



No. S-231039  
Vancouver Registry

**In the Supreme Court of British Columbia**

Between

**THE NARWHAL NEWS SOCIETY and AMBER BRACKEN**

Plaintiffs

And

**ATTORNEY GENERAL OF CANADA, MINISTER OF PUBLIC SAFETY AND  
SOLICITOR GENERAL FOR BRITISH COLUMBIA, HIS MAJESTY THE KING IN  
RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, RCMP CHIEF  
SUPERINTENDANT JOHN BREWER, UNKNOWN RCMP OFFICER #1, and  
UNKNOWN RCMP OFFICER #2**

Defendants

**RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM**

Filed by: Attorney General of Canada, Minister of Public Safety and Solicitor General of British Columbia), and RCMP Chief Superintendent John Brewer (collectively, the "RCMP Defendants").

**Part 1: RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM FACTS**

**Division 1 — RCMP Defendants' Response to Facts**

1. The facts alleged in paragraphs 2, 3, 4 (sentences 1 and 2), 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 30, 32, 33, 34, 38, 40, 62 of Part 1 of the Amended Notice of Civil Claim ("ANOCC") are admitted.
2. The facts alleged in paragraphs 4 (sentence 3), 9, 19, 20, 21, 22, 25, 26, 27, 31, 35, 37, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 61, 63, 64, 65 of Part 1 of the ANOCC are denied.
3. The facts alleged in paragraphs 1, 6, 23, 24, 28, 29, 36, 58, 59, 60, 66, 67 of Part 1 of the ANOCC are outside the knowledge of the RCMP Defendants.

**Division 2 — RCMP Defendants' Version of Facts**

4. Except as hereinafter admitted, the RCMP Defendants specifically deny each and every allegation contained in the ANOCC and put the plaintiffs to the strict proof thereof.

**Overview**

5. This litigation turns on the questions of whether the RCMP had reasonable and probable grounds to arrest Amber Bracken for breaching a court injunction and whether Ms. Bracken

was exempted from complying with the injunction because she was on assignment as a journalist for the Narwhal at the time of her arrest.

6. Since 2012, certain individuals have made continued efforts to impede the construction of a pipeline from near Dawson Creek to Kitimat, British Columbia by, among other things, blockading access to active work sites, damaging and stealing property, threatening, intimidating and endangering the safety of workers and the public.
7. Coastal GasLink Pipeline Ltd., the pipeline owner, obtained injunction orders on December 14, 2018, December 21, 2018 and December 31, 2019, prohibiting individuals from interfering with the construction of the pipeline. The RCMP is responsible for enforcing the injunction orders and maintaining the peace.
8. On November 19, 2021, Ms. Bracken, along with several pipeline opponents, occupied a cabin, barricaded from the inside, located on a pipeline worksite. The occupation of this cabin was intended to, and did, interfere with the construction of the pipeline.
9. Ms. Bracken was familiar with the injunction order and knew that the occupation of the cabin breached that order. Regardless, she failed to identify herself as a journalist despite being asked to do so by the RCMP and remained in the cabin after the RCMP read a summary of the injunction, and refused to leave when directed to do so by the RCMP.
10. In order to enforce the injunction order, the RCMP forcibly entered the cabin and removed the occupants. The RCMP arrested Ms. Bracken based on reasonable and probable grounds that she breached the injunction order. The fact that Ms. Bracken was on assignment as a journalist at the time of her arrest did not exempt her in law from obeying the terms of the injunction.
11. The RCMP members involved acted lawfully, in good faith, and in the public interest at all times when enforcing the injunction order and exercising their policing duties. At all times, the RCMP attempted to conduct enforcement activities in a manner that protected the public's right to engage in peaceful and lawful protest, and facilitated access by the media to cover the protest activities.
12. The Plaintiffs have not pled material facts capable of establishing the tort of unlawful arrest, the breach of ss. 2(b), 7 or 9 of the *Charter of Rights and Freedoms*, or that RCMP enforcement activities were in any way unlawful. Accordingly, this action should be dismissed.

### **The Pipeline Project and the Illegal Protests**

13. Coastal GasLink Pipeline Ltd. ("CGL") is building a natural gas pipeline spanning 670 km from an area near Dawson Creek to a liquid natural gas export facility to be built near Kitimat, British Columbia (the "Pipeline Project"). The Pipeline Project traverses the asserted traditional territory of the Gidimt'en Clan of the Wet'suwet'en Nation.

14. CGL obtained the necessary provincial permits and authorizations for the Pipeline Project. More specifically, CGL has permits, agreements and authorizations to use various forest service roads to access CGL work sites along the pipeline route, including the Morice Forest Service Road (“Morice FSR”), the Morice West Forest Service Road (“Morice West FSR”) and the Marten Forest Service Road (“Marten FSR”). At different times, CGL has hundreds of employees and contractors working at various sites along the pipeline route.
15. Since 2012, several individuals – including but not limited to some Wet’suwet’en people – have opposed the Pipeline Project. Some of the pipeline opponents have taken action to attempt to slow down or stop its construction. For example, in or about 2012, pipeline opponents set up a blockade at a bridge on the Morice FSR to prevent preparatory work on the Pipeline Project. This blockade persisted until the Royal Canadian Mounted Police (“RCMP”) initiated enforcement actions.
16. After 2012, there were multiple incidents of pipeline opponents continuing to create blockades until April 12, 2019, when CGL entered into an Access Protocol Agreement that provided a framework for access pursuant to the Interim Injunction. As a result of repeated incidents by individuals involved in the blockades prior to April 12, 2019, CGL had difficulties accessing the area to the west of the blockade to conduct fieldwork for planning and permitting, and the Pipeline Project was delayed.
17. Despite the challenges, in or about October 2018, a final decision to proceed with the Pipeline Project was made and CGL commenced construction.

### **The Injunctions prohibiting interference with the Pipeline Project**

18. On December 14, 2018, Justice Church issued an interim injunction in favour of CGL to, among other things, prohibit individuals from interfering with the construction of the Pipeline Project (*Coastal GasLink Pipeline Ltd. v. Huson*, 2018 BCSC 2343).
19. On December 21, 2018, Justice Church revised the interim injunction order to include all of the Morice FSR, so as to include the area where a group of individuals had set up a new blockade at KM 44 of the Morice FSR.
20. In contravention of the interim injunction order, pipeline opponents continued to engage in various activities to impede the construction of the pipeline. These actions included maintaining blockades on the Morice FSR, the Morice West FSR, and elsewhere; constructing permanent structures along the pipeline route and access right of way; destroying or removing property; entering into active CGL worksites; and intimidating pipeline workers.
21. On December 31, 2019, Justice Church granted an injunction order (the “Injunction Order”) with terms largely similar to the interim injunction order granted on December 21, 2018, which included enforcement provisions within the Injunction Order (*Coastal GasLink Pipeline Ltd. v. Huson*, 2019 BCSC 2264). The enforcement provisions were intended to inform the public of the consequences of non-compliance with the Injunction Order and to provide a mandate to the RCMP to enforce the terms of the order.

22. Among other things, the Injunction Order:
- (a) directs that anyone having knowledge of the order is “restrained, enjoined and prohibited” from “physically preventing, impeding, restricting or in any way physically interfering with, or counselling others to prevent, impede, restrict or physically interfere with, any person or vehicle travelling to or accessing the vicinity of the area in and around the Morice River Bridge ... or any of the areas accessed by the Morice Forest Service Road” (the “Injunction Area”).
  - (b) applies, on its face, to “anyone” having knowledge of the order and the style of cause refers to, among others, “all other persons unknown to the Plaintiff occupying, obstructing, blocking, physically impeding or delaying access”. There are no exceptions for, or references to, journalists or members of the media in the Injunction Order.
  - (c) is not geographically limited and includes terms prohibiting individuals from:
    - i. physically preventing, impeding, restricting or in any way physically interfering with, or counselling others to prevent, impede, restrict or physically interfere with CGL, its employees, contractors, or subcontractors carrying on its business related to the Pipeline Project, and in particular pre-construction activities of the Pipeline Project in the Injunction Area;
    - ii. threatening or intimidating CGL, its contractors or subcontractors and their respective employees, servants, agents or other persons in a contractual or economic relationship with CGL; and
    - iii. creating a nuisance by physically obstructing CGL and its contractors from carrying on their business.
  - (d) includes a term that requires anyone having notice of the Injunction Order to remove any obstructions, such as cabins, they have caused or created on the Morice River Bridge, any of the roads or bridges in the Injunction Area, or on the work sites CGL is authorized to use within the Injunction Area.
  - (e) authorizes an RCMP member to detain a person found in breach of the Injunction Order until such time as they can be brought before the British Columbia Supreme Court.
  - (f) authorizes RCMP enforcement and preserves RCMP discretion as to timing and manner of enforcement. It authorizes the RCMP to arrest and remove any person who has knowledge of the Injunction Order and whom the RCMP has reasonable and probable grounds to believe is contravening or has contravened any provision of the Injunction Order.
23. In granting the Injunction Order, this Court made the following comments at paragraphs 231-232 regarding the need for an RCMP enforcement order:

[231] In the face of the Interim Injunction order, the defendants refused to voluntarily comply with the order and enforcement action by the RCMP, as well as ongoing RCMP presence, was required to ensure compliance.

[232] Other incidents since the Interim Injunction, including the KM44 Blockade and the establishment of new protest camps, also tend to suggest that an enforcement order remains necessary in this case. The defendants have made numerous public statements that they intend to continue to engage in such self-help remedies in order to prevent the Pipeline Project from being constructed and their conduct continues to suggest that they will not respect an order of this court.

24. The Injunction Order has not been appealed or varied except to expand its geographic scope and it remains in force.
25. Notwithstanding the Injunction Order, blockades and other unlawful attempts to impede construction of the Pipeline Project continued in 2020 and 2021 – including building structures and facilities to engage in activities opposing the construction of the Pipeline Project – and have at times endangered the safety of the public, CGL employees and RCMP members. RCMP members have attended regularly in the Injunction Area to enforce the Injunction Order and more generally to enforce the law and maintain the peace, including at or near the Marten FSR.

#### **Escalation of Illegal Protest Activities in the Fall of 2021**

26. Starting in or about September 2021, RCMP members observed a change in tactics by some persons opposing the Pipeline Project and an escalation in unlawful protest activities. Pipeline opponents claimed that they were “at war with Canada”. Verbal abuse towards police and industry became more common, as did the practices of wearing camouflage and asserting that RCMP members are trespassing on the land. Groups of pipeline opponents would emerge from surrounding treelines and surround the RCMP members in an attempt to intimidate them.
27. On or about September 25, 2021, pipeline opponents, including individuals claiming to represent the Gidimt’en Clan of the Wet’suwet’en Nation, blockaded the drill site on the banks of the Morice River (the “CGL Drill Site”), approximately 2.5 km down the Marten FSR at the 63.5 km junction of the Morice West FSR in an attempt to stop drilling under the Morice River.
28. As part of their efforts to impede construction of the Pipeline Project, in general, and drilling under the Morice River, in particular, pipeline opponents built at least two small cabins on the CGL Drill Site. One of the cabins, named “Tiny House”, was built on a portion of the CGL Drill Site referred to by the pipeline opponents as “Coyote Camp”. Contrary to the terms of the Injunction Order, this cabin was built in an area used by CGL as a worksite.
29. In response to Part 1, paras. 19-22 of the ANOCC, the RCMP Defendants submit that the Tiny House, the Coyote Camp and the area that the Plaintiffs refer to in the ANOCC as the “Drill Site Camp” are all located on the CGL Drill Site, and are located within the Injunction Area.

30. In response to Part 1, para. 25 of the ANOCC, prior to the occupation by pipeline opponents in or about September 2021, the CGL Drill Site was an active CGL worksite, and CGL planned to maintain the drill site as an active worksite into the foreseeable future, including in November 2021. The pipeline opponents intended to intimidate, and did intimidate CGL workers away from attending and working at the CGL Drill Site.
31. In occupying the CGL Drill Site, the pipeline opponents “evicted” CGL from the CGL Drill Site, and impeded access to that worksite, with the aim of preventing CGL from undertaking drilling operations, in violation of the Injunction Order. In public statements at the time, pipeline opponents made it clear that the creation and occupation of Coyote Camp was expressly intended to bring a halt to the Pipeline Project at the CGL Drill Site. The occupation of the CGL Drill Site prevented CGL from using that site for purposes related to construction of the Pipeline Project.
32. The RCMP’s attempts to engage with those blockading and occupying the CGL Drill Site were consistently rebuffed.
33. Also in contravention of the Injunction Order, pipeline opponents intentionally damaged CGL equipment, set up blockades, blocked roads, prevented CGL work, and then retreated to Coyote Camp, amongst other places. Some of these actions endangered the lives of CGL workers and RCMP members.
34. On or about September 25, 2021, RCMP members attended Coyote Camp and saw that several new cabins had been erected on the CGL Drill Site in locations that impeded safe and efficient CGL operations in that area. RCMP members also encountered protestors, obstructions – such as partially cut trees that presented a falling hazard – and road damage at multiple locations. The RCMP read the Injunction Order, or a summary thereof, to protestors, but took no enforcement action at that time.
35. On or about September 25, 2021, CGL contractors advised the RCMP that unknown individuals had used CGL’s heavy machinery to dig holes in and damage the Marten FSR, rendering it impassable. The RCMP arrested an individual who had used a stolen excavator to make the Marten FSR impassable, in violation of the Injunction Order. This individual allowed the arm of the excavator to swing in an uncontrolled way, creating a dangerous environment for RCMP members executing their duties.
36. On or about September 27, 2021, RCMP members saw an individual at the Marten FSR chained in a device locked under a demobilized school bus and several structures built on the road preventing CGL from accessing its worksite. RCMP members arrested that individual for breaching the terms of the Injunction Order.
37. From time to time in October 2021, the RCMP returned to the area and found blockades on the roads, trenches dug in the roads, structures built that obstructed areas covered by the Injunction Order, and CGL equipment either moved or vandalized. The RCMP again read the Injunction Order, or a summary thereof, to protestors but took no enforcement action.

38. The occupation of, blockade of and/or interference with the Marten FSR and the CGL Drill Site continued into November 2021. Throughout this time, the RCMP continued to take no enforcement action.

### **Culmination of Unlawful Protest Activities in mid-November 2021**

39. On or about November 14, 2021, pipeline opponents publicly declared that they were enforcing a January 4, 2020 eviction notice, and “evicted” CGL from “unceded Wet’suwet’en territory”, and identified the RCMP as trespassers. In response to Part 1, para. 26 of the ANOCC, the RCMP Defendants admit that on November 14, 2021, members of the Gidimt’en clan ordered all CGL workers to leave the territory of the Wet’suwet’en Nation and advised that the Morice FSR would be closed. The pipeline opponents further announced they were evicting the RCMP. The RCMP first learned of these statements through social media posts and an eviction announcement on Forest Service Radio. These statements were intended to intimidate, and did intimidate CGL and CGL employees away from active work on the Pipeline Project, and away from attempts to recommence other work on the Pipeline Project, such as work on the CGL Drill Site.
40. On or about November 14, 2021, CGL advised the RCMP of two or more roadblocks, consisting of downed trees and fires, along the Morice West FSR at kilometers 36, 44 and 63.5. CGL advised the RCMP that deliveries of essential services, including food and water, had been denied to over 500 employees staying in CGL’s “P2” camp. CGL advised that supplies and essential services would be at a critical level in the “P2” camp by Wednesday November 17, 2021. These obstructions, and resultant road inaccessibility, also prevented CGL employees from leaving the isolated and remote “P2” camp, and left them unable to access emergency medical care. This situation created health and safety risks for the trapped CGL employees as well as a sense of anxiety, fear, and intimidation.
41. Further, the RCMP were advised and did believe that pipeline opponents had created additional barricades, were using stolen machinery to create further obstructions, and were continuing to occupy certain areas along the Pipeline Project in contravention of the Injunction Order, including the Coyote Camp on the CGL Drill Site.
42. The occupation of the CGL Drill Site in and before November 2021 prevented CGL from doing work in that location. In response to Part 1, para. 25 of the ANOCC, the RCMP Defendants say that to the extent that the CGL Drill Site was not being used by CGL, this was because that location was being occupied or frequented by pipeline opponents.

### **The RCMP Response to the Breaches of the Injunction Order**

43. RCMP decided it was necessary to take enforcement action as a result of complaints of activities in breach of the Injunction Order by CGL and consequent observations by the RCMP of activities in apparent breach of the Injunction Order. Given the nature of the breaches by the pipeline opponents and the circumstances of the CGL employees being denied access to and from their work sites, on or about November 14, 2021, C/Supt. John Brewer determined that the situation was critical, urgent action needed to be taken, and it was necessary for the RCMP to enforce the Injunction Order.

44. In response to Part 1, paras. 9 and 27 of the ANOCC, on November 15, 2021, for security during enforcement of the Injunction Order, and to prevent further roadblocks from being created, the RCMP established an access control point at the 27.5 km mark of the Morice FSR, at or near where the Morice FSR intersects with and merges into the Morice West FSR. From approximately the 27km mark to the 44km mark, the Morice FSR and the Morice West FSR are the same road. At approximately the 44km mark, the Morice FSR separates off and continues south, while the Morice West FSR continues west, towards the 63km mark and the Coyote Camp. The access control point did not establish or create an “exclusion zone”.
45. In response to Part 1, paras. 56-57 of the ANOCC, members of the media were not excluded from the Injunction Area. Instead, they were required to check-in before travelling further up the Morice FSR/Morice West FSR. On November 18, 2021, the RCMP’s Division Liaison Team (“DLT”) escorted media, who had identified themselves to the RCMP, to a position where they could film the enforcement of the Injunction Order.
46. The RCMP deployed to the Morice West FSR on November 18, 2021 to enforce the Injunction Order and allow essential supplies to be delivered to CGL’s “P2” Camp. The RCMP began enforcement of the Injunction Order by clearing obstacles and blockades preventing CGL employees from leaving their worksites and suppliers from accessing their worksites, and advising protestors that if they continued to breach the terms of the Injunction Order they would be arrested.
47. In response to Part 1, para. 31 of the ANOCC, the RCMP succeeded in clearing several obstacles and blockades along the Morice FSR that day, but did not have enough time to clear the blockade located at approximately the 63-kilometre mark of the Morice West FSR (the “63-km Blockade”), or the Coyote Camp, located in and around the intersection of the Morice West-Marten FSR (approximately at the 63.5-kilometre mark of the Morice FSR). The 63-km Blockade prevented traffic in and out of the Coyote Camp.
48. Early on November 19, 2021, RCMP officers arrived at the 63-km Blockade. They observed a log pile, school bus, and a pickup truck fully engulfed in flame blocking further access to the Morice West FSR, as well as numerous sections of barbwire intertwined through a large log fence that the RCMP had to cut through to proceed.
49. After clearing the 63-km Blockade, the RCMP observed several individuals blocking access to the CGL Drill Site near the Coyote Camp. Pipeline opponents had built cabins to block access to CGL’s worksite and to obstruct construction activity in contravention of the Injunction Order. One of these cabins, the Tiny House, was being occupied by several individuals whose identity was unknown at the time. The occupants of the Tiny House had barricaded themselves inside, preventing access by the RCMP.
50. At approximately 11:28 am, RCMP members read a summary of the Injunction Order outside the Tiny House to the occupants. Following that, RCMP members made several calls, over the course of more than an hour, for all individuals to exit the Tiny House. The RCMP further informed the occupants that if they failed to comply with the lawful command to exit, they would be arrested.



51. All RCMP attempts to convince the occupants to peacefully and voluntarily exit the Tiny House were unsuccessful.
52. In specific response to the allegation at Part 1, para. 39 of the ANOCC, the occupants of the Tiny House, including Ms. Bracken, should have and would have heard what was being said by those inside the Tiny House to the RCMP. The occupants' responses to the RCMP's calls to exit the Tiny House demonstrated a committed unwillingness to comply with the lawful command.
53. In response to Part 1, para. 40 of the ANOCC, the RCMP Defendants say that the RCMP determined that a warrant was not necessary to enter the Tiny House because the enforcement provisions in the Injunction Order provided them with sufficient authority.
54. In response to Part 1, para. 41 of the ANOCC, some RCMP officers, though not most of them, proceeded to a second cabin elsewhere on the CGL Drill Site to read a summary of the Injunction Order. One or more of these officers then returned to the Tiny House.
55. At approximately 12:30 pm, with the occupants refusing to leave, and after more than an hour and repeated de-escalation attempts, the RCMP forcibly entered the Tiny House and arrested all six occupants, including Ms. Bracken. One of the Tiny House occupants arrested was Sleydo' / Molly Wickham, a leader of the opposition to the Pipeline Project, and another occupant arrested was Michael Toledano, who has also claimed to be a member of the media.
56. During the arrest, two hunting rifles were seized from the Tiny House. They were improperly stored on a shelf on the wall near the barricaded entrance to the Tiny House.
57. At approximately the same time on November 19, 2021, the RCMP entered another cabin on the CGL Drill Site and arrested all of the occupants to enforce the Injunction Order.
58. In total, the RCMP arrested and detained eleven individuals who were occupying these two cabins on the CGL Drill Site on November 19, 2021.

#### **RCMP interactions with Amber Bracken**

59. Prior to November 2021, Ms. Bracken had visited the Injunction Area and reported on the Pipeline Project and the protests against it. On those occasions, she identified herself to the RCMP members present, did not ignore directions from RCMP members, and did not appear to take part in any protest activities. On these occasions, the RCMP did not interfere with Ms. Bracken's access to the Injunction Area, or coverage of the Pipeline Project.
60. From her arrival on or about November 11, 2021 to prior to her arrest on November 19, 2021, Ms. Bracken travelled freely and without interference into and around the Injunction Area. She was not required to have an RCMP escort and was not subject to limits on where she could go or what she could report on.
61. On November 18, 2021, Matt Simmons from the Narwhal News Society (the "Narwhal") wrote to Corporal Madonna Saunderson and Staff Sergeant Janelle Shoihet of the RCMP, advising that Ms. Bracken, a Narwhal photojournalist, was at the Coyote Camp.

62. In response to Part 1, para. 35 of the ANOCC, this was the first time the RCMP were informed that Ms. Bracken was present generally in the Injunction Area. At no point prior to Ms. Bracken's arrest were the RCMP informed of her specific location.
63. Later that day, Cpl. Saunderson sent a response e-mail to Mr. Simmons stating, "Your information has been passed along. If you are in contact with Amber [Bracken] please ensure that she identifies herself to police at the first opportunity and then adheres to police requests or directions moving forward."
64. On November 19, 2021, at 8:18 am, Staff Sergeant Shoihet also sent a response e-mail to Mr. Simmons, confirming receipt of his e-mail, and stating, "Amber [Bracken] has been at the camps previously and I think always identified herself as media. As long as she is clear with the members on the ground there shouldn't be any issues. I will pass along the information to the officers out there."
65. Prior to her arrest, Ms. Bracken was posting on her Twitter and Instagram accounts from inside the Tiny House. On November 17, 2021, her Twitter posts noted, among other things, that the RCMP were expected to arrive at Coyote Camp in the "next 12 to 48 hours."
66. On the same day, Ms. Bracken posted a photo on her Instagram account of the Injunction Order being burned. The photo's caption specifically refers to the Injunction Order, and cites a statement from Sleydo', also known as Molly Wickham, that the Gidimt'en were "forced to take matters into their own hands" by enforcing an eviction order against CGL, and "had to get a little bit louder" in sending their message.
67. In further response to Part 1, para. 23 of the ANOCC, the RCMP Defendants admit that Ms. Bracken was on assignment as a journalist for the Narwhal at the time of her arrest, but that at all material times, Ms. Bracken's actions went beyond her role as a journalist and, in any event, were in breach of the Injunction Order.
68. Ms. Bracken chose to enter into the Tiny House and chose to allow herself to be barricaded inside it. She knew or ought to have known that this was a breach of the Injunction Order and that the pipeline opponents who were occupying the Tiny House intended to deliberately breach the Injunction Order to further their cause.
69. Despite knowing or having ought to have known that she was breaching the terms of the Injunction Order, Ms. Bracken remained in the Tiny House for more than an hour after RCMP members read a summary of the Injunction Order.
70. Prior to forcing entry into the cabin, RCMP officers were unable to see inside the Tiny House to ascertain who was inside or to identify any of the occupants, and Ms. Bracken did not identify herself.
71. Contrary to the specific direction from Cpl. Saunderson to Mr. Simmons at the Narwhal, at no point after her arrival in the Injunction Area or prior to her arrest did Ms. Bracken identify herself as a journalist or as a member of the media to any of the RCMP members in the area. She did not let the RCMP know that she was inside the Tiny House. Nor did she communicate

directly or at all with the RCMP from the time of her arrival in the Injunction Area until the time of her arrest.

72. In response to Part 1, paras. 37 and 43 of the ANOCC, Ms. Bracken was not “out of the way” when RCMP members entered the Tiny House. The Tiny House was a small cabin occupied by six individuals. In the circumstances, her presence in the cabin interfered with safe and effective police operations.
73. At approximately 12:53 pm on November 19, 2021, Ms. Bracken was arrested for breaching the Injunction Order, the charge being civil contempt of court. Upon her arrest, Ms. Bracken was read her s. 10 *Charter* rights and given a police caution.
74. In response to Part 1, paras. 42 to 55 of the ANOCC, the Plaintiff’s descriptions of the precise actions of each unknown RCMP officer do not appear to correspond to the actions of any single particular officer, and it appears the Plaintiff has conflated the actions of different officers at times.
75. In further response to Part 1, paras. 42 to 54 of the ANOCC, the RCMP Defendants say that an RCMP officer placed Ms. Bracken under arrest inside the Tiny House, before she identified herself as a journalist to any RCMP member. The arresting officer was unaware that Ms. Bracken was on assignment as a journalist at the time of her arrest. The arresting officer escorted Ms. Bracken to two RCMP members at the entrance to the Tiny House. These two members took custody of Ms. Bracken and escorted her to two further RCMP members, one of whom read Ms. Bracken an arrest script. These two further members drove Ms. Bracken and two other contemnors towards the 27km marker. Before arriving at the 27km marker, the vehicle was stopped to allow Ms. Bracken to have a conversation with two members of the RCMP’s DLT. After this conversation, Ms. Bracken and the two other contemnors were driven to the 27km marker. At the 27km marker, Ms. Bracken was escorted to two RCMP members who drove her and other contemnors to the Houston RCMP detachment.
76. In further response to Part 1, paras. 42 to 54 of the ANOCC, the RCMP Defendants admit that immediately following her arrest, and thereafter, Ms. Bracken identified herself as a member of the media to one or more RCMP members who were responsible for arresting, detaining and transporting her.
77. In further response to paras. 42 to 54 of Part 1 of the ANOCC, the RCMP members who were informed by Ms. Bracken following her arrest that she was a member of the media did not have the authority to decide whether Ms. Bracken would be released from custody following her arrest and/or concluded that they had insufficient information to determine whether Ms. Bracken’s asserted status as a member of the media invalidated the grounds for her arrest in the circumstances and declined to release her from custody.
78. The RCMP concluded that being a journalist or a member of the media did not entitle Ms. Bracken to violate the Injunction Order.
79. In further response to Part 1, paras. 42 to 54 of the ANOCC, the RCMP admit that Ms. Bracken did speak to a member of the RCMP’s DLT after her arrest and prior to arriving at

the RCMP detachment in Houston. When speaking to the DLT, Ms. Bracken stated that she heard the RCMP read the Injunction Order while in the Tiny House. Ms. Bracken further stated that as a member of the media she was immune from police arrest and had the right to ignore police directions if she encountered police while embedded with the protestors.

80. Ms. Bracken ultimately arrived at the Houston RCMP Detachment at approximately 4:12pm, where she was processed and placed into the cells.

### **Continued Detention of Amber Bracken**

81. The RCMP attempted to expedite the processing of individuals arrested on November 19, 2021, including Ms. Bracken, by seeking to put the matter before Justice Church that same day. When Justice Church was informed that more alleged contemnors were arrested she decided to put the matter over to Monday, November 22, 2021 at the Prince George Courthouse.
82. In response to Part 1, paras. 63-64 of the ANOCC, at approximately 5:12 pm on November 19, 2021, Ms. Bracken spoke to legal counsel at the Houston RCMP Detachment. Ms. Bracken was then transported to the Smithers RCMP Detachment, and then to the Prince George RCMP Detachment for the purpose of appearing before Justice Church at the Prince George Courthouse on November 22, 2021. As Justice Church did not remand the alleged contemnors, they remained in RCMP custody until their scheduled court date.
83. Ms. Bracken came before Justice Church on November 22, 2021, and was released on conditions that same day.
84. In response to Part 1, para. 65 of the ANOCC, at approximately 2:51 pm on November 22, 2021 at the Prince George Courthouse, and while in the process of being released, Ms. Bracken confronted courthouse sheriffs about some of her personal effects not being brought over to the courthouse from the Prince George RCMP Detachment. Ms. Bracken demanded that the sheriffs call the RCMP to have them deliver her effects to the courthouse. Ms. Bracken was informed that she would have to go to the Prince George RCMP Detachment to pick up her effects. Ms. Bracken then struck a courthouse sheriff in the left shoulder with her right hand. This constituted assault, pursuant to s. 270(1) of the *Criminal Code*, RSC 1985, c C-46 (Assault of a Peace Officer). The RCMP were called, and Ms. Bracken was arrested.
85. Upon her arrest, Ms. Bracken was read her s. 10 *Charter* rights, was put in contact with a lawyer, and was transported to the Prince George RCMP detachment. At 4:24 pm, Ms. Bracken's lawyer arrived at the detachment and spoke to Ms. Bracken.
86. On November 22, 2021, Ms. Bracken was released on the civil contempt charge on an undertaking with the following conditions: (1) a promise to appear before the court on February 14, 2022; and (2) a promise to "strictly comply" with the terms of the Injunction Order.

87. On or about November 23, 2021, a number of the occupants of the two cabins on the CGL Drill Site appeared before the Court and were released on conditions. In one set of reasons (*Coastal GasLink Pipeline Ltd. v. Huson*, 2021 BCSC 2735), Justice Church commented the following on knowledge of the protestors:

[23] I do not agree with the submission of defence counsel that the plaintiff's case is not strong, and thus the condition ought not to be imposed. Each of these individuals was aware or should have been aware of the order when they undertook their activities, including obstructing the road, harassing individuals and occupying the plaintiff's worksite. There has been considerable notice since 2019 to the alleged contemnors that the plaintiff was taking the position that their actions constituted a breach of the injunction order. The RCMP attended and read the injunction order to the protestors several times between September and November 2019 including at least twice on November 19, 2021, immediately prior to their arrest.

[24] It appears that these individuals occupying the wooden structures that were erected on the plaintiff's worksite did so knowing they were participating in a protest that was in direct violation of this court. There is evidence before me that they have protested in defiance of that order.

88. CGL, in their sole discretion, discontinued the charge of civil contempt of court against Ms. Bracken in December 2021.

### **Division 3 — Additional Facts**

89. At all material times, and pursuant to its exercise of discretion to enforce the Injunction Order, the RCMP independently assessed the complaints brought to its attention. The RCMP exercised considerable restraint regarding when and how to enforce the injunction, even in the face of unlawful activity. The RCMP attended at the Pipeline Project only when the RCMP assessed the alleged conduct amounted to a significant breach of the Injunction Order or a criminal offence.
90. In addition to other standard practices, the RCMP employed the following measures when enforcing the Injunction Order, as appropriate:
- i. avoiding direct enforcement and seeking cooperation from individuals in the Injunction Area in lieu of direct confrontation whenever possible;
  - ii. using expert and specialized teams to address sophisticated obstructions;
  - iii. developing procedures to process individuals in remote locations; and
  - iv. avoiding the use of force whenever possible and following standard RCMP use-of-force policy when force is required.
91. At all material times, the RCMP did not intend to interfere and did not interfere with legitimate protest activities that were not a breach of the Injunction Order or a criminal offence, as long as those activities allowed the RCMP to conduct their operations and preserve safety.

92. At all material times, the RCMP's focus when enforcing the Injunction Order is to remove obstructions to CGL's work on the pipeline, consistent with the terms of the Injunction Order. The RCMP have allowed structures built and/or used by pipeline opponents within the Injunction Area to remain in place and in use for a considerable period of time, provided they did not interfere with CGL's work.
93. In response to Part 1, paras. 56-57 of the ANOCC, at all material times, the RCMP did not interfere with media access and made efforts to facilitate media access to the Injunction Area to the greatest extent possible, while also ensuring that the RCMP could conduct their operations effectively and safely.

## **Part 2: RESPONSE TO RELIEF SOUGHT**

1. The RCMP Defendants consent to the granting of NONE of the relief sought in paragraphs 1-9 of Part 2 of the ANOCC.
2. The RCMP Defendants oppose the granting of ALL of the relief sought in paragraph 1-9 of Part 2 of the ANOCC.
3. The RCMP Defendants take no position to the granting of NONE of the relief sought in paragraphs 1-9 of Part 2 of the ANOCC.

## **Part 3: LEGAL BASIS**

### **No valid cause of action against any of the personally named Defendants**

1. In response to Part 1, Para 4, sentence 3, the statement that His Majesty the King in right of the Province of British Columbia "is liable for breaches of the *Charter* by the provincial police force" is not a fact capable of admission, but a legal conclusion.
2. At all material times, there was an agreement between the Province of British Columbia and the Government of Canada pursuant to s. 14 of the *Police Act*, RSBC 1996, c 367 (the "*Police Act*") and s. 20 of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, as amended ("*RCMP Act*") authorizing the RCMP to carry out the powers and duties of a provincial police force (the "Provincial Police Service Agreement").
3. At all material times, and subject to the Provincial Police Service Agreement, the RCMP was deemed to be a provincial police force pursuant to s. 14(2)(a) of the *Police Act*, and RCMP members were deemed to be provincial constables pursuant to s. 14(2)(b) of the *Police Act*.
4. Pursuant to s. 11 of the *Police Act*, and B.C. Order in Council 762/2015, the Minister of Public Safety and Solicitor General ("MPSSG") is responsible for policing in British Columbia and is, on behalf of the provincial government, jointly and severally liable for torts committed by provincial constables (including members of the RCMP) in performance of their duties. The MPSSG is vicariously liable for torts committed by provincial constables in the execution of their duties pursuant to ss. 11 and 21(4) of the *Police Act*.

5. Section 21(2) of the *Police Act* states that no action lies against any provincial constable or person appointed under the *Police Act* for anything said or done in the performance or intended performance of their duty, in the exercise of their power, or for any alleged neglect or default in the performance or intended performance of their duties or exercise of their power.
6. Section 21(3) of the *Police Act* states that subsection (2) does not provide a defence if the police officer has been guilty of dishonesty, gross negligence or malicious or wilful misconduct or the cause of action is libel or slander. The Plaintiffs do not claim in libel or slander. The Plaintiffs do not plead material facts which, if proven, would establish that any RCMP officers were dishonest, grossly negligent or guilty of malicious or wilful misconduct.
7. The RCMP Defendants plead and rely upon ss. 11 and 21 of the *Police Act*, and say that no action for damages lies against any individual RCMP members, including C/Supt Brewer, who participated in any investigation, search or arrest of Ms. Bracken, or anyone, as at all material times they were acting in the performance of their duties and in the exercise of their powers as provincial constables.
8. At all material times, C/Supt. Brewer was an RCMP member, a Chief Superintendent in the RCMP, and Gold Commander of the Community-Industry Response Group.
9. At all material times, C/Supt. Brewer was acting in the course and scope of the execution of his duties as a peace officer and member of the RCMP in accordance with the common law, s. 18 of the *RCMP Act* and s. 17 of the *Royal Canadian Mounted Police Regulations*, 2014 SOR/2014-281.
10. At all material times and in all material respects, C/Supt. Brewer fulfilled the statutory mandates set out in the *Criminal Code*, the *RCMP Act* and the *Police Act* in good faith and in a *bona fide*, proper and reasonable manner and acted in accordance with the common law.
11. In particular, C/Supt. Brewer acted in accordance with his statutory and common law duties to preserve the peace, enforce the law, prevent and investigate crimes and offences against the laws of Canada and British Columbia. The defendant C/Supt. Brewer relies on s. 18 of the *RCMP Act* and s. 7 of the *Police Act*.
12. Pursuant to s. 36 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 (“*CLPA*”), all members of the RCMP are Crown servants. Pursuant to ss. 3 and 10 of the *CLPA*, no vicarious liability lies against the Attorney General of Canada (“AGC”) unless a tort committed by a Federal Crown servant gives rise to a cause of action for personal liability against that servant.
13. No action for damages lies against any Crown servant on the facts of this case as pleaded by the Plaintiffs in tort law or otherwise. As such, no action for damages in tort lies against the AGC pursuant to ss. 3 and 10 of the *CLPA*.
14. The Plaintiffs’ entire claim as against any RCMP members, including C/Supt. Brewer, should be struck, and the Plaintiffs’ tort claim should only proceed as against the MPSSG.

### **The RCMP acted lawfully in arresting and detaining Ms. Bracken**

15. In response to the whole of the ANOCC, and in particular to Part 3, paras. 1-4, the RCMP Defendants specifically deny that the RCMP committed any torts, breached Ms. Bracken or the Narwhal's Constitutional rights, or otherwise acted unlawfully as alleged or at all.
16. In response to the whole of the ANOCC, the RCMP Defendants plead and rely on s. 21 of the *Police Act* and say no action lies against C/Supt. Brewer as at all material times he was acting in the performance or intended performance of his duty and in the exercise of his power as a provincial constable.
17. The RCMP Defendants say that RCMP members acted lawfully and in the general public interest in enforcing the Injunction Order and in exercising their general policing duties. At all material times, RCMP members conducted themselves reasonably, lawfully and appropriately.
18. In addition to enforcing the terms of the Injunction Order, RCMP members acted in the course and scope of their duties as members of the RCMP and peace officers in accordance with the common law and ss. 11.1 and 18 of the *RCMP Act*, which duties include the preservation of the peace, the prevention of crime, the prevention and investigation of offences against the laws of Canada and of British Columbia, and the apprehension of offenders and others who may lawfully be taken into custody.
19. The Plaintiffs have not pleaded material facts capable of establishing the elements of the alleged torts or *Charter* breaches, or that RCMP enforcement activities have been tortious or in violation of the *Charter*.
20. The Injunction Order prohibits "anyone" from "physically preventing, impeding, restricting, or in any way physically interfering with, or counselling others to prevent, impede, restrict or physically interfere with any person or vehicle travelling to or accessing the vicinity...". The Injunction Order further prohibits "anyone" from "threatening or intimidating" CGL or anyone working with CGL on the Pipeline Project.
21. In the circumstances, the construction and occupation of the Tiny House on the CGL Drill Site was intended to and did impede and restrict CGL's work on the Pipeline Project, and restricted Pipeline Project workers from accessing the area. Further, the construction and occupation of the Tiny House intended to and did threaten and intimidate Project workers. The construction and occupation of the Tiny House effectively prevented CGL from actively using the area, which it had been doing prior to the occupation of the CGL Drill Site in September 2021, and which it had planned to do after.
22. The occupation of the Tiny House on the CGL Drill Site was a violation of the express terms of the Injunction Order. Accordingly, on November 19, 2021, all of the occupants of the Tiny House were arrested for violating the Injunction Order and detained.
23. Ms. Bracken's participation in the occupation of the Tiny House on November 19, 2021, constituted a breach of the express terms of the Injunction Order and was, accordingly, unlawful.



24. Ms. Bracken's status as a journalist or member of the media would not have placed her outside the ambit of the Injunction Order or entitle her to violate the express terms of the Injunction Order by occupying the Tiny House.
25. There is no general exception in law that exempts a member of the media from complying with valid court orders.
26. In the alternative, the RCMP had reasonable and probable grounds to conclude that Ms. Bracken's status as a journalist or member of the media did not place her outside the ambit of the Injunction Order or entitle her to violate the express terms of the Injunction Order by occupying the Tiny House.
27. In the further alternative, the RCMP in the circumstances had reasonable and probable grounds to conclude that Ms. Bracken was not acting as journalist or member of the media when she was occupying the Tiny House on November 19, 2021.
28. In the further alternative, Ms. Bracken's was not acting as a journalist or member of the media when she was occupying the Tiny House on November 19, 2021, or at the time of her subsequent arrest.
29. In the time during which she was occupying the Tiny House and up to and including Ms. Bracken's arrest, she:
  - i. Was not engaged in apparent good faith news-gathering activities of a journalistic nature;
  - ii. Was actively assisting, participating with or advocating for the Tiny House occupants, about whom her reports were being made;
  - iii. Committed acts which could reasonably be considered as aiding or abetting the Tiny House occupiers in their actions and in breaching the injunction order that had been already made; and
  - iv. Was obstructing or interfering with those seeking to enforce the law or any order that has already been made and was otherwise interfering with the administration of justice.
30. Ms. Bracken knowingly and recklessly placed herself in a position where she would be breaching the Injunction Order. Ms. Bracken embedded herself with individuals intentionally breaking the law, in a situation where she knew or ought to have known that occupying the Tiny House was a violation of the Injunction Order. In the alternative, Ms. Bracken was aware of more than enough details of the Injunction Order to put her on notice and require any reasonable person to inquire as to its terms. In failing to do so, she was both reckless and willfully blind.
31. The RCMP ordered Ms. Bracken to leave the Tiny House and despite being given ample time and opportunity to do so, she chose not to leave in direct contravention of the RCMP's order.

Her failure to comply with the RCMP's clear and direct order amounted to obstruction of justice.

32. Ms. Bracken did not identify herself to RCMP members, or advise RCMP members that she was a journalist or member of the media, from the time of her arrival in the Injunction Area until after her arrest at the Tiny House.
33. It was only after unlawfully occupying the Tiny House in violation of the Injunction Order and several RCMP commands to exit, that the door of the Tiny House was breached and Ms. Bracken was arrested.
34. At the time of her arrest, the RCMP had reasonable and probable grounds to conclude that she had violated the Injunction Order, that she was engaged in obstruction of justice and that she had committed an offence.
35. During her detention by the RCMP following the arrest, the RCMP had reasonable and probable grounds to conclude that Ms. Bracken's status as a journalist or a member of the media did not bring her outside the ambit of the Injunction Order, or relieve her of the consequences of violating the Injunction Order, or the consequences of failing to comply with the lawful orders of the RCMP. Accordingly, it follows that the RCMP had reasonable and probable grounds to maintain the arrest and continue the detention of Ms. Bracken until she appeared before the court.
36. Ms. Bracken's arrest on November 22, 2021 and subsequent detention was also lawful. Ms. Bracken assaulted a Courthouse Sheriff at the Prince George courthouse. This met the definition of Assault of a Police Officer, per. s. 270(1) of the *Criminal Code*, justifying her arrest and detention. Ms. Bracken was released as soon as practicable the next day, on Tuesday, November 23, 2021, and was not detained any longer than reasonably necessary.

**Ms. Bracken and the Narwhal suffered no Charter violations and are not entitled to Charter damages**

37. At Part 3, paras. 3-4, the ANOCC alleges infringements of ss. 2(b), 7, and 9 of the *Canadian Charter of Rights and Freedoms* and seeks damages under s. 24(1). The ANOCC does not provide material facts or sufficient particulars to support these claims. Claims of *Charter* breach require that material facts be specifically pleaded to support the elements required for each *Charter* provision that is invoked, and the justification for *Charter* damages if claimed. The RCMP Defendants cannot reasonably respond to allegations that the Plaintiffs' rights were breached under ss. 2(b), 7, or 9 of the *Charter* without further and better particulars of the material facts relating to the breach of each provision.
38. In addition to the *Supreme Court Civil Rules*, BC Reg. 168/2009 with respect to pleadings, the RCMP Defendants plead and rely on s. 8 of the *Constitutional Question Act*, RSBC 1996, c 68, as amended.
39. The RCMP Defendants deny that any RCMP member breached Ms. Bracken's rights under ss. 2(b), 7, or 9 of the *Charter*. The RCMP Defendants further deny that any RCMP member breached the s. 2(b) rights of the Narwhal.

40. The RCMP Defendants say that the RCMP members acted lawfully and denies that the Plaintiffs' *Charter* rights were breached. Alternatively, if any *Charter* rights were breached as alleged, which is denied, then any such infringement was justified under s. 1 of the *Charter*.
41. In specific response to Part 2, paras. 6-7 of the ANOCC, the RCMP Defendants say that the Narwhal does not have standing to rely on Ms. Bracken's arrest and subsequent detention to support its claim pursuant to s. 2(b) of the *Charter*. The Narwhal's own s. 2(b) *Charter* rights must have been infringed or denied to support a claim on its own behalf. The Narwhal was not, itself, arrested or detained and Ms. Bracken's arrest and subsequent detention does not support the Narwhal's claim that its own s. 2(b) *Charter* rights were breached.
42. Further, the RCMP Defendants say that *Charter* damages would not be an "appropriate and just" remedy under s. 24(1) of the *Charter*. In addition, *Charter* damages are not available because tort damages claimed by the Plaintiffs would sufficiently address any concerns of compensation, vindication and deterrence.

**Mr. Bracken suffered no compensable damages as a result of her arrest and detention**

43. The RCMP Defendants deny that Ms. Bracken has suffered any injury, loss, damage, or expense recoverable by law as a result of conduct by the RCMP Defendants, as alleged or at all.
44. The RCMP Defendants further deny that Ms. Bracken has suffered emotional distress beyond the ordinary annoyances, anxieties, and fears of persons being lawfully arrested and detained.
45. In the alternative, if Ms. Bracken has suffered injury, loss, damage, or expense, which is denied, then such harm, detriment, loss, or damage was not caused by the acts or omissions of any of the RCMP Defendants, or anyone for whom they are in law responsible, and the RCMP Defendants are not liable.
46. In the alternative, the RCMP Defendants say that any wrongful arrest, wrongful detention, or other wrongdoing on the part of any of the RCMP Defendants, which is not admitted but is denied, was not the proximate cause of, or did not contribute to, any injury, loss, damage, or expense allegedly suffered by Ms. Bracken.
47. In the further alternative, if Ms. Bracken suffered any injury, loss, damage, or expense, any such injury, loss, damage or expense is attributable to previous or subsequent incidents involving Ms. Bracken, or pre-existing circumstances.
48. In the further alternative, if Ms. Bracken sustained or continues to sustain any injury, loss, damage, or expense as alleged or at all, then the injury, loss, damage, or expense was or is too remote, and not a reasonably foreseeable consequence of any act or omission on the part of the RCMP Defendants, or anyone for whom the RCMP Defendants could be liable.
49. In the further alternative, if Ms. Bracken suffered any injury, loss, damage, or expense as alleged or at all, which is denied, the plaintiffs, and each of them, could, by the exercise of due diligence, have reduced the amount of any such injury, loss, damage, or expense. Ms.

Bracken failed to mitigate her damages, the particulars of which may become known and/or which are wholly within the knowledge of Ms. Bracken.

50. Ms. Bracken is not entitled to aggravated, special, or punitive damages, as alleged, or at all. At all material times, the RCMP Defendants and their employees, servants, and agents acted in good faith and the RCMP Defendants deny that their or any of their employees, servants, or agents' conduct was reckless, high-handed, malicious, arbitrary, or highly reprehensible, or that any of them at any time departed from ordinary standards of decent behavior, as alleged, or at all. The ANOCC does not provide material facts to support a claim for damages.

### **Legislation**


51. The RCMP Defendants plead and rely upon the following legislation:
- a. *Criminal Code*, RSC 1985, c C-46;
  - b. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11;
  - c. *Crown Liability and Proceedings Act*, RSC 1985, c C-50;
  - d. *Negligence Act*, RSBC 1996, c 333;
  - e. *Police Act*, RSBC 1996, c 367;
  - f. *Royal Canadian Mounted Police Act*, RSC 1985, c R-10;
  - g. *Royal Canadian Mounted Police Regulations*, 2014 SOR/2014-281;
  - h. *Constitutional Question Act*, RSBC 1996, c 68;
  - i. *Supreme Court Civil Rules*, BC Reg. 168/2009; and
  - j. *Court Order Interest Act*, RSBC 1996, c 79.

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Dated: October 5, 2023

  
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Signature of the lawyer for the RCMP Defendants

**The Attorney General of Canada  
The Minister of Public Safety and Solicitor  
General of British Columbia  
RCMP Chief Superintendent John Brewer**

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**Per: Craig Cameron**

Solicitor/counsel for the RCMP Defendants

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
  - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
  - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.