SUPREME COURT OF NOVA SCOTIA
Citation: ***Annapolis Group Inc. v. Halifax (Regional Municipality)*****,**
2022 NSSC 87

Date: 20220324
Docket: Hfx No. 460474
Registry: Halifax

Between:

Annapolis Group Inc.

Plaintiff/Respondent

v.

Halifax Regional Municipality

Defendant/Applicant

D E C I S I O N

Judge:	The Honourable Justice James L. Chipman
Heard:	March 24, 2022
Written Decision:	March 25, 2022
Counsel:	Peter H. Griffin, for the Plaintiff/Respondent Michelle C. Awad, Q.C., for the Defendant/Applicant

Orally By the Court:

BACKGROUND

[1] By Notice of Motion filed March 10, 2022, the Defendant, Halifax Regional Municipality (HRM) moves to adjourn the 35-day trial scheduled to begin September 6, 2022. The Plaintiff, Annapolis Group Inc. (Annapolis) opposes the motion. In addition to their briefs and authorities, the parties rely on solicitors' affidavits. HRM filed Michael Richards' affidavits sworn March 9 and 21, 2022 and Annapolis filed Jonathan N. McDaniel's affidavit sworn March 16, 2022.

[2] I became case management judge (CMJ) on March 26, 2019. I permitted (encouraged) an early Date Assignment Conference (DAC) on January 16, 2020. At the time, discovery of four of the eventual 21 witnesses had occurred. The trial dates were set along with various milestone dates including an April 22, 2022 Finish Date.

[3] Approximately two and a half years later owing to among other things, delays with Annapolis obtaining their expert reports, counsel negotiated an alternate schedule (with the Court's concurrence) which included the requirement for Annapolis to file its expert reports by January 15, 2022.

[4] There have been a number of case management conferences (CMCs) in the three years since I became CMJ. There have also been a number of motions. The last motion resulted in my reported decision – *Annapolis Group Inc. v. Halifax (Regional Municipality)*, 2021 NSSC 344 – wherein I traced relevant background, which bears repeating in the context of the current motion:

> [2] I am the case management judge and, accordingly, am well acquainted with this longstanding litigation. Trial dates are currently set before Justice Bodurtha commencing in September, 2022. These dates were scheduled during a January 16, 2020 Date Assignment Conference (DAC). In the time since, the Nova Scotia Court of Appeal allowed an appeal (*Halifax (Regional Municipality) v. Annapolis Group Inc.*, 2021 NSCA 3) from my decision (*Annapolis Group Inc. v. Halifax (Regional Municipality), 2019 NSSC 341*) and granted HRM summary judgment with respect to Annapolis' *de facto* expropriation claim. In so doing, Farrar, J.A. determined Annapolis' claim for *de facto* expropriation had no reasonable chance of success.
>
> [3] On June 24, 2021 the Supreme Court of Canada granted Annapolis leave to appeal (SCC No. 39594) and the matter is scheduled to be heard on February 16, 2022. Depending on how long it takes for the Supreme Court of Canada to render its decision, it is possible that the trial dates will have to be adjourned. Accordingly, I advised counsel during a recent case management meeting (CMM) that I have

> placed on hold the next available long civil trial dates beginning in April, 2024. As well, I advised counsel that I have a special request in for trial dates in the spring, summer or fall of 2023.

[5] The Supreme Court of Canada heard Annapolis' appeal on February 16th. The Court reserved decision.

[6] Within the last six months, five CMCs have occurred. Consistent with all of the CMCs, minutes were generated following these sessions. Not surprisingly, there are passages within the minutes which shed light on the current dispute:

<u>September 13, 2021 CMC Minutes</u>

> 1. The Status of the Litigation
>
> a. The Appeal to the Supreme Court of Canada;
>
> The parties updated Justice Chipman on the filing deadlines for Annapolis' appeal to the Supreme Court of Canada. Justice Chipman asked if the parties had considered seeking an expedited hearing date at the Supreme Court of Canada, to accommodate the trial date. Annapolis advised that although no hearing date has been set, it does not expect the pending appeal to influence the scope of discoveries and therefore the discoveries can continue as planned. However, if the scheduled hearing date is late, Annapolis will reach out to the Supreme Court to determine if an earlier date can be set.
>
> Justice Chipman raised the possibility that the Supreme Court of Canada's decision may not be released for months. His Lordship suggested that the parties begin considering a 'Plan B' option in terms of trial dates and the effect of changed trial dates on the agreed-upon schedule. Justice Chipman indicated that if the parties need to turn to him on the trial dates, given the appeal, he would case manage. Justice Chipman also offered, if the date of the SCC hearing turns out to be a problem, to canvass new trial dates. HRM suggested that we look at backup trial dates now, and Justice Chipman indicated he was prepared to wait and see.
>
> …
>
> d. Adjustment of Exhibit Dates (new)
>
> As a result of the schedule-related discussions, it was agreed that the date for the Trial Readiness Conference should be changed from June 17, 2022 to July 29, 2022. The parties agreed to discuss whether the Finish Date requires adjustment as well and to advise the Court of any agreement or issues prior to the next Case Management Meeting on October 8, 2021.
>
> 2. The Proposed (and Agreed Upon by the Parties) Timetable for the Next Steps in the Action

The parties confirmed their agreement to the schedule attached to the September 10, 2021 letter from Ms. Awad to Justice Chipman (also attached to these Minutes.

3. A Request for Your Lordship's Assistance in Resolving a Schedule for the Delivery of Expert Reports

The parties advised that they were generally in agreement with the following timetable for the delivery of expert reports:

- Plaintiff's Expert Reports due by January 15, 2022;
- Defendant's Expert Reports due by June 15, 2022; and
- Plaintiff's Rebuttal Reports (if any) due by July 15, 2022.

Annapolis advised that it may require flexibility with the July 15, 2022 date for the Plaintiff's Rebuttal Reports in order to address any new areas or issues raised in the Defendant's Reports. In addition, HRM advised that the above noted schedule is based on Annapolis' agreement to advise HRM of the identity of its experts, their organizations and the topics they will address as soon as possible and, in any event, by September 30, 2021 at the latest. HRM confirmed that it will provide the same information in relation to its experts by March 31, 2022. HRM indicated that Annapolis had provided some additional conditions concerning this expert identification agreement just prior to the Case Management Conference and HRM had not yet had a chance to consider them. The parties agreed to further discuss both Annapolis' request for flexibility in relation to the July 15, 2022 date and the additional conditions proposed by Annapolis and advise the Court as to any issues or their agreement.

October 8, 2021 CMC Minutes

1. Experts

HRM noted that the Parties had agreed to exchange the names of their experts, their organizations, and the subject of their reports on a without prejudice basis, but wanted to ensure that, if one of the parties felt that this agreement had not been complied with, they could raise it.

…

HRM noted that it did not agree with Annapolis' request for flexibility on the proposed July 15, 2022 deadline for reply expert reports. It was determined that this issue could be discussed further at a later date.

2. Finish Date

The Parties agreed to address the issue of whether the Finish Date should be moved at the next Case Management Conference, after the SCC hearing date is known.

…

6. Trial Dates

Justice Chipman advised the parties that he had inquired of the Chief Justice about the availability of summer trial dates in 2023, but had not yet heard back. His Lordship also noted available trial dates in April 2024.

Justice Chipman advised the parties that if the trial dates commencing in September, 2022 are maintained, Justice Bodurtha would sit as Trial Judge.

Justice Chipman and the Parties agreed to address the issue of the trial dates, and whether other dates need to be moved (e.g. Finish Date, expert report deadlines, Trial Readiness Conference), at the next Case Management Conference.

December 16, 2021 CMC Minutes

1. Update on Supreme Court of Canada Hearing

The parties confirmed that February 16, 2022 has been set for the hearing of Annapolis' appeal to the Supreme Court of Canada. Justice Chipman noted that eight parties had been granted intervener status and both parties indicated they were preparing their Reply Facta which were due December 22, 2021.

Justice Chipman noted that the Supreme Court of Canada could rule on the appeal on the day of the Hearing with reasons to follow, or it could reserve and take months to issue a decision. Justice Chipman advised that the Court was raising this timing issue because it could impact the timing of the trial which remains scheduled to begin in early September, 2022.

The parties agreed that it was not possible to predict the timing of the Supreme Court's decision.

Justice Chipman confirmed earlier e-mail advice from his Judicial Assistant that while the September, 2022 trial dates will be maintained, dates beginning in April, 2024 are also being held for this matter and a special request has been made for dates in the spring, summer or fall of 2023 if they become available.

…

4. Experts

Annapolis advised that they had learned that morning that one of their experts, Lee Weatherby, had to be away at the end of the year due to a family issue and his report delivery date would have to be extended slightly beyond the agreed-upon deadline of January 15, 2022. Mr. Griffin indicated that he would deal directly with Ms. Awad on that issue. Mr. Griffin reminded Ms. Awad that Mr. Weatherby's report is an update of a report delivered in 2014, to which HRM provided a responding report at that time.

HRM advised that due to the proximity of the trial dates, it was not prepared to agree to Annapolis' earlier request that it be provided with flexibility in relation to the July 15, 2022 deadline for delivery of its Reply Reports. HRM advised further that with the anticipated volume of expert reports, it already had significant

concerns regarding the September, 2022 trial dates, even if all Reply Reports were delivered by July 15, 2022. Annapolis clarified that it was not asking for an extension of the July 15, 2022 deadline for Reply Reports at that time.

Justice Chipman noted that all but one of Annapolis' expert reports would be delivered by January 15, 2022, HRM would have until June 15, 2022 to deal with them and July 15, 2022 was agreed to for the Reply Reports. Justice Chipman suggested that some of the issues regarding the timing of expert reports will be resolved if the parties receive new trial dates. The Court indicated that it was leaving the case on track for the September, 2022 trial dates. The parties' notes and recollections differ as to the Court's plan if the Supreme Court reserves with the Plaintiff's understanding being that re-evaluation will occur at the next Case Management Meeting and the defendant's understanding being that the matter would be set over to April, 2024 in those circumstances (or set over to sometime in 2023 if dates open up).

…

6. Finish Date

To provide additional time for the parties to react to the Reply Reports, Annapolis raised the possibility of moving the Finish Date to July 29, 2022. HRM opposed moving the Finish Date for any matters other than its expert reports and Annapolis' Reply expert reports.

Justice Chipman confirmed that this could be addressed at the next Case Management Conference which should be scheduled shortly after the Supreme Court of Canada appeal.

February 18, 2022 CMC Minutes

1. Update on Supreme Court of Canada Hearing

Justice Chipman noted that His Lordship watched the Supreme Court of Canada hearing by video. The parties noted that the Court had reserved, and that they did not have further insight as to when a decision would be rendered.

2. Trial Dates

Justice Chipman noted that the Court was holding the September, 2022 and April, 2024 trial dates, but could not hold both indefinitely. He noted that 2025 dates are being assigned for new trials.

Mr. Griffin noted that while the parties could not predict the timing of the Supreme Court of Canada's decision, whether the test changed or not the facts of this case at trial will be the same. He noted that as such, Annapolis would prefer to maintain the September, 2022 trial dates. Mr. Griffin noted the implications on his career timing of a 2024 trial date.

> Justice Chipman noted the possibility that the Supreme Court of Canada's decision may provide direction that could influence the content of expert reports, and the parties would not want to present redacted reports.
>
> Mr. Griffin noted that this may be the case, and that if a decision were to be rendered in the summer there may need to be adjustments to the reports and other things.
>
> Justice Chipman told the parties that the Court would hold both sets of trial dates for the time being until the next Case Management Conference. His Lordship noted that if there is no agreement as to the trial date, a motion may be necessary. His Lordship noted that if the trial date were to be moved to April, 2024, the hope would be that the parties could come to an agreement on the new pre-trial deadlines.
>
> Ms. Awad noted that HRM is still waiting on three experts' reports from Annapolis, and raised a concern that HRM's June 15 date for responding reports would not move. Ms. Awad said that the time for deciding the trial date would need to be soon.
>
> Justice Chipman noted that there would be no decision on the trial date at this Case Management Conference. His Lordship suggested that if Annapolis agreed to move the trial date to 2024 it would move, and if not, a motion would be set.
>
> Mr. Griffin noted that Annapolis did not favour a motion regarding the trial date, but preferred to schedule another Case Management Conference in a week or so to report on the parties' positions.

[7] During the next and most recent CMC held on February 24, 2022, Annapolis counsel advised of their wish to maintain the current trial dates, thus necessitating the within motion.

POSITIONS OF THE PARTIES

HRM

[8] HRM moves for adjournment of the trial to eliminate the prejudice they say results from the uncertainties associated with the looming decision with the Supreme Court of Canada. Additionally, HRM asserts that Annapolis' ongoing failure to comply with the Rules as well as the parties' agreement concerning its expert reports results in significant prejudice necessitating the adjournment.

Annapolis

[9] Annapolis states that HRM has not proved prejudice to it. In the result, Annapolis argues that the currently scheduled trial ought to proceed. They point out

that the litigation has progressed, notwithstanding the uncertainty surrounding the *de facto* expropriation issue now on reserve with the Supreme Court of Canada. For example, Annapolis points out that there have been voluminous discoveries of 18 witnesses in the period since HRM first appealed. Accordingly, Annapolis says that it is disingenuous to say that the law is too uncertain to prepare for trial.

LAW

[10] I am guided by CPR's 2.03(1)(a) and 4.20(1) on this motion. Rule 2.03(1)(a) reads:

> 2.03 (1) A judge has the discretions, which are limited by these Rules only as provided in Rules 2.03(2) and (3), to do any of the following:
>
> (a) give directions for the conduct of a proceeding before the trial or hearing;

[11] Rule 4.20 permits motions to be made to adjourn trial dates both before or after the finish date:

> 4.20 (1) A judge may adjourn trial dates before the finish date, if all parties agree the party seeking the adjournment would suffer a greater prejudice in proceeding with the trial than other parties would suffer by losing the trial dates.
>
> (2) A motion for an adjournment after the finish date must be made to the trial judge, unless a judge has not been assigned or the trial judge is not available.
>
> (3) A judge hearing a motion for an adjournment after the finish date must consider each of the following:
>
> (a) the prejudice to the party seeking the adjournment, if the party is required to proceed to trial;
>
> (b) the prejudice to other parties, if they lose the trial dates;
>
> (c) the public interest in making the best use of court facilities, judges' time, and the time of court staff.
>
> (4) The judge who hears a motion for an adjournment after the finish date must presume both of the following, unless the contrary is established:
>
> (a) losing trial dates adversely affects a party's tangible and intangible interests;
>
> (b) a late adjournment adversely affects the efficient scheduling of facilities and time.

[12] The parties are *ad idem* that there are two words missing from the above Rule 4.20(1). In this regard, HRM states as follows in their brief:

> 40. It seems there is a typographical error or words missing in Rule 4.20(1). Read strictly, it would mean that pre-Finish Date adjournments are only permitted if the parties agree, whereas a Judge has the discretion to order a post-Finish Date adjournment. Such an interpretation is plainly wrong. It seems clear that the drafters of the Rules intended for Rule 4.20(1) to state: "a judge may adjourn trial dates before the finish date if all parties agree, or if the party seeking the adjournment would suffer a greater prejudice than other parties would suffer by losing trial dates". This language is consistent with the remainder of Rule 4.20, with principles concerning judicial discretion, and with the common law governing adjournments (which recognizes that the primary consideration in deciding whether to grant an adjournment should be the weighing of prejudice as between the parties). The Defendant proceeds on the basis that judicial discretion has not been constrained and the Rule reflects the common law.

[13] The parties may be correct in their collective position that the Rule should be read to include the suggested missing words. In any event, I make the obvious point that this motion comes approximately one month before the Finish Date for this action. As I will explain, the test I must apply has been discussed both by this Court and our Court of Appeal.

[14] Once again, this Motion is made in advance of the Finish Date so Rule 4.20(1) applies. It can be inferred from the Rule that a pre-Finish Date adjournment Motion allows sufficient time for effective re-deployment of the Court resources referenced in Rule 4.20(3) and (4).

[15] Perhaps not surprisingly, most of the adjournment cases deal with instances where the motion is made after the Finish Date has passed. Nevertheless, in *Limbo Cove Resources Inc. v. Fraser*, 2020 NSSC 134, a plaintiff brought a motion to set aside a defendant's objection to proceeding with the scheduled trial dates. Justice McDougall considered the defendant's objection to be analogous to a request for an adjournment (para. 21).

[16] Justice McDougall did not suggest that a pre-Finish Date adjournment could only be granted with the agreement of all parties. Instead, he weighed the possible prejudice to the defendant caused by proceeding with earlier trial dates (impact on his ability to prepare for lobster fishing season), against the possible prejudice that an adjournment would cause to the plaintiff (delay). Justice McDougall denied the plaintiff's motion to set aside the defendant's objection to the trial dates, the effect

of which was to grant the defendant's request for an adjournment (see paras. 28 - 32).

[17] The general test to be applied on a motion to adjourn was discussed in *Caterpillar Inc. v. Secunda Marine Services Ltd.*, 2010 NSCA 105. In *Caterpillar*, a fire occurred aboard a ship in 2001, and the parties filed their pleadings in 2004. The plaintiff brought a motion to adjourn the trial after the Finish Date, based on a scheduling conflict for its counsel. The Chambers Judge denied the motion (*Secunda Marine Services Ltd. v. Caterpillar Inc.*, 2010 NSSC 392). The Court of Appeal reversed that decision and adjourned the trial.

[18] Justice Fichaud stated that the Chambers Judge had correctly identified the three prejudices which must be considered for a post-Finish Date motion under Rule 4.20(3), namely:

1. prejudice to the moving party, if the party is required to proceed to trial;
2. prejudice to the other parties, if they lose the trial dates; and,
3. prejudice to the public.

[19] I am mindful that I must consider the first two prejudices as I decide HRM's motion to adjourn. The reason I have not factored in prejudice to the public is because we are not past the Finish Date of April 22, 2022. In any event, the parties are essentially in agreement concerning the applicable law governing this motion.

WEIGHING THE PREJUDICES

[20] With respect to the factual backdrop, without question there are uncertainties associated with the outstanding appeal on reserve with the Supreme Court of Canada. Annapolis has marshalled various arguments as to why the outstanding appeal poses no prejudice. For example, in their brief they submit:

> 66. The Court in *Tinkham* at para. 18 stated that an outstanding appeal will only weigh in favour of a trial adjournment where the appeal "may affect the course of the trial, or have some considerable influence upon it". The Supreme Court of Canada's decision in this case will have no meaningful impact on preparation for, or indeed evidence called at, the trial.
>
> 67. HRM's submissions significantly overstates any possible uncertainty or impact arising from the Supreme Court of Canada's decision if the current trial dates are maintained. Whether the Supreme Court dismisses the appeal, grants the appeal with no changes to the CPR test, or grants the appeal with changes to the

> CPR test, the parties' preparations and the evidence called at trail will not be materially different.
>
> 68. If the appeal is dismissed, the misfeasance in public office and unjust enrichment claims will proceed to trial. As discussed below, those causes of action relate to the same facts and will require the same evidence as the *de facto* expropriation claim. The evidence may be referred to differently in argument, but the presentation of the case will not be materially impact.

[21] HRM also refers to *Tinkham Real Estate Ltd. v. Future Group Realty Ltd.*, (2007) NSSC 167 and Justice Wright's comments at para. 18. Although decided under the "old" Rules, I am of the view that Justice Wright's comments have application here. Accordingly, I reproduce the entirety of the para.:

> [18] The foregoing cases illustrate the principle, which I think can be properly extended to this case being so closely related to the Hood action, that <u>once the applicant establishes that a question left for determination by the Court of Appeal may affect the course of the trial, or have some considerable influence upon it, as a general rule the trial ought to be adjourned pending the outcome of the appeal unless the respondent demonstrates very special reasons otherwise.</u>
>
> [my emphasis added]

[22] The above is obviously adaptable in the context of a question left for determination by the Supreme Court of Canada.

[23] HRM vigorously responds to the arguments fashioned by Annapolis. For example, at para. 13 of their rebuttal brief, HRM states:

> 13. The Plaintiff's submissions concerning this adjournment are an attempt to minimize the impact of the Supreme Court of Canada Appeal. That is not surprising; it also wishes to minimize the impact of the dismissal of its *de facto* expropriation claim on its efforts to secure sizeable damages from the Defendant. However, for the reasons already canvassed in the Defendant's March 9, 2022 Brief and those set out herein, these impacts are very real. The outcome of the Supreme Court appeal will definitely affect the course of the trial. The Plaintiff's claims will either include *de facto* expropriation or not, if de facto expropriation is included, the law will either be the CPR test or something else, and the evidentiary rulings which the Court will be required to make before and during the trial will be based on the claims and the law following the Supreme Court's decision. The parties' preparations cannot meaningfully contemplate all of the contingencies. Despite the Plaintiff's suggestions to the contrary, the matters being considered by the Supreme Court are very central to the future course of the proceeding.

[24] The "CPR test" referenced by both sides pertains to the current *de facto* expropriation test as enunciated in *Canadian Pacific Railway Co. v. Vancouver (City)*, 2006 SCC 5. Having perused the facta and watched the February 16, 2022 appeal, I will go so far as to say that I do not think anyone can prognosticate as to what the Supreme Court of Canada will say about the CPR test or any other aspect of the appeal. I would add that none of us can say when they will render their decision.

[25] In my view, there is no question that the outstanding, material issues on the Appeal give rise to a presumption that maintaining the existing trial dates will cause prejudice. Given that I have concluded that the outcome and timing of the Appeal may influence the trial, the burden shifts to Annapolis to establish "very special reasons" why the trial must proceed.

[26] I have carefully reviewed Mr. McDaniel's affidavit as well as the arguments and authorities submitted by Annapolis. With respect to the former, Annapolis has not provided a sufficient evidentiary basis for the prejudice it alleges it will suffer as a result of the proposed 18 month delay of the trial, other than time passing. As for the latter, I find the authorities submitted in cases where adjournments have been denied to be distinguishable from what we have here. Indeed, almost all dealt with adjournment requests on the eve of trial.

[27] In my view there is a distinct possibility that the Supreme Court of Canada decision – if it is rendered in time – could significantly affect trial preparation and the trial itself. Once again, nobody can prognosticate with precision; there are just too many variables.

[28] On the basis of the outstanding Supreme Court of Canada decision alone I would grant the requested adjournment. The rationale for granting the adjournment is heightened when I consider the expert reports timing issue. In this regard, the CMC excerpts (extensively quoted herein at para. 6) detail much of the history. The correspondence attached to the affidavits amplify the dispute. On the evidence and from the CMCs it is clear that Annapolis has missed deadlines in relation to the agreed schedule for its expert reports. The alternate schedule required Annapolis to file its expert reports by January 15, 2022. All but one of the reports have been delivered late and two have yet to be provided to HRM. We are now more than two months past the agreed-upon deadline and half of HRM's agreed-upon response period has been eroded. In my view HRM has been prejudiced by Annapolis' delay. This is particularly so given that the trial is currently scheduled to start in six months.

[29] On balance, Annapolis has not provided any "very special reasons" which would cause this Court to proceed with the trial given the impact which the pending decision with the Supreme Court of Canada will have on the course of the trial. Further, Annapolis has not provided a sufficient evidentiary basis for the prejudice it alleges it will suffer as a result of the proposed 18-month delay of the trial (other than time passing) or the very special reasons why the trial must proceed as scheduled.

[30] With respect to Annapolis' argument that HRM's ongoing actions on their land should favour keeping the current trial dates, I have been presented with conflicting interpretations of the public record. Rather than weighing in on this I would simply observe that presumably, if Annapolis believes that its interests are being significantly affected by HRM's park planning, it can seek injunctive or other immediate relief. Otherwise, any relevant evidence concerning these ongoing efforts can be adduced at trial. Whether the trial begins in September of this year or April of 2024 is not critical.

[31] In all of the circumstances and having regard to Rules 2.03(1)(a) and 4.20(1) and the authorities, I am of the view that the existing trial dates must be vacated. Indeed, if I did not grant the motion we would undoubtedly move past the Finish Date (less than a month from now) and perhaps still be left without a Supreme Court of Canada decision. Not only would this affect the parties preparations, the trial judge (who takes over managing the case from the CMJ post the Finish Date) would enter the situation without the legal framework for one of Annapolis' key alleged claims being finally pronounced upon. In this scenario Justice Bodurtha (the judge assigned) would be no doubt faced with a subsequent adjournment motion. Indeed, it is possible that the parties would (reluctantly in the case of Annapolis) agree to adjourn the trial. If this were to happen we would be much closer to the September 6th trial start date and it would be that much more difficult for the Chief Justice and Court Scheduler to effectively utilize the (in excess of 30 days) court time allotted to this matter for other pressing civil and criminal cases.

[32] I am prepared to sign HRM's Order as presented and award them $2,500.00 towards costs and disbursements on a forthwith basis.

[33] As for the request to quickly convene a CMC, I will soon do so. In the meantime, I strongly urge the parties to come to terms with recommending a new Finish Date (in light of the trial now scheduled to being April 15, 2024) and corresponding experts reports schedule. Having said this, I recognize that it may be

difficult to contemplate the latter with complete certainty until the Supreme Court of Canada releases its decision.

Chipman, J.