

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *McLean v. McLean Capital Corporation*,
2026 BCSC 280

Date: 20260223
Docket: S258445
Registry: Vancouver

Between:

Joseph McLean

Petitioner

And

**McLean Capital Corporation, 0943750 BC Ltd., McLean Family Foundation,
Joel McLean, Jonathan McLean, Taylor McLean,
James Cory McLean, Dru Narwani and Darryl Eddy**

Respondents

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.
February 5, 2026

Place and Date of Judgment:

Vancouver, B.C.
February 23, 2026

Table of Contents

INTRODUCTION 3

 The Petition 3

 Affidavit of Joseph McLean 5

 April 28, 2025 Letter 6

 SRT Email 7

ISSUES..... 7

 What is the court’s jurisdiction to make the declarations sought? 8

 Are either the April Letter or the SRT Email properly the subject of settlement
privilege? 8

 The April Letter 9

 The SRT Email 10

 Do either the April Letter or the SRT Email fall within an exception to settlement
privilege? 10

 The April Letter 11

 Prejudice asserted by the petitioner..... 13

 SRT Email..... 13

 Has the petitioner waived settlement privilege? 14

 April Letter 14

 SRT Email..... 16

 Should the petition be dismissed? 16

DISPOSITION..... 16

COSTS 17

Introduction

[1] Before me are two applications for declarations that certain correspondence are not subject to settlement privilege. One application is brought by the respondent McLean Capital Corporation (“MCC”), and one is brought by the respondent Joel McLean. Joel McLean also seeks an order dismissing the petition if I order that the documents are protected by settlement privilege.

[2] On January 19, 2026, Mr. Justice Gaul ordered certain paragraphs of the notice of application, and of certain affidavits, to be sealed until February 5, 2026, the date these applications were heard. On February 5, 2026 I extended the sealing order until the date these reasons are released. Upon the release of these reasons, all terms of the sealing order are released, with the exception of one piece of correspondence in Exhibit B to the Affidavit of Dru Narwani dated January 15, 2026, which will remain sealed until further order of the court.

[3] The petition was filed by Joseph McLean, alleging that the directors of the respondent corporate entities (defined in the petition as the “Business Entities”) acted oppressively and contrary to s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57. He also seeks to have Joel McLean removed as a director of the McLean Family Foundation. The Business Entities were created by Joseph McLean’s father, Raymond McLean. Joseph McLean and four of the personal respondents (all nephews of Joseph McLean) are alleged to be the directing minds of the corporate respondents. MCC also has two independent directors, Mr. Narwani and Mr. Eddy (both are also respondents to this petition).

The Petition

[4] The petition was filed on November 7, 2025, and was supported by an affidavit of Joseph McLean sworn on November 12, 2025.

[5] In the petition, Joseph McLean alleges that Joel McLean began a campaign of harassment and defamation against Joseph McLean and a charity Joseph McLean created, called the Rainbow Lodge Charity. The allegations of defamation

are the subject of a separate action, filed by Joseph McLean and the Rainbow Lodge Charity against Joel McLean on October 10, 2025:

40. Joel McLean began the Defamatory Campaign in the spring of 2022, following a series of disputes between himself and Joseph McLean concerning the Skeena River Trust (the “SRT”). Joseph McLean is the primary beneficiary of the SRT and Joel McLean was the trustee of the SRT for a period of time ending April 26, 2021.

41. The full details of the Defamatory Campaign are set out in an action filed in the Supreme Court of British Columbia by Joseph McLean and the Rainbow Lodge Charity on October 10, 2025 (Vancouver Registry, action number S-257682).

[6] The petition summarizes the defamation alleged to have been conducted by Joel McLean, and alleges that Joseph McLean approached the two independent directors, Mr. Narwani and Mr. Eddy, with issues regarding Joel McLean’s conduct in 2022.

[7] Under the heading “Joseph McLean Informed the Board of MCC that Joel McLean Was Responsible for the Defamatory Campaign”, the petition sets out the following allegations:

54. On April 28, 2025, the board of MCC was provided with compelling evidence that Joel McLean was responsible for the Defamatory Campaign.

55. The same day, Joseph McLean met individually with each of the independent directors, Darryl Eddy and Dru Narwani, and explained to them the evidence that Joel McLean was responsible for the Defamatory Campaign. At the same time, Joseph McLean’s spouse, Blair Youngusband, met with Cory McLean and provided him with the same information. These three meetings are referred to as the “Individual Director Meetings”.

56. Despite receiving the evidence described above that Joel McLean was responsible for the Defamatory Campaign, and despite the Individual Directory Meetings, the boards of MCC and the other Business Entities did not take any meaningful steps to address Joel McLean’s misconduct.

[8] The petition sets out the reasonable expectations Joseph McLean is alleged to have had in relation to the Business Entities and the directors, and sets out the allegation of breach of reasonable expectations as follows:

57. Joseph McLean’s reasonable expectations included:

a. The affairs of the Business Entities would be conducted in a manner consistent with family harmony and respect;

b. The boards of the Business Entities would treat him fairly and act in good faith to investigate allegations of serious misconduct by a director against him as a fellow director, shareholder, Family Trust beneficiary, and society member; and

c. No director of the Business Entities would be permitted to remain in office if he unlawfully inflicted serious financial and emotional harm against, or incited violence against, a fellow director, shareholder, Family Trust beneficiary, and society member.

58. The directors of the Business Entities have violated Joseph McLean’s reasonable expectations by failing to take any meaningful action in response to evidence that Joel McLean perpetrated the Defamatory Campaign against Joseph McLean, and allowing Joel McLean to continue to be a director of the Business Entities despite the Defamatory Campaign.

...

80. By failing to take any meaningful steps to address Joel McLean’s misconduct after being informed that Joel McLean perpetrated the Defamatory Campaign, the directors of the Business Entities violated Joseph McLean’s reasonable expectations in an oppressive, or alternatively, in an unfairly prejudicial manner.

[9] While the petition contains more detail about the actions of Joel McLean, and the history of dealings between the parties, for the purpose of these applications, the paragraphs referenced above set out the key allegations.

Affidavit of Joseph McLean

[10] In his affidavit sworn November 12, 2025, and filed in support of the petition, Joseph McLean sets out a great deal of detail about the history of the family relationships, the Business Entities, details of the alleged Defamation Campaign, and steps he took to inform the MCC board, including the following:

- a) He describes the structure of an entity known as the Skeena River Trust (“SRT”), and a dispute with family members regarding changes to the structure of the trust. In relation to this issue, he exhibits several emails from family members, correspondence between counsel, and correspondence with Mr. Narwani – all written in 2021 and 2022.
- b) He describes the actions he alleges Joel McLean took in developing the Defamatory Campaign against him.

- c) He states that in February 2025 he investigated certain social media postings and determined the “investigation proved conclusively that the Becky See Facebook Account was run from Joel McLean’s home” (para. 90).
- d) He suggests that Joel McLean may be motivated by a desire to push Joseph McLean to take certain actions that would, under the terms of the SRT trust deed, result in Joseph McLean being removed from the board of MCC, and impact Joseph McLean’s entitlements under the SRT.
- e) He states he provided the board of MCC with the evidence proving Joel McLean was responsible for the Defamatory Campaign, as detailed in his affidavit, on April 28, 2025, and met with the independent directors the same day to explain the evidence.
- f) He states the board has taken no steps to investigate the allegations against Joel McLean, and states “I have been surprised and disappointed by the lack of response from the MCC board to the evidence that Joel was responsible for the Defamatory Campaign.” (para. 119)
- g) He states he expected the board would act in good faith to investigate the allegations, and believed they would place Joel McLean on leave, retain an independent third party to investigate, and gather more information from him.

April 28, 2025 Letter

[11] Mr. Dru Narwani swore an affidavit in support of this application on January 15, 2026.

[12] Mr. Narwani states that on April 28, 2025 he met with Joseph McLean, and Mr. McLean provided him with a letter dated April 28, 2025, written by his counsel, setting out the evidence which is alleged to prove that Joel McLean is responsible for the defamatory campaign, and including a report from an online investigator and

a draft notice of civil claim against Joel McLean (the “April Letter”). The April Letter is stated to be written on a without prejudice basis for the purpose of settlement “in relation to the potential litigation described within this letter”. The investigator’s report is stated to be privileged and confidential, and to be used for the purposes of settlement negotiation only.

[13] It was common ground on the hearing of these applications that the April Letter is the communication, and contains the evidence, referenced in paragraphs 54 – 58 of the petition.

SRT Email

[14] In his affidavit, Mr. Narwani exhibited a series of correspondence as Exhibit B. In August 6, 2021, correspondence was exchanged between certain family members regarding family relationships and the structure of the SRT. On August 6, 2021, Taylor McLean wrote to Joe, Joel, Jon and Jordan McLean. On August 21, 2021, Joel McLean wrote to Joseph McLean.

[15] On September 16, 2021, Joseph McLean wrote an email to Joel, Jonathon and Jordan McLean, which was marked “without prejudice” and purported to set out a proposed settlement to issues between them in relation to the SRT. In the September 16, 2021 email, Joseph McLean expressed a desire to settle matters to avoid litigation (“SRT Email”). It is the SRT Email (September 16, 2021) that is the subject of these applications.

Issues

[16] This application raises the following issues:

- a) What is the court’s jurisdiction to make the declarations sought?
- b) Are either the April Letter or the SRT Email properly the subject of settlement privilege?
- c) Do either the April Letter or the SRT Email fall within an exception to settlement privilege?

- d) Has the petitioner waived settlement privilege?
- e) Should the petition be dismissed?

What is the court’s jurisdiction to make the declarations sought?

[17] The applications are brought pursuant to the inherent jurisdiction of the court. This is not an application under Rule 7 of the Rules of Court. In *Peak Products Manufacturing Inc. v. Gros*, 2022 BCCA 349, the court of appeal confirmed that applications for declarations as to waiver of privilege engage the court’s inherent jurisdiction. As such, I find these applications are properly brought pursuant to the court’s inherent jurisdiction.

Are either the April Letter or the SRT Email properly the subject of settlement privilege?

[18] Settlement privilege is a class privilege that attaches to communication exchanged in an attempt to settle a litigious dispute. In *Acciona Wastewater Solutions L.P. v. Greater Vancouver Sewerage and Drainage District*, 2025 BCSC 2040, Justice Elwood summarized the relevant legal principles, which I adopt, as follows:

[85] Settlement privilege is a common law rule of evidence that protects communications exchanged by parties as they try to settle a litigious dispute. Sometimes called the “without prejudice rule”, it enables parties to participate in settlement negotiations without fear that information they disclose will be used against them in litigation: *Union Carbide Canada Inc. v. Bombardier Inc.*, 2014 SCC 35 at para. 31.

[86] Settlement privilege is a “class” or “blanket” privilege. It protects the class of communications exchanged in the course of settlement negotiations, as well as documents created for the purpose of that endeavour: *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37 paras. 12, 16.

[87] The use of the words “without prejudice” is not essential. What matters is the intent of the parties to settle the dispute: *Sable Offshore Energy* at para. 14.

[88] Justice Veenstra confirmed the test for settlement privilege in *Stancor Enterprises Ltd. v. Fiorvento*, 2022 BCSC 1842 at para. 92, citing *Abdul-Ahad v. Challa*, 2021 BCSC 795 at para. 35:

- a) A litigious dispute must be in existence or within contemplation;

b) The communication must be made with the express or implied intention that it would not be disclosed to the court in the event negotiations failed; and

c) The purpose of the communication must be to attempt to effect a settlement.

[89] The party asserting settlement privilege must establish that a "litigious dispute" was either in existence or within contemplation, and the communications in question were made for the purpose of attempting to effect a settlement of that dispute. This means that litigation must be more than a mere possibility for the privilege to apply: *Blue Line Hockey Acquisition Co., Inc. v. Orca Bay Hockey Limited Partnership*, 2007 BCSC 143 [*Blue Line Hockey*] at para. 103.

[90] Litigation can be said to be within contemplation when a reasonable person, with the same knowledge of the situation as one or both of the parties, would find it unlikely that the dispute will be resolved without it: *Hamalainen v. Sippola* (1991), 1991 CanLII 440 (BC CA), 62 B.C.L.R. (2d) 254 (C.A.).

The April Letter

[19] The April Letter contemplated litigation, in as much as it included a draft notice of civil claim against Joel McLean which would be filed if the parties could not reach resolution. On its face, the April Letter is stated to be issued without prejudice for the purposes of settlement. The April Letter sets out settlement terms which are advanced in order to settle the issues between the parties.

[20] MCC argues that the settlement terms are entirely directed to Joel McLean, as is the notice of civil claim. As such, MCC submits that the April Letter cannot be conceived as an attempt to settle issues or litigation proposed against MCC.

[21] While I agree that no settlement terms are expressly directed towards MCC, in the context of the complicated and interrelated relationships between the McLean family and the Business Entities, I am satisfied that the April Letter satisfies the requirement that the communication be written to effect a settlement.

[22] For the reasons set out above, I find that the April Letter meets the test for settlement privilege, in the first instance and before considering any exceptions to the privilege.

The SRT Email

[23] The SRT Email, while it is less formal than the April Letter, it nevertheless references a desire to settle matters without resort to litigation. It was written without prejudice. I am satisfied that it also meets the test of establishing settlement privilege, in the first instance.

[24] The SRT Email is distinguished from the two email written in August 2021, also found in Exhibit B to the affidavit of Mr. Narwani, that are not written “without prejudice”, do not discuss litigation, and do not propose any settlement terms. These two emails are not protected by settlement privilege.

Do either the April Letter or the SRT Email fall within an exception to settlement privilege?

[25] Settlement privilege is not absolute. In certain circumstances, production may be permitted of documents otherwise protected by settlement privilege. In *Dos Santos v. Sun Life Assurance Co.*, 2005 BCCA 4, the Court of Appeal adopted the classic statement in *Middelkamp v. Fraser Valley Real Estate Board* (1992), 71 B.C.L.R. (2d) 276, and restated an exception in relation to the proper disposition of litigation:

[14] In *Middelkamp*, *supra*, Chief Justice McEachern for four of five members of the Court said:

...

[20] I recognize that there must be exceptions to this general rule. An obvious exception would be where the parties to a settlement agree that evidence will be furnished in connection with the litigation in which the application is made. In such cases, the public interest in the proper disposition of litigation assumes paramountcy and opposite parties are entitled to know about any arrangements which are made about evidence. Other exceptions could arise out of such matters as fraud, or where production may be required to meet a defence of laches, want of notice, passage of a limitation period or other similar matters which might displace the privilege. As we did not have argument on these matters I prefer to say nothing further about them.

[emphasis added]

...

[18] In my view, *Middelkamp* did not close the door on what might constitute a valid exception to the blanket privilege (see reviews of types of exceptions

to the rule in **Berry v. Cypost Corp.** (2003), 43 C.P.C. (5th) 275, 2003 BCSC 1827, and **Unilever plc v. The Proctor & Gamble Co.**, [2000] 1 W.L.R. 2436 (C.A.)).

[19] However, the test for discharging the burden to establish an exception should not be set too low. The public policy behind settlement privilege is a compelling one. It is so compelling that even threats arising in the context of settlement negotiations may not justify an exception: **Unilever**, *supra* at p. 2449-2450.

[20] To establish an exception in this case, the defendant must show that a competing public interest outweighs the public interest in encouraging settlement. An exception should only be found where the documents sought are both relevant, and necessary in the circumstances of the case to achieve either the agreement of the parties to the settlement, or another compelling or overriding interest of justice.

[26] I accept that the respondents must show that the documents are both relevant and necessary, and that the disclosure of such documents outweighs the public interest in encouraging settlement.

The April Letter

[27] The respondents submit that the petition puts the April Letter squarely into issue. I agree. Paragraphs 54-58 of the petition clearly reference evidence contained in the April Letter, delivered to the MCC board by way of the April Letter, and assert a claim in oppression based on the respondents' failure to act in response to the evidence contained in the April Letter.

[28] The petition puts into issue the directors' reaction to the letter, in as much as the petition states that the directors acted oppressively in response to the delivery of the evidence contained in the April Letter. While the petition does not expressly mention the April Letter, I find on the evidence before me that the reference in paragraphs 54-58 of the petition to the evidence brought to the board on April 28, 2025 is a reference to the April Letter.

[29] In order to explain the directors' actions in response to the April Letter, they submit they must be permitted to rely on the proposed settlement terms. In his affidavit, Mr. Narwani describes some of the terms of settlement proposed by Joseph McLean, and states:

17. As a result of the above, I was skeptical that the [April Letter] was an attempt to resolve any outstanding dispute with MCC in good faith. The matters raised in the [April Letter] did not appear to have anything to do with MCC or its business operations. I suspected that gaining control of the SRT was Joseph's motivating factor in sending the [April Letter] to MCC, in addition to engaging MCC in exacting retribution on Joel. In general discussions with other non-conflicted members of the MCC Board, including Taylor McLean and Darryl Eddy, they advised me they also felt that this was probably the motivating factor behind Joseph's actions.

[30] The respondents submit that the settlement terms themselves caused them to be suspicious of the petitioner's motivation in delivering the April Letter, and to be suspicious of the facts alleged in the April Letter.

[31] I find that the petition puts into issue both the April Letter and the directors' response to the letter. As such, the April Letter in its entirety is relevant to the petition.

[32] In considering whether the April Letter is necessary to the resolution of the petition, I rely on the discussion at paras. 27 – 38 of *Dos Santos*. *Dos Santos* addressed disclosure of a settlement agreement to ensure an injured party did not recover twice for the same damages, which is admittedly a difference issue than is before me. Nevertheless, the principle in *Dos Santos* that significant weight should be given to the just disposition of pending litigation when assessing if a settlement agreement (or offer, as in the case before me) should be exempted from privilege, remains applicable: *Dos Santos*, para 34, 37.

[33] Like the defendant in *Dos Santos*, the respondents here submit that the only way to establish if their actions were objectively reasonable in the context of the oppression allegations asserted by the petitioner, is to allow the production of the April Letter in its entirety in the context of this petition. I agree.

[34] I find that disclosure of the April Letter is relevant and necessary to the resolution of the dispute, and that necessity in disclosure in outweighs the public interest in encouraging settlement. I find that the April Letter is excepted from settlement privilege in the circumstances of this case.

Prejudice asserted by the petitioner

[35] The petitioner submitted that if the respondent Joel McLean was permitted to use the April Letter in this petition, he would be advantaged in the defamation action brought by Joseph McLean. I do not agree that is a relevant consideration. The orders sought before me relate to the petition only, and the issues raised in this petition. If Joel McLean wishes to address the April Letter in the context of other proceedings, that is for the parties to address in those other proceedings.

[36] This is not a case where the parties are unaware of the content of the April Letter. They all know the content of the letter and, to the extent that knowledge has any bearing on their approach in other litigation, the horse is already out of the barn. If a party wishes to obtain a formal order permitting the use of the April Letter in relation to another action, that will be determined in that other action, and no order made in this petition will have any bearing on the merits of such an application.

[37] As such, I find that there is no prejudice to Joseph McLean in relation to other actions, which arises from the declarations as to privilege made in this petition regarding the April Letter.

SRT Email

[38] Unlike the April Letter, I find the SRT Email is not necessary to the resolution of the petition, and the public interest in encouraging settlement outweighs the production of the SRT Email.

[39] The existence of the SRT Email is not referenced in the petition. In his affidavit, Joseph McLean puts into issue a proposal with respect to SRT made in 2022, but makes no reference to the proposal advanced in 2021 by way of the SRT Email. While the fact of ongoing issues regarding the structure of SRT, and Joseph McLean's rights and entitlements under the SRT, are relevant to the petition, and to the directors' response to the April Letter, I do not agree that the specific settlement proposal contained in the SRT Email is relevant or necessary to the resolution of the petition.

[40] I find that the SRT Email is not excepted from settlement privilege.

Has the petitioner waived settlement privilege?

[41] Settlement privilege can be waived by both parties waiving the privilege. It is not possible for one party to unilaterally waive settlement privilege. However, waiver of privilege may be either express or implied. Here, the respondents clearly have waived privilege. The issue is whether the petitioner also waived privilege over either the April Letter or the SRT Email.

April Letter

[42] I find that the petitioner has voluntarily taken a position in the litigation that is inconsistent with maintaining settlement privilege over the letter: *Fibreco Export Inc. v. AG Growth International Inc.*, 2023 BCSC 1719 at para. 38-39.

[43] The petitioner submitted that if I were to find that the April Letter has been put in issue in the petition, any waiver could only be with respect to the facts and evidence asserted in the letter. The petitioner submits the settlement terms must remain protected by settlement privilege. I disagree.

[44] To allow the petitioner to rely on the facts and evidence he presented in the April Letter, but to prevent the respondents from relying on the portion of the April Letter that they say had a role in determining their reaction to the *bona fides* of the evidence in the April Letter, would be unfair cherry picking. It would prevent the court from fully assessing the reasonableness of the actions taken, or not taken, by the respondents.

[45] In *Graham v. Canada (Minister of Justice)*, 2021 BCCA 118, the court of appeal reviewed the law of waiver of privilege in the context of solicitor-client privilege. The general statements of law have equal application to the case before me:

[48] Additionally, waiver may also be found to have occurred in limited circumstances where fairness and consistency require this result. Generally speaking, in cases where fairness has been invoked in support of a finding of waiver, there has been some manifestation by the privilege holder of a

voluntary intention to waive the privilege, at least to some extent. In these circumstances, achievement of the principles of fairness and consistency may lead to a finding that the privilege has been waived in its entirety. The issue was helpfully canvassed by Holmes A.C.J. in *United States v. Meng*, 2020 BCSC 1461:

[37] Implicit waiver may take place where a party does not expressly waive privilege, but takes a position in relation to privileged materials that is inconsistent with maintaining the privilege. This may be by, for example, selectively disclosing part of a privileged document or a category of privileged documents on a particular subject, but withholding the remainder of the document or other documents on that same subject. In these circumstances, to uphold the privilege over the remaining communications would be unfair, because the opposing party and the court would be deprived of access to the full narrative. In *Huang v. Silvercorp Metals Inc.*, 2017 BCSC 795 at para. 143, Madam Justice Warren explained:

The common thread in the cases where implied waiver is found is that the privilege holder has attempted to use and, at the same time, to shelter behind privileged documents. In such cases, fairness and consistency require production because the privilege holder uses the privilege as a sword to justify or explain a position or action while also using the privilege as a shield to prevent the other party from testing the justification or explanation.

[38] In a case of the selective disclosure of privileged documents, fairness and consistency require the disclosure of all documents on the same subject so to ensure that the partial disclosure does not give an unfair advantage or create a misleading picture: *McDermott v. McDermott*, 2013 BCSC 534 at paras. 113-117; *Huang* at para. 149.

[39] Waiver will cause loss of privilege only in relation to the particular subject matter over which privilege has been waived. This limit ensures that waiver extends only as far as is necessary to ensure fairness: *R. v. Sipes*, 2012 BCSC 635 at para. 22; *Biehl v. Strang*, 2011 BCSC 213 at para. 47.

[Emphasis added.]

[46] In the case before me, I find the petitioner is attempting to use the content and intention of the evidence set out in the April Letter to prove the respondents acted oppressively in response to receipt of such evidence, while at the same time sheltering behind the settlement terms contained in the April Letter which the respondents say had a direct impact on the response they had to the receipt of the April Letter. The petitioner is trying to use the privilege as a shield to prevent the respondents from testing the reasonableness of his assertion of oppression:

Graham, supra; Huang v. Silvercorp Metals Inc., 2017 BCSC 795 at para. 140; *Ross River Dena Council. V. Canada (Attorney General)*, 2016 YKSC 51 at para. 19-21.

[47] I find that the petitioner has waived settlement privilege over the April Letter.

SRT Email

[48] I find that the petitioner has not put the SRT Email into issue in either the petition or the affidavit of Joseph McLean. As such, and for the reasons expressed in relation to my finding that the SRT Email is not excepted from settlement privilege, I find that the petitioner has not waived settlement privilege over the SRT Email.

Should the petition be dismissed?

[49] Joel McLean submits that, if I found either document to be privileged, I should strike the petition as the underlying facts are incapable of being proven.

[50] In my view, this argument really only arises in relation to the April Letter, which is clearly foundational to the petition. The SRT Email is not in issue in the petition, and the assertion of privilege over the SRT Email does not undermine the petition such that it cannot continue.

[51] I dismiss the application to dismiss the petition.

Disposition

[52] The declarations sought at paragraphs 1 and 2 of the applications filed by MCC and Joel McLean are allowed.

[53] The declarations sought at paragraph 3 of the applications filed by MCC and Joel McLean are dismissed.

[54] The order sought at paragraph 4 of the application of Joel McLean is dismissed.

[55] The order of Justice Gaul made January 19, 2026, and extended on February 5, 2026, is released with the exception of the email dated September 16, 2021

contained in Exhibit B to the affidavit of Dru Narwani dated January 15, 2026, such email to remain sealed pending further order of the court.

Costs

[56] If the parties cannot agree on the appropriate order for costs, they may make submissions to me in writing, through the registry, with all submissions to be delivered no later than March 31, 2026.

“W.A. Baker J.”