACA* does not preclude injunctions against officers in all cases. (See also C.M.M. at para. 52)

[73.] At paragraph 101 of *Smith*, Cromwell, JA explains:

[101] As mentioned earlier, the availability of injunctions against Crown officers at common law was based on two main principles: first, that acts beyond authority could be enjoined; and second, that acts which would attract personal liability of the Crown officer could be enjoined. Both of these principles are reflected in Canadian authority binding on this Court.

[74.] Facts matter and context is always critical. It is interesting to note in *Smith*, Justice Cromwell goes on to say, at paragraph 108 and 109 of *Smith*:

[108] Applying these principles to the present case, my view is that the deputy's actions here arguably were beyond his statutory authority in two related senses. First, the MOA may be taken to have constrained his general delegated powers in relation to public servants. Put a different way, his acts arguably violated the provisions of the MOA and his statutory powers, properly interpreted, do not permit him to do this because his acts arguably constitute a civil wrong which is not explicitly or implicitly authorized by statute.

[109] It follows that, in my view, Mr. Smith has advanced an arguable case that the challenged actions by the deputy minister were unauthorized and that this sort of allegedly unauthorized action by a Crown servant purporting to exercise statutory powers may be enjoined.

[75.] There is no allegation before me of the Minister of DTI or any other Crown servant or officer having acted without or beyond any particular statutory authority. There is no allegation of personal wrongdoing by the Minister for instance.

[76.] *Smith* was relied upon by Chief Justice DeWare in *Anglophone East School District & Harry Doyle v The Province of New Brunswick and The Minister of Education and Early Childhood Development (ASD East)*, 2024 NBKB 116.

[77.] In *ASD East*, the Chief Justice confirmed that, in New Brunswick, injunctive relief against the Crown would be “*exceedingly rare*” and where s. 14(2) was engaged, it would only be available “*when the underlying action or application involves the interpretation and preservation of Charter rights*”. There are no allegations of Charter or constitutional issues before me.

[78.] In *Loomis v. Ontario (Minister of Agriculture and Food)*, (1993) 16OR (3<sup>rd</sup>) (188) the Ontario Divisional Court also expresses the principle that there is a “general rule” that interlocutory injunctions/declarations should not be granted against the Crown unless there is some evidence of a “deliberate flouting of the law”.

[79.] In *Grain Farmers of Ontario v. Ontario Ministry of the Environment*, 2015 ONSC 6581, the court refers to *Aroland First Nation v. Ontario*, 27OR (3<sup>rd</sup>) 732 where Wright J, following *Loomis* gave examples of this exception as instances where governmental authorities acted knowingly in breach of a court order or existing law. At paragraph 30 he added:

An interim declaration is not to be used as an interim injunction to maintain the *status quo* pending a determination of the parties rights. The Crown is in a special position. Generally speaking the Crown is entitled to act as it sees fit until there’s a proper declaration of right upon conclusion of proceedings.

[80.] I have determined that injunctive relief is not available to Julmac as against PNB or DTI. PNB generally has an absolute immunity from such relief pursuant to s. 14(2) of *PACA* and it does in these circumstances.

- [81.] In regards to Julmac’s argument on the basis of a “commercial” exception for DTI, on behalf of PNB, and the *Wittal v. Saskatchewan Government Insurance*, 1988 CanLII 5072 (SK CA) decision, I do not accept that premise to be at all decisive or helpful in this instance.
- [82.] *Wittal* was a 2-2 split decision of the Saskatchewan Court of Appeal and is a case concerning whether a Crown corporation, as agent for the Province of Saskatchewan, could be enjoined in order to maintain the *status quo*. Bayda, CJ determined that Crown immunity did not extend to agents in the circumstances. I note that unlike the Saskatchewan *Proceedings Against the Crown Act*, which did not expressly provide immunity for Crown “agents”, s. 14(4) of *PACA* in New Brunswick expressly includes “agents and officers”.
- [83.] Further, *Wittal*, is discussed by Justice Cromwell, in *Smith*. I agree with Counsel for the Province, that Justice Cromwell, did not adopt a “commercial exception” to Crown immunity from injunctive relief. Indeed, he considered *Wittal* to “not be a very helpful authority”.
- [84.] There is no authority in New Brunswick which has, in my view, adopted any “commercial exception” for the Crown itself, and as argued by the Moving Party under *Wittal*.
- [85.] In my view, injunctive relief does not lie against the Crown, that is to say, the Government of New Brunswick in this case.
- [86.] I also share Counsel for the Province’s point that Julmac has effectively, and not so subtly, attempted to recast its position on the requested relief in order to avoid this rather absolute statutory bar for injunctive relief set out in *PACA* under s. 14(2).

[87.] The facts of the case before me are such that I can and must apply that general bar to injunctive relief as against the Crown.

### IMMUNITY EXCEPTIONS

[88.] In light of the above, in case I am in error, I wish to go on to address Julmac's arguments that their requested injunctive relief or interim declaratory relief remains available as one of the noted exceptions to the immunity for Crown servants/agents and under s. 14(4).

[89.] While I fully acknowledge the difficulty in reconciling all of the various authorities provided to me, even if the request for interlocutory injunctive relief is to be interpreted as against the Minister of DTI, I am not satisfied Julmac has established any of the recognized exceptions at common law for Crown servants or officers to apply *in this instance*.

[90.] I also acknowledge Julmac's argument to the effect that one of the main purposes of *PACA* was to treat the Crown more like an "ordinary" litigant. Therefore, *PACA* should not be interpreted so as to limit an aggrieved party's rights (exceptions) long recognized prior to the legislation.

[91.] Justice Cromwell determined *PACA* legislation to effectively codify the existing common law exceptions to Crown immunity for Crown servants. Once again, I would lean on Justice Cromwell's words in *Smith* and at paragraphs 99 and 101:

[99] Thus, in this case, an injunction may not be issued against the Crown because that is prohibited by s. 16(2). However, an injunction may issue against a Crown officer if the case falls within the type of case that was recognized at common law as not being, in effect, an injunction against the Crown.

...

[101] As mentioned earlier, the availability of injunctions against Crown officers at common law was based on two main principles: first, that acts beyond authority could be enjoined; and second, that acts which would attract personal liability of the Crown officer could be enjoined. Both of these principles are reflected in Canadian authority binding on this Court.

[92.] At paragraph 105, Justice Cromwell gives some meaning to the traditionally noted concerns over Crown officers acting in excess of their statutory authority, as follows:

[105] The principle that Crown officers acting in excess of authority may be enjoined has often been expressed broadly. For example, LeDain, J.A. in **Re Lodge et al. and Minister of Employment and Immigration** (1979), 94 D.L.R. (3d) 326 (F.C.A.) stated that injunctions could issue with respect to acts that were “...*ultra vires* or otherwise illegal.” (at 333). Justice Sharpe describes the rule as being that “...an injunction will be granted to restrain a Crown servant from exceeding the lawful limits of authority or from acting without any authority where the acts complained of constitute a violation of the plaintiff’s rights.”: Sharpe, **supra** at para 3.1050. However, the terms used in these formulations of the exception – “*ultra vires*”, “exceeding lawful limits of authority” and “otherwise illegal” – describe a fairly wide variety of conduct. It will be helpful, therefore, to review some of the cases to determine the various senses in which these have been used.

[93.] At page 107, Justice Cromwell reviews a number of authorities where “Crown officers” are acting allegedly in excess of valid statutory powers:

[107] Many cases base the availability of injunctions against Crown officers on the ground that they are alleged to be acting in excess of valid statutory powers. The “excess of statutory powers”, however, may take many forms. The cases illustrate that included in this category are situations in which:

- (1) The acts constitute a civil wrong not specifically authorized by statute. For example, in *Baton Broadcasting*, the acts restrained were allegedly civil wrongs committed by the Crown agent that were not contemplated or authorized by its constituent legislation. A similar result was reached in *Bolton et al. v. Forest Pest Management Institute et al.* (1985), 1985 CanLII 579 (BC CA), 21 D.L.R. (4th) 242 (B.C.C.A. Chambers)
- (2) The acts do not fall within the scope of permitted acts on the proper interpretation of the legislation. For example, in *Pacific Salmon*, the court confirmed its jurisdiction to enjoin actions by a minister in excess of his statutory powers. The minister, purporting to rely on power delegated

to him by regulation, had ordered the plaintiff to stop delivering certain goods to an airport but the plaintiff claimed that the relevant regulations, properly interpreted, did not prohibit mere delivery of the goods and that the Minister had therefore exceeded his powers under them. See also *Baxter Foods Ltd. v. Canada (Minister of Agriculture)*, [1988] 21 F.T.R. 15; F.C.J. No. 410 (Q.L.)(T.D.).

- (3) The acts are authorized by subordinate legislation which is itself ultra vires: see for example *Esquimalt Anglers' Association*, supra.
- (4) In carrying out the acts in question, the officer denies natural justice or uses delegated authority for an improper purpose. Padda is an example of the former and MacLean of the latter. In Padda, an interlocutory injunction was granted to restrain the Minister from executing a deportation order. The underlying allegation was that the order was invalid because there had been a denial of natural justice. This was also the basis of the decision in *Smoling v. Canada (Minister of Health and Welfare)* (1993), 1992 CanLII 8547 (FC), 95 D.L.R. (4th) 739 (F.C.T.D.) In *MacLean*, the Court upheld the granting of an interlocutory injunction against Crown officers who, by advising licensed establishments that their liquor licences would be in jeopardy if they offered the entertainment provided by the plaintiffs, effectively prevented the plaintiffs from performing in licensed premises and induced a breach of contract between the license holder and the plaintiffs. The underlying allegation was that Crown officers acted beyond their statutory powers by threatening to exercise their regulatory powers for an improper purpose.
- (5) In one case, the acts of a Crown officer were considered to be “unauthorized” when they were in breach of a collective agreement, although the court divided on the point and the decision was also based on two other factors: a distinction between Crown agents and Crown officers and a distinction between a final and an interlocutory injunction. The case is *Wittal*, supra, in which the claim was based on the breach of a collective agreement and an interim injunction was issued against a Crown agent to preserve the *status quo* pending trial.

[94.] Justice Cromwell, in *Smith*, found, before him, the Deputy Minister of Justice to have taken steps beyond his statutory authority by acting contrary to a Memorandum of Agreement that

itself purported to expressly restrict the Deputy Minister's delegated statutory authority. In that circumstance, Cromwell, JA interpreted the Deputy Minister to have arguably committed a civil wrong not authorized by statute.

[95.] Of particular interest, at paragraph 110, Justice Cromwell states:

[110] **I think it is doubtful that if Mr. Smith's claim were in breach of contract alone, it would support an injunction against the deputy minister.** Justice Sharpe's view in his treatise is that law on this is unclear: at para 3.1180. I have not found a case which materially assists on the point. For the reasons mentioned earlier, Wittal is not a very helpful authority. **As a matter of principle, it is hard to see how enjoining the deputy from breaching the contract of employment with the Crown is not, in effect, enjoining the Crown from breaching the contract.** However, in light of my conclusion that the judge was on firm ground when he concluded that the deputy's acts were arguably beyond his statutory powers and could be enjoined, it is not necessary to address the breach of contract point.

**(Emphasis Added)**

[96.] In the matter before me, there is no allegation of a breach of any statute or the Minister committing any civil wrong while acting beyond any statutory authority. This is a contractual dispute between the parties full stop.

[97.] Julmac alleges that PNB, supposedly through DTI, issued unjustified and improper default notices and wrongly removed work from Julmac under all three bridge contracts.

[98.] Furthermore, they appear to allege these actions are taken contrary to PNB's duty of contractual good faith. As an aside, I am not convinced that the duty of good faith under contract principles necessarily equates to a finding of actual bad faith.

[99.] Regardless, in my view, the allegations even if determined to be made on an arguable basis, do not constitute a civil wrong in excess of statutory powers by the Minister. This narrow traditional exception would not apply.

[100.] In my view, and as alluded to by Justice Cromwell in *Smith*, at paragraph 110, it cannot reasonably mean “any” civil wrong by an officer in order to qualify for this narrow exception to Crown immunity. Furthermore, for virtually any breach of contract with government, the Court would be overrun with these injunctive requests.

[101.] A tort allegedly committed by a Crown officer or servant which gives rise to personal liability is also one of the mentioned exceptions to injunctive immunity, but those facts are not alleged in this matter. (See *Canada (Le Conseil de Ports Nationaux) v. Langelier et al.*, 1969 SCR 60)

[102.] There is yet another aspect of s. 14(4) that I wish to touch upon. Once again, s. 14(4) of *PACA* states:

14(4) The court shall not in any proceedings grant an injunction or make an order against an officer or agent of the Crown **if the effect of granting the injunction or making the order would be to give any relief against the Crown that could not have been obtained in proceedings against the Crown** but, in lieu thereof, may make an order declaratory of the rights of the parties.

**(Emphasis Added)**

[103.] In the matter before me, assuming the requested relief is to enjoin the Minister of DTI to effectively rescind the default and removal of work notices; this would have the practical effect of enjoining the Crown itself. The impugned contracts are between Julmac and PNB. The Minister of DTI enters the contracts on behalf of the government. To enjoin the Minister would be to enjoin the Crown in these circumstances. (See *Smith*, para. 110) and that would be

contrary to s. 14(4) of *PACA*. Likewise, it would seemingly amount to an order for specific performance of the contracts while the legal dispute unfolds.

[104.] While authority has been found, in limited circumstances, to restrain Crown officers or agents when they are shown to be acting outside of statutory authority, that exception is consistent with the notion that stopping the agent in circumstances of their exceeding authority is not a restraint on the principal itself. This principle is also reflected in s. 14(4) of *PACA*.

[105.] In this matter, I am unaware of any material allegations of the Minister acting other than as an officer or servant of the Crown in regards to the administration of the contracts. Nor, is any other Crown servant, allegedly doing so. Their individual actions are not tethered to any particular exercise of statutory authority or personal wrongdoing. To repeat, there is no claim for personal liability or wrongdoing against any Crown servant to which I am aware.

### ***STATUS QUO* EXCEPTIONS**

[106.] Counsel for Julmac understandably posits it to be “unthinkable” if Julmac was unable to obtain any interim relief in the circumstances where they have raised serious issues of a breach of contract and a breach of good faith by PNB (or DTI). Mr. Outerbridge reminds the Court of its inherent jurisdiction to maintain the *status quo* in the circumstances of a particular dispute pending its final disposition. He cites *Canada (AG) v. Law Society of British Columbia*, 1982 CanLII 29 (SCC) and *Saskatoon Square Ltd. v. CMHC*, 1995 CanLII 6112, *Winnipeg Child & Family Services v. Canada (AG)*, 1997 CanLII 11528 (MBKB) and *Couchiching First Nation v. Canada (Attorney General)*, 2010 ONSC 2442.

[107.] It would seem that, in relatively rare occasions, Courts will issue *status quo* orders in order to protect the Courts' own processes. It would generally not be available where it requires a positive course of action. In *Nelson, et al. v. HMTQ in right of Ontario*, 2019 ONSC 5415, a breach of contract case, the Court addresses this principle at paragraph 27 in regards to a request to reinstate an employee's salary:

[27] One further exception to the rule against injunctions against the Crown that has been recognized in limited circumstances is when the injunction against the Crown is to preserve the *status quo*. This has arisen, for example, when the preservation of property has been in issue: *Couchiching First Nation v. Town of Fort Frances*, 2010 ONSC 2442. However, that is not this case. At this point, the order Ms. Dixon seeks is to require affirmative action by the government to reinstate her salary, which she has not received for a year. This is not seeking to maintain the *status quo*. Ms. Dixon was on STSD from the fall of 2018 until April 2019. She had warnings of the need to make a timely LTIP application to continue to receive disability benefits and failed to do so. She has options to challenge the denial of LTIP which should be pursued and which would, if successful, more closely reflect and preserve the *status quo*.

[108.] In my view, despite Counsel's attempt to rephrase it's relief in argument, Julmac is seeking a mandatory injunction order requiring positive actions of PNB (or DTI) to rescind notices already issued under the contract and to effectively "reinstate" the contractor back onto the jobs. From the perspective of Julmac, I can appreciate how they might view that outcome as its *status quo*, however, the *status quo* here is one of contract with both parties having their relationship determined by those contracts.

[109.] A so-called *status quo* order here would not simply preserve the *status quo* but in fact redefine the parties' contractual rights and likely represent a final remedy.

[110.] A mandatory injunction is discussed by Justice Brown, in *R. v. Canadian Broadcasting Corp.*, at para. 15, who states:

A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the *status quo*, or to otherwise "put

the situation back to what it should be”, which is often costly or burdensome for the defendant and which equity has long been reluctant to compel.

[111.] What did Justice Brown mean by “a positive course of action”?

[112.] He answered this question in *R. v. Canadian Broadcasting Corp.* as follows:

Ultimately the application judge, in characterizing the interlocutory injunction as mandatory or prohibitive, will have to look past the form and the language in which the order sought is framed, in order to identify the substance of what is being sought and, in light of the particular circumstances of the matter, “what the practical consequences of the injunction are likely to be”. In short, the application judge should examine whether, in substance, the overall effect of the injunction would be to require the defendant to do something, or to *refrain from doing* something.

[113.] In *1169433 Ontario Ltd. v Simpson, et al.*, the Plaintiff sought an order compelling the Crown (through the Ontario Provincial Police) to follow an internal policy. The Plaintiff argued that because it was seeking a mandatory order, the applicable Crown immunity legislation did not apply. This was rejected by the Court as illogical:

**[12] The plaintiff agrees that an injunction is not available against the Crown pursuant to the clear wording of either statute, yet asserts that a mandatory order is available. Taking that argument to its conclusion, however, leads to the outcome that the Court could not stop the Crown from doing something (an injunction) but could, arguably more intrusively, direct the Crown to do something: to take action which it does not wish to take (a mandatory order). In my view, such would not be a logical nor a principled outcome.** Consistent with *Deep v. Ontario*, 2004 CarswellOnt 2625 and *Granite Power Corp v. Ontario*, 2002 CarswellOnt 5929, in which in those cases claims for mandatory orders were struck under section 14 of the Proceedings Against the Crown Act, I respectfully reject the plaintiff’s argument. I follow these decisions and find that the two Acts each preclude injunctive relief which, as Justice Sharpe explains, includes mandatory orders.

[114.] As argued by Julmac, the *status quo* exception to Crown immunity from injunctive relief has been applied on a few occasions. Often, albeit not exclusively, those are in the context where the interim preservation order serves to protect the very subject matter of the dispute being lost,

- and the resulting effectiveness of any final disposition by the Court being undermined. (See for instance *Couchiching First Nation*.) In *Couchiching First Nation*, the Court's order was made to preserve a distinct piece of property, i.e. a public park.
- [115.] This is not the nature of the circumstance before me.
- [116.] The effect of any so-called *status quo* order here, is to require PNB to continue to deal with Julmac on the three bridge contracts in accordance with the agreements. It is both a positive mandatory order and it would purport to preserve the pure the economic rights of Julmac to the exclusion of any contractual rights available to PNB.
- [117.] Injunctions against the Crown to protect economic rights as opposed to the preservation of property rights, have been found lacking. In *Grain Farmers of Ontario v Ontario Ministry of the Environment and Climate Change*, 2015 ONSC 6581, the Court distinguished an earlier case (*Couchiching*) and found that an injunction seeking to protect economic rights does not preserve the *status quo*, in the way an injunction seeking to preserve property rights might:
- [19] [...] In the motion judge's view, if the *status quo* of the park changed and Fort Francis lost possession, the land would cease in its 100-year-old ability to operate as a park. **This is a very different set of circumstances to the dispute between GFO and the province of Ontario. Contrary to GFO's submissions, I take the view that this case is one of economic rather than property rights.** What is affected here is the farmer's ability to generate income rather than the use of their land. [...]
- [118.] In the circumstances, as a mandatory order, the *status quo* exception would not apply.
- [119.] I recognize, as I must, that the Supreme Court of Canada in *Law Society of British Columbia* confirmed a Superior Court's inherent jurisdiction to issue interim orders in order to protect the Court's own process and regardless of legislation that might purport to take away that very

- authority. I view this to be a most narrow and fact specific exception. The Supreme Court of Canada discussed such relief in terms akin to a preservation order pending disposition of all claims. *Law Society of British Columbia* involved a constitutional challenge to federal legislation.
- [120.] Such *status quo* relief has been made in circumstances where the government might be shown to have been “deliberately flouting the law” but, again, for purposes of protecting the Court’s processes.
- [121.] The case before me is a contractual dispute and one that I do not view as so exceptional, nor one that threatens the Court’s own processes should such an interim order not be issued.
- [122.] While not taking issue at this Court’s strict jurisdiction to control its own process, I am not convinced that this is an instance where that exception has been shown as necessary nor to have application.
- [123.] Last, I concur with Counsel for PNB that the *status quo* in this instance, in any event, is the fact that PNB have already issued the default and removal notices. The contracts have not been terminated and remain in force on the terms set out therein. To order, in this instance, that Julmac is entitled to resume work under the contracts would be far more intrusive than simply preserving the *status quo*.

#### **INTERIM DECLARATORY ORDER**

- [124.] Last, I will address the availability of the alternate relief of an interim declaratory order as requested by Julmac. In short, I am of the view that in New Brunswick, interim declaratory

relief is rarely if ever granted. To remind, s. 14(4) of *PACA* purports to allow for “declaratory relief of the parties’ rights in lieu of injunctive relief”.

[125.] In *Nelson*, 2019, ONSC 5415, the Court addresses the availability of interim declaratory relief at paragraph 26:

[26] Further, the declaratory relief sought by Ms. Dixon, which seeks the same result as an injunction, cannot be made on an interim basis. As Professor Hogg has stated in *Liability of the Crown*, 2nd ed. (1989), quoted with approval in *Loomis v. Ontario (Ministry of Agriculture & Food)* (1993), 1993 CanLII 8625 (ON SC), 16 OR (3d) 188:

**Can a declaration be obtained in interlocutory proceedings, that is, before the trial of the action, in order to obtain a temporary order holding the defendant to the *status quo*? The answer is no. A declaration is by its nature final. It is "absurd" for a court "to declare one day in interlocutory proceedings that an applicant has certain rights and upon a later day that he has not". For this reason, courts have nearly always refused to grant a temporary declaration before there has been a final determination of the applicable law. In other words, interlocutory (or interim) relief, which is available in the form of an injunction, is not available in the form of a declaration.**

**(Emphasis Added)**

[126.] In *Town of Caraquet and Les Amis de l'Hôpital de l'Enfant-Jésus RHSJ de Caraquet v. Ministre de la Santé et du Mieux-être*, 2005 NBQB 358 at paragraph 4, Justice Young states:

[4] The motion for an interlocutory injunction was filed on March 10, 2005. This motion also includes a motion for a declaratory order. Although the motion for a declaratory order was not formally withdrawn by the applicants, the parties’ pleadings and arguments focused mainly on whether or not an interlocutory injunction should be issued. My comments on this point will therefore be brief. **A declaratory order is a final decision.** Where facts are contested as they are here, I do not think that a declaratory order would have been appropriate in any event.

**(Emphasis Added)**

[127.] Justice Cromwell, in *Smith*, also shared the view that interim declaratory relief is generally not an available remedy. At paragraph 76 he states:

[76] As a practical matter, these immunities from injunctive relief only cause problems in cases, like this one, in which interlocutory relief is claimed. This is because, as noted in s. 16(2), a declaration of right may be made in place of a permanent injunction. **However, it is generally accepted that there is no such remedy as an interlocutory or interim declaration, so if an interlocutory injunction cannot be granted, no alternative interlocutory remedy may be available.** I will, therefore, limit myself to discussing the availability of interlocutory injunctions against Crown officers.

**(Emphasis Added)**

[See also Chief Justice DeWare in *ASD East*.]

[128.] To repeat, this is contractual dispute for which the government has purported to act under its contractual rights and as per the detailed terms of the three bridge contracts, i.e. notices of default and removal of work. Julmac challenges those decisions of government as breach of contract and actions in bad faith.

[129.] An interim declaratory order, as requested in these circumstances, would effectively grant the equivalent of a final remedy to Julmac by putting them back on the job(s) and requiring PNB to actively reengage back into a contractual relationship with Julmac while the contract dispute plays out. It would be declaratory of the parties' rights under their contracts. In this way, it may, in effect, serve to modify their contracts and prematurely dispose of the dispute.

[130.] In effect, rather than preserving the subject matter of the dispute before the Court, such an order, in this case, would amount to an interim declaration of the rights of the parties which I am not satisfied is available in the circumstances. It would not serve to protect the Court's processes but might lead one to conclude that they have been abused.

## **DISPOSITION**

[131.] For the forgoing reasons, the Preliminary Motion is dismissed. I wish to emphasize that this decision in no way reflects on the merits of any ongoing or intended litigation between the parties. Rather, this motion fails as it seeks relief which the Court has determined is not available in the circumstance.

[132.] PNB is the successful party and as a result are entitled to costs. I will award PNB costs of \$2,500.00 plus reasonable disbursements.

**DATED** at Fredericton, New Brunswick on the 28<sup>th</sup> day of March, 2025.

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Richard G. Petrie  
J.C.K.B.