

## **COURT OF KING'S BENCH OF MANITOBA**

### **B E T W E E N:**

ANDRE NORBERT GOBEIL, AND	)	
GISELE ANNE MARIE GOBEIL,	)	
	)	<u>Amelia Peterson</u>
applicants,	)	for the applicants
	)	
AARON GOLDMAN, AND INDIGIVISION INC.,	)	<u>Aaron Goldman</u>
	)	on his own behalf
respondents.	)	
	)	
	)	<u>Judgment Delivered:</u>
	)	February 3, 2025

### **TOEWS J.**

#### **INTRODUCTION**

[1] This is a notice of application under Part 3 of ***The Landlord and Tenant Act***, C.C.S.M. c. L70 (the "***Act***") requesting the court to determine, *inter alia*, whether the respondents:

- a) were tenants to the applicants for a term and period that has expired;
- b) hold possession of the leased property (the "Premises") located at and forming a part of the property commonly known as 28 Gobeil Road, Dufresne, Manitoba against the right of the applicants as landlords; and

c) having no right to continue in possession the Premises wrongfully refuse to go out of possession.

[2] The applicants request that an order for a writ of vacant possession be granted and place them in possession of the Premises.

[3] This application CI 24-01-48876 ("876") is one of three proceedings currently active between the parties and include a statement of claim in action CI 23-17-00050 ("050") brought by the applicants and a further statement of claim in CI 24-01-49871 ("871") brought by the respondents. All three are related to the dispute between the parties arising out of or in respect of the leasehold arrangements of the Premises. A trial date has been set for January 12-23, 2026, in 050, the main action.

[4] I am one of several judges of this court who has attempted to move the main action towards resolution. However, at a pre-trial conference on September 10, 2024, it became evident to me that despite the best efforts of the court, these proceedings had gone off the rails.

[5] At the pre-trial conference, the defendants in 050, and now the respondents in this application, advised that they wished to have a trial of an issue as to the validity of the lease between the parties in advance of the scheduled trial date set for 050 in January 2026. The plaintiffs in 050, and now the applicants in this application, were also in agreement with dealing with the validity of the lease, including the validity of the notice of the termination of the lease given to the defendants/respondents in advance of the scheduled trial date.

[6] Although the **Act** itself sets out a process at Part 3 in respect of proceedings against tenants who are allegedly overholding, Part 3 at s. 68 of the **Act** also provides:

68. Except as otherwise varied by this Part, The Court of King's Bench Act and the Court of King's Bench Rules apply to applications made and proceedings had under this Part.

[7] The King's Bench Rules provide:

**General principle**

**1.04(1)** These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

**Proportionality**

**1.04(1.1)** In applying these rules in a proceeding, the court is to make orders and give directions that are proportionate to the following:

- (a) the nature of the proceeding;
- (b) the amount that is probably at issue in the proceeding;
- (c) the complexity of the issues involved in the proceeding;
- (d) the likely expense of the proceeding to the parties.

[8] In order to put in place a procedure to make those determinations, I directed the plaintiffs in 050 to commence an application, or if possible, by way of motion, for vacant possession pursuant to the **Act**. The applicants proceeded by way of application and I set two days for the hearing of the application on January 8 and 9, 2025. In accordance with the principles of proportionality and with a view to determining this issue in a just, expeditious and least expensive manner as mandated by the Rules, I directed that this matter proceed on the basis of affidavit evidence rather than *viva voce* testimony. Furthermore, to avoid duplication and to minimize the expense of the proceedings without

compromising its just and expeditious determination, I allowed the parties to rely on other affidavits which they had previously filed in the related actions. I would note that none of the parties objected to proceeding in this fashion at that time.

[9] To ensure that issues raised, and allegations made in those affidavits were subject to cross-examination, I set a schedule allowing for the filing of new affidavits and the examination of the affiants in advance of the contested January hearing. I also advised the parties that if either party failed to adhere to this schedule, the hearing would nevertheless proceed on the basis of the material before the court that has been filed on a timely basis “unless the party failing to adhere to the schedule can demonstrate to the court why the material that was not filed in compliance with this schedule should nevertheless be considered by the court” and further that: “Late material will be considered by the court at its discretion.” (See Pre-trial Conference Memorandum (No. 2) in 050 held on September 10, 2024)

[10] As an aside, I would note that by letter dated September 20, 2024, counsel for the applicants proactively raised a possible contentious issue in respect of the manner in which I directed this matter proceed. In the same letter however, counsel also set out her position that the directions I made in respect of the hearing were authorized by virtue of King’s Bench Rule 50.05. It is instructive to reproduce this entire section as it sets out the broad scope of the powers of a pre-trial judge in respect proceeding the pre-trial conduct of a matter. This section provides:

## ROLE OF PRE-TRIAL JUDGE

### Role of pre-trial judge

**50.05(1)** The pre-trial judge is responsible for managing the pre-trial conduct of an action in a manner that will achieve the objectives set out in subrule 50.01(2).

### Pre-trial judge seized

**50.05(2)** Unless otherwise directed by the Chief Justice or his or her designate on the request of the pre-trial judge or a party to the action, the pre-trial judge must

- (a) preside at all subsequent pre-trial conferences; and
- (b) hear all motions arising in the action.

### Appeals from associate judge's order

**50.05(2.1)** If an appeal from an order of an associate judge has not been heard before the first pre-trial conference, that appeal must be heard by the pre-trial judge.

### Pre-trial powers

**50.05(3)** At a pre-trial conference, the pre-trial judge may, on motion by any party or on his or her own motion, without materials being filed, make any order or give any direction that he or she considers necessary or advisable to facilitate the just, most expeditious and least expensive determination or disposition of an action.

### Examples of pre-trial orders and directions

**50.05(4)** Without restricting the generality of subrule (3), the pre-trial judge may make an order or give a direction that

- (a) pleadings be amended or closed by a specified date;
- (b) motions be brought by a specified date;
- (c) any or all motions not proceed;
- (d) examinations for discovery and cross-examinations on affidavits be dispensed with or be limited in scope;
- (e) examinations for discovery and cross-examinations on affidavits be completed by a specified date;
- (f) establishes timelines for the completion of any step in the litigation process;
- (g) the parties exchange reports and resumes of any experts to be called at trial by a specified date;
- (h) limits the number of experts to be called at trial or the matters to be addressed at trial by experts;
- (i) simplifies the issues and eliminates frivolous claims or defences;
- (j) the parties make admissions respecting facts or documents;
- (k) directs a reference to be conducted on a specific issue;
- (l) the parties file an agreed statement of facts or an agreed book of documents;
- (m) makes provisional advance rulings on the admissibility of evidence;

- (n) evidence at trial, in whole or in part, be adduced by affidavit;
- (o) establishes reasonable limits on the time allowed to present evidence at trial;
- (p) requires a separate trial of a claim, counterclaim, crossclaim or particular issues;
- (q) establishes special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions or unusual proof problems; or
- (r) the parties prepare a trial brief and trial record, including specifying the contents of a trial brief or trial record and the timelines for filing these documents.

**Pre-trial judge powers respecting motions**

**50.05(5)** The pre-trial judge may do one or more of the following with respect to any motion that he or she hears in an action that is subject to pre-trial management:

- (a) make an order on the basis of oral submissions only;
- (b) order that oral submissions be recorded;
- (c) order that written materials be filed and served;
- (d) give directions respecting the preparation and filing of an order.

**Modification of scheduling order or direction**

**50.05(6)** An order or direction that established timelines respecting any step in the litigation process may be modified only if the pre-trial judge determines that it is appropriate to do so.

[11] I would also note that following the September 10, 2024, pre-trial conference, the respondents brought the case of *Kruciak v. Antoniuk*, 1946 CanLII 474 (MB CA) to my attention. That decision purports to restrict the use of affidavit evidence in Part 3 proceedings under the *Act*. However, that decision, which was rendered in 1946 by our Court of Appeal, understandably does not take into account the relatively recent changes made to the King’s Bench Rules and the incorporation of those changes by the *Act*. This includes in particular:

**50.05(3)** At a pre-trial conference, the pre-trial judge may, on motion by any party or on his or her own motion, without materials being filed, make any order or give any direction that he or she considers necessary or advisable to facilitate the just, most expeditious and least expensive determination or disposition of an action.

[12] In my opinion, given the agreement here by all parties to proceed by way of affidavit on September 10, 2024, as well as by virtue of the operation of the King's Bench Rules and the specific incorporation of these Rules by the **Act**, I am satisfied that any concerns in this respect raised after the September 10, 2024 pre-trial conference, but prior to and at the hearing of this matter on January 8 and 9, are not well founded.

**APPLICATION FOR ADJOURNMENT BY THE RESPONDENTS**

[13] By way of correspondence dated December 12, 2024, Mr. Goldman requested an adjournment of these proceedings. Since the matter had been scheduled for hearing since September 10, 2024, my assistant replied to Mr. Goldman's request on my behalf by way of email on December 13, 2024, stating:

In respect of a motion for adjournment, given the date of the hearing, any such request must be made to the Chief Justice. Any medical evidence which Mr. Goldman would wish to rely on in making that request, should accompany the request and it should be in writing.

It is up to Mr. Goldman to satisfy the Chief Justice of the King's Bench that an adjournment is warranted and the terms of any adjournment if granted.

Counsel for the opposite party may wish to also make a written representation to the Chief Justice in respect of this request.

[14] In response to this correspondence, by way of email dated December 17, 2024, Mr. Goldman raised various concerns about the matter proceeding, including an apparent failure by the opposite party to comply with the timelines set for filing documentation. This included a concern about the opposite party providing him with their documentation by way of email rather than by way of personal service.

[15] Counsel for the applicants responded in detail to Mr. Goldman's correspondence to the Chief Justice with a copy to Mr. Goldman. This included addressing the issue of

adherence to the schedule that I set for the filing of documents on September 10, 2024, and also the issue of service by way of the email.

[16] By letter dated December 30, 2024, the Chief Justice replied to Mr. Goldman's request. After referring to the correspondence he relied on in making his decision, the Chief Justice set out the reasons why he was not prepared to adjourn the matter. This correspondence and the decision not to allow the adjournment were provided to both parties by way of the email addresses which the parties have been using to correspond with each other and the court.

### **THE EVIDENCE**

[17] As stipulated in the pre-trial conference memorandum of September 10, 2024, and as agreed to by the parties at the pre-trial, this application is focused rather narrowly on the validity of the lease, including the validity of the notice of termination of the lease given to the respondents, namely Mr. Goldman and the corporate defendant Indigivision Inc.

[18] The lease documents are found at exhibits A and B of the affidavit of the applicant, Andre Gobeil, affirmed September 30, 2024. Exhibit A (hereinafter referred to as "the first lease agreement"), is dated September 2, 2021, and was executed by the applicant Andre Gobeil and the respondent Mr. Goldman on September 3, 2021. Exhibit B (hereinafter referred to as "the second lease agreement"), is dated September 2, 2022, and was executed on September 3, 2022, by the same individuals who executed the first lease agreement. Legal counsel does not appear to have been formally involved in the drafting and execution of either lease agreement on behalf of either party.

[19] In most respects both lease agreements are similar. Both documents are entitled "Commercial Lease Agreement". Clause 1 of both agreements describes the property leased as a "40 x 40 insulated steel building" and specifies that the property is " ... for use as commercial premises only". While other provisions of these two documents will be referred to during these reasons, it is helpful to reproduce some of the provisions now.

[20] Clause 7 of the first lease agreement provides:

The term of the Lease commences at 12:00 noon on September 1st [sic], 2021 and ends at 12 noon on September 1st [sic], 2022. At the tenant's discretion the lease is renewable for 1 year increments for up to 3 years, after which the renewals will require 3% per annum increases on rent.

[21] Clause 20 of the first lease agreement provides:

Upon giving written notice no later than 60 days before the expiration of the term of this Lease, the Tenant may renew this lease for an additional term. All terms of the renewed lease will be the same except for this renewal clause and the amount of the rent. If the Parties cannot agree as to the amount of the Rent, the amount of the Rent will be determined by mediation.

[22] Clause 53 of the first lease agreement provides:

This Lease constitutes the entire agreement between the parties.

[23] Finally, Clause 56 of the first lease agreement provides:

Please note that the Tenant requests\* the option to purchase the whole property at 28 Gobeil Road, Dufresne, Manitoba at fair market value, (current appraised value \$499,000.00) including the house should this property come up for sale.

\*The typewritten word "requests" has been crossed out in ink and the word "has" is substituted in ink for the word "requests" and the change is initialed by Mr. Goldman in ink.

[24] The second lease agreement provides as follows at Clause 7:

The term of the Lease commences at 12:00 noon on September 1st [sic], 2022 and ends at 12:00 noon on September 1st [sic], 2023\*. At the tenant's discretion the lease is renewable for 1 year increments for up to 3 years, after which the renewals will require 3% per annum increases on rent.

\*The typewritten date "2023" has been crossed out in ink and the date "2024" is substituted in ink for the date "2023" and the change is initialled by both parties.

[25] Clauses 20, 53 and 56 of the second lease agreement are identical to the same numbered clauses in the first lease agreement with the exception that the typewritten word "requests" remains in place in Clause 56.

[26] It is noted that neither of the parties have cross-examined on the affidavits relied on in this matter. The failure of the applicants to cross-examine on the most recent affidavits filed by the respondents is understandable as the respondents filed numerous affidavits a few days before and on the day of the commencement of this hearing. The late filing of those affidavits effectively precluded any opportunity for cross-examination.

These affidavits include:

- the affidavit of Mr. Goldman affirmed January 3, 2025, and filed with the court January 6, 2025;
- the affidavit of Mr. Goldman affirmed January 6, 2025, and filed with the court on the same date;
- the affidavit in 2 volumes of Mr. Goldman affirmed January 7, 2025, and filed with the court on January 8, 2025; and
- the affidavit of Mr. Goldman affirmed and filed with the court on January 8, 2025.

[27] I would also note that these materials are in addition to previous affidavits filed by the parties in 050, the main action, and in respect of which I stated in the September 10, 2024, pre-trial conference that the parties could rely upon in the course of this hearing. While I have agreed to accept the documents that were filed outside the timelines of the schedule that I established at the pre-trial, the propriety of including some of the material in these affidavits as well their relevance and weight remains to be determined, especially in view of the scope of this hearing agreed to by the parties on September 10, 2024.

### **THE POSITION OF THE APPLICANTS**

#### **a) The evidentiary and procedural issues in this application**

[28] The applicants submit that since the respondents had not filed any new affidavits as of December 2, 2024 (the date of the filing of the applicants' brief) and have not advised the applicants what evidence from the main action they are relying on, the respondents should not be permitted to rely on any evidence in the hearing of this application.

[29] The applicants take issue with the respondents' position that there has been improper service of their material on the respondents. Furthermore, they take the position that if there has been service in an unauthorized or irregular manner, Rule 16.08(1) of the King's Bench Rules authorizes the court to make an order validating service if certain requirements have been met.

[30] In his submissions, Mr. Goldman has taken issue with the service of the applicants' material by way of email. The applicants point out that Mr. Goldman regularly uses email as a means of communication and that on October 14, 2024, when requesting an

extension of the filing of the respondents' material, Mr. Goldman did not indicate that he had not received the application or the supporting materials. The applicants stated that it was not until they refused to agree to an adjournment of the hearing of this application that Mr. Goldman claimed not to have been served with the application and the supporting materials.

[31] Accordingly, the applicants take the position that the service of the application and the supporting materials filed by the applicants should be validated.

**b) Is the Lease commercial or residential?**

[32] The applicants take issue with the respondents' argument that the lease is a residential tenancy. They take the position that both the first and second lease agreements are commercial leases and therefore the *Act* applies.

[33] They argued that the predominant purpose of the use of the leased space is the primary consideration in a determination of whether a lease is residential or commercial. They stated that in this case the predominant use of the Premises by the respondents is commercial in nature and therefore the *Act* governs the first and second lease agreements.

**c) Is there an option to purchase in the lease agreements?**

[34] The applicants submit that Clause 56 in both the first and second lease agreements are properly characterized as containing a right of first refusal and not an option to purchase. The applicants argue that an "option to purchase" must allow the non-owner buyer to buy the property at a fixed price within a certain time and is an irrevocable offer to sell.

[35] The applicants argue that Clause 56 of both the first and the second lease agreements contain a right of first refusal and only provides a buyer with the exclusive right to purchase the premises once the landlord decides to put the leased property up for sale. The applicants state that in this case the respondents do not have the right to elect to purchase the Premises at any time, but allows the respondents to make an offer to purchase the Premises at fair market value should the Premises come up for sale.

[36] The applicants argue that the respondents were provided with a right of first refusal and refused or neglected to make use of it. Accordingly, the respondents no longer have a right of first refusal.

**d) Are there valid oral agreements or implied terms in addition to the written lease agreements?**

[37] The applicants take the position that there are no collateral or oral agreements or implied terms in addition to the written lease provisions. They argue that collateral or oral or implied terms cannot be applied here as there is no ambiguity in the language of the lease and there is an "entire agreement" clause found at Cause 53 of both lease agreements.

**e) Are the applicants entitled to an order of possession?**

[38] The applicants submitted they are entitled to an order for vacant possession of the Premises as they have met the preconditions set out at s. 67 of the *Act* entitling them to the order. They stated they have made two demands in writing for the respondents to vacate the Premises based on one or more of the following grounds:

**(i) A failure by the respondents to remedy breaches of the lease provisions**

- The applicants submit that in accordance with s. 18(2) of the *Act*, they provided the respondents with sufficient notice of breaches of the lease in November 2023 and that despite being given an opportunity to remedy them, the respondents failed or refused to do so. Accordingly, the applicants submit that they are entitled to terminate the lease.

**(ii) The respondents failed to renew the lease pursuant to the terms of the lease or otherwise**

- The applicants argued that an option to renew a lease must be clear, explicit and unequivocal. While the applicants acknowledge that the failure of a tenant to explicitly exercise their option to renew the lease may be nevertheless result in a valid exercise of the option to renew, this exception is only applicable where a tenant has an option to renew and there is no specific term governing the time and method of exercising it.

[39] The applicants submitted that in this case the respondents did not exercise their right to renew the lease in a manner that was clear, explicit and unequivocal. Furthermore, the applicants submitted that the exception to the necessity to renew the lease in a manner that is clear, explicit and unequivocal is not applicable here as the lease agreements specify a deadline and a method for the respondents to provide their notice of termination. The applicants stated that the only attempts by the respondents to renew

the lease were accompanied by counter-offers and because the applicants did not accept the new terms, there was no renewal of the lease.

**f) Should the respondents be required to pay the landlord's costs of this application?**

[40] The applicants submitted that the respondents should be required to pay the applicants costs of this application on a solicitor and client basis. The applicants argued that the respondents have continually attempted to frustrate and delay these proceedings and have engaged in inappropriate conduct and have made spurious allegations.

**THE POSITION OF THE RESPONDENTS**

[41] While the respondents have raised numerous arguments challenging the application for vacant possession, in my opinion, a review of the materials and submissions made by the parties in this proceeding leads me to the conclusion that the issues identified by the applicants in their brief for the most part properly encapsulate the matters that I must consider in resolving this application. In my opinion, many of the respondents' submissions go somewhat far afield and beyond the matters to be determined in order to resolve this application.

[42] As an aside, I would note that the oral submissions of the respondents were somewhat difficult to follow as the respondents failed to file an application brief as directed and therefore that created difficulty on my part to properly summarize Mr. Goldman's submissions. To remedy the difficulties arising out of the failure of the respondents to file an application brief prior to the hearing, on January 9, 2025, I allowed Mr. Goldman to file a further written submission on behalf of the respondents. After

some discussion at the hearing, I directed that 10 days would be provided to Mr. Goldman to provide that written submission if he chose to do so.

[43] On January 20, 2025, Mr. Goldman forwarded an email to my assistant requesting a further extension for the filing of the respondents' written submissions to January 24, 2025. In addition, he made a request in the same email to cross-examine on the affidavits filed by the applicants. After reviewing the respondents' request, my assistant replied to Mr. Goldman's email on my behalf. That email, also dated January 20, 2025, stated:

Please be advised that Justice Toews has received Mr. Goldman's request for a further adjournment to prepare his written submissions and also an opportunity to conduct cross-examinations on the affidavits filed in this matter. Justice Toews has carefully reviewed your requests and is not prepared to grant those requests.

Mr. Goldman was given an opportunity to make a written submission when it became apparent to Justice Toews that he would be unable to complete his oral submissions by the end of the time slotted on January 9, 2025. Initially Mr. Goldman was provided one week to provide those written submissions. Following further comments by Mr. Goldman, and a request for 10 days to prepare and submit his written submissions, Justice Toews allowed an extension to 10 days from the initial one week to provide his written submissions by email. Those 10 days expired on January 19, or Sunday midnight. Mr. Goldman agreed to that deadline.

The purpose of the 10 day period for providing the written submissions was to have Mr. Goldman provide in writing what he was unable to complete orally on January 9th. The reasons for the extension were certainly not to provide an opportunity to obtain further evidence by way of cross-examination.

Accordingly Justice Toews advises that unless the written submissions are completed and emailed to this email address by midnight tonight he will proceed to prepare and deliver his written reasons without having received the benefit of those submissions.

[44] At 11:47 p.m., January 20, 2025, Mr. Goldman forwarded a written brief of some 90 typewritten pages to the attention of counsel opposite and my assistant. This lengthy written submission has assisted me to more fully understand the respondents' position.

[45] There are two additional issues that I intend to specifically address in my reasons which were not set out in the applicants' brief. The first is Mr. Goldman's allegation that my handling of this matter generally and his request for an adjournment specifically demonstrates a reasonable apprehension of bias on my part. That issue is set out in Mr. Goldman's affidavit affirmed on January 7, 2025, specifically at paragraphs 64 to 112, as well as additional paragraphs in that affidavit. It is also set out in his written brief of January 20, 2025.

[46] I dismissed this argument at the oral hearing of this matter when it was brought to my attention by Mr. Goldman, after concluding that I can properly deal with the respondents' case on its factual and legal merits. Following receipt of his written brief of January 20, 2025, I have again reviewed his written submissions in that respect. I have not changed my mind.

[47] The governing legal principles and applicable test to be applied in determining a judge's recusal on the basis of bias or a reasonable apprehension of bias were recently considered by this court in *Johnson v. Miazga*, 2022 MBQB 80, [2022] M.J. No. 424 (QL). The governing legal principles and applicable test to be applied in determining a judge's recusal were also summarized by Joyal J. (as he then was), in *Kalo v. Manitoba (Human Rights Commission)* 2008 MBQB 92 (CanLII). It is the legal principles, and the test set out in those cases which I have considered in denying the respondents' motion for recusal.

[48] The second issue involves the allegation that the applicants, Mrs. Gobeil in particular, had assumed a "duty of utmost good faith" and "duty of care" and that

Mrs. Gobeil failed to carry out those duties in carrying out the provisions of the lease agreements in her dealings with Mr. Goldman. The allegations of breach of the duty of utmost good faith and the duty of care by Mrs. Gobeil are referred to in Mr. Goldman's affidavit affirmed on January 7, 2025, as well as in the respondents' oral arguments at the hearing and in the written brief of January 20, 2025. The allegations of the breach of the duty of utmost good faith and negligence in carrying out the duty of care owed to him by Mrs. Gobeil are intermingled with the allegations made by Mr. Goldman against a member of the legal profession, accusing him of assisting Mrs. Gobeil in these breaches by using "willfully fabricated evidence", "fraud" and "knowingly and negligently" inducing a breach of a settlement in three other recent actions which Mr. Goldman is involved in. (See, *inter alia*, paras. 133, 138, 145, 152, 172, 191-194, 198 and 212, of Mr. Goldman's affidavit affirmed on January 7, 2025).

**a) The evidentiary and procedural issues in this application**

[49] It is the respondents' position that the applicants have failed to properly serve the application and supporting materials on the respondents. The respondents argue that the service of those materials require personal service rather than service by email.

[50] Furthermore, the respondents state that while the applicants may well have provided email copies of the material to the respondent Mr. Goldman's personal email address, he would not have recognized the sender of the documents as they were sent by a "stranger" and not from the personal email account of counsel for the applicants. On that basis, Mr. Goldman submitted that those materials were probably discarded as

junk mail without being read or even opened since he is the recipient of many junk emails daily.

**b) Is the Lease commercial or residential?**

[51] The respondents take the position that notwithstanding that both lease agreements are headed "Commercial lease Agreement" and that Clause 1 provides that the Premises are "for use as commercial premises only", these leases are residential in nature. The respondents rely on parol evidence as set out in the January 20, 2025 written brief as well as the following clauses in the first and second lease agreements:

2. Subject to the provisions of this Lease, apart from the Tenant, no other persons will use the Property without the prior written permission of the Landlord.
3. No guests of the Tenants may occupy the Property for longer than one week without the prior written consent of the Landlord, other than the Freedom Studios Inc. staff.
4. No animals are allowed to be kept in or about the Property with the exception of Sasha, Aaron Goldman's husky.

[52] The import of this argument is that categorizing the first and second lease agreements between the parties as a residential tenancy effectively displaces the notice provisions set out in the lease agreements and brings into play the termination of lease provisions statutorily imposed by residential tenancy legislation in Manitoba.

**c) Is there an option to purchase in the lease agreements?**

[53] The respondents' position is that the lease agreements contain an option to purchase which is set out in Clause 56 of both the first and second lease agreements. For example, this issue is referred to in Mr. Goldman's affidavit affirmed on January 7, 2025, at paragraphs 346 – 353 where Mr. Goldman purports to recount how the clause was drafted by Mrs. Gobeil and intermingles that issue with an alleged failure by Mrs. Gobeil to adhere to the duty of care she owed him. It is instructive to reproduce

paragraph 350 of that affidavit to provide a flavour of Mr. Goldman's allegations in this respect. It provides:

350. When Gisele [Gobeil] prepared the lease renewal document in September of 2022 after having forgotten to remind me about the renewal per the duty of care she had undertaken in September of 2021 to give me such reminders about all aspects of the lease due to my head injury, she provided the document and said it was the same as the original document evidencing our lease, with the only change being that it was now indicating that the lease period was from 2022 to 2023 instead of 2021 to 2022.

[54] And further at paragraph 354 of the same affidavit which reads in part:

354. There was complete clarity in what [Mrs. Gobeil] represented that document to be before it was signed, which was that it:

. . .

- Was a document evidencing our continuing and triggered option to purchase ...

[55] In the submissions made to me in the course of the September 10, 2024 pre-trial conference and as noted in that pre-trial memorandum, the respondents take the position that the applicable lease agreement provides the respondents with an option to purchase not only the Premises but all the property at 28 Gobeil Road in perpetuity. The respondents maintained that position at the hearing on January 8 and 9, 2025.

**d) Are there valid oral agreements or implied terms in addition to the written lease agreements?**

[56] As set out in Mr. Goldman's affidavit affirmed on January 7, 2025, and referred to above, the respondents in their oral and written submissions submit it was the intention of the parties to create an option to purchase the property at 28 Gobeil Road by virtue of Clause 56 found in both the first and the second lease agreements. The respondents rely extensively on parol evidence to make that assertion and urge the court to interpret the

lease agreements in this fashion. The respondents also argue in favour of the admissibility of parol evidence in order to demonstrate a failure of Mrs. Gobeil to adhere to a duty of utmost good faith and negligence in respect of a duty of care that she owed to them and consequently to have the agreements and in particular Clause 56 of the lease agreements interpreted in a manner that would create a legally enforceable option to purchase.

**e) Are the applicants entitled to an order of possession?**

[57] Based on the arguments advanced by the respondents, the respondents stated that the applicants are not entitled to an order of possession. The respondents argue that there has been a failure by the applicants to comply with s. 67 of the *Act*, and in particular the applicants have failed to comply with taking the steps required by s. 67(2) of the *Act* before an order of possession may be obtained.

**ANALYSIS AND DECISION**

[58] Before I address the specific arguments raised by the parties in advancing their respective positions, I think it is important to make various comments in respect of the weight and relevance of the evidence provided by the parties, and particularly the evidence of Mr. Goldman.

[59] It is unfortunate that much of the affidavit evidence filed by the respondents was filed almost at the last minute before the hearing and well outside of the schedule that I had set for the hearing of this application. It effectively prevented the applicants from cross-examining on any relevant assertions of facts by the affiants had the applicants considered it necessary to do so. It also prevented the applicants from even responding in their written brief or in their oral arguments to the allegations made by the respondents

in their affidavits. In addition, I was unable to review a significant portion of the material contained in those affidavits before January 8, 2025, since the material was provided to me on the morning of the first day of the hearing, that is on January 8, 2025.

[60] I stated in the pre-trial memorandum of September 10, 2024, that I would consider material filed after the timelines set in scheduling the filing of materials for this application. However, in light of the significant delay in the filing of the respondents' material and the inability of the applicants to either cross-examine or to specifically address the matters raised in that material in their application brief, I do not accept the respondents' submission to me that I am required to accept the truth of any uncontradicted affidavit evidence found in the respondents' material. In my opinion, the conduct of the respondents and specifically Mr. Goldman would constitute sharp, if not unethical practice if carried out by legal counsel. This type of conduct is not to be tolerated, nor should adverse inferences be made against the applicants on account of the respondents' last-minute filing of evidence.

[61] I also wish to address the position that Mr. Goldman advanced before me that he has been taken advantage of by the respondents as a consequence of a head injury which he stated he has suffered, and which impacts adversely on his ability to conduct these proceedings.

[62] The evidence is clear that Mr. Goldman is not the unsophisticated litigant he claimed to be during this hearing. During the course of his submissions, he advised me that he has been involved in well over 30 different legal proceedings in Manitoba. Indeed, in one of the prior cases in which he was involved, it appears that he acted on behalf of

a corporate respondent, again a tenant, without formal representation by legal counsel at the trial level (although the corporate respondent in that case, **441 Main Inc. v. Silver Pawn Pictures Inc.**, 2013 MBCA 70 (CanLII), was represented by legal counsel at the appellate level).

[63] In reviewing the facts of the **441 Main Inc.** case, it is noteworthy that the issue in dispute there was a written lease dated December 14, 2010, for a lease term expiring on December 31, 2011. The dispute in that case involved the consideration of an option to renew and although not on all fours with the facts in this case, it is instructive to note from the decision of the court there:

[8] During the tenancy, the tenant continually asserted that it had a right to purchase the building. Correspondence between Rossong and Goldman demonstrates that the landlord did not accept the tenant's position that the landlord provided the tenant with an option to purchase, or right of first refusal to purchase, the building at the time that the lease was negotiated.

[64] A complete reading of that decision makes it clear that Mr. Goldman has previously been involved in legal disputes like those in the case at bar and has raised many arguments here similar to those he raised in the **441 Main Inc.** case. The present proceeding in many respects echoes the arguments and tactics used by Mr. Goldman in the **441 Main Inc.** case. That case demonstrates his longstanding familiarity with the legal concepts and arguments he is raising in these proceedings. This familiarity is abundantly clear from the submissions made and the language used in the respondents' January 20, 2025 written brief. The facts in this case as well as his submissions to the court demonstrate he is an intelligent, but crafty individual who is very familiar with the

legal system and attempts to shrewdly use it to his advantage by engaging in sharp practice.

[65] Mr. Goldman's correspondence, actions and arguments on behalf of the corporate tenant in **441 Main Inc.** are characterized by the court at para. 49 as an "... attempt to "engage in a dance" with the landlord with respect to the purchase of the building ...". His correspondence, actions and arguments as set out in the affidavit evidence, including his own material, in the case at bar constitute a similar approach in dealing with the applicants. He would have the court here believe by way of his written and oral submissions that he relied almost entirely upon the expertise and skill of Mrs. Gobeil, an elderly woman in a wheelchair who formerly worked as an administrative assistant before she retired, in drafting the first and second lease agreements. He maintains that it was based on the assurances she made as to the legal effect of their provisions, and specifically the purported option to purchase at Clause 56 of both lease agreements, that he executed these agreements.

[66] In my opinion, the position of the respondents in respect of the relationship between Mr. Goldman and Mrs. Gobeil as giving rise to a breach of the duty of utmost good faith and negligence in carrying out a duty of care exceeds all bounds of credibility. Despite the respondents' assertion that the lease agreements were substantively drafted and administered by Mrs. Gobeil alone, a review of both lease agreements demonstrates the existence of numerous clauses that could only have been drafted with the substantive input if not direction of Mr. Goldman. I do not accept the respondents' assertion as to his reliance on Mrs. Gobeil's legal knowledge as being accurate.

[67] This conclusion is strongly supported by Mr. Goldman's demonstrated familiarity with legal concepts, the drafting of agreements, and the writing of correspondence in the context of this legal proceeding as well as the dispute which Mr. Goldman was involved in in **441 Main Inc.** It is reinforced by a reading of the respondents' January 20, 2025 written brief. My assessment of the evidence here is that Mr. Goldman knew exactly what he was doing and that he was engaging in another "dance", this time with the applicants here in respect of the Premises specifically and the property at 28 Gobeil Road generally. In assessing Mr. Goldman's evidence in respect of his contractual relationship with Mrs. Gobeil and his submission that the evidence gave rise to a duty of utmost good faith which she breached, and negligence on her part in carrying out a duty of care allegedly owed to him by her, I find it is not credible and his evidence and submissions in that respect should not be given any weight.

[68] It is also important to note that despite Mr. Goldman appearing on his own at this hearing, he continues to be assisted by an "advisory counsel", Mr. Joseph Kary, a lawyer who I was advised is licensed and called to the bar in Ontario. By way of an email to my assistant dated January 7, 2025, Mr. Goldman advised that Mr. Kary has been his "advisory counsel" since 2008 when Mr. Goldman apparently suffered his head injury. Mr. Goldman advises that Mr. Kary has been instrumental in assisting him in this litigation.

[69] At a prior conference with Mr. Goldman, when Mr. Kary was also in attendance by way of teleconference, I inquired of Mr. Kary whether he had been retained by Mr. Goldman. He advised that he did not have a formal retainer, but that he was being consulted by Mr. Goldman and provided legal advice to him in matters that included this

case. At that time, I advised him that unless he was being formally retained by Mr. Goldman, he would not be allowed to make submissions or other representations on behalf of Mr. Goldman or the corporate respondent during these proceedings. However, pursuant to Mr. Goldman's email to my assistant of January 7, 2025, arrangements were made for Mr. Kary to attend by way of teleconference. Mr. Kary in fact attended a significant portion of this hearing by way of teleconference, but as he had not been retained by either of the respondents, he did not participate directly in these proceedings on behalf of the respondents, nor did he attempt to do so.

[70] In respect of the evidentiary and procedural issues raised by both parties in this application, I am not prepared to reject the affidavits of the respondents on account of their last-minute filing as requested by the applicants. However, as stated in the preceding paragraphs, I am also not prepared to accept the assertions made in those affidavits simply because there was no cross-examination by the applicants on those affidavits.

[71] In respect of Mr. Goldman's complaints concerning the service of documents by the applicants on the respondents, I am satisfied that upon a review of the evidence and by virtue of allowing Mr. Goldman to file materials at the eleventh hour, and to provide a written submission to the court on January 20, 2025, there is no prejudice to Mr. Goldman's ability to respond to the application brought by the applicants.

[72] Even if I were to accept Mr. Goldman's submission that he was not aware of the filing and service of the applicant's material on October 1 and 2, 2024, in my opinion he knew that materials had been filed by October 14, 2024, since he asked the applicants

for an extension to file his material on that date. Furthermore, even if I accept the factual underpinnings of his submission regarding the filing of the documents, I do not accept his submission that he was under no obligation to ask the applicants about the status of the filing of the material as soon as became aware there may have been a failure to file them in accordance with the schedule.

[73] While civil proceedings may not trigger the much more onerous constitutional obligations on all parties to move matters along in a timely manner in the context of criminal proceedings as set out in *R. v. Jordan*, 2016 SCC 27 (CanLII), [2016] 1 S.C.R. 631, nevertheless all parties, including the court, are also under an obligation to take reasonable steps to ensure that civil proceedings do not languish. In the circumstances of this case, Mr. Goldman was not entitled to wait silently without drawing any alleged failure to the attention of the opposite parties, or indeed the court itself, in a timely fashion.

[74] Furthermore, as pointed out by the applicants, it is telling that Mr. Goldman did not raise any concerns about a delay in the filing of the applicants' materials or that they were served by email until after the applicants would not agree to his request for an extension of the filing of his materials or his subsequent request for the adjournment of the proceedings. The concerns he is now expressing about the date and manner of the service of the applicants' material would have been apparent to him at the latest sometime before October 14, 2024, if not by October 1 or 2, and yet he chose not to raise those concerns until sometime in November 2024.

[75] The Chief Justice has also reviewed Mr. Goldman's arguments for an adjournment based on the apparent failures to adhere to the schedule, the reliance on affidavit evidence, and the medical documentation. It was his conclusion that he was not prepared to grant the adjournment. This decision is found in the letter of the Chief Justice dated December 30, 2024, in response to Mr. Goldman's letter to the Chief Justice of December 23, 2024. The decision of the Chief Justice not to grant the adjournment was reiterated in an email to Mr. Goldman dated January 7, 2025, in response to another letter to the Chief Justice from Mr. Goldman received by the court on January 3, 2025.

[76] As set out in an email from the assistant to the Chief Justice dated January 7, 2025, the correspondence from Mr. Goldman:

Chief Justice Joyal is not persuaded that his initial determination to not adjourn the trial should change. He read carefully your initial letters and submissions just as he read carefully the submissions made by opposing counsel.

Nothing in your most recent letter has caused Chief Justice Joyal to change his determination – the reasons for which are outlined in his letter of December 30, 2024. That letter constitutes his reason for the determination to deny your adjournment request.

Accordingly, you will be expected to attend the commencement of the trial as scheduled on January 8, 2025.

As Chief Justice Joyal indicated in his last letter, any further submissions, concerns, issues, or questions should be addressed to the trial judge, Mr. Justice Toews.

[77] Nothing in the materials or submissions of the respondents during the trial suggest that the respondents were placed at an unfair disadvantage by virtue of the Chief Justice's decision not to adjourn this matter. On the contrary, it is clear that it is the applicants who were placed at a potentially significant disadvantage by virtue of the last-minute filing of affidavits by the respondents.

[78] In dealing specifically with the allegations made by the respondents that there has been improper service of the applicants' filings in this matter, I am satisfied that the respondents have not been prejudiced or otherwise placed at a disadvantage by virtue of the manner and date the applicants' materials were brought to the attention of the respondents. If there has been service in an unauthorized or irregular service of the applicants' material, I rely on the general powers of a pre-trial judge previously set out in these reasons to make an order validating service, and to the extent it is necessary to do so, I specifically rely on Rule 16.08(1) of the King's Bench Rules to make an order validating service.

[79] In respect of the submission by the respondents that the two lease agreements here are residential rather than commercial in nature, I agree with the applicants' arguments and evidence that these agreements are commercial agreements and that it is the **Act** which governs commercial leases rather than the provincial residential tenancy legislation which applies. As stated by the applicants in their brief, the predominant purpose of the use of the leased space is the primary consideration in a determination of whether a lease is residential or commercial. The decision of the court in **Tukahafez Investments Inc. v. Experteers Corp.**, 2021 ONSC 4460 (QL), summarizes the applicable test as follows:

**9** The jurisprudence is clear that when assessing whether a lease is commercial or residential in nature, a primary consideration is the predominant purpose of the occupation and/or use of the leased premises. As held by Justice Roberts in *Onthegoshipping Inc. and Leung v. G. Khan Medicine Professional Corporation* 2020 ONSC 2789 (CanLII):

"Substance, not form, governs when considering the true nature of a tenancy. Both the Court of Appeal and the Divisional Court have held that s. 202 of the RTA applies when determining whether or not a unit is

residential: *Matthews*, at para.24, quoted with approval in *Firm Capital*, at para.34. Section 202(1) provides:

In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

- (a) may disregard the outward form of a transaction or the separate corporate existence of participants; and
- (b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

...

All the circumstances must be considered to determine the predominant purpose or use of the tenancy. This Court in *Fiset*, provided examples of circumstances which may be relevant. The circumstances could include:

- \* The historical use of the premises.
- \* The intention of the parties.
- \* Whether the landlord knew the tenant was living at the premises.
- \* zoning for the premises.
- \* The form and wording of the lease.
- \* Whether the landlord charged GST in relation to the rent.
- \* Whether the premises are a single unit or whether they were divided into distinct residential and commercial areas, such that the residential area is "attached" to the commercial area.
- \* Whether or not amenities one would expect in a residential tenancy, such as a stove and a refrigerator, are in the premises.
- \* The relative share of the premises devoted to commercial use as opposed to residential use.
- \* How business was conducted at the premises. Was there a "walk-in" trade? Did employees or workers attend the premises in relation to the conduct of the business?
- \* Whether there are any signs indicating a commercial use.
- \* The terms of the lease, such as its length, and any provisions for rent increase."

[80] On an examination of the evidence in the context of the foregoing criteria, including the language used in the first and second lease agreements, there is no doubt that the parties entered into a commercial agreement and not a residential tenancy. It is the provisions of the *Act* that are applicable here.

[81] In respect of whether Clause 56 in either of the lease agreements constitutes an "option to purchase" I am satisfied that it does not. More properly, this clause can be

characterized as a “right of first refusal”. In my view an “option to purchase” must allow a party to buy a specific property at a fixed price within a certain time and constitutes an irrevocable offer to sell by the property owner. (See ***Crow v. Masur***, 2005 BCSC 719 and ***Mason v. Vulcan Machinery & Equipment Ltd.*** (1977), 4 B.C.L.R 185 (BCSC)) In this case Clause 56 does not allow the respondents to elect to purchase the property at 28 Gobeil Road at any time in perpetuity as argued by the respondents, but instead allows them to make an offer to purchase the property at fair market value, should it come up for sale. This constitutes a right of first refusal rather than an option to purchase.

[82] In the case at bar, the respondents failed to renew the applicable lease agreement by failing to give the proper 60-day notice. Furthermore, unless there is a clear expression of intention either in the words of the lease agreement or in the acts or conduct of the parties which would show that the right of first refusal was to be extended, the right of first refusal expires. (See ***North Eastern Enterprises Ltd. v. Chevron Canada Ltd.***, 2016 BCSC 1954) The expiry of the right of the lease agreement here resulted in the expiry of the right of first refusal as there is no renewal of the applicable lease agreement by virtue of words, conduct or acts.

[83] As stated above, Clause 56 does not legally constitute an “option to purchase”. Furthermore, for the reasons set out earlier in this decision, I do not consider as credible the respondents’ position that Mr. Goldman relied on the legal advice of the applicant, Mrs. Gobeil to advise him that Clause 56 of the lease agreement constituted a valid “option to purchase” and on that basis, he executed the agreement.

[84] In interpreting the provisions of the first and second lease agreements, I am satisfied that there is no basis to admit parol evidence nor are there any collateral oral agreements or implied terms in addition to the written terms set out in the first and second lease agreements. The courts will on occasion imply a term in an otherwise written contract or perhaps even alter a written term in an agreement, but only if certain conditions are present. In *Brennan v. Brennan Educational Supply Ltd.*, 2006 SKCA 9 (CanLII) the court held:

[41] It is true that the courts will on occasion imply a term in a contract, in addition to the terms to which the parties have expressly agreed and set to writing, but only if certain conditions are fulfilled: *B.P Refinery (Western) Pty. Ltd. v. Shire Holdings* (1978) 16 A.L.R. 363 (Aust. P.C.):

...for a term to be implied, the following conditions (which may overlap) must be satisfied: (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract so that no term will be implied if the contract is effective without it; (3) it must be so obvious that 'it goes without saying'; (4) it must be capable of clear expression; and (5) it must not contradict any express term of the contract.

[85] In my opinion, these conditions have not been fulfilled in this instance. I am certainly not prepared to interpret Clause 56 in the lease agreements to constitute an "option to purchase" as requested by the respondents when the clause falls substantially short of legally constituting an "option to purchase" and at the same time meets the legal requirements of a "right of first refusal". Without in any way accepting that the other conditions set out in *Brennan* have been met by the respondents, to rework Clause 56 in that fashion is not so obvious that "it goes without saying".

[86] In my opinion, the existence of the "entire agreement" clause found at Clause 53 together with the lack of ambiguity in the agreements precludes the admission of parol

evidence in this case or to reinterpret Clause 56 using parol evidence as an “option to purchase” when in law it is a “right of first refusal”.

[87] As stated in **441 Main Inc.**, an option to renew a lease must be clear, explicit and unequivocal. As the court held at para. 40:

[40] An option to renew a lease must be exercised in a manner that is “clear, explicit, unambiguous and unequivocal.” See *Doria* in which Low J. wrote that “[i]t is not sufficient that the parties engage in a dance with each other; it is necessary that the optionee declare his intentions” (at para. 8). An option to renew is, in law, a unilateral offer giving a tenant the right to renew on the terms specifically set out in the option. Anything more renders the notice a counter offer, as opposed to an acceptance, and does not bind the landlord unless the counter offer is accepted. See *Zacharopoulos v. Sykiotis Enterprises Ltd.* (1992), 1992 CanLII 8531 (MB CA), 76 Man.R. (2d) 272 (C.A.), in which the court held that an option to renew clause is an offer to renew by the landlord on certain conditions and is “in the nature of a unilateral contract which is subject to the rule of strict compliance” (at para. 15). Also see *120 Adelaide v. Oxford*, [1991] O.J. No. 1507 (QL) (Ont. C.J. (Gen. Div.)) aff’d., [1993] O.J. No. 2801 (QL) (C.A.).

[88] The **441 Main Inc.** decision arose out of a similar application under Part 3 of the **Act** where the Court of Appeal held that when a landlord does not sanction a tenant’s continued possession of the leased premises after the expiry of the lease and when the tenant chooses to counter offer instead of exercising an option to renew, the tenant has not exercised their right to renew the lease. (See **441 Main Inc.**, at paras. 48-49)

[89] In this case there was no clear, explicit and unequivocal renewal of the lease agreement. The applicable lease agreement specifies a deadline and a method for the respondents to provide their notice of renewal. I agree with the applicants that the respondents’ only attempts to renew the lease agreement were accompanied by counter-offers with very similar language to that in **411 Main Inc.** and as the applicants did not accept the proposed new terms, the lease agreement was not renewed.

[90] Parenthetically, as the applicants note in their brief, Mr. Goldman himself was the tenant's representative in **441 Main Inc.** and employed a similar strategy in dealing with the applicants here.

[91] Whether or not the applicable lease agreement was terminated by the respondents' failure to remedy various breaches of the agreement as alleged by the applicants, I am satisfied that the applicable lease agreement was not renewed by the respondents pursuant to the terms of the agreement, or at all, and as a result, the lease agreement expired on September 1, 2024. As a result, the respondents are no longer entitled to the possession of the Premises and the applicants are entitled to an order of vacant possession.

[92] In respect of the issue of costs, while I have grave concerns about the conduct of the respondents in this matter, I am not satisfied that costs on a solicitor and client basis should be awarded against the respondents as requested by the applicants. In this regard, I am prepared to apply costs on the basis agreed to by the parties in the first and second lease agreements, where Clause 27 provides:

Attorney Fees

27. In the event that any action is filed in relation to this Lease, the unsuccessful Party in the action will pay to the successful Party, in addition to all the sums that either Party may be called on to pay, a reasonable sum for the successful Party's attorney fees.

[93] On that basis, I am ordering elevated costs on a Tariff 4 level which I consider to be reasonable in the circumstances of this case.

**CONCLUSION**

[94] On the basis of the forgoing reasons, I have concluded that the respondents, Aaron Goldman and Indigivision Inc.:

- a) were tenants to the applicants for a term or period that has expired;
- b) hold or purport to hold possession of the Premises, being part of the property commonly known as 28 Gobeil Road, Dufresne, Manitoba against the right of the applicant landlords Andre Gobeil and Gisele Gobeil to the possession of the aforementioned property;
- c) having no right to continue in possession of any or part of the property known as 28 Gobeil Road, Dufresne, Manitoba wrongfully continue in possession of the aforementioned property.

[95] On the basis of the forgoing conclusions, and based on the further written submissions of both parties concerning an appropriate date for vacant possession, I order that:

- a) the respondents vacate all and any part of the property known as 28 Gobeil Road, Dufresne, Manitoba, including the Premises, within thirty (30) days of the date of the issuance of the writ of possession;
- b) a writ of possession is directed to the sheriff commanding them that upon the expiration of thirty (30) days of the date of the issuance of the writ of possession to place the applicant landlords in sole possession of the aforementioned property and the Premises; and

c) the respondents are jointly and severally liable to pay the applicants the costs of this application at a Tariff 4 level.

[96] The form of order to be prepared by the applicants pursuant to these reasons is to be delivered and forwarded directly to me without requiring the approval as to form or content by the respondents. However, the applicants are to send a copy of the proposed order to the email address regularly used by the respondents in their communications with the court and the applicants and set out in the pre-trial memorandum of September 10, 2024. The respondents may provide the court (by way of email to my administrative assistant at the same email address used to deliver the respondents' January 20, 2025 written brief and the respondents' subsequent written submissions regarding, *inter alia*, the date for vacant possession) with any concerns regarding the proposed order within five days of the date of the email from the applicants sending them a copy of the form of order.

[97] Considering the orders made in this application, I would direct the parties to schedule a further pre-trial in the main action (CI 23-17-00050) to determine what steps should be taken in respect of that action or any other related action between the respondents and one or more of the applicants, including CI 24-01-49871.

\_\_\_\_\_ J.