

Federal Court



Cour fédérale

Date: 20160902

**Dockets: T-1947-13
T-1997-14
T-942-15**

Citation: 2016 FC 994

Vancouver, British Columbia, September 2, 2016

PRESENT: Prothonotary Roger R. Lafrenière

Docket: T-1947-13

BETWEEN:

**THE ENOCH CREE NATION
AS REPRESENTED BY
CHIEF RON VINCENT MORIN AND
LYLE MORIN, NOLA WANUCH,
JOHN THOMAS JR., BILLY MORIN,
LORNA MORIN, LORNE MORIN,
KELLY MORIN, WAYNE MORIN AND
SHANE MORIN, BAND COUNCILLORS
ACTING ON THEIR OWN BEHALF AND ON
BEHALF OF ALL OTHER MEMBERS OF
THE ENOCH CREE NATION**

Plaintiffs

and

**HER MAJESTY THE QUEEN IN RIGHT
OF CANADA AS REPRESENTED BY
THE ATTORNEY GENERAL OF CANADA,
THE MINISTER OF ABORIGINAL AFFAIRS
AND NORTHERN DEVELOPMENT,
THE MINISTER OF TRANSPORT,
THE MINISTER OF ENVIRONMENT,
PARKLAND AIRPORT DEVELOPMENT
CORPORATION, CPL6 HOLDINGS LTD.,
ROBERT GILGEN, SILKE GILGEN, AARON
SOOS, AND THE ROYAL BANK OF CANADA**

Defendants

Docket: T-1997-14

AND BETWEEN:

**THE ENOCH CREE NATION
AS REPRESENTED BY
CHIEF RON VINCENT MORIN AND
LYLE MORIN, NOLA WANUCH,
JOHN THOMAS JR., BILLY MORIN,
LORNA MORIN, LORNE MORIN,
KELLY MORIN, WAYNE MORIN AND
SHANE MORIN, BAND COUNCILLORS
ACTING ON THEIR OWN BEHALF AND ON
BEHALF OF ALL OTHER MEMBERS OF
THE ENOCH CREE NATION**

Applicants

And

**HER MAJESTY THE QUEEN
IN RIGHT OF CANADA
AS REPRESENTED BY
THE MINISTER OF TRANSPORT,
PARKLAND AIRPORT DEVELOPMENT
CORPORATION AND CPL6 HOLDINGS LTD.**

Respondents

Docket: T-942-15

AND BETWEEN:

ENOCH CREE NATION

Applicant

and

**HER MAJESTY THE QUEEN
IN RIGHT OF CANADA,
AS REPRESENTED BY
THE MINISTER OF TRANSPORT
AND PARKLAND AIRPORT
DEVELOPMENT CORPORATION**

Respondents

REASONS FOR ORDER

[1] This motion is brought by Parkland Airport Development Corporation (Parkland), CPL6 Holdings Ltd. (CPL6), Robert Gilgen, Silke Gilgen and Aaron Soos, the Defendants in Court File No. T-1947-13; by Parkland and CPL6, the Respondents in T-1997-14; and by Parkland, the Respondent in T-942-15, who are together jointly referred to in these reasons as the “Moving Parties”. They seek an order that Parlee McLaws LLP (Parlee), including Mr. Edward H. Molstad Q.C., be disqualified by reason of a conflict of interest from acting for Enoch Cree Nation (Enoch), the principal Plaintiff or Applicant in the three proceedings before this Court.

[2] The conflicting interest is said to arise from Parlee’s representation of Parkland and CPL6 in litigation before the Court of Queen’s Bench of Alberta (ACQB) from 2013 to 2015. The primary ground advanced by the Moving Parties is that Parlee’s representation of Enoch is a breach of the duty of loyalty to Parkland and CPL6, who are Parlee’s former clients, and is harmful to the reputation of the administration of justice. The secondary ground advanced is that Parlee should be removed to avoid the risk of improper use of confidential information provided by Parkland and CPL6 to Parlee during the solicitor-client relationship and after Parlee assured the Moving Parties that Enoch could not retain Parlee in its dispute with Parkland and CPL6 due to obvious conflict.

[3] The motion is opposed by Enoch, Chief Ronald Morin and the Band Council, who are named as the Plaintiffs in T-1947-13 and the Applicants in T-1997-14, and by Enoch, the Applicant in T-942-15.

I. Introduction

[4] The Moving Parties brought the present motion on December 15, 2015. In support of their motion, they filed the affidavits of Mr. Ferguson and Robert Gilgen. Enoch filed nine affidavits in response. The parties have also produced documents related to the proceedings brought by Enoch in this Court and the proceeding brought by Parkland and CPL6 in the ACQB, including pleadings, affidavits and transcripts.

[5] The facts in the present case are fairly well documented and, for the most part, not controversial. Each side urges, however, a different approach upon me in the interpretation of the facts to determine whether Parlee complied with the principles relating to conflict of interest. Without attempting to summarize all of the voluminous evidence filed by the parties, I will set out below only the pertinent facts as I see them, in chronological order.

II. Background Facts

[6] In November of 2012, Robert Gilgen and Mr. Soos, the president and vice-president of Parkland, began exploring the potential to create an aerodrome in Parkland County (County). In December of 2012, they met and together learned the process involved for creating an aerodrome. Both of them reviewed documents, such as the Transport Canada Aeronautical Information Manual and the requirements in the *Aeronautics Act*. They also learned that Canada had no general restrictions on aerodrome development.

[7] Parkland was incorporated in February of 2013. Parkland became aware in August of 2013 that the Edmonton City Centre Airport would be closing November 30, 2013. CPL6 was incorporated in August of 2013 and acquired the land for the aerodrome.

[8] On September 17, 2013, Mr. Rodney Shaigec, Mayor of the County, sent a letter to the then Minister of Transport, to express concerns with the proposed aerodrome. The letter was copied to various parties, including Parkland, Chief Morin, and the Honourable Rona Ambrose, who was the member of Parliament representing the riding where the Enoch reserve was located. Mayor Shaigec concluded his letter as follows:

Further, the applicant has not consulted with Enoch Cree First Nation which is located approximately two (2) kilometers to the east of the proposed aerodrome. As the approval of the application rests with the Crown, I trust Transport Canada will consult Enoch Cree First Nation prior to rendering a decision that may impact their existing Aboriginal rights or titles.

[9] Chief Morin in turn sent a letter to Ms. Ambrose on September 19, 2013, with copies to the Minister of Transport, the County and Parkland, to advise that Enoch had yet to be consulted by Transport Canada or any federal entity about the proposed aerodrome. Chief Morin noted that construction had already begun and questioned whether there had been any environmental assessments of the project. He concluded his letter by stating that Enoch objected to any further construction until the First Nation was consulted.

[10] Mayor Shaigec sent a second letter to the Minister of Transport on September 26, 2013 requesting that the federal government amend the *Aeronautics Act* and *Regulations* to allow municipalities to provide meaningful input in the application and review process. The letter

reiterates the County's request that Transport Canada not approve Parkland's application "as it is not in the public interest." The letter was copied to Parkland and Chief Morin.

III. Retainer of the Law Firm Parlee

[11] On September 18, 2013, the County issued a "Stop Order" pursuant to section 645(1) of the *Municipal Government Act*, ordering that CPL6 cease and desist all stripping and grading activity by October 10, 2013.

[12] In early October 2013, Parkland and CPL6 retained Mr. Fred Laux, Q.C. to act for them to quash the Stop Order, thereby allowing the development and construction of the aerodrome to continue. Mr. Laux is a lawyer at Shores Jardine LLP with expertise in municipal planning law. However, due to the urgency of the matter, Ian Wachowicz was retained to assist Mr. Laux with the litigation. At the time, Ian Wachowicz was a partner at Parlee. Both counsel worked together to prepare material in support of an application for a permanent or interim injunction against the County prohibiting the County from attempting to enforce the Stop Order. This gave rise to litigation commenced on October 7, 2014 in the ACQB, Docket No. 1303-14319 (the "ACQB application").

[13] Robert Gilgen states that Mr. Wachowicz provided legal advice in relation to the law regarding aerodrome development, including registration and certification of the aerodrome in accordance with the *Aeronautics Act*. Mr. Wachowicz maintains, however, that the dispute centered exclusively on whether the County had jurisdiction to regulate aerodromes. While acknowledging that the *Aeronautics Act* may have been mentioned in the brief, Mr. Wachowicz denies having provided any advice to Parkland and CPL6 regarding the legislation. According to

Mr. Wachowicz, the advice was focused instead on the extent to which the County could regulate the aerodrome.

[14] On October 24, 2013, the merits of the application were argued by Mr. Laux and Mr. Wachowicz before ACQB Justice R. Paul Belzil based upon the affidavit evidence of Robert Gilgen and a written brief filed on behalf of Parkland and CPL6. The brief describes the work done by Parkland and CPL6 to develop and construct the aerodrome and refers to the legal requirements for registration and certification of the aerodrome. At paragraph 5, Mr. Laux submits that the facilities to be constructed meet the definition of “Aerodrome” under the *Aeronautics Act*. He further adds at paragraph 10 that: “[t]here is no requirement under the *Aeronautics Act* or regulations thereunder requiring any form of approval prior to a party undertaking construction of the facilities described above”. Oral submissions to the same effect were made at the hearing.

[15] On October 29, 2013, Justice Belzil issued a decision enjoining the County from attempting to enforce the purported Stop Order: *Parkland Airport Development Corporation v Parkland (County)*, 2013 ABQB 641 (CanLII). No appeal was taken from the decision; however, Parlee continued to represent Parkland and CPL6 until about August of 2015, when the matter of the costs of the application was finally concluded by Parlee’s managing partner, Mr. James McGinnis, following the departure of Mr. Wachowicz from Parlee.

IV. Legal Proceedings by Enoch against the Moving Parties

[16] On November 28, 2013, the law firm of Willier and Company (which was representing Enoch at the time) served the Moving Parties' corporate solicitors, Lynass Ferguson & Schoctor, with the Statement of Claim in T-1947-13, as well as a motion record seeking an injunction on short notice. The Statement of Claim alleges, in short, that the development and construction of the aerodrome by the Defendants is illegal and constitutes an ongoing danger or threat to Enoch's treaty rights, aboriginal rights, traditional way of life and aboriginal cultural values. At paragraph 23, it is alleged that the Defendants have intentionally violated Canadian law, including the *Aeronautics Act*.

[17] The previous day, Mr. Will Willier of Willier and Company had sent a letter Mr. Molstad cautioning him about Parlee's representation of Parkland. The letter reads as follows:

Attached is a Statement of Claim filed in Federal Court on November 26, 2013.

We understand that Parlee McLaws acts for the defendants; Parkland Airport Development Corporation, CPL6 Holdings Ltd., and possibly Robert Gilge, Silke Gilgen, and Aaron Soos.

Because Parlee McLaws is acting for Enoch Cree Nation with respect to land claims, including the matter of the traditional territory of Enoch Cree Nation in which the proposed aerodrome/airport is located in Parkland County, we submit that Parlee McLaws is in a conflict of interest position and can no longer act for Parkland Airport Development Corporation.

We look forward to your immediate response.

[18] Mr. Molstad wrote to Mr. Willier on November 27, 2013 and advised him that Parlee would not act for any of the Defendants in that dispute.

[19] Unaware of the correspondence exchanged between Mr. Willier and Mr. Molstad, Mr. Richard Ferguson, a partner with Lynass Ferguson & Schoctor, sent the pleading and motion materials with a covering letter to Mr. Wachowicz on November 28, 2013 asking if Parlee could represent the Moving Parties in the defence of the action and in response to the motion. Later that same day, Mr. Ferguson received an email from Mr. Wachowicz that reads as follows:

“I just saw this. Sadly, I cannot act. Enoch is a client of Parlee McLaws, and while they are not using our firm for this matter (obviously due to the conflict) Enoch just sent us a letter demanding that Parlee McLaws not act for either side in this dispute. I will contact you tomorrow re this, and regarding referrals to aboriginal law counsel.”

[20] Mr. Wachowicz states that to the extent that he advised Mr. Ferguson that Enoch had requested that Parlee not act for “either side” of the dispute, he was mistaken. He sent a further e-mail to Mr. Ferguson, including Robert Gilgen, to advise that Parlee was conflicted from acting as the firm acted for Enoch in unrelated matters.

[21] The Moving Parties subsequently retained Shores Jardine LLP to defend the action and the injunction application.

[22] In his affidavit filed in support of Enoch’s motion for injunctive relief, Chief Morin states that the Enoch Band Council met on November 8, 2015 and that the Band Council passed a motion to proceed immediately to bring an application to stop the aerodrome/airport development being constructed by Parkland and CPL6. He expresses numerous concerns about the construction of the aerodrome next door to the reserve, including the overall environmental damage and the irreparable harm it would inflict on the First Nation’s archeological, cultural and

historical sites in the immediate vicinity. Chief Morin also states that he heard that Parkland and CPL6 had been boasting that there was no requirement under the *Aeronautics Act* or regulations for any form of approval prior to a party undertaking construction of the facilities. Chief Morin sets out in his affidavit a number of preliminary steps or requirements that should be incorporated into an aerodrome/airport development process before any approval is granted by the appropriate federal government departments and actual construction of an aerodrome or air strip or runway begins.

[23] The injunction application was ultimately dismissed by Order of Mr. Justice Michael Phelan dated January 20, 2014.

[24] Enoch subsequently commenced the application for judicial review in T-1997-14 on October 24, 2014. Enoch was represented Willier and Company at the time. In support of the application, Chief Morin filed an affidavit reiterating Enoch's position that the aerodrome development process was illegal. In early 2015, the law firm of Olthuis Kleer Townshend LLP (Olthuis Kleer) was retained to represent Enoch in T-1947-13 and T-1997-14.

[25] On June 4, 2015, Enoch filed a second application for judicial review against the Crown and Parkland (T-942-15). Once again, Enoch was represented by Willier and Company at the time. The grounds for relief and the evidence in this second application substantially overlap with that in T-1947-13 and T-1997-14.

[26] Olthuis Kleer later applied to be removed as solicitors of record T-1947-13 and T-1997-14 and the application was granted by Order dated October 28, 2015.

V. Conflict of Interest Raised

[27] On November 6, 2015, Mr. Kirk Lambrecht, counsel for the Moving Parties, received a call from Mr. Molstad, senior counsel with Parlee. According to Mr. Lambrecht, Mr. Molstad indicated that Enoch was considering retaining Parlee to assume conduct of the action in T-942-15 in place of Willier and Company and inquired whether Parkland would object to Parlee's appointment as solicitor of record on the basis of conflict.

[28] Although there is disagreement as to whether Mr. Molstad requested that Parkland waive any conflict, it is of no moment, as it is clear that Mr. Lambrecht immediately raised the possibility of a conflict. Mr. Lambrecht responded to Mr. Molstad's inquiry by e-mail on November 9, 2015 as follows:

My clients have confirmed that Parlee LLP did act for Parkland Airport Development Corporation in relation to airport development, and have decided to not waive the conflict of Parlee LLP in this matter. My client therefore does not consent to have Parlee LLP (Mr. Molstad or associates) take over the litigation for the Enoch Cree First Nation.

[29] On November 11, 2015, Mr. Molstad replied by e-mail. In the interest of fidelity, the full text of the relevant portions of the e-mail is reproduced below.

In order to clarify, Parlee McLaws has not requested that Parkland Airport Development Corporation ("Parkland") waive any conflict as we are not aware of a conflict of interest.

In our conversation with you on Friday afternoon, November 6th, 2015, we advised you that we were aware that Parlee McLaws had acted on behalf of Parkland in the past, however, the writer was not familiar with this matter and had no knowledge in relation to it. We asked if you would inquire of Parkland to determine whether

they would have any objection to the writer acting on behalf of the Enoch Cree Nation (“Enoch”) in relation to the dispute between Enoch and Parkland.

We contacted Mr. Ian Wachowicz who was a partner at Parlee McLaws until early this year (he is presently at the law firm of Dentons) on Tuesday, November 10th, 2015 and he advised that his representation of Parkland was with respect to a dispute with the County of Parkland. This representation of Parkland was completed and the file was closed. Parlee McLaws does not presently act for Parkland.

Mr. Wachowicz further advised that he received no confidential information which was in any way related to the dispute between Parkland and Enoch.

We were advised today by Mr. Littlechild that Chief and Council of Enoch passed a Band Council Resolution on November 10th, 2015 confirming that the writer has been appointed to represent them in relation to their dispute with Parkland and the Crown.

Based upon the information that we have received from Mr. Wachowicz, it is our position that there is no conflict and that the writer is able to represent Enoch in relation to their dispute with Parkland and the Crown.

We will be filing a Notice of Change of Solicitor and requesting a telephone conference with Prothonotary Lafreniere in order to address the schedule in relation to this matter.

[30] Mr. Lambrecht responded to Mr. Molstad on November 12, 2015 as follows:

It seems from your email that your position that Parlee is not in conflict is based upon information that you have “received from Mr. Wachowicz”. It appears to me that you are not aware of all of the material circumstances which bear upon the issue of conflict of interest, and I will be assembling additional information in this regard in the coming days and weeks. Right now, that issue is outstanding.

[31] Despite further submissions from Mr. Lambrecht, Parlee maintained its position that it had no conflict of interest when acting for Enoch in litigation against Parkland because the law

firm had no confidential prejudicial information. Parlee indicated that it was prepared, however, to continue to take steps to ensure that no information would be communicated from the lawyers at the firm who worked on the file involving Parkland and the County with other lawyers at the firm.

[32] By letter dated December 3, 2015, Mr. Molstad concluded the debate as follows:

As you are aware, it is the position of Parlee McLaws LLP that there is no conflict and that they are in a position to continue to represent Enoch. Ultimately the Court will make a decision in this regard. Once the issue of conflict has been resolved and provided the Court allows us to continue to represent Enoch Cree Nation, we will at that time become Solicitor of Record in relation to Actions T-1947-13 and T-1997-14.

VI. Motion for Disqualification of Parlee

[33] In response to the Moving Parties' motion, Enoch filed the affidavits of six lawyers and one articling student at Parlee, and of Mr. Wachowicz, the lawyer who (while at Parlee) had a solicitor-client relationship with Parkland associated with litigation before the Court of Queen's Bench of Alberta. Most of these affiants had only passing involvement in the said litigation.

[34] Mr. James McGinnis, a managing partner at Parlee, states in his affidavit that he reviewed the law firm's file relating to its former clients, Parkland and CPL6, and confirms that there was no confidential information on the file that relates to Parkland's dispute with Enoch. Mr. Wachowicz, Mr. Steven Rohatyn, and Mr. Bruce Hirsche also denied the existence of confidential information relevant to the dispute between Enoch and Parkdale. However, it was

clearly established during cross examination that none of these deponents had actually read the pleadings in T-1947-13, T-1997-14, or T-942-15 at the time they commissioned their affidavits.

[35] Mr. McGinnis states that in order to secure the file relating to Parkland, Parlee put a number of ethical screens in place on or around November 13, 2015. He obtained the physical file and placed it in a locked filing cabinet in his office, whereby only he has the key. The cabinet is on a separate floor from the office of Mr. Molstad. Mr. McGinnis also had IT staff secure the electronic file materials, so that they could not be accessed by any other lawyer at the firm, other than him. Mr. McGinnis spoke to all the lawyers that entered time on the Parkland dispute with the County and directed them that they are not permitted to speak about the matter to anyone at the firm. All the lawyers that entered time on the matter executed solicitor's undertakings, wherein they undertake not to discuss the file materials. Mr. McGinnis and Mr. Molstad have also executed solicitor's undertakings. Mr. McGinnis reviewed the support staff arrangements to ensure that no support staff that worked on the Parkland dispute would work with Mr. Molstad.

VII. Issue to be Determined

[36] It is common ground that Parlee had a previous solicitor-client relationship with Parkland and, by extension, with CPL6 and the two corporation's directors. There is also no dispute about the terms of the retainer. The only issue to be determined on this motion is whether Parlee, including Mr. Molstad, should be disqualified from acting for Enoch in the three proceedings brought by Enoch against the Moving Parties in this Court by reason of a conflict of interest.

VIII. Analysis

[37] From its seminal decision in *MacDonald Estate v Martin*, [1990] 3 SCR 1235, 77 DLR (4th) 249 [*Macdonald Estate*] through to its recent pronouncement in *Canadian National Railway Co v McKercher LLP*, 2013 SCC 39 (CanLII), [2013] SCJ No. 39 [*McKercher*], the Supreme Court of Canada has provided guidance as to when it is appropriate to deny a party the counsel of its choice because of some past dealings by the counsel, or individuals in his law firm, with the opposing party to the litigation. While the governing principles are now well established, their application is fact intensive.

[38] Enoch submits that the motion should be dismissed because there is no risk that confidential information will be misused or that there would be a breach of the duty of loyalty. According to Enoch, the previous retainer with Parkland and CPL6 involved a lawyer that left the firm some time ago and is unrelated to Parkland's dispute with Enoch.

[39] This case is fairly unique in that both parties to this motion have, at some point in time, asserted that Parlee is in a conflict of interest vis-à-vis the interests of the other party. Moreover, counsel with Parlee was acutely aware that there was a potential conflict of interest in representing their long-time client in light of their previous involvement with Parkland.

[40] Being substantially in agreement with the written representations filed on behalf of the Moving Parties, I conclude that Parlee's should be disqualified from representing Enoch because there is an actual conflict of interest on the facts of this case. At the very least, there is an overwhelming appearance of a conflict of interest.

[41] The interests of the County and Enoch were clearly allied back in September 2013 when they adopted similar public positions and pressure tactics in opposing the development and construction of Parkland's aerodrome. Further, correspondence from Mayor Shaigec and Chief Morin to Crown Ministers setting out their objections was not only copied to Parkland, but also to each other. It strains credulity that Mr. Wachowicz was not aware of Enoch's opposition to the project when he was acting on behalf of Parkland. At the very least, he should have been attuned to Enoch's interest in the project by perusing the letter from Mayor Shaigec to the Minister of Transport dated September 26, 2013, which was attached as an exhibit to Robert Gilgen's affidavit in the ACQB application.

[42] This is not a case, as in *Macdonald Estate*, of lawyers changing firms. Nor is this a case of a law firm accepting a retainer to act against a current client on a matter unrelated to the client's existing files, as in *McKercher*. This is a case of a law firm acting at one time for a client to defend its right to develop and construct an aerodrome and then turning around and opposing that same right on behalf of another client. These are clearly irreconcilable legal interests.

[43] The general rule is that a lawyer, and by extension, a law firm, owes a duty of loyalty to their clients. A lawyer who has formerly represented a client in a matter shall not thereafter represent another party in the same or a substantially related matter in which that party's interests are materially adverse to the interests of the former client, unless the former client gives informed consent. The duty of loyalty includes, among other duties, a duty of candour (full disclosure) and a duty to avoid conflicting interests.

[44] In *R v Neil*, [2002] 3 SCR 631, the Supreme Court of Canada concluded that the fiduciary relationship between a lawyer and client imposes on the lawyer more than a duty not to disclose confidential information. It includes a duty of loyalty and, in particular, a duty to avoid conflicting interests if there is a substantial risk that a lawyer's representation of a client would be materially and adversely affected by the lawyer's duties to a former client.

[45] As I stated in *Robbins & Myers Canada Ltd v Torque Control Systems Ltd*, 2007 FC 957 (CanLII), the fiduciary duty of loyalty owed by a lawyer to a former client continues after termination of the solicitor-client relationship, such that a lawyer may not act in a manner that will injure the former client in matters involving the prior representation.

[46] An aggravating circumstance is that Parlee proceeded to act for other clients interested or involved in the lawful development and construction of the aerodrome in accordance with the *Aeronautics Act* after being warned by Enoch to cease representing Parkland. This lack of duty of loyalty is a paramount concern in this case.

[47] I should add that it matters not whether relevant confidential information has been provided by the Moving Parties to Parlee. The Federal Court of Appeal in *Groupe-Tremca Inc v Techno-Bloc Inc*, 1999 CanLII 9113 (FCA) explained why the duty of loyalty to a former client arises regardless of the existence of confidential information, at par. 13:

[13] It seems to the Court that once a law firm issues a legal opinion leading the client to adopt a particular line of conduct, that firm places itself in a conflict of interest situation which is no longer potential but actual if it subsequently takes it upon itself to act against that client for activities relating to the line of conduct. The firm must bear the consequences of its choices of client, and

the first client chosen should as a general rule be the only one represented in any problem arising out of the particular retainer. A firm which in such circumstances undertakes to represent a second client will have difficulty persuading the Court that the second client's right to retain its services takes priority over the first client's right to assume the loyalty of its counsel.

[48] For the sake of completeness, I conclude that the general denials by Mr. Wachowicz, Mr. McGinnis and others at Parlee are not enough to satisfy me that no relevant confidential information could have been imparted by the Moving Parties. First of all, I agree with the Moving Parties that the denials were made without any apparent knowledge of the specific allegations made by Enoch in its pleadings. Secondly, a reasonably informed person would assume, as I have, that a variety of incidental information and opinions would have been transmitted between Mr. Wachowicz and the principals of the two companies: *Almecon Industries Ltd v Nutron Manufacturing Ltd*, (1994), 55 CPR (3d) 327 at p. 328.

[49] I should also add that the steps taken by Mr. McGinnis to secure the Moving Parties' confidential information may have been sufficient, if implemented earlier, but were implemented too late. There is a strong inference that lawyers who work together share confidences. Reasonable measures should have been taken to ensure that no disclosure would occur immediately after Mr. Willier wrote to Mr. Molstad on November 27, 2013, and not two years later.

[50] It is unclear to me why Enoch has persisted in defending the indefensible. In the circumstances, I conclude that the motion should be granted, with costs fixed at an elevated scale, as requested by the Moving Parties.

ORDER

THIS COURT ORDERS that:

1. The motion is granted.
2. Parlee McLaws LLP (Parlee), including Mr. Edward H. Molstad Q.C., are hereby disqualified from acting for Enoch Cree Nation in Court File Nos. T-1947-13, T-1997-14 and T-942-15 by reason of conflict of interest.
3. Costs of this motion, hereby fixed in the amount of \$20,000.00, plus reasonable disbursements and taxes, are awarded in favour of the Moving Parties.
4. The proceedings are stayed pending the expiry of the appeal period and, if an appeal is filed by Enoch Cree Nation, until the final resolution of all appeals.

“Roger R. Lafrenière”

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1947-13

STYLE OF CAUSE: THE ENOCH CREE NATION ET AL V HER MAJESTY
THE QUEEN ET AL

AND DOCKET: T-1997-14

STYLE OF CAUSE: THE ENOCH CREE NATION ET AL V HER MAJESTY
THE QUEEN ET AL

AND DOCKET: T-942-15

STYLE OF CAUSE: ENOCH CREE NATION ET AL V HER MAJESTY
THE QUEEN ET AL

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: FEBRUARY 25, 2016

REASONS FOR ORDER: LAFRENIÈRE P.

DATED: SEPTEMBER 2, 2016

APPEARANCES:

W.J. Kenny	FOR THE PLAINTIFFS/APPLICANTS
Debra Curcio	
Brad Bedard	FOR THE DEFENDANTS/APPLICANTS
	HER MAJESTY THE QUEEN IN RIGHT OF CANADA
Kirk Lambrecht	FOR THE DEFENDANTS/APPLICANTS
Aman Athwal	PARKLAND AIRPORT DEVELOPMENT CORPORATION, CPL6 HOLDINGS LTD., ROBERT GILGEN, SILKE GILGEN, AARON SOOS

SOLICITORS OF RECORD:

Miller Thomson LLP
Edmonton, Alberta

FOR THE PLAINTIFFS/APPLICANTS

Department of Justice
Edmonton, Alberta

FOR THE DEFENDANTS/RESPONDENTS
HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Shores Jardine LLP
Edmonton, Alberta

FOR THE DEFENDANTS/RESPONDENTS
PARKLAND AIRPORT DEVELOPMENT
CORPORATION, CPL6 HOLDINGS LTD.
ROBERT GILGEN, SILKE GILGEN, AARON SOOS