2025 NBKB 299

COURT FILE NO: FC-292-2022

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

629869 NB LTD.

Plaintiff,

- and –

NEW BRUNSWICK LIQUOR CORPORATION

Defendant,

DECISION

Rule 23 Pre-Trial Determination of Questions

Date of Hearing:	December 16, 2025
Date of Decision:	December 19, 2025
Before:	Justice Richard G. Petrie

Representation of Parties at Hearing:

Erica C. Brown, Counsel for the Plaintiff

Clarence L. Bennett, K.C. and Kathleen A. Starke, Counsel for Defendant.

Petrie, J.

I. INTRODUCTION

[1.] This is a motion by the Defendant, New Brunswick Liquor Corporation (ANBL) seeking: the determination of various questions before trial; the striking out of the Plaintiff's Statement of Claim in its entirety pursuant to Rule 23 of the Rules of Court; and the disposal of the Plaintiff's action.

[2.] The Defendant's motion states a number of alternative bases for relief in order to strike/dispose of all or portions of the claim. It also seeks judgment under Rule 37.10 or, alternatively summary judgment under Rule 22.01 (3).

[3.] The crux of the Defendant's motion, citing Rules 23.01(1)(a) and (b) and 23.01(2)(a), is for a pre-trial determination that all of the Plaintiff's claims are statute-barred by virtue of s. 15 and s. 21 of the *Proceeding Against the Crown Act*, RSNB 1973, c P-18 (hereinafter "*PACA*") resulting in the Court having no jurisdiction.

[4.] The Plaintiff asks the Court to deny the motion, in its entirety. It also maintains the motion, as framed under Rule 23, is not suitable to, nor a proper basis for, the relief requested, and that summary judgment under Rule 22 is also inappropriate given the significant factual and circumstantial disputes existing between the parties.

II. BACKGROUND

[5.] The Moving Party, ANBL, is a body corporate established under the *New Brunswick Liquor Corporation Act*. It is also designated as a "Crown Corporation" under *PACA*.

[6.] The Plaintiff and responding party, 629869 NB Ltd., is a corporation under the laws of New Brunswick with a head office in Hartland, NB.

[7.] The parties have been involved in prior litigation in regards to the dispute between them.

[8.] In a most general way, their dispute concerns the Defendant's awarding of an agency liquor store in Hartland by way of a competitive Request For Proposals (RFP) bidding process and for which the Plaintiff was unsuccessful.

[9.] In a written decision, dated November 6, 2024, (reported at 2024 NBKB 200), my colleague, Justice Morrison denied a judicial review application also brought by the Plaintiff against the Defendant concerning the awarding of the agency liquor store contract.

[10.] At paragraphs 1-4 of his decision, Justice Morrison provides helpful background to the "dispute" between these parties:

> 1 The agent for New Brunswick Liquor Corporation ("ANBL") for the sale of alcohol in Hartland was Courtyard Convenience Ltd. ("Courtyard Convenience"), which was located at 380 Main Street in Hartland, New Brunswick. It was a convenience store which included an ANBL agency for some 26 years. In June 2019, the applicant, 629869 NB Ltd. ("Freshmart") purchased Courtyard Convenience, moved it to a new location, and undertook extensive renovations. The ANBL agency contract was set to expire March 31, 2021. Nevertheless, Freshmart expected that the ANBL agency licence would be renewed. Rather than automatically issue an extension of the agency agreement, ANBL decided instead to issue a request for proposals.

2 In November 2020, ANBL issued a request for proposals, seeking a party to act as its agent in Hartland, New Brunswick (the "RFP"). Two proposals were submitted in response to the RFP: one from Freshmart and one from Hartland Valu Foods Inc. ("Valu Foods"). After evaluation of the proposals by ANBL personnel, a recommendation was made to ANBL's Acting President and CEO that the agency store be awarded to Valu Foods. The Acting President approved the recommendation and submitted it to ANBL's Board of Directors on March 10, 2021, where it was given final approval on March 15, 2021 (the "Decision") (Record, p. 225). The Decision was communicated to both Valu Foods and Freshmart on March 17, 2021 (Record, p. 225).

3 This is an Application by Freshmart for judicial review of the Decision. Freshmart submits that the Decision is unreasonable in that it fails to articulate the decision makers' reasoning and analysis and is untenable in light of the facts and the spirit and intent of ANBL's Agency Store Policy. Freshmart also submits that ANBL failed to comply with the requirements of procedural fairness.

4 ANBL submits that, through the RFP, Freshmart knew exactly what they were bidding on, how it would be scored, and the Record discloses how and why Freshmart received the score that it did. As such, ANBL submits the Decision is transparent, rational, internally logical and therefore reasonable. Further, ANBL submits that the proponents to the RFP knew the process that would be followed in receiving, scoring and evaluating proposals, and that that process was followed. ANBL therefore submits that Freshmart has failed to establish any procedural unfairness on the part of ANBL. The submissions of Valu Foods largely mirror those of ANBL.

[11.] Of course a judicial review and an action are distinct proceedings.

[12.] The Plaintiff's action, arguably in contrast to its judicial review application, is seeking damages and declaratory relief alleging the Defendant's bidding/RFP process to have been unlawful and unfair.

[13.] According to the Plaintiff's Brief on the motion before me:

1. Notice of the within Action was provided to the Defendants by service upon them of a Notice under the Proceedings Against the Crown Act, RSNB 1973, c P-18, ("*PACA*") pursuant to section 15(1) of the said Act. Mr. Christopher Burden served the Notice on September 21, 2022.

2. The Plaintiff filed its Notice of Action with Statement of Claim Attached on November 18, 2022, which Action was served on the Defendant by Mr.

> Burden on April 24, 2023. The Defendant filed a Demand for Particulars on April 26, 2023. The Plaintiff filed its Statement of Particulars on May 25, 2023. The Defendant then filed its Statement of Defence on May 26, 2023.

[14.] The Plaintiff's Notice of Action with Statement of Claim Attached, purports to allege a number of claims including:

(a) the RFP process was unfair and the Defendant breached its duty of fairness;

(b) the Defendant intended to cause economic harm to the Plaintiff by unlawful means;

(c) the Defendant's actions constitute misfeasance in public office; and

(d) breach of contract.

[15.] The Defendant's motion was filed on June 9, 2023, and while it was originally scheduled in the Fall of 2023, it was adjourned several times. It was not rescheduled and heard until December 16, 2025 before me. This delay is unfortunate.

[16.] The parties filed lengthy pre-hearing briefs, and I heard oral submissions. Prior to hearing, I directed the parties to initially address the issues related to *PACA* specifically arising from para. 2(a) and (b) of the Defendant's motion.

III. ISSUE:

[17.] While the Defendant's motion raises a number of distinct and seemingly cascading additional and alternative bases for relief, I am satisfied that I can determine the motion on one discrete issue.

[18.] That issue is whether the Plaintiff's action is a nullity due to a failure to provide two months previous notice in writing to the Defendant of the proposed action and as required under s. 15(1) of *PACA.*

IV. LAW & ANALYSIS

[19.] Section 15(1) of *PACA* states:

> 15(1) No action shall be brought against the Crown **unless two months previous notice in writing thereof has been served** on the Attorney General, or **on the corporation in the case of an action to be brought against a Crown corporation**, in which notice the name and residence of the proposed plaintiff, cause of action, and the court in which it is to be brought shall be explicitly stated.
>
> (**Emphasis Added**)

[20.] The Defendant argues the Plaintiff's written notice as per *PACA*, is deficient as it was not served at least two months prior to the filing of the action and as mandated by s. 15(1) of the *PACA*. As a result, it says the Court is without jurisdiction.

[21.] The Plaintiff says it did provide written notice and one within the proper time frame under s. 15(1) of *PACA*.

[22.] Despite some dispute regarding whether service of the Plaintiff's notice pursuant to *PACA* occurred, the Plaintiff has put forward affidavit of service evidence establishing the alleged delivery of the notice to the Defendant occurred on September 21, 2022. It is clear, that the Plaintiff's Notice of Action with Statement of Claim Attached was stamped filed on November 18, 2022.

[23.] In regards to the notice under s. 15(1) of *PACA*, the Plaintiff's Statement of Claim alleges, at paragraph 3:

> 3. Advanced notice of this Action has been provided to the Defendant pursuant to section 15 of the Proceedings Against the Crown Act, RSNB 1973, c. P-18.

[24.] The Defendant's Statement of Defence pleads, at paragraph 29:

> 29. As to the whole of the Statement of Claim, the Defendant states that the Action does not disclose a reasonable cause of action as the Action as a whole is barred by the *Proceedings Against the Crown Act*, RSNB 1973, c P-18 (the "*PACA*") and ought to be dismissed as the Plaintiff failed to comply with subsection 15(1) of the *PACA*. Specifically, the Defendant states that:
>
> > (a) pursuant to section 21 of the *PACA*, no proceedings may be brought against the Crown, including Crown agents, except as provided in the *PACA*;
> >
> > (b) the Defendant was not served with notice of the Action as required by subsection 15(1) of the *PACA*;
> >
> > c) if the Defendant was served with notice of the Action, which is denied, such notice did not comply with subsection 15(1) of the PACA as:
> >
> > > (i) the within Action was filed on November 18, 2022, less than two months after the purported notice was served on the Defendant; and
> > >
> > > (ii) the within Action raises causes of action which were not included in the purported notice served on the Defendant.

[25.] To repeat and for clarity, the Defendant takes issue with a number of aspects of the Plaintiff's efforts to provide "proper" notice under *PACA*. I am addressing only one.

[26.] The Plaintiff argues that a Rule 23 motion is determined only on the pleadings and is not an appropriate mechanism for resolving any factual disputes. The Plaintiff further amplifies that the scope of any motion under either Rule 23.01(1) or 23.01(2) is for determination of a question arising from the pleadings and, generally, evidence is not admissible.

[27.] The Defendant's pre-hearing brief seemingly focused its request for relief as a Rule 23.01(1)(a) pre-trial question of law on the pleadings due to the Plaintiff's failure to provide two months notice under *PACA*. At the hearing, Mr. Bennett, on behalf of the Defendant, emphasized the basis for the same relief being available *also* under Rule 23.01(1)(b) (i.e. does not disclose a reasonable cause of action), or 23.01(2)(a) (Court is without jurisdiction).

[28.] In reply to the Plaintiff's position on suitability of Rule 23, the Defendant argues that any "limitation" on the use of evidence under a Rule 23 motion would be applicable only to Rule 23.01(1)(a) and (b) circumstances, but that this is not the case for motions advanced under Rule 23.01(2). Regardless, they assert there to be no factual dispute before me and the availability of the relief in this case is established under any one of the stated Rules.

[29.] I acknowledge that the test applied to motions for pre-trial determinations under Rules 23.01(1)(a), 23.01(1)(b) and 23.01(2) are different. Certainly the test applied to motions under Rule 23.01(1)(a) and (b) are more strigent then ones under Rule 23.01(2)(a).

[30.] Former Chief Justice Drapeau, addresses this, at least in regards to Rule 23.01(1)(b) and 23.01(2)(a) in *New Brunswick Community College et al. v. Vihvelin*, 2015 NBCA 17, in part, at paragraphs 29-31:

> [29] The test under Rule 23.01(1)(b) is stringent…Moreover, that test is applied to a factual matrix shaped without resort to evidence. A different process is contemplated under Rule 23.01(2)(b).
>
> [30] On a motion under Rule 23.01(2)(a), pleaded allegations of fact are not deemed proven and, although the hearing should not be turned into a full-blown trial, evidence is both admissible and expected…
>
> [31] In my judgment, on a motion for dismissal of the action under Rule 23.01(2)(a), the defendant must show that the court probably lacks subject-matter jurisdiction.
>
> …
>
> (See also, *Tingley v. The Attorney General of Canada et al.*, 2021 NBCA 18)

[31.] In the end I do not believe anything turns on the Plaintiff's arguments with respect to the suitability of Rule 23 and the use or reliance on evidence in these particular circumstances. I am more than satisfied that *for purposes of this issue*, i.e. two months notice, no factual controversy or dispute exists and certainly not one that could benefit the Plaintiff in these circumstances. My determination is not contingent on resolution of any dispute of material

facts between the parties and I am satisfied that the applicability of a statutory bar to the action is a question of law that is suitable for determination on this motion under Rule 23.01(1)(a). (See *NBCC v. Barton*, 2017 NBCA 57, at para. 34)

[32.] The issue of whether an action is proscribed by law can be a question properly addressed under Rule 23.01 (1)(a). (*Clark v. Naqui*, 1989 CanLii 161 (NBCA); and *Windsor Energy Inc. et al. v. Northrup* et al., 2015 NBQB 199, at paragraph 13) In addition, even if I am wrong, Rule 23.01(2)(a) expressly contemplates a court determining whether it has jurisdiction and resort to some evidence would be expected, (see, *Vihvelin*).

[33.] The scope of relief under Rule 23.01(1)(a) was addressed by (then) Chief Justice Drapeau in *Lloyd's of London v. Norris* (1998), [1998] N.B.J. No. 351 (C.A.) (QL), leave to appeal dismissed [1998] S.C.C.A. No. 559 (QL), wherein he stated:

> **As I read Rule 23.01(1)(a), the court's function is limited to determining a point of law raised by a pleading. Its mandate is not to actually dispose of the action, just as its mandate is not to actually shorten the trial or to actually bring about a substantial saving of costs. If the potential for achieving any of these results exists, the court may exercise its discretion and determine the point of law.** To state it otherwise, the possibility that the determination of a question of law may dispose of the action is a condition precedent to the exercise of discretion envisaged by Rule 23.01(1)(a): **the actual disposal of the action is not effected under it, a companion or follow-up motion being required.**
>
> (**Emphasis Added**)
>
> (see also *LeBlanc v. Boisvert*, 2005 NBCA 115 at para. 23)

Again, before me, the Defendant has coupled their motion with a request for judgment under Rule 37.10 and/or alternatively, summary judgment under Rule 22.04(3).

[34.] The question of whether the Plaintiff's claims are statute-barred is a valid question for a Rule 23 motion in this instance. I am satisfied that a determination as to the meaning of "two months previous notice" under s. 15(1) of *PACA* has the real potential of disposing of the action

resulting in substantial savings to the parties and the Court. Furthermore, it does *not* involve an "unsettled, complex and difficult question of statutory interpretation", (see para. 35 of *LeBlanc v. Boisvert*). In any event, resolution of this legal issue can also be approached as a question of jurisdiction and whether the Court "probably" lacks jurisdiction in the circumstances under *PACA* (i.e. Rule 23.01(2)(a).)

[35.] Taking the Plaintiff's own factual submissions at their highest, written notice of the proposed action as per s. 15(1) of *PACA* was served on the Defendant on September 21, 2022. The Plaintiff filed their Notice of Action with Statement of Claim Attached on November 18, 2022. The question is whether that constitutes "two months previous notice" as expressly required under s. 15(1) of *PACA*.

[36.] The legal question before the Court is an interpretive one. What does the legislation mean when it references "two months previous notice in writing"?

[37.] The *Interpretation Act*, RSNB 1973, c I-13 is helpful. At s. 38, the term "month", is defined to mean "calendar month". S. 22(k) of the Interpretation Act, directs that where a period of time dating from a specified act or event is prescribed (i.e. two months previous notice), the time period is calculated exclusive of the day of the *Act* or event.

[38.] I accept the Defendant's position that, in this instance, for the Plaintiff's action to have been validly filed and commenced on November 18 2022, the Plaintiff was required to provide notice, in writing, of its proposed action to the Defendant *before* September 18, 2022. In this case notice was not provided until September 21, 2022.

[39.] To expand on this, I hold the view that two (calendar) months means the period that runs month to month based upon the dates on the calendar and not a fixed number of days.

[40.] The *Merriam-Webster.com Dictionary* defines "calendar month" ("calendar month," *Merriam-Webster.com Dictionary*, https://www.merriam-webster.com/dictionary/calendar%20month. Accessed 11/27/2025.) to mean:

> **calendar month** noun
>
> 1 one of the months as named in the calendar
>
> 2 the period from a day of one month to the corresponding day of the next month if such exists or if not to the last day of the next month (as from January 3 to February 3 or from January 31 to February 29)

[41.] While neither party's briefs referenced any case law on the meaning of "month" or "calendar month", I am aware of a few decisions from New Brunswick that are of assistance and support the above view.

[42.] In *Chiasson v. Century Insurance Co. of Canada*, 1978 CarswellNB 50, our Court of Appeal upheld a lower court decision on the issue of whether a Plaintiff's action for insurance coverage was barred because of the fact that it was not issued until one day beyond the stated limitation period (i.e. "within one year of the loss occurring").

[43.] In its reasons, the Court of Appeal fully accepted the trial judge's adoption of *Halsbury (3rd Ed.)* definition which included discussion of the term "month" (and calendar month):

> 20 The plaintiff argues that a year is twelve consecutive calendar months and that a calendar month runs from the first to the last day of a particular month. However, a calendar month running from an arbitrary date expires with the day in the succeeding month immediately preceding the day corresponding to the date on which the period starts.

21 In 37 Halsbury's Laws of England, (3rd Ed.) 80, the following paragraph gives the statutory definition of the term "year":

> 135. Statutory definitions. The term "year", besides denoting the solar year of the calendar, may also mean any like period of time running from a date arbitrarily fixed by statute, contract or otherwise.

and at 83 the following paragraph deals with - **Calendar month running from arbitrary date.**

> **143.... When the period prescribed is a calendar month running from any arbitrary date the period expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts; save that, if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of the latter month.**

22 Thus when computing a limitation period of one year, because the day of the event is omitted, the period expires on the anniversary of that day.

(**Emphasis Added**)

[44.] In *Pelletier v. Nolet*, 1980 CarswellNB 357, the court analyzed the meaning of “month” and “calendar month”. The dispute concerned whether a notice of sale under a mortgage deed was void as contrary to the mortgage document’s requirement of “one calendar months” prior notice.

[45.] At paragraph 14, the court replies upon:

> In Stroud's Judicial Dictionary of Words and Phrases (4th Edition), Volume 1, page 369:
>
> **A calendar month is a legal and technical term; and in computing time by calendar months, the time must be reckoned by looking at the calendar and not be counting days.** (per Brett L.J. Migotti v. Colville, 4 C.P.D. 233) Therefore, i.e. "one calendar month's imprisonment is to be calculated from the day of imprisonment to the day numerically corresponding to that day in the following month, less one" (ibid.)... **So, as regards the requirement of a calendar month's**

> **notice of action - "in considering what is the length of a calendar month, it is sufficient, when months are broken whatever be the length of either, to go from one day in one month to the corresponding day in the other."** (per Cockburn, C.J., Freeman v. Read, 32 L.J.M.C. 226).
>
> (**Emphasis Added**)

[46.] The court in *Pelletier* found that where the period of time prescribed is a calendar month, the period expires with the day on the succeeding month immediately preceding the date corresponding to the one upon which the "one month" period is deemed to have commenced. (See also more recently *Pricewaterhousecoopers Inc. v Grand Falls Agromart Ltd.*, 2025 NBKB 106 at paras. 41-43)

[47.] In the matter before me, the Plaintiff's action was filed less than the required two-month period. In my view, under s. 15(1) of *PACA*, a proposed Plaintiff must provide *no less* than two (calendar) months prior notice in writing. It is a strict legislative requirement.

PACA

[48.] There are numerous authorities in New Brunswick and across Canada which hold that the failure to follow the requirements of *PACA* (or similar) can be fatal.

[49.] The provisions of *PACA* are not discretionary but are mandated by statute and must be strictly construed and complied with before any action against the Crown can proceed. Smith, J. undertook a fulsome discussion of notice requirements under the Nova Scotia *Proceedings Against the Crown* legislation in *Green v. Nova Scotia Department of Community Services*, 2023 NSSC 155:

> [52] It is well established by the Courts in this province and in jurisdictions across Canada that a failure to strictly comply with the notice provisions of the respective

Proceedings Against the Crown Act renders an action null and void. Any form of an informal or implied notice of intended action does not meet the strict statutory requirements of the *PACA*.

[53] For example, in the case of B.M.G. Farming Ltd v. New Brunswick, 2010 NBQB 151 (CanLI), Justice LaVigne held at para. 81 that the notice provisions of the Proceedings Against the Crown Act (New Brunswick) "must be strictly construed" and "must be complied with before the process may validly issue"

[54] In Biseau v Harnish, 2012 NBQB 339 (CanLI), the plaintiff, Erica M. Biseau and the defendant, Scott Harnish, were involved in a motor vehicle accident which occurred on April 16, 2009. Mr. Harnish was employed by the Province of New Brunswick, Minister of Transportation, and was operating a vehicle owned by the Department of Transportation at the time of the accident. The adjuster for the insurers of the Province were notified of the accident. Given that the Province's adjuster was aware of the claim, Justice Rideout of the Court of Queen's Bench of New Brunswick considered whether the court had discretion to prevent the strict application of the notice requirements under New Brunswick's Proceedings Against the Crown Act. He concluded at para. 23 that "no such discretion exists." As such, Mrs. Biseau's action against the Province of New Brunswick was struck.

[55] In Beardsley v. Ontario, 2001 CanLII 8621 (ON CA) the plaintiff sued the Crown and two Ontario police officers for false arrest, false imprisonment, malicious prosecution, negligence and breach of his Canadian Charter of Rights and Freedoms rights. A formal letter of notice under s. 7(1) of the Proceedings Against the Crown Act, RSO 1990, c. P.27 was sent by counsel for the plaintiff the day after the statement of claim was issued. On a motion brought pursuant to Rule 21.01(1)(a) and (b) of the Ontario Rules of Civil Procedure, the motions judge held that the claims against the Crown and the police officers were void, having been instituted without the appropriate notice under s. 7(1) of the *Proceedings Against the Crown Act*. The plaintiff appealed and the Ontario Court of Appeal upheld the motion judge's decision.

(See also *Murphy v. Office of Information and Privacy Commissioner for Nova Scotia et al.*, 2025 NSSC 266)

(**Emphasis Added**)

[50.] In *Levesque v New Brunswick*, 2010 NBQB 150 (affirmed on other grounds on appeal), Justice Lavigne (as she then was) found that an action was a nullity because the plaintiff failed to comply with the requirements of s. 15(1) of the *PACA*, including that the notice provided did not disclose the nature of the causes of action and was served on the Attorney General, rather than the Crown corporation.

[51.] In *Seymour v New Brunswick (Department of Municipal Affairs & Environment)*, 1987 CarswellNB 58, Justice Dickson held that the plaintiff's claim should be struck because the plaintiff failed to comply with the requirements of s. 15(1) of the *PACA* and did not disclose a reasonable cause of action.

[52.] In *Kirkpatrick v McIntosh*, 1989 CarswellNB 27, Justice McLellan dismissed the plaintiff's action for failure to comply with the requirements of s. 15(1) of the *PACA*. In that case, although the Province's conduct suggested knowledge of the plaintiff's action, Justice McLellan confirmed that s. 15(1) was clear and must be enforced; the Court did not have authority to "*soften the harshness of the application to this case of s. 15*".

[53.] In *Brooks v Fredericton City Police Force et al*, 2017 NBQB 83, Justice Morrison held that the plaintiff's claim could not proceed in part because the plaintiff had failed to provide notice to the Attorney General of the cause of action as required by subsection 15(1) of the *PACA*.

(And see more recently, *Kramer v. PNB Justice and Public Safety and Kennebecasis Regional Police Force* (unreported – SJC-496-2024, dated September 29, 2025)

V. CONCLUSION

[54.] The Plaintiff did *not* provide "two months" previous notice in writing of its proposed action. The failure to do so renders the action invalid (s. 21 of *PACA*). As a result the action is statute-barred and must be treated as a nullity. The Plaintiff's failure to give proper and timely notice of its intended action under s. 15(1) of *PACA* is fatal and conclusive as to its action against the Defendant. In this sense, the Court lacks jurisdiction to address the subject matter of the action.

[55.] Therefore, I find there are sufficient grounds to strike or dispose of the entirety of the Plaintiff's pleading and for the application of Rule 37.10(a) to grant judgment, because a failure to give proper notice renders the action a nullity that cannot be corrected by any amendment to the pleadings. (see *NBCC v. Barton*; and see *Tardif-Woolgar v. Dixon et al.*, 2024 NBKB 083 and the cases cited at paragraph 17 therein)

[56.] Very recently, former Chief Justice Drapeau in *J.D. Irving Limited et al. v. Wolastoquey Nation*, 2025 NBCA 129 noted his agreement with the observations of Justice Gregory on the motion under appeal in that case, at para. 181, in regards to granting judgment under Rule 37.10:

> At least one party has requested judgment following the requested striking of the pleadings pursuant to Rule 37. 1 am mindful that such relief in the form of judgment, is a matter of discretion but only exercisable where an amendment to the pleadings will not correct the pleadings deficiency, Judgment does not always follow as a matter of course in motions for Rule 23.01(1)(b) relief: Under our Rules of Court, where relief is granted under Rules 23.01(1)(a) or (b), judgment does not automatically follow. Indeed, an amendment to the pleadings might cure the problem and breathe life into the action or defence, hence the option, in a proper case, of a conversion order and judgment pursuant to Rule 37.10(a). For statement of claim purposes, that relief is warranted where no amendment giving rise to a reasonable cause of action is appropriate: see Tingley, at para, 39 [para. 83]

VI. DISPOSITION

[57.] The Defendant's motion is granted; the Plaintiff's claim struck; and Judgment is granted under Rule 37.10.

[58.] While not necessary given my above conclusion, I am also satisfied the Defendant to have established an appropriate basis for summary judgment under Rule 22.01(3) as, in light of my findings, there is no existing cause of action and thus *no genuine issue* requiring a trial. (Rule 22.04(1)(a)).

VII. COSTS

[59.] As the successful party, the Defendant is entitled to an order of costs. The parties will have twenty (20) days from the date of this decision to see if they can agree on quantum of costs. Failing agreement, both parties shall, within fourteen (14) days following, file their (up to two page) costs submissions with the Court and the Court will then set costs.

DATED at Burton, N.B. this 19th day of December, 2025.

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