COURT FILE NUMBER:	QBG-SA-00766-2022
COURT OF KING'S BENCH FOR SASKATCHEWAN	
JUDICIAL CENTRE:	SASKATOON
PLAINTIFFS/ RESPONDENTS	CAITLIN ERICKSON, JENNIFER SOUCY (BEAUDRY) and STEFANIE HUTCHINSON ~~and COY NOLIN~~
DEFENDANT/ APPLICANT	THE GOVERNMENT OF SASKATCHEWAN
DEFENDANTS/ RESPONDENTS	MILE TWO CHURCH INC., KEITH JOHNSON, JOHN OLUBOBOKUN, KEN SHULTZ, NATHAN RYSAVY, DUFF FRIESEN, LYNETTE WEILER, JOEL HALL, ~~FRAN THEVENOT~~, LOU BRUNELLE, JAMES RANDALL, ~~TRACEY JOHNSON, SIMBO OLUBOBOKUN~~, ~~ELAINE SCHULTZ, CATHERINE RANDALL~~, KEVIN MACMILLIAN, ~~ANNE MACMILLIAN~~, DAWN BEAUDRY, NATHAN SCHULTZ, AARON BENNEWEIS, ~~DEIDRE BENNEWEIS, STEPHANIE CASE~~, DARCY SCHUSTER, RANDY DONAUER, JOHN THURINGER, JOHN DOES and JANE DOES Brought under *The Class Actions Act*

BRIEF OF LAW ON BEHALF OF THE GOVERNMENT OF SASKATCHEWAN

(ABUSE OF PROCESS)

Ministry of Justice and Attorney General
Legal Services Division
Civil Law Branch
900 – 1874 Scarth Street
Regina, SK, S4P 4B3

Lawyer in charge of file: Justin Stevenson

I. INTRODUCTION

1. Thirteen Defendants, including the Government of Saskatchewan ("Saskatchewan"), have applied to stay the within action as an abuse of process. The same Defendants have pending individual applications seeking further and better particulars with respect to allegations made against them in the Second Amended Statement of Claim dated June 29, 2023 (the "Claim"). There is currently no outstanding certification application.

2. Saskatchewan agrees with Mile Two Church Inc.'s ("Mile Two") submissions, which have been filed on its stay application. Saskatchewan adopts and will limit repetition of them. The following submissions are intended to supplement Mile Two's submissions.

II. ARGUMENT

A. Why Saskatchewan Brought its Application

3. Saskatchewan brought a stay application because, at its core, this matter is about ensuring the integrity of the litigation process. By failing to immediately disclose the settlement agreements at issue, the Plaintiffs have committed an abuse of the Court's process. Such conduct requires both court notification and an appropriate remedy.

4. The case law is clear that the Plaintiffs' failure to immediately disclose the settlement agreements is a significant issue in which the only appropriate remedy is a stay of proceedings. The Ontario Court of Appeal has released a number of recent decisions that provide the rationale for why this is the case. Many of these are touched on in Mile Two's submissions. Two examples Saskatchewan wishes to highlight for the Court are:

(a) In *Aecon Buildings v. Stephenson Engineering Limited*, 2010 ONCA 898, the Court states:

> [16] Here, the absence of prejudice does not excuse the late disclosure of this agreement. The obligation of immediate disclosure is clear and unequivocal. It is not optional. Any failure of compliance amounts to abuse of process and must result in consequences of the most serious nature for the defaulting party. Where, as here, the failure amounts to abuse of process, the only remedy to redress the wrong is to stay the Third Party proceedings and of course, by necessary implication, the Fourth Party

> proceedings commenced at the instance of the Third Party. Only by imposing consequences of the most serious nature on the defaulting party is the court able to enforce and control its own process and ensure that justice is done between and among the parties. To permit the litigation to proceed without disclosure of agreements such as the one in issue renders the process a sham and amounts to a failure of justice.
>
> [Emphasis added]

(b) In *Skymark Finance Corporation v. Ontario*, 2023 ONCA 234, the Court states:

> [55] The necessary magnitude of the change to the litigation landscape must be informed by the values that the rule is meant to advance. This court has repeatedly held that the rule is meant to preserve fairness to the parties. It is also designed to preserve the integrity of the court process. That is why the failure to observe the immediate disclosure rule is considered to be an abuse of the court's process, which can only be remedied by a stay of proceedings: see *Handley*, at para. 45. In *Tallman*, this court said, at para. 28: "This remedy is designed to achieve justice between the parties. But it does more than that – it also enables the court to enforce and control its own process by deterring future breaches of this well-established rule."
>
> [Emphasis added]

5. In sum, this matter engages fundamental litigation principles such as the administration of justice and fairness that go to the heart of the litigation process.

B. The Plaintiffs' Conduct

6. Saskatchewan submits that the Plaintiffs' conduct with regards to the settlement agreements should be of significant concern to the Court for the following reasons.

7. First, the evidence supports that the Plaintiffs never intended to advise the non-settling defendants or the Court that these settlement agreements had been reached. It was only through the probing of Mile Two that they were eventually disclosed. There is no evidence they would have been disclosed otherwise.[1]

8. Second, this intention of secrecy becomes especially problematic when you consider the terms of the settlement agreements themselves. The signing defendants go from being in an

[1] This is further supported by the fact that the Plaintiffs do not view themselves as having an obligation to notify the remaining parties when they discontinue the action against individual defendants (see para 12 of the Affidavit of Caitlin Erickson and para 4 of the Affidavit of Vicki Strickland).

adversarial position with the Plaintiffs to being aligned in interest with them. They are required to do such things as cooperate with the Plaintiffs, take no adversarial position against them, and provide answers to their questions. Notably, with regards to the Thevenot and Johnson Agreements, they have also agreed that their testimony provided at trial will not vary from the written responses they have provided to the Plaintiffs. It also appears that the Plaintiffs intend to assert privilege over any answers they receive from these defendants.[2]

9. In a nutshell, the Plaintiffs entered into settlement agreements which fundamentally alter the adversarial landscape, attempt to manage the testimony of the applicable defendants, and require testimony based on questionnaires that will not be provided to the other parties due to a claim of privilege, and their intention was to keep all this secret from the remaining defendants.

10. When the case law speaks of fairness to the parties and preserving the integrity of the court process, this is what those judges have in mind.

11. Third, even though the Plaintiffs have breached their obligation to immediately disclose these settlement agreements, thereby committing an abuse of process, it appears they intend to argue that it does not matter because, as per the Affidavit of Mark Drapak, if this action is stayed, they will just bring a new one. Rather than file evidence explaining their conduct to the Court, they have chosen to file an affidavit which attempts to ignore the significance of what has occurred.

12. Lastly, it should be noted that the Plaintiffs' obligations with regards to the settlement agreements were not onerous. They simply had to immediately provide them to the non-settling defendants upon their execution. Furthermore, if they were uncertain of their obligations, as per *Handley Estate v. DTE Industries Limited*, 2018 ONCA 324, they could have sought guidance from the Court:

> 47 Moreover, if a party to a litigation agreement is unclear whether the agreement has the effect of changing the adversarial position of the contracting parties, thereby attracting the mandatory disclosure obligation, it is always open to the party to move before the court for directions. In that way, the court can enforce and control its own process and ensure that justice is done between and among the parties.

[2] See para 21(a) of the Affidavit of Caitlin Erickson.

III. CONCLUSION

13. The Court's determination of this matter will have implications beyond this action. Saskatchewan respectfully submits that the Court must stay this action as an abuse of process to correct the breaches to fairness and to the administration of justice that have occurred, and to deter future breaches of the immediate disclosure requirement in future cases.

14. Saskatchewan does not seek costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Regina, in the Province of Saskatchewan, this 14th day of February, 2025.

Deputy Attorney General and Deputy Minister of Justice

Per: _____
Counsel for the Defendant, The Government of Saskatchewan

CONTACT INFORMATION AND ADDRESS FOR SERVICE

This document was prepared and delivered by:

Ministry of Justice and Attorney General
Civil Law Branch, Legal Services Division
900 – 1874 Scarth Street
Regina, Saskatchewan S4P 4B3

Address for service:	Same as above
Lawyer in Charge of File:	Justin Stevenson
Telephone:	(306) 798-1419
Facsimile:	(306) 787-0581
Email:	justin.stevenson@gov.sk.ca

IV. TABLE OF AUTHORITIES

Tab	Name	Pinpoints	Legal Principle
Case Law			
	Aecon Buildings v. Stephenson Engineering Limited, 2010 ONCA 898	Para 16	Failure to immediately disclose settlement agreements results in a stay of proceedings. To permit otherwise would be a failure of justice.
	Handley Estate v. DTE Industries Limited, 2018 ONCA 324,	Para 47	A party to a settlement agreement can seek direction from the court if unsure of its disclosure obligations.
	Skymark Finance Corporation v. Ontario, 2023 ONCA 234	Para 55	The requirement to immediately disclose settlement agreements is to preserve fairness and integrity of court process. Stay of proceedings as a remedy achieves justice between the parties and enables the court to control its own process.