Federal Court Cour fédérale

Date: 20260320

Docket: 26-T-113

Citation: 2026 FC 382

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Montréal, Québec, March 20, 2026

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

NATIONAL INDIGENOUS FISHERIES INSTITUTE

Applicant

and

ATTORNEY GENERAL OF CANADA
(DEPARTMENT OF FISHERIES AND OCEANS)

Respondent

ORDER AND REASONS

[1] Although the pleadings in this matter are in English, at the request of the Applicant and with the Respondent's consent, the hearing proceeded in French. The parties have advised the Court that they do not require that this judgment be issued simultaneously in both official languages (*Official Languages Act*, RSC 1985, c 31 (4th Supp), s 20(1)b)). Therefore, the judgement and reasons will be provided in English, with a French translation to follow.

I. Overview

[2] On May 1st, 2019, the National Indigenous Fisheries Institute [the Applicant or NIFI] and Her Majesty The Queen In Right Of Canada as represented by the Minister of Fisheries and Oceans entered into the Aboriginal Aquatic Resource and Oceans Management Agreement [AAROM Agreement].

[3] The AAROM Agreement was due to expire on March 31, 2029. However, on December 10, 2025, the Minister sent NIFI a notice of termination due to take effect on March 31, 2026, in conformity with section 10.1 of the AAROM Agreement, which provides that "[t]his Agreement may be terminated by either Party with ten (10) days' notice in writing given to the other Party" [Notice of Termination].

[4] On March 4, 2026, NIFI filed a Motion for (a) an Order that the *dies a quo* or first day of the 30-day statutory period for filing an Application for judicial review [AJR] under section 18.1(2) [of the *Federal Courts Act*, RSC 1985, c F-7] is February 26, 2026; (b) in the alternative, an extension of time in which to file the AJR pursuant to Rule 8 is warranted under the *Federal Court Rules*, SOR/98-106; (c) an order staying the December 10, 2025, Notice of Termination of the AAROM Agreement governing relations between the Applicant and the Respondent pending a ruling of this Court on the legality of the Notice of Termination; and (d) such further and other relief as this Court may deem just [Motion].

[5] At the hearing held on March 10, 2026, NIFI's counsel clarified that the Motion has really two prongs, the Applicant wants 1) an interlocutory injunction to stay the December 10, 2025,

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Notice of Termination, to prevent the AAROM Agreement from being terminated as of March 31, 2026, to remain in force until the Court finally disposes of the AJR and 2) an extension of time to commence its AJR.

[6] NIFI essentially argues that the Notice of Termination lacked clarity and was sent in breach of the Crown's duty to act in good faith and, perhaps, the honour of the Crown, other fiduciary obligations owed by the Crown, and even section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, including because it was sent before all the avenues for dispute resolution provided for in the AAROM Agreement were exhausted. Further, NIFI submits that should the AAROM Agreement be terminated, many aboriginal communities across Canada will suffer irreparable prejudice.

[7] As will be more fully detailed below, the authorities cited by NIFI's counsel in their written representations - all of which allegedly dealing with the extension of time - simply do not exist and appear to be the product of Artificial Intelligence [AI] hallucinations. Further, the applicable legal principles were neither accurately identified nor clearly pleaded, be it orally or in writing. Hence, the above represents the Court's attempt at describing the essence of NIFI's pretentions, summarizing arguments that were never presented intelligibly, and using legal principles that were neither identified nor articulated in their application to the case at bar.

[8] Further to the written and oral representations of the parties and given the urgent nature of the interlocutory injunction requested, the Court agreeing fully with the Respondent's written representations, dismissed the Motion at the end of the hearing, with reasons to follow. Here are these reasons.

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II. Factual background

[9] The Respondent states that NIFI was created and first funded in 2017 with a short-term mandate to lead Fisheries and Oceans Canada's [DFO] Indigenous Program Review [IPR], which the Respondent describes as "an intensive two year engagement process undertaken in partnership with DFO that produced recommendations for renewing DFO's commercial and collaborative programs".

[10] According to the Respondent, "on May 1st, 2019, the parties entered into the AAROM Agreement. This agreement was amended on June 13, 2023, in order to increase funding and add relevant core activities such as assisting DFO in the launching of a new marine spatial planning initiative by ensuring indigenous involvement support, the development of a compendium of DFO leading practices related to fisheries and oceans management, the holding of a virtual workshop on Indigenous procurement in the DFO portfolio, an Indigenous Skills and Training Project, assisting in a Collaborative Program Management Committee and assistance in the development of an all of government strategy to guide Canada's ocean economy". On the Respondent's side, the AAROM Agreement fell under the purview of the Indigenous Programs Unit [IPU].

[11] In September 2024, the then Director General of the IPU wrote to NIFI's president to raise "several dispute points". Over the following year, there were several exchanges between NIFI and the DFO's leadership. DFO representatives convened a meeting with the Applicant's board and expressly stated that they wanted to "restore mutual trust" and "find a good path forward" to continue their relationship.

[12] The Respondent submits that the Department took concrete steps to "address the issues and to promote dialogue and transparency" including several meetings, acting "consistent with section 12.1" of schedule 2 to the AAROM Agreement, which reads as follows:

> 12. ISSUE RESOLUTION
>
> 12.1. lf any issue arises under this Agreement, the Parties will attempt to resolve the issue in a collaborative and informal manner.
>
> 12.2. Where an issue remains unresolved, the Parties may develop and implement a mutually agreed-to issue resolution process to resolve the issue;

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[13] Each party argues that the process failed because of the failures of the other side. What is clear is that the process did not lead to any resolution.

[14] On November 10, 2025, NIFI's General Manager sent the DFO a "Request for Independent Senior Review and Mediation to Support Renewal and Strengthening of the National Indigenous Fisheries Institute-DFO AAROM Partnership", with a cover letter expressing concerns regarding the "creeping erosion of the co-management principle that has long underpinned our shared work under AAROM" [Independent Senior Review Request]. The basis for this Independent Senior Review Request was again section 12 of Schedule 2 to the AAROM Agreement. This letter remained unanswered.

[15] On November 20, 2025, the DFO's Assistant Deputy Minister informed NIFI that the acting Director General of the IPU was leaving, and that a new permanent Director General had been appointed effective immediately. Then, on November 26, 2025, the outgoing acting Director General of the IPU wrote to NIFI's leadership stating: "There is no rush, and I know we're

approaching the holiday season, but we thought we might try to set up an introductory call for her [the new permanent Director General] with you three early in the new year."

[16] On December 1, 2025, NIFI's General Manager wrote to the IPU's new Director General to follow-up on the Independent Senior Review Request.

[17] On December 10, 2025, after what the Respondent describes as "more than 2 years of discussions between the parties regarding various unsatisfactory operations and program outcomes" but before any meeting involving NIFI representatives and the DFO's new Director General was scheduled, DFO sent NIFI the Notice of Termination, based on section 10.1 of the AAROM Agreement, to be effective March 31, 2026.

[18] Notwithstanding the Notice of Termination, NIFI continued to attempt to reach out to DFO in relation to the Independent Senior Review Request, with letters on January 16, 2026, January 29, 2026, and February 20, 2026. NIFI reiterated that they stood ready to resume negotiations to attempt to salvage the AAROM Agreement. However, and as the Applicant itself highlight, "none of these overtures received any reply" until February 26, 2026. On that date, the IPU's Director General sent a letter confirming the DFO's decision to terminate the AAROM Agreement. With respect to the Independent Review Request, the letter stated: "I would remind all parties that such a resolution process has already been implemented".

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III. Analysis

(1) *The motion for an extension of time to commence the application for judicial review is dismissed*

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[19] As concerns the extension of time sought, the applicable legal test was defined by the Federal Court of Appeal in *Canada (Attorney General) v. Hennelly*, 1999 CanLII 8190 (FCA). The Applicant needed to prove:

1. a continuing intention to pursue its application;
2. that the application has some merit;
3. that no prejudice to the respondent arises from the delay; and
4. that a reasonable explanation for the delay exists.

[20] It is not necessary for all these conditions to be met for the extension of time to be granted (*Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 [*Hogervorst*] at para 33 citing *Grewal v. Canada (Minister of Employment and Immigration)*, 1985 CanLII 5550 (FCA) [*Grewal*] at 278-79).

[21] The matter is discretionary and, ultimately, the question is "whether, in the circumstances presented, to do justice between the parties calls for the grant of the extension." (*Grewal* at 272; *Hogervorst* at para 33; *Seven Valleys Transportation Inc v. Canada (Employment and Social Development)*, 2017 FC 195 at para 21; *Odyssey Television Network Inc v. Ellas TV Broadcasting Inc*, 2018 FC 337 at para 71).

[22] Regarding its continuing intention to pursue the matter, NIFI essentially submits that their

repeated letters trying to obtain a reopening of negotiations, in which they mentioned that the Notice of Termination was, in their understanding, a breach of contract, show a continued intention to challenge said notice. Furthermore, regarding the merits of its AJR, NIFI submits that: "[t]his act by the Department of Fisheries and Oceans is in complete breach of the co-co-co management standards, basic departmental service standards and section 35 of the Constitution Act, 1982".

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[23] NIFI also submits that, when the Termination Notice was received: "There had been no prior notice, no consideration of the impact on indigenous communities NIFI serves on Canada's three coasts, all within the context of DFO senior management level chaos and increasing unpredictability. This left the Applicant confronted with a maze of DFO signals to consider over the Christmas period." They also highlight that the Independent Senior Review Request was an attempt to try a different dispute resolution mechanism, one that would be external, whereas the 2024 attempts relied on internal processes.

[24] Further, the Applicant argues that the Termination Notice was not clear since the letter contained a "eulogy of praise for NIFI" recognizing its past collaboration with the DFO, and "it was not even clear who was authorized to articulate DFO's position vis a vis the Applicant". They highlight "the expectation set by the preceding Director General, and the Applicant's attempts to resolve the matter with the Respondent".

[25] NIFI adds that: "There is no prejudice to the Crown, and there has been no delay, whereas allowing the Crown to trample on this Agreement will cause irreparable harm to indigenous communities". Alternatively, they propose that "[t]he delay is minimal [and] [t]he Respondent has

been aware of the Applicant's position on dispute resolution since November 10, 2025." Lastly, with respect to the reasonable explanation for the delay, NIFI posits that "the primary reason why this situation has arisen is the constructive non-engagement and obstructionism of the DFO".

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[26] Given the above, NIFI submits that February 26, 2026, should be the day on which the delay to start their AJR should be deemed to have started pursuant to paragraph 18.1(2) of the *Federal Courts Act*. NIFI submits that "[t]he Request for Independent Senior Review and Mediation is the next step in an escalating model aligned with AAROM principles, section 35 and the general principles of judicial review. The ignoring of this process via an unmotivated notice of termination is unreasonable under the circumstances and ergo, *null and void ab initio*."

[27] The Court is not convinced by NIFI's submissions. The Notice of Termination was clear and was provided in accordance with the terms of the AAROM Agreement that both parties signed. The AAROM Agreement is the law governing the parties. There was no action or obstructionism on the part of DFO that could suggest that this termination was suspended in any way. There is no evidence of an intransigent conduct or attitude on the part of DFO. On the contrary, the evidence in the record is that various attempts, in the spirit of cooperation and respect, took place before DFO elected to send the Notice of Termination. The merit of the underlying AJR is therefore far from clear.

[28] While the evidence provided may show a continuing intention to negotiate a different outcome for the AAROM Agreement, they do not show a continuing intention to pursue an AJR.

Moreover, even if such an intention had been proven, the reasons provided by NIFI to explain its delay of close to three months before filing the AJR are not reasonable.

[29] As for the issue of prejudice, the Court agrees with the Respondent submissions that prejudice is clear whenever a delay lacks a reasonable explanation, citing *Collins v. Canada (Attorney General)*, 2010 FC 949 at paragraph 6: “[w]here time limits are not complied with, a respondent is entitled to expect that extensions of such time limits will not be granted where the non-compliance with the time limits lacks a reasonable explanation. To grant an extension of time in such circumstances can only result in prejudice to an opposing party.” (cited approvingly in *McLean v. Canada (Royal Mounted Police)*, 2021 FC 1148 at para 17).

[30] In view of the above, the Court finds that the conditions needed for an extension of time are not met in this case.

[31] In any event, the Court is far from convinced that the Notice of Termination constitutes a decision that can be the subject of judicial review pursuant to paragraph 18.1(2) of the *Federal Courts Act,* as more fully explained below.

(2) *The Motion for interlocutory injunctive relief is dismissed*

[32] Given that the motion for an extension of time is dismissed, there is no underlying AJR to which the motion for an interlocutory injunction can attach. This is sufficient to dispose of the Motion. Nonetheless, before reaching this decision, the Court undertook a full review of the submissions made by both parties, both before and during the hearing. That said, the Court notes

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that NIFI's written representations did not mention or plead the test applicable to interlocutory injunctions, nor did they mention any jurisprudence on the matter, including seminal decisions like *RJR-MacDonald Inc v. Canada (Attorney General)*, 1994 CanLII 117 (SCC) [*RJR-MacDonald*]. It is only at the hearing that counsel for the Applicant argued the need for the injunctive relief sought.

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[33] Under the *RJR-MacDonald* framework, the Applicant must prove that i) their application raises a serious question to be tried; ii) they would suffer irreparable harm without the injunction; and iii) the balance of convenience favors granting them in that the inconvenience they will suffer without immediate interlocutory relief is greater than that the Respondent faces if an injunction is granted. The Court finds that the Applicant has not met the *RJR-MacDonald* test.

[34] First, not only does the proposed AJR appear to have no merit given the clear terms of section 10 of the AAROM Agreement, but moreover, the procedural vehicle that was chosen, namely the judicial review of the decision to terminate the AAROM Agreement, is improper. This matter relates to a contractual issue that has nothing to do with the Court's supervisory jurisdiction over federal boards. On this point, given the need of providing the parties with a decision quickly (i.e. before the March 31, 2026 deadline for the termination of the AAROM Agreement), the Court takes the liberty of citing the Respondent's submissions at length, with which it agrees:

> 13. On its face, the proposed application for judicial review and the Applicant's underlying interim motion for a stay do not engage this Court's judicial review jurisdiction.
>
> 14. Indeed, the Applicant is basically asking this Court to issue a writ of *certiorari* in respect of a dispute arising exclusively from a contractual relationship between the parties. This matter in no way concerns a decision or an order of a federal board within the meaning of the *Federal Cours Act*.

15. The appropriate recourse for the Applicant is to bring an Action before the Federal Court or by way of a "Demande introductive d'instance" before the Superior Court, not an application for review under s. 18 of *Federal Courts Act.*

16. As a result, an application for judicial review is bound to fail and therefore raises no serious issue.

(…)

18. The applicant is asking the Court to exercise a jurisdiction, which it simply does not have by asking it to address its complaints concerning the termination of the agreement when it should rather be filing an action for contractual relief before the Federal Court or the Superior Court.

19. Indeed, under the *Federal Courts Act*, an application for judicial review lies only in respect of a decision of a "federal board, commission or other tribunal", defined as " any body, person or persons having exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown." [*Federal Courts Act*, ss 2, 17] In *Anisman v Canada (Border Services Agency)*, the Federal Court of Appeal articulated a two-step inquiry to determine whether a body or person falls within this definition: " First, it must be determined what jurisdiction or power the body or person seeks to exercise. Second, it must be determined what is the source or the origin of the jurisdiction or power which the body or person seeks to exercise." [*Anisman v Canada (Border Services Agency)*, 2010 FCA 52 at para 29].

20. In the present case, the applicant seeks judicial review of the letter dated December 10th 2025 terminating the AAROM Agreement. The "jurisdiction or power" exercised by the Department in issuing that letter was solely the contractual right to terminate the agreement with NIFI on ten days' notice, the source of which is section 10.1 of the AAROM Agreement.

21. In exercising this right, it is plain and obvious that the Department was not acting under jurisdiction or powers conferred "by or under an Act of Parliament" or "by or under an order made pursuant to a prerogative of the Crown" within the meaning of section 2 of the Act. Consequently, the Department was not acting as a "federal board, commission or other tribunal".

22. As in *Anisman*, it is irrelevant whether the Department was authorized by federal legislation to enter into the AAROM

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> Agreement with NIFI [*Anisman* at para 33; *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall,* 2018 SCC 26 at para 14]. That is not the issue raised by the proposed application for judicial review. The authority to terminate the AAROM Agreement did not derive from any federal statute or prerogative order; it derived solely from the bilateral contract between the parties. The impugned act is therefore purely contractual in nature.

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[35] The Court did consider the Applicant's arguments related to the obligations of good faith owed by the Crown to NIFI, given its submission that it is a non-profit organisation that services Indigenous people, and the possibility that the AAROM Agreement should be approached as something other than a private law instrument, and this, even though these arguments were not clearly articulated in NIFI's written submissions. At the hearing, counsel for NIFI suggested that the Court should do something "akin to lifting the corporate veil", in order to look at the communities that NIFI services, rather than the organization itself. No caselaw or legal basis were provided to support this new argument.

[36] The Respondent on the other hand submitted that further to the failed negotiation attempts in 2024-2025, which were entertained in the spirit of cooperation and respect, DFO was contractually entitled to exercise its right to terminate the AAROM Agreement and that no breach of good fait or of section 35 of the *Constitution Act*, 1982 arises from this termination:

> 35. In these circumstances, any obligations that could arguably arise under section 12 were fully satisfied to resolve the issues collaboratively and informally and went further by establishing a structured process in which the Applicant participated. When those efforts failed to produce the necessary transparency and cooperation, the Department was entitled to exercise its clear contractual prerogative to terminate the Agreement under section 10.1, which it did lawfully.
>
> 36. The Applicant nevertheless alleges that "this act by the Department of Fisheries and Oceans is in complete breach of the co-

> co-co management standards, basic departmental service standards and section 35 of the Constitution Act, 1982." This bare assertion is unsupported by the terms of the AAROM Agreement and by the factual record and, as such, does not raise a serious justiciable issue with respect to the Department's exercise of its contractual termination rights.
>
> 37. The Department reasonably determined that continued expenditure under the AAROM Agreement was no longer warranted and was less effective than other methods for pursuing co-development, co-design and co-delivery in national-level collaboration efforts. The Department continues to pursue these objectives; it has simply chosen not to do so through this particular project. The CO-CO-CO management standards remain a departmental priority, but the Department concluded that they were not being met under this Agreement. The Applicant does not demonstrate, by reference to facts or contractual language, how the Department's decision to terminate breached any such standard.
>
> 38. The Agreement expressly provides that it does not seek to determine the existence, nature or scope of Aboriginal or Treaty rights, and is instead confined to collaboration on aquatic resource and oceans management as a matter of departmental programming and service standards. The Applicant tenders no evidence and pleads no material facts capable of establishing a breach of section 35 of the *Constitution Act*, 1982 arising from the termination of this funding agreement.
>
> 39. For all of the foregoing reasons, the proposed application for judicial review does not raise any serious justiciable issue and has no reasonable prospect of success. It lies outside this Court's judicial review jurisdiction and, in any event, discloses no arguable basis to impugn the Department's lawful exercise of its contractual termination right. The motions should be denied.

[37] Therefore, even if this Court had jurisdiction, the Court is far from convinced that in the context of the present contractual matter, the Crown had any of the heightened duties and obligations that the Applicant refers to, nor that the Notice of Termination would constitute a breach of these obligations.

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[38] First, as the Respondent correctly pointed out, the AAROM Agreement's preamble contains relevant considerations that set the stage of the contractual relationship between the parties. It reads as follows:

> WHEREAS existing Aboriginal and treaty rights are recognized and affirmed in section 35(1) of the Constitution Act, 1982;
>
> AND WHEREAS in entering into this Agreement, the Parties are not seeking to determine the existence, nature or scope of Aboriginal or treaty rights, but rather are seeking to collaborate in aquatic resource and oceans management;
>
> AND WHEREAS the Parties are both interested in the conservation, protection and management of aquatic resources;
>
> AND WHEREAS the Parties confirm their commitment to a relationship based on mutual respect and understanding;
>
> AND WHEREAS DFO agrees to contribute funding to the Organization to support the Organization in carrying out the Activities in accordance with the terms and conditions of this Agreement.

[Underlining added]

[39] While the Applicant did not clearly articulate arguments related to the honour of the Crown, which it only mentioned in passing, the Court also looked into its possible application to the case at bar. The honour of the Crown, which is rooted in reconciliatory justice, is a constitutionally entrenched principle that imposes heavy obligations on the Crown, the exact nature of which varies depending on the specific circumstances (*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 [*Haida Nation*] at para 18).

[40] As stated by the Supreme Court of Canada in *Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan,* 2024 SCC 39 [*Pekuakamiulnuatsh Takuhikan*], at para 156:

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> The common element among the circumstances that the Court has so far recognized as engaging the honour of the Crown is that they relate to the reconciliation of specific Indigenous claims, rights or interests with the Crown's assertion of sovereignty (see MMF, at para. 73). In particular, the Court has established that the Crown has a duty to consult Indigenous peoples when their rights recognized and affirmed by s. 35 of the Constitution Act, 1982 might be adversely affected by the Crown's conduct, whether the rights are established or claimed (*Tsilhqot'in Nation v British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 257, at para. 78; *Haida Nation*, at para. 35). Where the Crown exercises control over specific Indigenous interests, the honour of the Crown may give rise to a fiduciary obligation (*Wewaykum Indian Band v. Canada*, 2002 SCC 79, [2002] 4 S.C.R. 245, at paras. 79 and 81; *MMF*, at para. 73). Similarly, the Crown has an obligation to act with integrity in the negotiation, interpretation and implementation of treaties entered into with Indigenous peoples (*Restoule*, at para. 73; *Beckman*, at para. 42).

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[41] However, "not all interactions between the Crown and Aboriginal people engage it" (*Manitoba Metis Federation Inc v. Canada (Attorney General)*, 2013 SCC 14 [*MMF*] at paras 65-72. See also *Newfoundland and Labrador (Attorney General) v. Uashaunnuat (Innu of Uashat and of Mani-Utenam)*, 2020 SCC 4 [*Uashaunnuat*] at para 22). This was also restated by the Supreme Court of Canada in *Pekuakamiulnuatsh Takuhikan,* at paragraphs 145-146, 160, "the honour of the Crown does not apply to every contractual undertaking given by the Crown to an Indigenous entity", specifically excluding "simple commercial contracts between a government and an Indigenous entity".

[42] In the case at bar, the AAROM Agreement is not constitutional in nature and does not relate to Indigenous peoples' right of self-government. It is a simple commercial contract between DFO and NIFI. Furthermore, the details of the organizational structure and make-up of NIFI are not in the record so whether it constitutes an "Indigenous group" within the meaning given by the

Supreme Court in *Pekuakamiulnuatsh Takuhikan* is far from clear. On the contrary, the Respondent's assertion that "IPR focused on technical and program issues rather than Indigenous rights or policy, and the Applicant was established as a technical organization rather than a rights bearing collective" is uncontested. Finally, counsel for NIFI did not identify any specific undertaking on the DFO's part that could be construed as directly engaging some or other constitutionally entrenched rights of Indigenous peoples.

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[43] Moreover, from the record as it stands, there is no indication that DFO acted in bad faith or acted in a way that would undermine the intent of the AAROM Agreement. In the spirit of cooperation and respect, DFO attempted a long mediation process, that proved unsuccessful. In view of this, it elected to use its contractually agreed right to terminate the agreement and provided much more notice than the contractually agreed delay of ten days.

[44] Given the above, the absence of any serious question would once again be sufficient to dispose of the injunctive portion of the Motion. However, given that the main argument submitted by NIFI at the hearing related to the irreparable harm that would be caused by the termination of the AAROM Agreement, the Court also looked into the second requirement for injunctive relief. The problem here is that the Motion adduced no evidence of irreparable harm. At the hearing, counsel for the Applicant mentioned possible layoffs and adverse consequences for indigenous communities, but these assertions were not supported by the evidentiary record.

[45] It is true that, at the eleventh hour, NIFI did attempt to introduce into evidence two new affidavits. Both were sworn on March 9th, 2026, the eve of the hearing. One of these affidavits was

filled so late that the registry of the Federal Court did not have time to communicate it to this Court before the hearing. Worse, it had never been communicated to the Respondent. Hence, this new evidence, which aimed at demonstrating the irreparable harm that would ensue from the termination of the AAROM Agreement, took the Respondent by surprise.

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[46] To explain the lateness, NIFI's counsel mentioned that the Applicant services communities across the country, including remote Western communities that may be hard to reach. However, this does not reasonably explain why NIFI could not secure these affidavits earlier. Let's not forget that the Notice of Termination had been sent on December 10, 2025. Although NIFI might have hoped for an out of court resolution, NIFI did not receive any sign from the DFO that could have led it to assume that the Notice of Termination was not going to be executed. If the irreparable harm it claims existed, one would have expected that it would have secured these affidavits much before the night before the hearing. To consider these affidavits, when the Respondent had no time to prepare submissions on them, would not only have been prejudicial to the Respondent, but more importantly, procedurally unfair. In view of this, as well as all of the above, the Court refused to consider them.

[47] For all these reasons, the Motion is dismissed.

(3) *The use of AI and the submission of hallucinated caselaw*

[48] Through the affidavit of David Joseph MacKinnon, legal (in-house) counsel of the Applicant, sworn on March 3, 2026, NIFI submitted 4 decisions supposedly supporting the Motion:

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Case law: Canada (Minister of Citizenship and Immigration) v. R. (2006), 54 Admin. L.R. (4th) 151 (FCA)

Issue: The Federal Court of Appeal clarified the factors to consider when deciding whether to grant an extension of time under section 18.1.

Held: The Court emphasized that the applicant must provide a reasonable explanation for the delay and show that the motion is brought in good faith and that it is not frivolous. The Court also noted that the delay should not cause prejudice to the respondent.

Relevance: The sequence of events, NIFI diligence, and the major consequence to the Applicant's raison d'être as a national indigenous organization, in addition to the ongoing negotiations all plead in favour of the Applicant. The delay causes no prejudice to the Respondent, as the proper venue for the dispute resolution process is an external review.

Borden Ladner Gervais LLP v. Canada (Minister of Citizenship and Immigration), 2015 FC 438 (Federal Court)

Issue: Whether the applicant had a reasonable excuse for the delay in filing its judicial review application.

Held: The Court granted an extension, noting that the delay was relatively short and that the applicant had been in discussions with the relevant government agency, which were ongoing at the time. The Court also noted that the respondent had not shown any prejudice from the delay.

Relevance: This case is similar to ours and shows that ongoing discussions or dispute resolution efforts can be a reasonable excuse for delay in filing.

Federal Express Canada Inc. v. Canada (Public Safety and Emergency Preparedness), 2013 FCA 257 (Federal Court of Appeal)

Issue: Whether an extension of time should be granted where the applicant failed to file an application for judicial review within the prescribed time.

Held: The Federal Court of Appeal allowed the extension, finding that the applicant had acted diligently and had shown that the delay was caused by a misunderstanding or confusion regarding the procedural requirements, rather than negligence.

> **Relevance:** This case is a useful reference when you have a reasonable explanation for the delay, such as ongoing correspondence or misunderstanding regarding the process.
>
> **Her Majesty the Queen in Right of Canada v. Imperial Oil Limited, 2011 FC 728 (Federal Court)**
>
> **Issue:** Whether an extension of time for filing judicial review was appropriate where there were significant delays in the applicant's attempt to resolve a dispute.
>
> **Held:** The Court granted the extension, emphasizing that while delays should not be encouraged, they must be considered on a case-by-case basis, particularly where it would be unfair to deny the applicant the right to proceed with judicial review.
>
> **Relevance:** This case reinforces the Court's discretion to allow extensions based on fairness and the individual circumstances of each case.

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[49] There is one substantial problem with all of these decisions: they simply do not exist!

[50] The Respondent submits, and the Court agrees, that "the only logical reason for why the affiant, counsel for the Applicant, would have cited hallucinated cases in his affidavit is that he relied upon generative AI in preparing this document" (citing *Arora v. Canadian National Railway*, 2026 FC 82 [*Arora*]). The Respondent further adds that "Applicant did not include the Declaration in the first paragraph of the Affidavit or the Motion record stating that AI was used in preparing the document required by the Court's practice direction entitled The Use of Artificial Intelligence in Court Proceedings dated May 7, 2024 which requires a litigant using AI to include a Declaration".

[51] When counsel appearing on behalf of the Applicant was questioned on this issue, at the outset of the hearing, he advised the Court that this was the first he heard of this issue, that he was not the one who prepared the Motion record and that he was simply acting as the "barrister" for

this file, while Me MacKinnon was the acting "solicitor". This fact is further supported by the apology letter from Me MacKinnon, received by the Court on March 18, 2026, which indicates, *inter alia*, that counsel "accepted to help me pro bono despite his already very busy practice (…) and that "it would be most unfair for him to be made the victim of the old saying "No good deed goes unpunished"".

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[52] While this may be true, this counsel "barrister" is the one who signed both the notice of application and memorandum included in the Applicant's Motion record, both dated on March 3, 2026. Furthermore, it is surprising that while appearing on behalf of the Applicant, to plead the Motion, he apparently had not read the Respondent's Motion Record, which clearly identified the issue of hallucinated AI decisions, at paragraphs 54 to 60 of their Memorandum of fact and law.

[53] The Court provided counsel with an opportunity to consort with Me MacKinnon on the issue. The only explanation given to the Court was that given the urgency of the Motion and the fact that NIFI is a small non-profit organisation, Me MacKinnon had subcontracted the legal research on this matter and did not verify the references provided. These excuses show carelessness and run afoul or ignore obligations clearly laid out by the Québec *Code of Professional Conduct of Lawyers*, CQLR c B-1, r 3.1, of which section 35 reads as follows:

> A lawyer must provide professional services that are appropriate to the nature of his mandate and avoid performing or multiplying professional acts without sufficient reason.
>
> He is responsible for the mandate and must adequately supervise work performed by others who are collaborating with him in the performance of the mandate.
>
> [Underlining added]

[54] While the Cour appreciates the content of the apology letter received after the hearing and this Court's Order rendered orally, and while the Court believes Me MacKinnon's submission that this was a non-intentional mistake, the Court also agrees with the representations of the Respondent that "the failure to declare the use of AI and, the manifest failure to verify the information is not a harmless endeavor", citing *Arora* (at para 30):

> Presenting erroneous AI-generated content to the Court can mislead the Court, waste scarce judicial resources, put a litigant's case at risk, cause reputational damage to a litigant and lead to sanctions. As the British Columbia Supreme Court recently stated, "[c]iting fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice": *Zhang v Chen*, 2024 BCSC 285 at para 29, cited with approval in *Lloyd's Register Canada Ltd. v Choi*, 2025 FC 1233.

[55] Given that AI hallucinated cases have become a more frequent concern before the Court, it is worth reviewing what Canadian courts have had to say on the topic. For instance, Justice Fothergill indicated in *Llyod's Register Canada Ltd v Munchang Choi*, 2025 FC 1233 [*Llyod's Register*] the following:

> The Respondent says that his use of generative AI tools was limited to drafting and preliminary research. He denies that the citation "*Fontaine v Canada*, 2004 FC 1777" was generated, or "hallucinated", by AI. Rather, he says that he intended to rely on *Fontaine v Canada (Attorney General)*, 2012 ONCA 206 [*Fontaine*], and made a mistake when writing the citation. He notes that he is a self-represented litigant with mental health issues, and asks the Court not to remove the Motion Record from the Court file and refrain from imposing punitive measures.
>
> The Applicant replies that the latitude afforded a self-represented litigant has limits, and notes that the Respondent has previously relied on AI-generated cases in other proceedings (citing *Choi v Lloyd's Register Canada Limited*, 2024 CIRB 1146 at paras 73-79 [*Choi*]).
>
> […]

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The Respondent's explanation for citing a non-existent case that was apparently generated by AI is unsatisfactory and cannot be accepted by the Court. As Justice David Masuhara of the British Columbia Supreme Court observed in *Zhang v Chen*, 2024 BCSC 285, "[c]iting fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice" (at para 29).

Pursuant to the Court's AI Practice Direction, parties must inform the Court and each other if any documents they submit to the Court for the purposes of litigation include content that was created or generated by AI. The Respondent was made aware of AI Practice Direction in *Choi* (at para 78), and admits to having used generative AI tools in preparing his submissions; however, he still has not provided the declaration required by the AI Practice Direction.

The undeclared use of AI in the preparation of documents filed with the Court, particularly when they include the citation of non-existent or "hallucinated" authorities, is a serious matter. In *Ko v Li*, 2025 ONSC 2965, a lawyer who relied on "fake case precedents" avoided a finding of contempt of court only because she took full responsibility for her actions and expressed appropriate contrition (at para 56 and following). The Respondent in this case has done neither, and continues to insist he has done nothing wrong.

In all of the circumstances, the removal of the Motion Record from the Court file is a very modest sanction.

Removal of the abusive Motion Record from the Court file is necessary to preserve the integrity of the Court's process and the administration of justice. A party who assists the Court in ensuring the orderly administration of justice should not have to suffer costs (*NM Paterson & Sons Ltd v The St Lawrence Seaway Managment Corp*, 2004 FCA 210 at para 18).

The Applicant has not requested costs on a solicitor-client basis, although such an award may have been warranted (*Young v Young*, 1993 CanLII 34 (SCC), [1993] 4 SCR 3 at p 134). Instead, costs will be awarded to the Applicant in the all-inclusive amount of $500.00.

[Emphasis added]

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[56] Justice Morin of the Superior Court of Québec addressed a similar issue in *Specter Aviation Limited c Laprade*, 2025 QCCS 3521 [*Spector Aviation*]. The following paragraphs are worth reciting at length:

> b) **L'usage inapproprié de l'intelligence artificielle par Monsieur Laprade constitue un manquement important au déroulement de l'instance**
>
> [32] Signe d'une tangente sociale à laquelle notre système de justice ne pourra se soustraire, l'intelligence artificielle s'est immiscée dans le débat opposant les parties.
>
> [33] Monsieur Laprade s'est présenté à la Cour seul après avoir perdu le soutien légal qu'il avait jusqu'à tout récemment. Dans le cadre de leur préparation, les procureurs des Demanderesses ont constaté que la contestation produite par Monsieur Laprade renfermait plusieurs citations d'autorités et de jurisprudences qui n'existent tout simplement pas.
>
> [34] Monsieur Laprade est un homme de 74 ans qui a manifestement vécu une vie fort intéressante. Bien préparé, attitude soignée et respectueuse du décorum de la Cour, il argumentera avec verve dans le cadre de l'audition.
>
> [35] Questionné au sujet de ces irrégularités lors de l'audition par le Tribunal, Monsieur Laprade dira qu'il n'est pas juriste et se drapant de son droit à une défense pleine et entière, il confirmera avoir dû recourir à plusieurs moyens. Ses amis juristes d'abord. Les différents moteurs de recherches juridiques ensuite. Surtout, il dira s'être appuyé sur « toute la force possible » que l'intelligence artificielle pouvait lui offrir.
>
> [36] Contrit, Monsieur Laprade s'excusera du fait que ses documents ne sont probablement pas parfaits, mais que sans l'aide de l'intelligence artificielle, il n'aurait pas été en mesure de se défendre adéquatement.
>
> [37] Le Tribunal est fort sensible aux enjeux auxquels Monsieur Laprade a dû faire face en toute fin de parcours judiciaire.
>
> [38] L'accès à notre système de justice se veut à la fois un droit et un privilège. Pour que ce dernier puisse remplir sa fonction vitale visant à normaliser les relations entre citoyens et justiciables, il est impératif que son accès soit contrôlé et que ses règles de jeux

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élémentaires soient respectées, peu importe que la partie soit représentée par un avocat ou non.

[39] Véritable fiduciaire de ce système, le Tribunal est investi d'une mission axée sur un accès ordonné et proportionnel pour le justiciable et doit maintenir le proverbial *« level playing field »* pour que la joute judiciaire se déroule en fonction des mêmes paramètres applicables à tous.

[40] Le contrepoids de cette mission - tout aussi important - est que le Tribunal doit s'assurer que le justiciable qui abuse du système judiciaire ou qui s'y inscrit en faux soit sanctionné et découragé.

[41] Le maintien de cet équilibre est un délicat exercice auquel le Tribunal est confronté quotidiennement. Mais cet exercice fondamental ne saurait être pris à la légère et, au final, favorise un accès uniforme aux justiciables. Il en va non seulement de l'efficacité du système, mais c'est un exercice qui est au cœur même de sa survie.

[42] Mais que ce soit clair.

[43] Si l'accès à la justice commande une certaine flexibilité de la part des tribunaux face au citoyen qui doit se représenter sans l'aide d'un avocat, celle-ci ne saurait jamais se traduire par une tolérance du faux. L'accès à la justice ne saurait jamais s'accommoder de la fabulation ou de la frime.

[44] La juge en chef de cette Cour, la Juge en chef associée et le Juge en chef adjoint s'exprimaient ainsi en 2023 dans le cadre d'un avis à la communauté juridique et au public [Avis à la communauté juridique et au public de la Cour supérieure du Québec, daté du 24 octobre_2023_(Avis_a_la_communaute_juridique_Utilisation_intelligence_artificielle_FR.pdf)] invitant les plaideurs à la prudence et visant à les mettre en garde contre le risque associé à un usage inapproprié de l'intelligence artificielle:

> La fabrication potentielle de sources juridiques par la voie des grands modèles de langage soulève des préoccupations importantes. Le présent avis aborde la question des références juridiques dans les observations présentées aux tribunaux, à la lumière de ces enjeux. Notre engagement commun à renforcer l'intégrité et la crédibilité des instances judiciaires est crucial.
>
> **Mise en garde :** La Cour supérieure du Québec invite les praticiens et les plaideurs à la prudence,

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> lorsqu'ils font référence à des sources juridiques ou des analyses émanant de grands modèles de langage.
>
> Fiabilité : Pour toute référence à la jurisprudence, des textes de loi ou des commentaires dans le cadre d'observations faites auprès du tribunal, il est essentiel que les parties se fondent exclusivement sur des sources provenant de sites Web de tribunaux, des éditeurs commerciaux couramment cités en référence ou les services publics bien établis.
>
> **Intervention humaine :** Afin de respecter les normes les plus strictes en matière d'exactitude et d'authenticité, **les observations générées par l'IA doivent faire l'objet d'un contrôle humain rigoureux**. Cette vérification peut se faire au moyen de recoupements avec des bases de données juridiques fiables pour confirmer que les références et leur contenu résistent à un examen minutieux. Une telle démarche est conforme aux pratiques de longue date des professionnels du droit.
>
> La Cour supérieure du Québec reconnaît que les nouvelles technologies présentent à la fois des opportunités et des défis. La communauté juridique doit s'adapter en conséquence. Ainsi, nous encourageons les discussions et souhaitons une collaboration constante afin d'aborder ces enjeux de manière efficace.
>
> [Soulignements ajoutés]

[45] Prudence et intervention humaine à toute étape afin de valider, voici les leçons à retenir.

[46] Inutile de stigmatiser l'usage de l'intelligence artificielle. Ceux qui le feront auront tôt fait d'oublier le sort réservé aux sbires qui se refusaient aux promesses et avantages que l'Internet devait apporter, il n'y a que quelques années. Les avancées technologiques ne permettent pas l'attentisme et l'appareil judiciaire doit s'adapter en amont plutôt qu'en aval. En outre, toute mesure technologique pouvant permettre de favoriser l'accès au système de justice au citoyen devrait être saluée et encadrée plutôt que d'être proscrite et stigmatisée.

[47] L'intelligence artificielle n'épargnera pas le système juridique et les tribunaux en plus d'y faire face, devront composer

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avec cette nouvelle technologie se targuant d'être révolutionnaire. Bien que ses promesses enivrantes n'aient d'égal que les craintes associées à son usage inapproprié, l'intelligence artificielle testera sérieusement la vigilance des tribunaux pour les années à venir.

[48] Nous en sommes manifestement aux balbutiements de l'impact de l'intelligence artificielle sur le déroulement d'une instance judiciaire. Notre Cour ne semble pas avoir eu l'occasion de se prononcer sur cet enjeu qui promet de noircir plusieurs pages de jurisprudence sous peu.

[49] Quelques décisions rendues par des tribunaux canadiens peuvent servir d'inspiration.

[50] La Cour suprême de la Colombie-Britannique dans l'affaire *Zhang v. Chen* [*Zhang v. Chen*, 2024 BCSC 285. Voir aussi *Hussein v. Canada (Immigration, Refugees and Citizenship)*, 2025 FC 1138, par. 9] a conclu que la citation de jurisprudence inexistante par un avocat ayant reconnu s'être fié sur les bons conseils de *ChatGPT* était constitutive d'un abus de procédure et était de nature à remettre l'intégrité du système de justice en question :

> [29] Citing fake cases in court filings and other materials handed up to the court is an **abuse of process** and is tantamount to making a false statement to the court. Unchecked, it can lead to a **miscarriage of justice**.
>
> […]
>
> [46] As this case has unfortunately made clear, generative AI is still no substitute for the professional expertise that the justice system requires of lawyers. Competence in the selection and use of any technology tools, including those powered by AI, is critical. **The integrity of the justice system requires no less**.
>
> [Soulignements ajoutés]

[51] Dans l'affaire *Lloyd's Register Canada Ltd. v. Choi* [reference omitted], la Cour fédérale a quant à elle conclu au rejet de la procédure entachée de références « hallucinées » et générées par l'intelligence artificielle […]

[52] Revenons à Monsieur Laprade et sa contestation.

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[53] Les procureurs des Demanderesses ont efficacement soumis au Tribunal un tableau relevant huit occurrences de citations inexistantes, de décisions non rendues, de références sans objet et de conclusions non-concordantes dans la contestation de Monsieur Laprade.

[54] Lorsque confronté à ces enjeux, ce dernier n'a pas cherché à s'en dédire, ne remettant pas en question que certaines de ses citations aient pu être « hallucinées » par l'intelligence artificielle sur lequel il s'est appuyé pour générer sa contestation.

[55] Le Tribunal est d'avis que la conduite de Monsieur Laprade est constitutive d'un manquement grave au déroulement de l'instance au sens de l'article 342 C.p.c. qui consacre le pouvoir discrétionnaire du Tribunal de sanctionner les manquements importants constatés dans le déroulement de l'instance.

[56] Qu'est-ce qu'un manquement important? C'est un manquement d'une certaine gravité et qui dépasse le statut d'anodin. C'est du moins l'interprétation proposée par la Cour d'appel dans un arrêt tout récent, *9401-0428 Québec inc. c. 9414-8442 Québec inc.* [*9401-0428 Québec inc. c. 9414-8442 Québec inc*, 2025 QCCA 1030] :

> [82] Qu'est-ce qu'un manquement important? Lors de l'adoption du nouveau *Code de procédure civile*, le ministre de la Justice de l'époque, M. Bertrand St-Arnaud, l'a décrit **comme un manquement « d'une certaine gravité » et qui est plus qu'anodin**. La jurisprudence de la Cour supérieure va dans le même sens.
>
> [83] De son côté, la Cour a qualifié les comportements suivants de « manquements importants » : le défaut de respecter des engagements; l'utilisation de prétextes pour retarder la transmission de renseignements financiers pertinents (ultimement communiqués pendant le procès avec huit mois de retard); l'omission ou le refus de transmettre l'identité et les coordonnées de témoins clés; et le fait d'éviter de répondre aux questions lors d'un interrogatoire. Ce sont tous des gestes destinés à embêter l'autre partie, à entraver le cours du procès ou à **faire perdre le temps des parties et du tribunal**.

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> [84] Les manquements énumérés à l’article 341 al. 2 *C.p.c.* (ne pas respecter des délais, indûment tarder à présenter un incident ou un désistement, faire comparaître un témoin inutilement, etc.) peuvent également servir de guide. Bien que les articles 341 et 342 *C.p.c.* n’aient pas le même objet (l’article 341 permet au tribunal de condamner la partie qui a eu gain de cause à payer les frais de justice), « le même principe les sous-tend : **décourager les justiciables à faire un mauvais usage de la procédure et les encourager à respecter les engagements qu’ils prennent dans le cadre du contrat judiciaire »**.
>
> […]
>
> [86] Contrairement à l’article 54 C.p.c., **l’article 342 *C.p.c.* vise d’abord à « sanctionner/*punish* » les manquements**, et non à réparer le préjudice subi par une autre partie. Certes, la sanction permettra de compenser, dans une certaine mesure, les honoraires professionnels de l’avocat de cette autre partie (ou, si elle n’est pas représentée par avocat, le temps consacré à l’affaire et le travail effectué), **mais l’objectif premier consiste à imposer une sanction proportionnelle à la gravité des manquements**, selon ce que le tribunal estime juste et raisonnable, et non selon le principe de la restitution intégrale.
>
> [87] La conclusion d’un juge sur l’existence d’un manquement important au sens de l’article 342 *C.p.c.* commande « une grande déférence ». La Cour n’interviendra « qu’en présence d’une erreur de droit ou d’une erreur manifeste et déterminante quant aux questions factuelles ou mixtes ».
>
> [Soulignements ajoutés]

[57] Tenter d’induire la partie adverse et le Tribunal en erreur en produisant des extraits fictifs de jurisprudence et autres autorités constitue un manquement grave. Que cette conduite soit intentionnelle ou plutôt le fruit d’une simple négligence, le justiciable est redevable des plus hauts standards par rapport aux procédures qu’il dépose à la Cour. Faut-il le rappeler, le dépôt d’une procédure demeure un acte solennel qui ne saurait jamais être pris à

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> la légère [*El-Hachem c. Décary*, 2012 QCCA 2071]. Que le justiciable soit représenté par avocat ou non.
>
> [58] Si le Tribunal est sensible au fait que l'intention de Monsieur Laprade était de se défendre au meilleur de ses capacités en ayant recours à l'intelligence artificielle, sa conduite n'en demeure pas moins hautement répréhensible. Il doit supporter seul tout l'opprobre découlant de citations « hallucinées » par l'intelligence artificielle sur laquelle il s'est appuyé pour générer sa contestation.
>
> [59] Une interprétation généreuse de sa conduite mène le Tribunal à conclure qu'il a fait perdre du temps à plusieurs intervenants, les avocats des Demanderesses et le Tribunal en tête de peloton. Une interprétation plus sévère aurait pu mener le Tribunal à conclure que Monsieur Laprade a *sciemment* tenté de l'induire en erreur, un manquement qui se situe à l'autre bout du spectre de la gravité des manquements procéduraux.
>
> [60] Considérant la nature punitive d'une condamnation pour manquement procédural et qu'il faut chercher à dissuader ce type de conduite, le Tribunal condamnera Monsieur Laprade au paiement de 5 000$.

[57] *Arora*, *Llyod's Register* and *Specter Aviation* are three cases involving self-represented parties. This is not the case here. Given all the Notices and Directives issued by Canadian courts of various levels on the use of AI in legal proceedings, and the information disseminated by various law societies, professional associations and media sources in general, the Court expects much more from members of the Bar, no matter how urgent a matter is claimed to be.

[58] Further to an interview with Former Chief Justice Crampton, in an article dated of October 28, 2025, Cristin Schmitz of Law 360 Canada writes:

> Counsel who "thumb their noses" at the Federal Court's requirement to disclose any and all generative AI they used to create court filings will find that the national trial court "won't hesitate" to ding them with personal costs or initiate contempt proceedings, warns Federal Court Chief Justice Paul Crampton "Federal Court "won't hesitate" to impose costs on lawyers for undisclosed GenAI use.
>
> (…)

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> The Federal Court's first personal costs sanction was small ($100), Chief Justice Crampton said. "But if we have to increase those cost awards, and even ask [counsel] to show cause why they shouldn't be held in contempt, we won't hesitate to do so, because we … can't have people thumbing their noses at our practice directions."
>
> The chief justice called it "disconcerting" that so few counsel seem to be disclosing AI use in the creation of court filings, despite the Federal Court's 2023 notice and 2024 practice direction requiring counsel and parties to alert the court and each other, via a signed declaration, whenever AI-generated or AI-created content is submitted to the court and prepared for the purpose of litigation.

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[59] In fact, and as cited above by Justice Fothergill, in *Ko v. Li*, 2025 ONSC 2965, a lawyer who relied on "fake case precedents" avoided a finding of contempt of court only because she took full responsibility for her actions and expressed appropriate contrition. The following passages of that decision rendered by Justice Myers are also worth reciting at length:

> [13] In *R. v. Cohn*, 1984 CanLII 43 (ON CA), Goodman JA, writing for the court, described contempt in the face of the court as follows:
>
>> A contempt in the face of the court may be broadly described as any word spoken or act done in, or in the precincts of, the court which obstructs or interferes with the due administration of justice or is calculated so to do. Forms of conduct which have been held to constitute such contempt are: assaults committed in court; insults to the court; interruption of court proceedings; refusal on the part of a witness to be sworn, or having been sworn, refusal to answer…: 9 Hals., 4th ed., pp. 4-8, paras. 5, 6 and 7.
>
> [14] Irrespective of issues concerning artificial intelligence, counsel who misrepresent the law, submit fake case precedents, or who utterly misrepresent the holdings of cases cited as precedents, violate their duties to the court.
>
> [15] I agree with Masuhara J. in *Zhang v Chen*, 2024 BCSC 285 (CanLII):
>
>> Citing fake cases in court filings and other materials handed up to the court is an abuse of process and is

> tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice.

[16] A court decision that is based on fake laws would be an outrageous miscarriage of justice to the parties and would reflect very poorly on the court and the civil justice system.

[17] In determining and pronouncing the law applicable to its decisions, the court receives submissions from counsel concerning the applicable law. As discussed below, the court relies on counsel to state the law accurately and fairly. Misrepresentation of the law by a lawyer poses real risks of causing a miscarriage of justice that undermines the dignity of the court and the fairness of the civil justice system.

[18] In my prior endorsement, I listed several duties that may be violated by a lawyer delivering a factum and making oral submissions relying on fake cases and mis-citing cases for propositions that have nothing to do with the actual issues and holdings of the cases. For clarity however, it seems to me useful to note that some of the duties that I listed are not necessarily duties owed to the court.

[19] The Law Society of Ontario remains the regulator of licenced lawyers and paralegals in Ontario. The Law Society regulates the professional duties of lawyers in addition to their duties to the court.

[20] Were this matter proceeding to a show case hearing, I would have first particularized for Ms. Lee that the court's concern was with misrepresentation of the law to the court. The organizational cause of what occurred in Ms. Lee's law firm is not the court's real concern in my view. In my view, issues concerning a lawyer's duties of technological competency and staff supervision, for example, are better dealt with by the Law Society.

[21] <u>In a court proceeding however, the proverbial buck stops with counsel. All counsel (and not just senior counsel on the file) bear responsibility for the accuracy of their submissions and for any misrepresentations they may make by signing, delivering, and relying on fake or false legal precedents and arguments.</u>

[22] Counsel may not mis-state or misrepresent the law to the court whether by way of AI hallucinations or by any other means.

[Emphasis added]

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[60] It is worth noting that in *Ko*, the offending lawyer 1) delivered letters of apologies, 2) admitted her wrongdoing, 3) recognised that it was a serious lapse in judgement, 4) undertook to complete no fewer than six hours of Continuing Professional Development training in legal ethics and technology including addressing specifically the professional use and risks of AI tools in legal practice, 5) revised her offending factum to remove all fake citations and 6) implemented new protocols in her practice to ensure that:

> -Every legal authority is independently confirmed through CanLII or Westlaw;
>
> -No AI-generated content will be relied on without rigorous manual review;
>
> -I will no longer delegate legal research to tools I cannot control or verify personally.

[61] Very recently, on March 3, 2026, Justice Myers rendered another decision in relation to the potential use of AI generated references in *Kapahi Real Estate Inc. v. Elite Real Estate Club of Toronto Inc*, 2026 ONSC 1438. The facts of that case are quite different from those in the present file. As he indicates, "[t]his decision may involve the next generation of AI hallucinations. In this case, counsel delivered a factum that cited real cases with correct neutral citations to CanLII. But then counsel added quotations from the cases. The quotations do not exist in the cases. The quotations are fake". While not directly applicable to the present matter, the following passages of his analysis are particularly impactful and are worth noting:

> [38] The most obvious explanation for these fake quotations is that counsel used AI to draft the factum. But I am not making that finding, as I have not had the benefit of full submissions on this issue. But, hypothetically, counsel might have checked each case cited to ensure that it was a real case but failed to read the cases to look for the quotations that AI hallucinated. That would at least make some sense of the issue.
>
> [39] But Mr. Parvaiz says that he "did not use or rely artificial intelligence or other such tools in preparing the reply factum." Rather, he attributes the false quotations to "a lack of due care" and

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“human errors” for which he takes full responsibility. He says the errors arose from his “misreading the cases cited”, “carelessness” and “inadvertence.” He says he sincerely and deeply regrets his errors and notes that he is a sole practitioner who is relatively new to the bar.

[40] Try as I might, I do not understand Mr. Parvaiz’s response. If he did not use AI, how did he come to make up seven paragraphs and call them quotations from real cases? If I accept that Mr. Parvaiz did not use AI for research or drafting, I am at a loss for how these quotations could be a result of human error, a lack of due care, misreading the cases cited, carelessness, or inadvertence as stated by Mr. Parvaiz.

(…)

[45] I have previously required counsel to show cause why they should not be held in contempt of court for relying on fake cases in a factum and in open court. *Ko v. Li*, 2025 ONSC 2766 (CanLII).

[46] But in a show cause proceeding, I have no ability to investigate to try to determine what happened from objective sources like computer metadata and online histories. As judge, I am not able to cross-examine or challenge credibility like a prosecutor.

(…)

[48] I am also concerned because there has already been a proceeding under Rule 57.07 in which Mr. Parvaiz was exposed to some jeopardy in costs for misconduct that included the fake quotations in his Reply Factum. While that does not preclude contempt of court, other quasi-criminal or criminal processes, or administrative proceedings, it does lead me to temper the court’s ongoing involvement.

[49] There are other bodies, like the Toronto Police Service and the Law Society of Ontario that are equipped to investigate wrongdoing if they exercise the discretion to do so.

[50] In my view, on these facts, the best outcome to determine if there has been either use of AI hallucinations or deliberate falsification of law is for those with the authority to investigate to be left to do so. It will be up to the authorities to decide if charges of one type or another should be brought.

[51] I will be referring this decision to the Law Society of Ontario for its consideration.

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[62] In the case at bar, as above mentioned, the Court did receive on March 18, 2026, an apology letter from Me MacKinnon, taking responsibility for the situation. While the Court appreciates its content, there must be consequences to such a serious breach ("manquement important") of professional conduct, and this, even if counsel did not intend to mislead the Court. This is not a case where the Court would consider contempt of Court findings or refer this decision to the Law Society of Québec. However, as per the Order rendered orally at the end of the hearing, the Court will be granting costs on a solicitor-and-client basis, as per the request of the Respondent.

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[63] That said, these costs are not solely related to the undisclosed use of AI and the hallucinated cases cited in support of the Applicant's submission. There were numerous other irregularities identified in the Applicant's record by the Respondent. Given the circumstances, the Respondent submitted that this matter warrants "dismissal of the claim, or, at a minimum, an award of costs on a solicitor-and-client basis" (citing the very well summarised principles of costs in *Whalen v Fort McMurray No, 468 First Nation*, 2019 FC 1119 at paras 2 to 11). The Court agrees that in the present matter, costs on a solicitor-and-client basis are warranted. However, it would be unfair for NIFI to assume these costs alone. Given the content of Me MacKinnon's letter, he will also be held liable to pay some of these costs.

IV. Conclusion

[64] Considering the reasons above, the Motion is denied.

JUDGMENT in 26-T-113

THIS COURT'S JUDGMENT is that:

1. The Motion is denied.

2. The Applicant and Me Joseph MacKinnon personally are solitarily condemned to pay costs on a solicitor-client basis in favor of the AGC.

"Danielle Ferron"
Judge

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	26-T-113
STYLE OF CAUSE:	NATIONAL INDEGINOUS FISHERIES INSTITUTE v ATTORNEY GENERAL OF CANADA (DEPARTMENT OF FISHERIES AND OCEANS)
PLACE OF HEARING:	MONTRÉAL, QUÉBEC
DATE OF HEARING:	MARCH 10, 2026
JUDGMENT AND REASONS:	FERRON J.
DATED:	MARCH 20, 2026

APPEARANCES:

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Éric Gingras Isabelle Mathieu-Millaire	FOR THE RESPONDENT (ATTORNEY GENERAL OF CANADA)

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Joseph MacKinnon, in-house counsel for the Applicant	
Attorney General of Canada Montréal, Québec	FOR THE RESPONDENT (ATTORNEY GENERAL OF CANADA)

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