

# OFFICIAL TRANSCRIPT

Action No.: 0901-07057

E-File No.: CVQ09BRODERDONA

Appeal No.: \_\_\_\_\_

## IN THE COURT OF QUEEN'S BENCH OF ALBERTA JUDICIAL DISTRICT OF CALGARY

BETWEEN:

DONALD BRODER and  
GEORGE BRODER

Plaintiffs  
Defendants by Counterclaim

and

ELIZABETH MACINNIS

Defendant  
Plaintiff by Counterclaim

---

### PROCEEDING

---

Calgary, Alberta  
November 23, 2009

Transcript Management Services, Calgary  
Suite 1901-N, 601-5th Street SW  
Calgary, Alberta T2P 5P7  
Phone: (403) 297-7392 Fax: (403) 297-7034

## TABLE OF CONTENTS

Description	Page
November 23, 2009	1
Afternoon Session	1
Submissions by Ms. Smith	6
Submissions by Mr. Broder	26
Order	27
Submissions by Ms. Smith (Costs)	27
Submissions by Mr. Broder (Costs)	28
Order (Costs)	30
Certificate of Record	31
Certificate of Transcript	

1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

3 November 23, 2009

Afternoon Session

4

5 Master Prowse, Q.C.

Court of Queen's Bench of Alberta

6

7 (No Counsel)

For the Plaintiffs

8 P. A. Smith, Q.C.

For the Defendant

9 G. Squirell

Court Clerk

10

11

12 THE COURT CLERK:

Order in chambers. All rise.

13

14 THE MASTER:

Good afternoon. Please have a seat. Just

15 give me a minute here while I unpack the materials. Okay. I can let you know that I  
16 have read all of the materials. So from the defendant's side, that's a brief, a schedule 8,  
17 and a notice of motion, and a list of sources referred to in the brief.

18

19 And I've read from the plaintiff's side, a chambers application argument, affidavit of  
20 Donald Broder or Broder, sorry, supplementary affidavit of Donald Broder, affidavit of  
Craig Broder and supplementary affidavit of Craig Broder. So I assume those are the  
22 materials that I was -- you know, that that is the total of the materials that was in front  
23 of me. Plus I've read the statement of claim, defence, amended statement of claim, and  
24 amended statement of defence.

25

26 So, Ms. Smith?

27

28 **Submissions by Ms. Smith**

29

30 MS. SMITH:

Thank you, Master Prowse. Since you have

31 read all of the materials, I will not go through them in horrid detail. This is a very  
32 simple matter. Mr. Broder is a serial litigator. This is the second statement of claim  
33 he's brought against Elizabeth MacInnis who acted for parties adverse in interest to  
34 Donald Broder. She acted, as you can see from the materials that are provided to you,  
35 for the personal representatives of an estate.

36

37 In that context, based on authorities I've provided to you in -- at tabs -- tab 15, which is  
38 the *J.A. Industries* case, Ms. MacInnis had no duty whatsoever to Mr. Broder. She had  
39 no duty to George Broder who is sued in his capacity as a beneficiary. Her duty was to  
) the estate.

41

1 The history of this claim is one of tortured litigation, Sir, that Mr. Broder engaged in for  
2 a period of ten years involving a trophy deer head. That litigation was characterized by  
3 orders, appeals, and further appeals, judgment appeals, and further attempts to appeal.  
4 Mr. Broder did not succeed in any of those matters. When you review the facts of this  
5 case in the submission of the defendant, there is no basis whatsoever for this action to  
6 continue.

7  
8 It is a hopeless case and it ought to be summarily struck. It ought to be summarily  
9 struck on the basis that Ms. MacInnis had no duty. It ought to be summarily struck on  
10 the basis that the -- that the plaintiffs are merely attempting to re-litigate matters already  
11 decided against them through various litigation in the underlying action. It ought to be  
12 struck on the basis that the limitation has long expired to bring this action. And it ought  
13 to be struck on the basis it is absolutely hopeless in fact, as the Court of Appeal said in  
14 the German (phonetic) case, justified the striking of a claim under section -- Rule 129 of  
15 the *Rules of Court*.

16  
17 And I did want to address the hopeless in fact in the re-litigation, Sir. There are ten --  
18 sorry, there are five paragraphs in the statement of claim which set out specific  
19 allegations against Ms. MacInnis. Paragraph 10 refers specifically to a statement of  
20 claim issued in 2003, six years prior to the within action being commenced, which claim  
21 was discontinued more than five years ago.

22  
23 Now, paragraph 10 says it was issued in 2001, prior to the issuance of the granted  
24 probate. That's clearly wrong. A certified copy of the statement of claim was within,  
25 was attached as part of the materials referred to in my brief, Sir, and it is certified. But  
26 more importantly, that statement of claim was discontinued many years ago. It's  
27 identical to the one that proceeded to trial.

28  
29 Paragraph 11 indicates that she -- Ms. MacInnis failed to provide, Sir -- basically is  
30 making a claim with respect to the failure to provide service. That allegation was dealt  
31 with by Madam Justice Veit who found that in her decision which is contained in the  
32 materials I provided to you, Sir, under the schedule, schedule 1(4), memorandum  
33 decision of the Honourable Madam Justice J.B. Veit, she found at paragraph 38 that  
34 Donald Broder had adequate notice of the application for appointment as administrators.

35  
36 Paragraph 12 alleges that she failed to obtain the leave of the Court to add the personal  
37 representatives to the -- to action number 9703-12949. That was dealt with, Sir, by  
38 Mr. Justice Clarke who, by orders of September 18th, 2001, granted leave to add the  
39 personal representatives to this action. An appeal of that order was denied by the Court  
40 of Appeal on October 4th, 2002.

1 Paragraph 14 alleges that she failed to include all relevant material in the record in order  
2 to coverup the date the first time the lack of personal representatives was raised. The  
3 record, which is included for the trial, Sir, which is included in the material attached to  
4 the schedule -- schedule 'A', included all orders of the Court made in connection with  
5 the matter including the order of Master Quinn with respect to the requirement to  
6 appoint a personal representative.

7  
8 Paragraph 15 essentially says that she kept material from the Court. All orders and  
9 pleadings were filed on the court file, Sir.

10  
11 Sir, that makes this case absolutely hopeless in fact based on the review of the certified  
12 copies of the pleadings filed. That's just one of the defences that the -- the -- one of the  
13 assertions the defendant puts before you that justifies striking this claim, no duty, no  
14 factual basis, the limitations long gone, and the case is hopeless in fact.

15  
16 Now, I did want to address the limitation. Limitation requires that you bring an action  
17 within two years of discovering you were injured and who caused it and that it -- that it  
18 supported bringing a cause of action. I want to refer you to something that is attached  
19 to the plaintiff's chambers application.

20  
21 THE MASTER:

Yeah.

22  
23 MS. SMITH:

This -- this is attachment 'C'. It's the  
24 transcript before Master Hanebury on a previous attempt by these -- by this plaintiff,  
25 Mr. Broder, to sue his own lawyers. Ms. MacInnis was joined in that action but that  
26 was -- that was struck earlier against Ms. MacInnis. I refer you to page 85 of that  
27 transcript. And this is exactly what the Broders said to Master Hanebury. In that case  
28 the limitation was raised as one of the issues, that was Mr. Sawers. That was raised as  
29 one of the issues. Starting at line 9: (as read)

30  
31 The Broders argued that they were not aware they'd been injured  
32 until the Supreme Court of Canada dismissed their application for  
33 leave to appeal in a lawsuit in which Mr. Sawers had represented  
34 them.

35  
36 Sir, I would submit to you that at the very latest date that these individuals could claim  
37 to have knowledge would be April of 2006, when the application for leave to -- to  
38 appeal to the Supreme Court of Canada was dismissed. This action was commenced  
39 more than three years after that.

40  
41 Sir, I would submit to you that the material that the defendant supplied to you, the

1 pleadings in the underlying case, the hopelessness of these facts, and the lack of duty  
2 more than support the applications made to you. I want to make a couple of comments  
3 about what the Broders have put forward in their chambers brief and that's to save time,  
4 Sir.

5  
6 First I want to address the notice of motion that they filed to strike for summary  
7 dismissal against the plaintiff -- against the defendant. All I can say about that is that's  
8 a patently ridiculous application, given the facts here. But they have referred to Rule  
9 137(2) in their notice of motion. That's the rule that you're supposed to underline  
10 amendments.

11  
12 Well, Master Prowse, the plaintiffs have an inability to distinguish between an amended  
13 statement of defence and a statement of defence to an amended statement of claim.  
14 The -- the defence they're referring to is the defence that was filed by Ms. MacInnis in  
15 response to an amended statement of claim. It is not an amended statement of defence.  
16 An amended statement of defence is when you amend your defence after it's filed. Rule  
17 137(1) has absolutely no relevance to this.

18  
19 Now, if I can turn to the chambers brief. What I've tried to do, the chambers brief  
20 doesn't have little topics set out. It has themes. So I will address the themes. The first  
21 theme is somehow that Ms. MacInnis colluded -- by the way the plaintiffs filed  
22 affidavits as part of their material from Mr. Lacourciere and Mr. -- Mr. Sawers who  
23 deny -- denied any collusion. That's just an aside. I don't think it's relevant but that's  
24 what they filed as part of their material.

25  
26 They say that she colluded to keep from the Court, a letter of October 9th, 1997, which  
27 would have been the first indication of a question of standing being raised. That letter  
28 that they're referring to is attached as Exhibit 6 to the affidavit of Donald Broder, the  
29 first one filed.

30  
31 THE MASTER: Yes.

32  
33 MS. SMITH: They have kindly highlighted what they're  
34 referring to in yellow. I will read it to you: (as read)

35  
36 I am presently unable to schedule examinations for discovery with  
37 your office as I am contemplating an application under Rule 159  
38 for summary dismissal of the claim. I may also combine this with  
39 an application under Rule 129 to strike out the claim. I think the  
40 limitation date has been missed and I do not believe that the claim  
41 can stand.



1  
2 An assertion that the claim can stand is not an assertion that the claimants have no  
3 standing. Clearly, they have completely misinterpreted the letter. I would further point  
4 out that that very issue was determined by Madam Justice Veit. And she found as  
5 matter of fact that there -- the standing issue was raised in 2001, which is when it was  
6 raised, Sir.

7  
8 The plaintiff then move on to a discussion of the orders of Justice Lewis and Justice  
9 Wachowich, Associate -- Chief Justice Wachowich, to the effect that certificates of  
10 readiness were to be filed by latest, March 15th. When you look, Sir, at all of the  
11 orders which I have produced in part 2 of schedule 'A', you will see that those orders  
12 were super -- superceded by two orders granting stays, namely the order of Justice  
13 Lewis and Justice Belzil, and then by the order of Justice Clarke which permitted the  
14 amendment of the claim, made certain directions and that order was upheld by the Court  
15 of Appeal. Those orders are all contained in schedule 'A', part 2.

16  
17 They then complain about the service, the ineffective service. Well, that issue, as I've  
18 already indicated to you, Sir, was specifically dealt with by Madam Justice Veit. They  
19 then complain about the filing of the second statement of claim which was discontinued  
20 more than five years in advance of this action in which, in any event, was identical to  
the one that proceeded to trial.

22  
23 They then complain about the adding of personal representatives without leave of the  
24 Court. Well, the leave of the Court was specifically given by Justice Clarke, who you'll  
25 see that was -- the exact statement of claim was attached to it. They then suggest that  
26 the limitation hasn't expired because they -- the estate was not finally wound up until  
27 2008. The winding up with the estate has absolutely nothing to do with the  
28 commencement of the limitation.

29  
30 The limitation commenced when they knew or ought to have known they suffered injury  
31 and I would submit to you that they themselves knew that occurred, not later -- not  
32 later, Sir, than the dismissal of the application for leave to appeal to the Supreme Court  
33 of Canada. And Master Hanebury, in fact, found with respect to Mr. Sawers, it occurred  
34 as soon as they had lost the trial at the Court of Queen's Bench which occurred in 2005  
35 or 4, sorry, 2004.

36  
37 Sir, in my submission, that's the sum total of the arguments that have been made by the  
38 plaintiffs in this, to the extent that they can be deduced from the chambers brief that was  
39 filed. None of them raise any arguable case at all. And in my submission, the  
) defendants have more than met the burden for the striking under Rule 129 in that there  
41 is no cause of action. It is vexatious, it is frivolous, and it ought to be dismissed on the

1 same basis that the action against Mr. Major was dismissed in German v. Major. Sir,  
2 that's the argument of the defendant.

3  
4 THE MASTER: Thank you.

5  
6 So, Mr. -- who's speaking on behalf of the plaintiffs?

7  
8 MR. C. BRODER: I am, Sir. It's Craig Broder.

9  
10 THE MASTER: Broder. Okay.

11  
12 MR. C. BRODER: C-R-A-I-G.

13  
14 THE MASTER: And I take it, I assume with you are Donald  
15 Broder and George Broder?

16  
17 MR. C. BRODER: Correct. It's Donald Broder to my right and  
18 George Broder to his right.

19  
20 THE MASTER: Okay. Okay. Go ahead.

21  
22 **Submissions by Mr. Broder**

23  
24 MR. C. BRODER: Sir, with speaking to the obligation that we  
25 have alleged in our statement of claim, we are -- we believe that Elizabeth MacInnis had  
26 a fiduciary duty not only to the -- to the beneficiaries but also to the -- to the personal  
27 representatives, to all the beneficiaries of the estate, and to the Court, Sir. And our  
28 statement of claim was issued because we feel that some of her fiduciary duties were  
29 breached.

30  
31 Now, with saying that, Sir, I -- I know I have quite a lengthy affidavit which you said  
32 you reviewed and I'm not sure that I, at this point, want to go through every -- every  
33 particular item in there. But what I would like to say, Sir, is that under tab 'L' in the  
34 supplementary affidavit of Don Broder.

35  
36 THE MASTER: Yes.

37  
38 MR. C. BRODER: There's a letter that Mrs. MacInnis wrote to  
39 the Chief Justice Allan Wachowich that clearly identifies who she was representing and  
40 it is all the parties, Sir. When Elizabeth MacInnis added the personal representatives to  
41 the statement of claim in the action 9703-12949, she did not substitute them, Sir, she



1 added them.

3 THE MASTER:

And -- and what difference does that make?

4

5 MR. C. BRODER:

It just makes the difference that we had two

6 sets of -- of parties on -- as the plaintiffs.

7

8 THE MASTER:

And so?

9

10 MR. C. BRODER:

And, obviously, they even had conflicting

11 allegations, one being that the first set was alleging that the -- that the trophy was

12 equally owned by all, that the estate had somewhat been settled a number of years ago,

13 and that (b) and that was being owned by the estate.

14

15 THE MASTER:

Right. And the trial judge held a trial and

16 decided that.

17

18 MR. C. BRODER:

The trial judge held a trial and decided that

19 the estate owned it.

20

21 THE MASTER:

Okay. So are you challenging that finding?

22

23 MR. C. BRODER:

Yes.

24

25 THE MASTER:

You are?

26

27 MR. C. BRODER:

Yes.

28

29 THE MASTER:

That's the whole point, isn't it?

30

31 MR. C. BRODER:

Yes.

32

33 THE MASTER:

You -- you can't. You can't keep coming

34 back to court. You had a trial, you had a judgment, a finding was made that the trophy

35 belonged to the estate. You challenged that. You went to the Alberta Court of Appeal.

36 You lost that part of the challenge as to who the trophy belonged to. You sought leave

37 to go to the Supreme Court of Canada, leave was refused. It's over. That issue is done.

38

39 MR. C. BRODER:

Sir --

40

41 THE MASTER:

You can't raise that issue again.

1  
2 MR. C. BRODER: Sir, our challenge is that some of the  
3 documentation and the proceedings and pleadings that were held during the trial --  
4

5 THE MASTER: Right.

6  
7 MR. C. BRODER: Yeah. That's our issue, that there was some  
8 issue --  
9

10 THE MASTER: You can't challenge that again. You can't  
11 bring a new lawsuit to challenge what happened at a trial. The trial's finished. You  
12 have the -- the appeal is where you argue the trial should not have made -- the trial  
13 judge should not have made that ruling. I understand that you do not agree with the  
14 ruling of the trial judge and you're entitled to hold that opinion. But the Court will not  
15 hear repeated arguments over the same issue that's already been decided. It would go  
16 on forever.  
17

18 MR. C. BRODER: Sir, we're not -- we're not here debating the  
19 issues around the trial. We're here debating on the --  
20

21 THE MASTER: Well, you are. Your whole lawsuit --  
22

23 MR. C. BRODER: No, no.  
24

25 THE MASTER: -- is based on that -- that the trial decision is  
26 wrong and it's wrong, you say, because Ms. MacInnis did things that she shouldn't have  
27 done and therefore it's -- and therefore a wrong decision was arrived at. Your whole  
28 lawsuit is premised on the trial decision being wrong.  
29

30 MR. C. BRODER: Our -- our whole lawsuit is premised on the  
31 fact that there was negligence on behalf of the solicitors that were representing.  
32

33 THE MASTER: How -- how was Ms. MacInnis negligent in  
34 winning the lawsuit for her client?  
35

36 MR. C. BRODER: She was -- she was negligent in winning the  
37 lawsuit because she had lost the lawsuit, Sir, and her negligence came into play when  
38 certain things were --  
39

40 THE MASTER: I'm sorry --  
41

1 MR. C. BRODER: -- kept from --

2

3 THE MASTER: -- did you say she lost the lawsuit?

4

5 MR. C. BRODER: I said she was negligent because, in our  
6 opinion, our argument is that there was some -- some documents and some information  
7 that was kept from all of the -- all of the judges that she was -- she had a fiduciary duty  
8 to be honest about, that she did not disclose when she was questioned by the trial judge.

9

10 THE MASTER: Right. And in other words, if -- and if that  
11 information had come out, there would have been a different result.

12

13 MR. C. BRODER: Correct.

14

15 THE MASTER: Yes. So you're challenging the result of the  
16 trial.

17

18 MR. C. BRODER: We're challenging that the solicitor that was  
19 representing in the estate wasn't -- was -- had a fiduciary duty, Sir, to be -- to be honest  
20 to the trial judge.

21

22 THE MASTER: Then if -- if you -- if you were serious about  
23 that, you have to go back to the trial judge and say, Here's something you didn't know.  
24 I'm bringing this to your attention. Does this change your mind?

25

26 MR. C. BRODER: Is that an option that we have, Sir?

27

28 THE MASTER: I'm not here to give you legal advice. What  
29 I'm telling -- what I'm here, though, is to rule on whether a separate lawsuit which is  
30 based on the trial decision being wrong, is an abuse of the process of the Court.  
31 Because if -- if you were so fortunate as to win today, could -- could another lawsuit be  
32 started to challenge what happened here today? And then if that lawsuit worked to a  
33 result that you didn't like, could you bring a lawsuit and on and on and on?

34

35 MR. C. BRODER: I understand that, Sir.

36

37 THE MASTER: Yes.

38

39 MR. C. BRODER: But we're not -- we're here challenging the --  
40 that the representation of solicitor to her clients, it's a negligence issue that we have  
41 against the solicitor --

1  
2 THE MASTER: She --  
3  
4 MR. C. BRODER: -- that represented.  
5  
6 THE MASTER: -- she won for her clients. How is a lawyer  
7 who wins a lawsuit negligent? People sue lawyers frequently who lose lawsuits, and  
8 they say well the lawyer did a bad job and lost the lawsuit because they were negligent.  
9 Let's say they didn't call a witness they should have called, and if they called the  
10 witness they would have won. But you're trying to sue a lawyer for winning a lawsuit.  
11  
12 MR. C. BRODER: I understand this is a complicated matter, Sir.  
13  
14 THE MASTER: It's -- it's really not that complicated. I've  
15 read it all. I understand it all.  
16  
17 MR. C. BRODER: Well, it's been eleven -- it's been eleven years  
18 since the -- since the beginning of what I guess should have been either an estate  
19 litigation in 1997 when the -- when -- when the lawsuit --  
20  
21 THE MASTER: Right.  
22  
23 MR. C. BRODER: -- started --  
24  
25 THE MASTER: Yeah.  
26  
27 MR. C. BRODER: -- compared to it being a number of pleadings  
28 being done.  
29  
30 THE MASTER: And -- and that topic that you've just raised  
31 with me was dealt with by Madam Justice Veit. Why are you raising that same  
32 argument with me now years later? You -- that was argued in front of Madam Justice  
33 Veit, it was lost, it was appealed, the appeal was lost. You can't come to court and  
34 argue the same thing over and over and over. It can't be done.  
35  
36 MR. C. BRODER: Sir, we're not arguing the same thing over.  
37 We're arguing that --  
38  
39 THE MASTER: You just did.  
40  
41 MR. C. BRODER: -- had Madam Justice Veit been -- been

1 provided the information that we know now, that that -- that that -- that information was  
2 kept from her.

3

4 THE MASTER: What information was kept from her?

5

6 MR. C. BRODER: For example, Don Broder, that he wasn't  
7 served for the surrogate court application.

8

9 THE MASTER: That wasn't argued in 2002?

10

11 MR. C. BRODER: It was argued, Sir, but it wasn't made clear at  
12 that time because it was kept from us that the pleadings were closed and that the  
13 solicitor that Mr. Broder had at the time did not accept service.

14

15 THE MASTER: The plead -- the pleadings being -- well, let's  
16 deal with one thing at a time. Madam -- the -- the order that you're talking about was  
17 appealed in front of -- the appointment of the personal representatives of the estate was  
18 in April of 2001.

19

20 MR. C. BRODER: May, Sir.

21

22 THE MASTER: That order was made in May of 2001.

23

24 MR. C. BRODER: Correct.

25

26 THE MASTER: May 24th, 2001.

27

28 MR. C. BRODER: Correct.

29

30 THE MASTER: That's right. And that was appealed before --  
31 to Madam Justice Veit who heard the appeal in the spring of 2002. And Mr. Broder  
32 either argued or could have argued at that time that one of the grounds for setting that  
33 aside was that he hadn't been given proper notice of the application.

34

35 MR. C. BRODER: We did argue that, Sir.

36

37 THE MASTER: Okay. And it's been dealt with. Then I'm  
38 not going to hear the argument again.

39

40 MR. C. BRODER: No, I understand. But we still believe that  
+1 there's a negligence issue and a fiduciary duty issue.

1

2 THE MASTER: How is it negligent when -- when the Court  
3 upheld what Ms. MacInnis did? And so how can the Court conclude that she was  
4 negligent in doing something that the Court has upheld?

5

6 MR. C. BRODER: Sir, they -- when Don Broder was -- didn't  
7 follow an order that was issued to turn over a trophy, that order was enforced.

8

9 THE MASTER: Yes.

10

11 MR. C. BRODER: When Chief Justice Allan Wachowich gave an  
12 order to close the pleadings on a certain day --

13

14 THE MASTER: Right.

15

16 MR. C. BRODER: -- and Elizabeth MacInnis didn't follow that  
17 order --

18

19 THE MASTER: Yes. And do you understand the difference  
20 between a substantive order and a procedural order?

21

22 MR. C. BRODER: Sir, I just understand that whenever an order  
23 has been given in court, it's been followed by our side.

24

25 THE MASTER: Apparently you don't understand. Throughout  
26 a lawsuit there are different procedures, examinations for discovery, production of  
27 documents, and so forth, filings of certificates of readiness. The Court can -- can  
28 change those types of orders at any time. A judge can say well I want discoveries in  
29 July and then later the judge can say well, no, September's okay, and then later they can  
30 say December. So a procedural order can be changed.

31

32 A substantive order, which is this, the estate owns the trophy, that is the substance of  
33 the lawsuit. That order, once made, can't be varied other than on appeal. So there's a  
34 big difference. So what you apparently are struggling with understanding is the  
35 difference between a procedural order which can be changed. And so you say the  
36 pleadings were closed but Justice Clarke ordered and allowed the plaintiff to amend the  
37 pleadings. So that supercedes the previous order.

38

39 MR. C. BRODER: That was not an application that was brought  
40 forth under the *Rules of Court* so that we could be repaired to that day. That was our  
41 application or our appeal.



1  
2 THE MASTER: Right. And -- and then so if you didn't  
3 like -- if you didn't think that Justice Clarke could give that decision, you had the right  
4 to appeal it. And I think you did appeal it.  
5

6 MR. C. BRODER: We did appeal.  
7

8 THE MASTER: And you lost. So now it can't be argued  
9 anymore.  
10

11 MR. C. BRODER: Sir, there's also a number of issues regarding  
12 Rule 129. And I -- I reference Madam Justice Bielby questioned Elizabeth MacInnis  
13 that when was the first time Rule 129 or lack of personal representatives was raised.  
14

15 THE MASTER: Yes. Yes, and I've read your materials  
16 carefully. I want you to understand that I read your materials very carefully and what it  
17 comes down to is the letter of April -- the April letters were at notice and you say the  
18 October 9th, 1997 letter --  
19

20 MR. C. BRODER: M-hm.

22 THE MASTER: -- it was notice of the challenge to standing.  
23 This -- this letter right here.  
24

25 MR. C. BRODER: Correct.

27 THE MASTER: (as read)  
28

29 I think the limitation date has been missed and I do not believe the  
30 claim can stand.  
31

32 MR. C. BRODER: Correct.  
33

34 THE MASTER: Right? That letter is not a challenge to  
35 standing at all. It doesn't say your clients, the plaintiffs, don't have the right to bring  
36 this lawsuit because they're not appointed as representatives of the estate. Do you --  
37

38 MR. C. BRODER: Well, Sir --  
39

40 THE MASTER: With respect, you have misread that letter. If  
41 that's what you think the letter says, you've, with respect, have misread it.

1  
2 MR. C. BRODER: Our original notice of motion was for that  
3 exact application in front of Master Quinn in March. And our original notice of motion  
4 that Mr. Sawers brought on that day for the application for no standing states exactly  
5 that. The statement of claim discloses --  
6  
7 THE MASTER: I don't understand what you're saying.  
8 Excuse me. I don't understand what you're saying about the application before Master  
9 Quinn.  
10  
11 MR. C. BRODER: Well, I have a copy here, Sir, of our  
12 original --  
13  
14 THE MASTER: You --  
15  
16 MR. C. BRODER: -- notice of motion.  
17  
18 THE MASTER: -- you brought the application -- I've -- I've  
19 seen it. But what I don't understand is you brought an application before Master Quinn  
20 to say the statement of claim should be struck out because it's not been brought on  
21 behalf of the estate. Master Quinn ordered that the -- that the plaintiffs would have time  
22 to bring that application. You then -- when the order of Master Quinn came out, you  
23 appealed the -- the order of Master Quinn and it ended up in front of Master -- or  
24 Justice Clarke. Justice Clarke --  
25  
26 MR. C. BRODER: Correct.  
27  
28 THE MASTER: -- dismissed your appeal and gave the  
29 plaintiffs leave to amend the statement of claim. All that's happened, done, been  
30 appealed, and is finished and can't be raised again.  
31  
32 MR. C. BRODER: So when you're -- when we brought our  
33 application on, and it's -- and it's clear that here that the action is stated as being  
34 frivolous, vexatious, and abuse of the courts, and then -- and then our solicitor at the  
35 time, Robert Sawers, referred to lack of personal representatives as being the reason for  
36 the 129 application.  
37  
38 THE MASTER: It's been -- it's been dealt with. That was  
39 all --  
40  
41 MR. C. BRODER: I understand. But that's --

1  
2 THE MASTER: -- before Master Quinn.  
3  
4 MR. C. BRODER: -- that's what -- that's what's being said in --  
5 in that letter from Joe Kueber, the letter that was written October 9th.  
6  
7 THE MASTER: What he's saying there is that he thinks  
8 there's a limitation problem.  
9  
10 MR. C. BRODER: And a Rule --  
11  
12 THE MASTER: Well, actually he doesn't even say the -- I  
13 think the limitation date has been missed, which is consistent with his earlier letters.  
14 His earlier letters, I think, in April say, yeah, they -- they say the same thing. Well, the  
15 first letter I think might have said I'm looking at it. And but in any event, he -- he  
16 consistently took the position that the action was out of time because, of course, it was  
17 25 or more years since the -- the deer head had -- had been dealt with earlier.  
18  
19 MR. C. BRODER: Sir, I also refer to tab 1 in the affidavit of  
20 Don Broder, the original statement of claim.  
21  
22 THE MASTER: Yes?  
23  
24 MR. C. BRODER: And if you refer to, sorry, tab 2, Sir --  
25  
26 THE MASTER: Yes?  
27  
28 MR. C. BRODER: -- the original statement of defence.  
29  
30 THE MASTER: Yes?  
31  
32 MR. C. BRODER: Both 159 and 129 are raised there.  
33  
34 THE MASTER: Yes?  
35  
36 MR. C. BRODER: And, Sir, I have a --  
37  
38 THE MASTER: I'm sorry I don't understand your point.  
39  
40 MR. C. BRODER: Well, my point is, Sir, that we mentioned  
41 clearly a number of times to all of our solicitors including Joe Kueber, obviously, in

1 October of '97, that personal representatives were required to conduct an estate  
2 litigation.

3  
4 THE MASTER: Where do I -- where do I get that from the  
5 statement of defence? I don't understand. Show me where it says --

6  
7 MR. C. BRODER: Where you lack standing, there's obviously  
8 something usually wrong with the plaintiff or the -- or the cause.

9  
10 THE MASTER: And -- and was this not dealt with at trial? I  
11 mean the statement of defence was -- was looked at by -- by Madam Justice Bielby?

12  
13 MR. C. BRODER: Sir, I guess if there was a problem with that  
14 wording or that particular claim in our statement of defence, then it raises the question,  
15 to me, why was that removed from our amended statement of defence six weeks before  
16 the trial?

17  
18 THE MASTER: And -- and did Ms. MacInnis remove it?

19  
20 MR. C. BRODER: No, Sir.

21  
22 THE MASTER: So how -- how does that have anything to do  
23 with this lawsuit you've brought against Ms. MacInnis?

24  
25 MR. C. BRODER: I'm -- it has to do with the fact that we are of  
26 the opinion that there was some collusion happening between our solicitor and the  
27 solicitor for the plaintiffs.

28  
29 THE MASTER: Well --

30  
31 MR. C. BRODER: You wouldn't have it in one statement of  
32 claim and then issue an amended one. Sir, we already had an amended statement of  
33 defence filed to the amended statement of claim. We already had one filed by  
34 Mr. Lacourciere. There was no need for another one six weeks before the trial.

35  
36 THE MASTER: Well, people -- people quite often before trial  
37 are doing their trial preparation, they've had discoveries, and they're -- they finalize and  
38 file. I mean it's a very common thing to happen.

39  
40 MR. C. BRODER: It is common, Sir, I guess, but not for a sole  
41 purpose of removing a 129 mention.

1  
2 THE MASTER: Where's the 129 referred to in this statement  
3 of defence? I'm sorry I didn't see it but I may have overlooked it.  
4  
5 MR. C. BRODER: It's on number 8, page 2, number 8.  
6  
7 THE MASTER: Well, that's just a claim that the -- that's the  
8 defence saying the claim is frivolous.  
9  
10 MR. C. BRODER: Frivolous, vexatious, is that --  
11  
12 THE MASTER: Yeah.  
13  
14 MR. C. BRODER: -- that's a 129?  
15  
16 THE MASTER: Oh, I see what -- I'm sorry. I understand  
17 your reference to the rule now. Yes, the language is the same language as used --  
18  
19 MR. C. BRODER: Correct.  
20  
21 THE MASTER: -- in Rule 129. So I understand that. Yeah.  
22 So that's there and then it's not there.  
23  
24 MR. C. BRODER: Correct.  
25  
26 THE MASTER: Right. And -- and in the end, since the claim  
27 was upheld by the trial judge, it would seem perhaps appropriate that it wasn't there. I  
28 mean it's hardly a frivolous claim when you end up winning it.  
29  
30 MR. C. BRODER: Sir, the estate, I guess, only one -- because we  
31 were prejudiced on our limitation argument because of times of issues like the 129, the  
32 first time it was raised, clearly in our eyes, there was some -- some collusion going on  
33 to hide or conceal times of certain pleadings and proceedings that had happened in the  
34 previous years before the trial.  
35  
36 THE MASTER: Well, we dealt with the one specific, the  
37 letter. What other specifics do you have?  
38  
39 MR. C. BRODER: Well, Sir, I -- I do have the copy of the table  
40 of contents also from the appeal books --  
41

1 THE MASTER:

Right.

2

3 MR. C. BRODER:

-- where the appeal books was discovered by  
4 myself a few months ago that some of the documentation in the appeal books is not  
5 there.

6

7 THE MASTER:

Specifically?

8

9 MR. C. BRODER:

Specifically the opening statements that I gave

10 on behalf of Don Broder at the trial.

11

12 THE MASTER:

But that is -- I -- I read your -- that opening  
13 statement. It's up to counsel who are -- who are doing an appeal to get together and  
14 agree what should go in the appeal book. Not everything that happens, not every piece  
15 of paper is put in an appeal book. An opening statement is simply someone's  
16 introduction to the trial judge, to introduce the trial judge to what their point of view is  
17 going to be. It's not a -- it's not like sworn testimony. It's not evidence at all. It's not  
18 a pleading and so it's not untoward at all for something like that to be left out of an  
19 appeal book.

20

21 MR. C. BRODER:

I guess, Sir, what's --

22

23 THE MASTER:

And how -- how does that -- how does that  
24 affect the result of the appeal?

25

26 MR. C. BRODER:

Sir, when I -- I reordered the transcripts.

27

28 THE MASTER:

Yes?

29

30 MR. C. BRODER:

The first day and the last day of the trial.

31

32 THE MASTER:

Right?

33

34 MR. C. BRODER:

And spoke to the Justice department shortly  
35 after they arrived and asked them why another set of transcripts direct off the audio  
36 revealed same stuff missing and I had them crosscheck the audio and the Justice  
37 department told me that it's not on the audio.

38

39 THE MASTER:

What's not on the audio?

40

41 MR. C. BRODER:

The opening statements.



1  
2 THE MASTER: And so?  
3  
4 MR. C. BRODER: When you speak in a courtroom, Sir, it's all  
5 on the audio file at the end of the trial for transcript purposes.  
6  
7 THE MASTER: What -- what flows from that?  
8  
9 MR. C. BRODER: Pardon me?  
10  
11 THE MASTER: What flows from that?  
12  
13 MR. C. BRODER: I'm not sure. I'm questioning it myself.  
14  
15 THE MASTER: Well, I -- I would say nothing flows from  
16 that, that a statement was made, you say, so it was made, the trial judge heard it. You  
17 didn't like the decision at trial, you appealed it to the Court of Appeal. All you're  
18 doing in your opening statement is saying this is what I'm going to be arguing. So  
19 presumably at trial it was argued and presumably on appeal it was argued.  
20  
21 MR. C. BRODER: And there was issues raised with regards to  
22 pleadings and things in the opening statements and the ongoings of the litigation from  
23 the start to the trial.  
24  
25 THE MASTER: Your point?  
26  
27 MR. C. BRODER: Sir, I'm -- I'm trying to make the point that it  
28 is our opinion that Ms. MacInnis was negligent. She had a fiduciary duty, Sir, to be  
29 honest to these people. Okay. To be honest and forthright.  
30  
31 THE MASTER: And?  
32  
33 MR. C. BRODER: She wasn't.  
34  
35 THE MASTER: And you say because she wasn't, then the trial  
36 decision is wrong?  
37  
38 MR. C. BRODER: First of all, the trial became an eleven year  
39 trial. If she'd have been honest and maintained her -- her duty to her people, to the  
40 people she was representing, and elected personal representatives at the time, at the  
41 1997, which she ought to have known to do, it would have been a one year litigation, if

1     that.  
2  
3     THE MASTER:                                 What would have happened? What do you  
4     see would have happened?  
5  
6     MR. C. BRODER:                             They would -- I would have -- I would see  
7     that they would have saved \$250,000 in legal bills. They would have only maybe paid  
8     for six months worth of legal bills.  
9  
10    THE MASTER:                                Okay. So now you're changing -- this is not  
11    the statement of claim you brought. I mean the statement of claim now you're saying is  
12    that we lost -- if I understand this last submission, we lost, we ought to have lost but if  
13    Ms. MacInnis had been honest, we would have lost earlier --  
14  
15    MR. C. BRODER:                             No.  
16  
17    THE MASTER:                                -- and saved legal fees?  
18  
19    MR. C. BRODER:                             If Ms. MacInnis would have been honest and  
20    brought personal representatives -- Mr. -- Mr. Broder didn't do anything outside of his  
21    right. He was asking for personal representatives in the very beginning to turn over the  
22    deer head if -- if they could or would be elected. He was just holding a property. He  
23    was -- he was, at the least, equal owner to everyone --  
24  
25    THE MASTER:                                Right.  
26  
27    MR. C. BRODER:                             -- to his share of the deer head.  
28  
29    THE MASTER:                                Right. And in 2001, the personal  
30    representatives were appointed and they asked him to turn it over and he didn't.  
31  
32    MR. C. BRODER:                             Correct.  
33  
34    THE MASTER:                                Right. So then -- then there had to be a trial.  
35  
36    MR. C. BRODER:                             He offered to turn it over. He made an offer  
37    to turn it over but he asked for this action to be dismissed --  
38  
39    THE MASTER:                                Well, yeah, a settlement --  
40  
41    MR. C. BRODER:                             -- and costs.

1  
2 THE MASTER: -- a settlement offer, that's -- that's with  
3 certain terms and conditions and a settlement was never done. And -- and so?  
4

5 MR. C. BRODER: So there should have never been a \$250,000  
6 estate bill --  
7

8 THE MASTER: Well --  
9

10 MR. C. BRODER: -- had Mrs. MacInnis performed her duties  
11 in -- in a manner of not misleading these people and getting personal representatives  
12 appointed within the first six months. They knew. She knew. She's -- she's not a --  
13 she's been a solicitor for a number of years. I understand estate is her specialty or part  
14 of her -- her portfolio, that she does them on a regular basis.  
15

16 THE MASTER: There -- there would have -- wouldn't have  
17 been a trial if when the demand was made by the personal representatives to turn the  
18 deer head over in 2001, if it had been turned over. That's why there was a trial. Not a  
19 conditional offer under certain conditions, but just fine, it's not mine, it belongs to the  
20 estate, here it is. That's all that had to be have done.

21  
22 Mr. Broder, I'm not doing this to frustrate you. Why I'm doing this is to let you know  
23 that I take this all very seriously, extremely seriously. I have read this all very  
24 carefully. It's very important to me that I do a good job and that is understanding  
25 what's happening, what's happened, and doing my best through these questions to  
26 perhaps have you understand what you're doing. And what you're doing is attempting  
27 to challenge and bring back into court, over and over again, something has already been  
28 decided.  
29

30 MR. C. BRODER: Sir, I guess what I have a very difficult time  
31 dealing with, Sir, is when we bring out a 129 application asking for the claim to be  
32 struck after the pleadings are closed, after the 129 Rule has been brought up a number  
33 of times, the Court's just give Elizabeth MacInnis direction on what to do just to save a  
34 defective claim. When we come into court on a 129 application, they say there's the  
35 door.  
36

37 When we come into court on a limitations of actions issue and we say it's a limitations  
38 argument in 1999, March, there's a new *Limitation Act* that came in inclusive of a ten  
39 year drop dead clause, still inclusive of a two year, but now ought to, when you ought  
40 to have known more liberal, they just say that's well, that didn't start, tick tick. Ten  
41 years doesn't start, tick tick. It's 33, but ten doesn't count, 33 doesn't count.

1

2 THE MASTER:

I understand, Mr. -- Mr. Broder. This is a very important moment this afternoon because if you will reflect on what you just said, think about what you just said, you just said, I am -- I am not happy. I am dissatisfied. I think that wrong rulings were given by Master Quinn and I think a wrong ruling was given by the trial judge. That is the basis of what you're doing.

7

And, in the end, you are entitled to hold that opinion forever. No one is telling you you can't hold that opinion. You're entitled to that opinion. You -- and you -- you, to the day you die, I'm sure you'll hold that opinion that you are correct and that Master Quinn was wrong and that Madam Justice Bielby was wrong. You're entitled to that opinion. But what you're not entitled to do is to come back to court again and again, challenging a ruling that you don't like.

14

That's absolutely what you were -- you're doing and if you'd listen to your own submissions, you would say that's right. Master Quinn was wrong, Justice Bielby was wrong, these are wrong rulings. And that is the basis of your statement of claim in this action, that -- that the rulings made in the previous litigation were wrong. And that is the classic definition of a frivolous and vexatious proceeding and an abuse of the court to try and come back again and again.

21

Do you really think that I can go back and rehear what Master Quinn decided or what Justice Bielby decided?

24

25 MR. C. BRODER:

No, Sir. I don't believe that at all. But what I believe is that, number 1, there's some triable issues here for negligence. And what I do believe, Sir, is that the courts were misled by Elizabeth MacInnis and that the beneficiaries have a right to -- to try those issues.

29

30 THE MASTER:

You -- the fundamental of that lawsuit, that lawsuit would have to be that the trial decision and the earlier decisions were wrong. The time has come and gone. The Court will not rehear matters.

33

34 MR. C. BRODER:

How could the time be come and gone, Sir, when we're --

36

37 THE MASTER:

Because you were in front of Justice -- or Master Quinn and you appealed that. You were in front of the trial judge and you appealed that. That's the time to criticize and to say that was a wrong decision, it needs to be overturned. You have your opportunity. You had your opportunity and took it and were unsuccessful. You cannot, through a lawsuit brought years later, ask the Court

41

1 to revisit those decisions.

3 MR. C. BRODER: We're not asking the Courts to revisit those  
4 decisions, Sir. We're asking the Courts to consider the negligence, possible negligence,  
5 that caused those decisions.

6  
7 THE MASTER: It calls for -- the presumption on which your  
8 claim is made is that if Ms. MacInnis had not, in your mind, misbehaved herself, the  
9 decision would have been otherwise.

10  
11 MR. C. BRODER: If MacInnis would have been -- upheld her  
12 fiduciary duty to being honest to these people, correct.

13  
14 MR. D. BRODER: Can I have a word? Can I have a word here?

15  
16 MR. C. BRODER: He asked if he could have a word but that's  
17 your decision, Sir.

18  
19 THE MASTER: Well, certainly if Mr. Broder wants to address  
20 the Court. I'd be happy to hear from him.

21  
22 MR. D. BRODER: I understand this is a whole new lawsuit.  
23 This is a suit of the estate against Mrs. MacInnis. It has nothing to do with the previous  
24 court hearings.

25  
26 THE MASTER: Okay. So then you agree that the estate  
27 owns --

28  
29 MR. D. BRODER: This is the estate --

30  
31 THE MASTER: -- owns the deer head; do you? Do you agree  
32 that the estate was the lawful and rightful owner of the trophy?

33  
34 MR. D. BRODER: Do I?

35  
36 THE MASTER: Do you agree?

37  
38 MR. D. BRODER: No.

39  
40 THE MASTER: Well --

41

1 MR. D. BRODER: I don't agree.  
2  
3 THE MASTER: -- no. No, you're not challenging the lawsuit,  
4 got nothing to do with the lawsuit but he doesn't accept and that's the basis for --  
5  
6 MR. D. BRODER: No. No, I'm --  
7  
8 THE MASTER: -- suing Ms. MacInnis --  
9  
10 MR. D. BRODER: -- I'm just saying --  
11  
12 THE MASTER: -- because the decision was wrong.  
13  
14 MR. C. BRODER: Sir, we're --  
15  
16 THE MASTER: We're going around in circles.  
17  
18 MR. C. BRODER: If the estate -- if the beneficiaries and the  
19 estate -- if the -- if the litigation was conducted in -- in a proper manner, then, yes, we  
20 would agree that the estate owned the deer head. But our position is is that it wasn't.  
21 And that a one year or less or zero litigation would have had to occur had Elizabeth  
22 MacInnis made an application for probate immediately. She knew this was a either.  
23 It's our position that it was never an estate litigation, Sir. Because if it was, she would  
24 have.  
25  
26 THE MASTER: It -- it became an estate litigation --  
27  
28 MR. C. BRODER: It can't become --  
29  
30 THE MASTER: -- in 2001.  
31  
32 MR. C. BRODER: -- an estate litigation. If the pleadings are  
33 closed and it's never been an estate litigation, just to become one now?  
34  
35 THE MASTER: Yeah. Again, what you're doing, Mr. Broder,  
36 is you're arguing against something that's already been argued.  
37  
38 MR. C. BRODER: We even paid costs, Sir, \$1,000 in costs when  
39 she brought the application to close the pleadings. And that was prior to probate. We  
40 said, No, don't close the pleadings. You're not ready yet. You're not ready yet.  
41 We've been asking for personal representatives for four years and you're not ready yet.



1 You haven't got them. And she demands that they close the pleadings. Does that  
2 sound fair? And then we get hit with a \$1,000 in costs because she forced the pleadings  
3 closed that we wouldn't consent to.

4  
5 THE MASTER: Mr. Broder, listen to yourself. What are you  
6 doing?

7  
8 MR. C. BRODER: Sir.

9  
10 THE MASTER: You're challenging rulings that have been  
11 made and you've argued already.

12  
13 MR. C. BRODER: I am not challenging rules that have been  
14 made, Sir. I am challenging --

15  
16 THE MASTER: Well, you're just challenging --

17  
18 MR. C. BRODER: -- negligence.

19  
20 THE MASTER: -- that it was -- that was unfair for you to pay  
\$1,000 costs when she wanted to close the pleadings and you didn't --

22  
23 MR. C. BRODER: No.

24  
25 THE MASTER: -- you're just bringing up the old lawsuit  
26 again and again.

27  
28 MR. C. BRODER: That was probably the best \$1,000 we spent,  
29 Sir. Just wasn't supposed to be that the pleadings could be reopened and now she could  
30 change her mind that it wasn't an estate litigation and now it is.

31  
32 When they attend to surrogate courts to -- to question if an estate or probate can be  
33 done, we're denied right at the -- right at the clerk's office. Too long. Twenty-four  
34 years.

35  
36 THE MASTER: I don't understand. What's your point?

37  
38 MR. C. BRODER: Sir --

39  
40 THE MASTER: What is your point?

41

1 MR. C. BRODER: -- my point is it was never an estate litigation.  
2 She closed the pleadings.  
3  
4 THE MASTER: Well, you're challenging what the Court -- the  
5 Court  
6  
7 MR. C. BRODER: No, Sir, I'm not.  
8  
9 THE MASTER: -- appointed someone?  
10  
11 MR. C. BRODER: I'm not challenging what the Court's decision  
12 was. I am challenging that there was negligence, there was collision, it was fraud on the  
13 courts, and there was conspiracy amongst our lawyer and Elizabeth MacInnis. That's  
14 what I'm challenging. And I have spoken to the Calgary Commercial Crime Unit, Sir.  
15 Okay. And I'm also asking today that there was an order given by Madam Justice  
16 Bielby at the end of the trial that this file be turned over to the Attorney General, and I  
17 am asking today that you enforce that order.  
18  
19 THE MASTER: Any further submissions?  
20  
21 MR. C. BRODER: Sir, this is the way it goes every time. I have  
22 no further submissions.  
23  
24 THE MASTER: Thank you.  
25  
26 And if I don't need to hear from you in rebuttal?  
27  
28 MS. SMITH: I just want to say one thing. I made my  
29 submissions but I want to emphasize there is not a shred of a scintilla of a -- of  
30 evidence whatsoever, when you go through all of the material, that Ms. MacInnis was  
31 dishonest in any respect whatsoever. And I -- I want to put that on the record before  
32 you because she's a respected counsel and Mr. Broder insisted on talking about her  
33 dishonesty and there's no evidence of that whatsoever.  
34  
35 THE MASTER: Okay.  
36  
37 MS. SMITH: That's all I want to say, Sir. I felt I had to  
38 say that.  
39  
40 **Order**  
41

1 THE MASTER: My decision, I have reviewed the materials  
 2 carefully. I have tried to show the plaintiffs the respect of taking the time to understand  
 3 and go through the file carefully to understand what happened. And what this lawsuit is  
 4 all based on is challenging the decisions that have already been made. Ms. MacInnis  
 5 was a successful lawyer who successfully prosecuted a lawsuit on behalf an estate under  
 6 court order. Those court orders and the trial judgment where she was successful were  
 7 all appealed. The appeals were unsuccessful. The matter is at an end.

8  
 9 It is just common sense that the courts cannot and will not rehear and retrial matters  
 10 again and again and again. Matters have to come to an end and this lawsuit against  
 11 Ms. MacInnis is coming to an end because I'm striking it out as being frivolous,  
 12 vexatious, and an abusive process of the courts. Costs?

13

14 **Submissions by Ms. Smith (Costs)**

15

16 MS. SMITH: May I speak to costs, Sir?

17

18 THE MASTER: Yes.

19

20 MS. SMITH: I gave notice in my brief to Mr. Broder that I  
 21 was seeking costs on an enhanced basis in a fixed sum. I do not want to go through the  
 22 hassle of taxing which I had to do the last time these pleadings were struck. There  
 23 remains unpaid from the previous application to strike, which was successful in March,  
 24 costs in the sum of \$6,885.59 which we were forced to tax. I am seeking costs in the  
 25 sum of \$10,000 on the basis that this is a rehash of what is already done and because of  
 26 the allegations of intentional fraudulent misconduct on the part of Ms. MacInnis.

27

28 THE MASTER: Okay.

29

30 Mr. Broder -- Broder, your response on the costs aspect?

31

32 **Submissions by Mr. Broder (Costs)**

33

34 MR. C. BRODER: Sir, my response on the costs are that it  
 35 doesn't matter.

36

37 THE MASTER: Okay. The --

38

39 MR. D. BRODER: If that's justice, that's the way you do it.

40

41 THE MASTER: I --

1  
2 MR. D. BRODER: I didn't have the right to speak to -- I never  
3 gave you proper notice but when the other administrators like.  
4  
5 THE MASTER: I've already made my decision.  
6  
7 MR. D. BRODER: I don't care what the judge has said or not. I  
8 wasn't properly notified.  
9  
10 THE MASTER: Mr. Broder, I've made my decision already.  
11 We've dealt with costs.  
12  
13 MR. D. BRODER: I know.  
14  
15 **Order (Costs)**  
16  
17 THE MASTER: I'm going to award costs in the amount of  
18 \$10,000.  
19  
20 MR. D. BRODER: But that -- it's been dealt with but those are  
21 the facts.  
22  
23 MS. SMITH: I have a form of order, Sir.  
24  
25 THE MASTER: Yeah.  
26  
27 MS. SMITH: I don't want to go through the hassle of trying  
28 to get it approved.  
29  
30 THE MASTER: Yeah.  
31  
32 MS. SMITH: I have left the costs blank. I left the  
33 master's --  
34  
35 THE MASTER: Yeah.  
36  
37 MS. SMITH: -- name blank. I'm sorry, Sir. I didn't know  
38 who it would be.  
39  
40 THE MASTER: Yeah. I'm going to --  
41

1 MR. D. BRODER:  
- at this --

I mean out of the professional people looking

3  
4 THE MASTER:

-- award costs against and the --

5  
6 MR. D. BRODER:

-- and they don't seem to know what's right.

7  
8 THE MASTER:

-- costs are against Donald Broder and George

9 Broder. Both of them are liable for the \$10,000 costs because George Broder was  
10 joined in on -- on this litigation and therefore made himself responsible for the costs of  
11 being unsuccessful. I think that the fact that this -- Ms. MacInnis, a claim was made  
12 against her, which I reviewed, and was struck out already, another claim again is  
13 brought against her and I'm striking it out, that it's an appropriate, that costs be awarded  
14 in a lump sum in -- in a significant amount.

15  
16 MR. D. BRODER:

That's what you get for doing nothing. I

17 didn't do a thing. Never done a thing.

18  
19 THE MASTER:

Okay. That order is signed.

20  
21 MS. SMITH:

Thank you, Sir.

22  
23 THE MASTER:

Thank you.

24  
25 MR. D. BRODER:

That's not the end of it yet, you know.

26  
27 THE MASTER:

Okay. Order in court.

28  
29 THE COURT CLERK:

Order in chambers. All rise

30  
31 THE MASTER:

Thank you.

32  
33  
34 PROCEEDINGS CONCLUDED  
35  
36  
37  
38  
39  
40  
41

1 **Certificate of Record**

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41

I, Garry Squirell, certify this recording is a record made of the evidence in the proceedings in the Court of Queen's Bench Court, held in courtroom 904, at Calgary, Alberta, on the 23rd day of November, 2009, and that I was the court official in charge of the sound-recording machine during the proceedings.



**1 Certificate of Transcript**

3 I, Brenda Stokes, certify that

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to  
6 the best of my skill and ability and the foregoing pages are a true and faithful transcript  
7 of the contents of the record, and

9 (b) the certificate of record for these proceedings was included orally on the record  
10 and is transcribed in this transcript.

13 Digitally Certified: 2010-01-18 10:19:45

14 Brenda Stokes, Transcriber

15 Order No. 12483-09-1

35 Pages: 33

36 Lines: 1361

37 Characters: 43847

39 File Locator: 0c8d5e34d90f10008001001a4b0a479e

) Digital Fingerprint: 35cc06ea2a2a48ade665db99d70bc460cf4a94d266e0515ba04feafa321f823a

Detailed Transcript Statistics	
Order No. 12483-09-1	
Page Statistics	
Title Pages:	1
ToC Pages:	1
Transcript Pages:	31
Total Pages:	33
Line Statistics	
Title Page Lines:	50
ToC Lines:	9
Transcript Lines:	1302
Total Lines:	1361
Visible Character Count Statistics	
Title Page Characters:	548
ToC Characters:	194
Transcript Characters:	43105
Total Billable Characters:	43847
Multi-Take Adjustment: (-) Duplicated Title Page Characters	43299