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	MILE TWO CHURCH INC.
DEFENDANTS / RESPONDENTS	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 MACMILLAN, ~~ANNE MACMILLAN~~, DAWN BEAUDRY, NATHAN SCHULTZ, AARON BENNEWEIS, ~~DEIDRE BENNEWEIS~~, ~~STEPHANIE CASE~~, DARCY SCHUSTER, RANDY DONAUER, JOHN THURINGER, THE GOVERNMENT OF SASKATCHEWAN, JOHN DOES and JANE DOES

Brought under *The Class Actions Act*

REPLY BRIEF OF LAW OF THE APPLICANT (DEFENDANT), MILE TWO CHURCH INC.

Re Stay Application

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PART I INTRODUCTION

1. The Applicant (Defendant), Mile Two Church Inc. ("**Mile Two**"), submits that the Plaintiffs' failure to immediately disclose settlement agreements entered into with certain former Defendants in the within Action constitutes an abuse of process for which the only appropriate remedy is an Order staying the Action.

2. Mile Two relies on its Brief of Law dated February 14, 2025 (the "**Mile Two Brief**"). This Reply Brief of Law responds to select arguments raised in the Plaintiffs' Brief of Law dated March 7, 2025 (the "**Plaintiffs Brief**"). Many of the arguments raised in the Plaintiffs Brief were anticipated and were pre-emptively addressed in the Mile Two Brief. Mile Two adopts the terms defined in the Mile Two Brief.

PART II FACTS

3. Mile Two relies on the facts set out in paragraphs 4 to 28 of the Mile Two Brief. However, the Plaintiffs Brief raises several factual issues that warrant closer scrutiny.

4. First, the Plaintiffs suggest that "[t]he only change in circumstances between June 18, 2024 when Mile Two Church Inc. brought the Production application and this [Stay] Application are the averments in the [Erickson Affidavit]" (Plaintiffs Brief at para 21). They argue that Mile Two and the other Non-Settling Defendants "now apply for different relief based on the same basis" as Mile Two's earlier production application (the "**Production Application**") (Plaintiffs Brief at para 22). Contrary to the Plaintiffs' submissions, the Erickson Affidavit was delivered in response to the Production Application. It contained new information concerning the Settlement Agreements that was previously unknown to Mile Two. It also asserts a claim of privilege that had not been articulated by the Plaintiffs previously. The Erickson Affidavit contributed to the evidentiary record necessary to support Mile Two's Stay Application.

5. Second, the Plaintiffs assert that the Stay Applications "are grounded solely on the face of the Settlement Agreements" (Plaintiffs Brief at para 26). This contention is incorrect. In addition to the Settlement Agreements, and as noted, Mile Two relies on evidence set out in the Erickson Affidavit. It also relies on the Reynolds Affidavit. Other Non-Settling

Defendants have also filed affidavits in support of the Stay Applications. The record before the Court includes more than just the Settlement Agreements.

6. Finally, the Plaintiffs assert the Stay Applications "are part of a pattern on the part of the Defendants to delay the proceedings and increase the time and cost to the Plaintiffs' moving the action to a certification hearing" (Plaintiffs Brief at para 28). This aspersion cast on the Defendants and their counsel is incorrect and unfair. Any delay in the Action is attributable to the Plaintiffs' decision to add 26 Defendants with the concurrent addition of an even greater number of counsel, requiring extra efforts in scheduling. Further, it is difficult to understand how certification has been delayed by the Defendants when the Plaintiffs have not served a certification application, despite having issued their claim almost two and a half years ago. More fundamentally, the Plaintiffs complain about delay while failing to confront the focus of the Stay Applications: the Plaintiffs' abuse of the Court's process.

PART III ISSUES

7. This Reply Brief of Law addresses the following issues:

a. The immediate disclosure rule applies in Saskatchewan;

b. The Discontinuances are not the focus of Mile Two's Stay Application;

c. The immediate disclosure rule does not discourage settlements;

d. The rules around disclosure and production of documents are irrelevant to the operation of the immediate disclosure rule;

e. The obligations imposed on the Settling Defendants under the Settlement Agreements only benefit the Plaintiffs and not the Non-Settling Defendants or the Court;

f. The Settlement Agreements alter the adversarial landscape of the litigation;

g. Mile Two is not required to demonstrate actual prejudice;

h. The nature of class proceedings do not bear on the immediate disclosure rule; and

i. The only remedy for breach of the immediate disclosure rule is a stay.

PART IV ARGUMENT

A. The immediate disclosure rule applies in Saskatchewan

8. The Plaintiffs assert that the immediate disclosure rule is not the law in Saskatchewan. Mile Two disagrees.

9. The Plaintiffs suggest that Saskatchewan law is different. They assert "[t]here is no legislation, regulation, rule or common law in the Province of Saskatchewan compelling a plaintiff to 'immediately' disclose a partial settlement agreement to the non-settling defendants" (Plaintiffs Brief at para 85).

10. The Plaintiffs confuse a lack of opportunity for the courts in Saskatchewan to confront applications like the Stay Applications for a suggestion that the immediate disclosure rule is inoperative in Saskatchewan. As the Mile Two Brief underlines, courts in Ontario, Alberta, and British Columbia have developed the same coherent framework for addressing what agreements must be disclosed, when they must be disclosed, and the consequences for the failure to disclose an agreement captured by the immediate disclosure rule. That framework is based on the application of the common law prohibiting the abuse of the court's process, which applies equally across all common law provinces, including Saskatchewan.

11. The immediate disclosure rule is cogent and has developed through carefully framed, highly persuasive case law. Of note, the Supreme Court of Canada has repeatedly been invited to consider appeals from decisions in which the immediate disclosure rule was invoked. Each invitation has been met with a dismissed leave application: see *Aecon Buildings v Stephenson Engineering Limited*, 2010 ONCA 898, 328 DLR (4th) 488, leave to appeal to SCC refused, 2011 CanLII 38818 [*Aecon*]; *Tallman Truck Centre Limited v K.S.P. Holdings Inc.*, 2022 ONCA 66, 466 DLR (4th) 324, leave to appeal to SCC refused, 2022 CanLII 96460 [*Tallman*]; *Waxman v Waxman*, 2022 ONCA 311, 471 DLR (4th) 52, leave to appeal to SCC refused, 2022 CanLII 96459 [*Waxman*]; and *Poirier v Logan*, 2022 ONCA 350, leave to appeal to SCC refused, 2022 CanLII 115635 [*Poirier*].

12. The Plaintiffs have failed to articulate an intelligible basis for rejecting the application of the immediate disclosure rule in Saskatchewan. Instead, the Plaintiffs attempt to escape the operation of the well-established rule by suggesting a (partial) alternative framework for

approaching the disclosure of settlement agreements. They suggest that while *Mary Carter* agreements and *Pierringer* agreements must be disclosed in Saskatchewan, no clear rule applies for other types of settlement agreements (Plaintiffs Brief at para 96). This approach draws distinctions based on the labels that may be assigned to particular types of agreements. The immediate disclosure rule rejects this approach – focusing on the *effect* of the agreement at issue *rather than the label* assigned to it: see *CHU de Québec-Université Laval v Tree of Knowledge International Corp.*, 2022 ONCA 467 at para 55(b), 162 OR (3d) 514 [*Tree of Knowledge*]; *Waxman* at paras 24, 37; *Poirier* at para 47; *Tallman* at para 23.

13. The Plaintiffs' approach highlights why the immediate disclosure rule is necessary. Under the proposed approach of the Plaintiffs, some settlements would need to be disclosed while others would not. Some agreements would need to be disclosed promptly (but perhaps not immediately) while others would not. The remedy for failing to disclose a settlement agreement would be flexible, premised at least in part on the ability of non-settling defendants to demonstrate prejudice. Importantly, the Plaintiffs also admit that they "have not considered the myriad circumstances which would bear on proposing an applicable test" (Plaintiffs Brief at para 160).

14. Despite suggesting that something other than the immediate disclosure rule must be the law in Saskatchewan, the Plaintiffs fail to outline a cogent alternative to the immediate disclosure rule. The difficulty in expressing a clear, alternative solution is telling.

15. All uncertainty regarding the requirement to disclose partial settlement agreements, and the consequences for failing to do so, is addressed by the immediate disclosure rule. Settlement agreements that alter the litigation landscape must be disclosed immediately. The only remedy to address the failure to immediately disclose such a settlement agreement is a stay. Careful analysis of the case law referred to in the Mile Two Brief reveals that courts have already confronted and rejected many of the proposals that the Plaintiffs raise in an effort to escape the consequences associated with breach of the immediate disclosure rule.

B. The Discontinuances are not the focus of Mile Two's Stay Application

16. The Plaintiffs emphasize that because no defences have been filed, they were entitled to enter the Discontinuances against the Settling Defendants without leave of the

Court (Plaintiffs Brief at paras 30–43). This contention misses the point of the immediate disclosure rule.

17. The Plaintiffs were entitled to enter into the Settlement Agreements and file the Discontinuances. After entering into the Settlement Agreements, however, the Plaintiffs were required to disclose the agreements in accordance with the immediate disclosure rule. The immediate disclosure rule does not limit the ability of parties to enter into settlement agreements – it simply imposes requirements upon settling parties where a partial settlement materially impacts the litigation landscape. The requirements imposed upon settling parties are neither onerous nor difficult to appreciate.

18. The Plaintiffs' arguments around the Discontinuances and *The King's Bench Rules* [*Rules*] regarding discontinuances, ring hollow considering the Plaintiffs did not deliver the Discontinuances to the Non-Settling Defendants when they were entered. Instead, they waited until Mile Two ultimately learned about and requested the Discontinuances. The irresistible inference is that the Plaintiffs did not want to alert the Non-Settling Defendants to their settlement activities in a timely way (or possibly at all).

C. The immediate disclosure rule does not discourage settlements

19. The Plaintiffs suggest that the immediate disclosure rule could discourage settlement or stifle the ability of parties to efficiently resolve disputes in multi-party litigation (Plaintiffs Brief at paras 158–59). Similar arguments have been considered – and rejected – by courts in the past.

20. In *Skymark Finance Corporation v Ontario*, 2023 ONCA 234 at para 48, the Court drew from *Aecon* in stating as follows:

> [48] I wish to stress an additional point. The immediate disclosure rule is not designed to discourage settlements – far from it. The rule simply compels the immediate disclosure of such agreements when they profoundly impact the litigation. This was clear from the inception of this line of authority. In *Aecon*, MacFarland J.A. said the following, at para. 13:
>
> > While it is open to the parties to enter such agreements, the obligation upon entering such an agreement is to *immediately* inform all other parties to the litigation as well as to the court. [Emphasis in original.]
>
> [Emphasis in original]

21. The immediate disclosure rule does not prevent litigants from entering into settlement agreements. The rule did not impact the ability of the Plaintiffs to enter into the Settlement Agreements with the Settling Defendants, nor did it prevent them from filing the Discontinuances concerning the Settling Defendants. The immediate disclosure rule only imposes obligations that must be met after the partial settlement of an action has been effected. The rule, and the consequences associated with breaching the rule, in no way discourages settlements.

D. The rules around disclosure and production of documents are irrelevant to the operation of the immediate disclosure rule

22. The Plaintiffs refer to the disclosure and production rules outlined in Part 5 of the *Rules* (Plaintiffs Brief at paras 31–32, 44–45). They suggest that the *Rules* do "not compel production of documents outside of specific processes such as a Request for Particulars or a Notice to Produce Documents" (Plaintiffs Brief at para 32).

23. The immediate disclosure rule is a substantive common law requirement. The rule addresses discrete circumstances that may arise outside of the ordinary course of litigation. The immediate disclosure rule operates notwithstanding the procedural rules governing the timing and form of disclosure and production imposed by Part 5 of the *Rules*. Part 5 of the *Rules* has no impact on the operation of the immediate disclosure rule.

E. The obligations imposed on the Settling Defendants under the Settlement Agreements only benefit the Plaintiffs and not the Non-Settling Defendants or the Court

24. The Plaintiffs suggest that if the Settling Defendants provide the Plaintiffs with records pursuant to the Settlement Agreements, those records would come before the Court in any event (Plaintiffs Brief at 91). The Plaintiffs argue that "[r]ecords disclosed to the Plaintiffs would be subject to their own obligations for disclosure pursuant to Part 5 of [the *Rules*]" (Plaintiffs Brief at para 91). They go so far as to suggest that "the disclosure obligations of the Settling Defendants enhance, rather than impair, the evidence which is or would be available to the parties and the Court in the adjudication of the action" (Plaintiffs Brief at para 92).

25. The Plaintiffs' arguments on this point raise two concerns. First, the obligations that the Settlement Agreements impose upon the Settling Defendants benefit only the Plaintiffs. The Settling Defendants are required to provide records to the Plaintiffs – not to the other parties or to the Court. Second, and relatedly, the Plaintiffs' argument is contrary to their own evidence. The Erickson Affidavit outlines a privilege claim over all documents relating to the Settlement Agreements. The Settlement Agreements were clearly designed to benefit only the Plaintiffs and the Settling Defendants – not the Non-Settling Defendants or the Court.

F. The Settlement Agreements alter the adversarial landscape of the litigation

26. The Plaintiffs contend that the Settlement Agreements do not materially alter the adversarial landscape of the litigation. They suggest that the positions of the parties have not crystalized, in part because none of the Defendants have filed statements of defence. This argument is misguided, and easily addressed with reference to relevant case law.

27. In *Crestwood Preparatory College Inc. v Smith*, 2022 ONCA 743 [*Crestwood CA*], the plaintiff argued that the settlement agreement at issue "did not entirely change the litigation landscape because the settling defendants and the remaining defendant had not yet pleaded in the action" (*Crestwood CA* at para 3). Similar to the suggestions of the Plaintiffs in this matter, the plaintiff in *Crestwood CA* argued that "[i]n the absence of statements of defence, the defendants have not yet taken positions against one another in the litigation" (*Crestwood CA* at para 3). The Court in *Crestwood CA* rejected this argument, noting that "it is clear from the language used in the cases that the court is not limited to an examination of the pleadings in order to discern whether the settlement agreement significantly altered the adversarial relationship among the parties as articulated in *Poirier*, at para. 47" (*Crestwood CA* at para 45).

28. The Court in *Crestwood* emphasized, with reference to *Poirier*, "that a change in the position of the parties reflected in the pleadings is not an essential part of the disclosure test and is not a condition precedent to the determination that the obligation to disclose has arisen" (*Crestwood CA* at para 47). This principle applies "where the pleadings are not complete" (*Crestwood CA* at para 47) because, "from early on in the development of the

rule, the analysis of the relationships among the parties was not limited to what was disclosed in the pleadings" (*Crestwood CA* at para 46). The Court went on to state:

> [48] To hold otherwise could defeat the intent of the disclosure obligation which is to ensure that when parties take steps in the litigation, and when the court makes rulings, the parties and the court are not being actively misled as to the consequences of those steps or rulings. If they are, the process becomes "a sham and amounts to a failure of justice": *Aecon*, at para. 16.

29. In *Crestwood CA*, the motion judge inferred "from the statement of claim that one would expect the defendants to be adverse to the plaintiffs' interest based on the allegations of conspiracy and common action" (*Crestwood CA* at para 52; *Crestwood Preparatory College Inc. v Smith*, 2021 ONSC 8036 [*Crestwood SC*]). The Court of Appeal found no error in this inference: *Crestwood CA* at para 52. It went on to observe that "[t]he conduct required of the settling defendants under the terms of" the settlement agreements at issue "would not be expected by the non-settling defendant in the normal course of the litigation" (*Crestwood CA* at para 54).

30. The focus of the analysis must be on whether the effect of the settlement agreements at issue is to "sufficiently change the litigation landscape and the adversarial positions among the parties [such] that immediate disclosure of the settlement agreements [is] required" (*Crestwood CA* at para 55). In *Crestwood SC*, the motion judge noted that the allegations raised by the plaintiffs in their statement of claim did "not foreshadow any 'natural' alliance or cooperation between the Plaintiffs and any of the Defendants" (*Crestwood SC* at para 82). The Court of Appeal noted that this statement demonstrated that the motion judge had conducted careful analysis that was properly focused on the effect of the settlement agreements: *Crestwood CA* at para 55.

31. *Crestwood SC* and *Crestwood CA* were recently considered by the Court in *Peninsula Employment v Castillo*, 2025 ONSC 1121 [*Castillo*]. There, the Court emphasized that the principles that inform the immediate disclosure rule are no less relevant at the pre-defence stage of the litigation:

> [12] As explained in *Crestwood Preparatory College Inc. v. Smith*, 2021 ONSC 8036, at para. 80, aff'd 2022 ONCA 743, the defendants are entitled to know the adversity of the action before pleading in their own defense. Counsel for [the non-settling defendants] points out that the Plaintiff has pleaded that the Defendants, including [the non-settling defendants and the settling defendants], "coordinated together in an unlawful means conspiracy to acquire and misuse [the Plaintiff's

> intellectual property]." There is no suggestion in the pleading that the three settling Defendants were anything but adversarial with the Plaintiff and aligned with [the non-settling defendant].
>
> [13] Accordingly, a settlement under which the three settling Defendants are obliged to assist the Plaintiff against [the non-settling defendant] represents a significant shift in the posture of the action. "[P]rocedural fairness *requires immediate disclosure*, among other things because the settlement agreement may have an impact on the strategy to be pursued by non-settling defendants, who need to be able to properly assess the steps being taken by the settling parties… These considerations apply at the pre-statement of defence stage as well as after" [emphasis added]: *Ibid.*, at para. 81, citing *Handley*, at para. 38.
>
> [Emphasis in original]

32. *Crestwood SC*, *Crestwood CA*, and *Castillo* demonstrate that the immediate disclosure rule, and the considerations that animate it, apply with equal force to the pre-defence and post-defence stages of the litigation. The Court's decision in *Ball v 1979927 Alberta Ltd.*, 2024 ABKB 229 [*Ball*] is of similar effect. There, the Court noted that it was "of no consequence that the Defendants have not yet filed defences or crossclaims" (*Ball* at para 80). If the effect of a settlement agreement between some parties, but not others, is to materially change the litigation landscape and the adversarial positions among the parties, the immediate disclosure rule is engaged regardless of the stage of the action.

33. The Claim indicates a clear adversity of interest between the Plaintiffs and all Defendants – including the Settling Defendants.

34. The history of the Action also reinforces the adversity between the Plaintiffs and the Settling Defendants that was disturbed only by discovery of the Settlement Agreements by Mile Two. All Defendants, including the Settling Defendants, supported Mile Two's application to defer the filing of defences until after certification is determined. The Plaintiffs vigorously resisted the application, arguing that all Defendants – including the Settling Defendants – should be required to deliver defences in advance of certification. Justice Bardai (as he then was) deferred the filing of defences until after certification is decided: see *Erickson v Johnson*, 2023 SKKB 191.

35. Further, like most of the Non-Settling Defendants, two of the Settling Defendants, Ms. Thevenot and Ms. Johnson, delivered requests for particulars concerning the Claim.

The responses delivered by the Plaintiffs suggests nothing other than an adversity of interest between the Plaintiffs and the Settling Defendants.

36. Here, the only inference that Mile Two, other Non-Settling Defendants, and the Court could draw from reviewing the Claim and the proceedings before the Settlement Agreements is that the Plaintiffs and the Settling Defendants were adverse in interest: see *Crestwood CA* at para 52. The effect of the Settlement Agreements is to completely alter this previously adversarial relationship into a cooperative one. Like in *Crestwood CA*, the Settlement Agreements reflect positions and obligations of the Settling Defendants that would not be expected in the normal course of litigation: *Crestwood CA* at para 52. The Settlement Agreements materially alter the litigation landscape.

G. Mile Two is not required to demonstrate actual prejudice

37. A consistent theme in the Plaintiffs Brief is the suggestion that Mile Two and the other Non-Settling Defendants have failed to demonstrate actual prejudice associated with the Plaintiffs' breach of the immediate disclosure rule. The case law is clear: no actual prejudice is required for the immediate disclosure rule to be engaged: see e.g. *Aecon* at para 16; *Tree of Knowledge* at para 55(g); *Tallman* at paras 27–28; *Handley Estate v DTE Industries Limited*, 2018 ONCA 324 at para 45, 421 DLR (4th) 636; *Waxman* at para 24; *Ball* at para 77; *Kim v 1048656 B.C. Ltd.*, 2023 BCSC 192 at para 82. Any suggestion that the Non-Settling Defendants are required to demonstrate prejudice for the immediate disclosure rule to operate is an error.

38. An extension of the Plaintiffs' argument on this point is the observation that none of the Non-Settling Defendants have filed any evidence describing how their litigation strategy has changed as a result of the Settlement Agreements (Plaintiffs Brief at para 25). The Plaintiffs go so far as to state that there is no evidence that the Non-Settling Defendants' "approach to the action, litigation strategy, or relationship between the Defendants" has been impacted by the Settlement Agreements (Plaintiffs Brief at para 58).

39. The Non-Settling Defendants are not required to demonstrate how their litigation strategies have changed or could change as a consequence of the Settlement Agreements. To impose this requirement would be to require the demonstration of actual prejudice. More fundamentally, the Plaintiffs' argument ignores how the Settlement Agreements alter the

litigation landscape. As detailed above, the only conclusion that could be drawn from the Claim and the conduct of the Action was that the Plaintiffs and Settling Defendants were adverse in interest. The Settlement Agreements converted that adversity into cooperation. The Plaintiffs failed to immediately disclose to the Non-Settling Defendants and the Court the shift in the litigation landscape, as required. Rather, the Plaintiffs hid the fact of the Settlement Agreement (and the Discontinuances) until Mile Two's efforts compelled them.

H. The nature of class proceedings do not bear on the immediate disclosure rule

40. The Plaintiffs suggest that the objectives of class proceedings and the interests of putative class members must be considered when adjudicating the Stay Applications, relying on cases involving abuse of the Court's process in other circumstances (Plaintiffs Brief at paras 175–83). Unlike the cases relied on by the Plaintiffs, the nature of class proceedings do not have a unique bearing on the application of the immediate disclosure rule. The circumstances in which the immediate disclosure rule operates are readily distinguished from those confronted in *Herold v Wassermann*, 2022 SKCA 103, 473 DLR (4th) 281 [*Wassermann*] or where the Court considers an application to dismiss a proposed class action for delay: see *Huard v The Winning Combination Inc.*, 2022 SKCA 130 [*Huard*].

41. In *Wassermann*, the Court of Appeal considered an appeal from an order staying an individual action until certification of a proposed class action was determined, where the individual plaintiffs would be class members if the action was certified. It was in that context that the Court noted that the competing interests of the applicant and the respondent must be considered when determining whether a stay is an appropriate remedy: *Wassermann* at para 62. The Court in *Wassermann* was concerned with fundamentally different issues than the issues in this matter. Notably, Wassermann did not involve an abuse of process (alleged or otherwise): see *Wassermann* at para 88. As the abuse of process doctrine empowers the Court to control its own processes, the balancing required in cases like *Wassermann* is unnecessary – particularly where the law provides for a clear remedy.

42. In *Huard*, the Court indicated that the interests of putative class members are one of many factors that could bear on whether it is in the interests of justice to dismiss an inordinately and inexcusably delayed action pursuant to Rule 4-44: see *Huard* at paras 54–56. The nature of the Rule 4-44 analysis that the Court must undertake is distinct from

situations where the immediate disclosure rule operates. In the former circumstance, the Court engages in a balancing exercise oriented towards determining what is in the interests of justice. In the latter circumstance, the Court recognizes that any breach of the immediate disclosure rule constitutes an abuse of process.

43. Mile Two submits that the nature of class proceedings do not bear on the application of the immediate disclosure rule.

I. The only remedy for breach of the immediate disclosure rule is a stay

44. The Plaintiffs suggest the Court must engage in a more nuanced approach than the immediate disclosure rule to determine whether the failure to disclose the Settlement Agreements constitutes an abuse of process (as stated, this would be an error) and, if so, fashion an appropriate remedy (Plaintiffs Brief at paras 143–185). However, all the relevant case law clearly establishes that the only remedy capable of confronting a breach of the immediate disclosure rule is a stay. The application of this remedy is fully informed by the principles that underlie the abuse of process analysis.

45. Every breach of the immediate disclosure rule is an abuse of process for which the only appropriate remedy is a stay. In *Poirier* at para 41, the Court stated: "Put simply, if it is found that immediate disclosure of a settlement was required but not made, it follows automatically that an abuse of process has occurred and that the action must be stayed". The automatic requirement for a stay where the immediate disclosure rule is breached was confirmed in a March 11, 2025 decision of the Ontario Court of Appeal: *Rosemont Management Inc. v Cityzien Properties Limited*, 2025 ONCA 198. There, the Court of Appeal explained as follows:

> [17] The settlement disclosure rule is designed to give settling parties the strongest possible incentive to disclose settlements to other affected parties. That is why the extreme remedy of a stay of proceedings must be granted automatically whenever the rule is breached…

46. In determining that a plaintiff has breached the immediate disclosure rule, the Court has by definition determined that an abuse of process occurred. In such circumstances, a stay is the only available and appropriate remedy. In *Tallman* at para 28, the Court emphasized that the remedy goes beyond ensuring that justice is achieved between the

parties – "it also enables the court to enforce and control its own process by deterring future breaches of this well-established rule".

PART V CONCLUSION

47. The Settlement Agreements materially altered the adversarial landscape of the litigation. The Plaintiffs failed to immediately disclose the Settlement Agreements. The Plaintiffs' failure to immediately disclose the Settlement Agreements constitutes an abuse of process. The only appropriate remedy is an Order staying the Action.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of March, 2025.

McDOUGALL GAULEY LLP

Per: _____
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PART VI LIST OF AUTHORITIES

Case Law

Tab	Case Name	Legal Principle(s)	Para(s)	Case Citation
	Aecon Buildings v Stephenson Engineering Limited	While it is open to litigants to enter into partial settlement agreements, the obligation upon entering such agreements is to immediately inform all other parties to the litigation as well as the Court. Non-settling defendants are not required to demonstrate actual prejudice for the immediate disclosure rule to be engaged.	13, 16	2010 ONCA 898, 328 DLR (4th) 488, leave to appeal to SCC refused, 2011 CanLII 38818
	Ball v 1979927 Alberta Ltd.	The Court noted that it was of no consequence that the defendants had not yet filed defences or cross-claims when invoking the immediate disclosure rule. Non-settling defendants are not required to demonstrate actual prejudice for the immediate disclosure rule to be engaged.	77, 80	2024 ABKB 229
	CHU de Québec-Université Laval v Tree of Knowledge International Corp.	The immediate disclosure rule focuses on the effect of the agreement at issue rather than the label assigned to it. Non-settling defendants are not required to demonstrate actual prejudice for the immediate disclosure rule to be engaged.	55	2022 ONCA 467, 162 OR (3d) 514
	Crestwood Preparatory College Inc. v Smith	The Court inferred from the statement of claim that one would expect the defendants to be adverse to the plaintiffs' interests based on the allegations of conspiracy and common action. The Court noted that the allegations raised by the plaintiffs in their statement of claim did not foreshadow any natural alliance or cooperation	82	2021 ONSC 8036

		between the plaintiffs and any of the defendants.		
	Crestwood Preparatory College Inc. v Smith	The Court rejected the argument that in the absence of statements of defence, the defendants had not yet taken positions against one another in the litigation. The Court noted that it is clear from the language used in cases concerning the immediate disclosure rule that the Court is not limited to an examination of the pleadings in order to discern whether the settlement agreement at issue significantly altered the adversarial relationship among the parties. A change in the position of the parties reflected in the pleadings is not an essential part of the disclosure test and is not a condition precedent to the determination that the obligation to disclose has arisen. The immediate disclosure rule applies where pleadings are not complete. From early on in the development of the rule, the analysis of the relationships among the parties was not limited to what was disclosed in the leadings. To hold otherwise could defeat the intent of the immediate disclosure rule. The Court emphasized that the focus must be on whether the effect of the settlement agreement at issue is to sufficiently change the litigation landscape and the adversarial positions among the parties such that immediate disclosure of the settlement agreement is required.	3, 45–48, 52, 54–55	2022 ONCA 743
	Erickson v Johnson	Justice Bardai (as he then was) deferred the filing of defences in		2023 SKKB 191

		the within action until after certification is decided.		
	Handley Estate v DTE Industries Limited	Non-settling defendants are not required to demonstrate actual prejudice for the immediate disclosure rule to be engaged.	45	2018 ONCA 324, 421 DLR (4th) 636
	Herold v Wassermann	The Court of Appeal considered an appeal from an order staying an individual action until certification of a proposed class action was determined, where the individual plaintiffs would be class members if the action was certified. The Court noted that the competing interests of the applicant and the respondent must be considered when determining whether a stay is an appropriate remedy.	62, 88	2022 SKCA 103, 473 DLR (4th) 281
	Huard v The Winning Combination Inc.	The Court indicated that the interests of putative class members are one of many factors that could bear on whether it is in the interests of justice to dismiss an inordinately and inexcusably delayed action pursuant to Rule 4-44.	54–56	2022 SKCA 130
	Kim v 1048656 B.C. Ltd.	Non-settling defendants are not required to demonstrate actual prejudice for the immediate disclosure rule to be engaged.	82	2023 BCSC 192
	Peninsula Employment v Castillo	The Court emphasized that the principles that inform the immediate disclosure rule are no less relevant at the pre-defence stage of the litigation.	12	2025 ONSC 1121
	Poirier v Logan	The immediate disclosure rule focuses on the effect of the agreement at issue rather than the label assigned to it. If it is found that immediate disclosure of a settlement was required but not made, it follows automatically that an abuse of process has occurred and that the action must be stayed.	41, 47	2022 ONCA 350, leave to appeal to SCC refused, 2022 CanLII 115635

	Rosemont Management Inc. v Cityzien Properties Limited	The immediate disclosure rule is designed to give settling parties the strongest possible incentive to disclose settlements to other affected parties. That is why the extreme remedy of a stay of proceedings must be granted automatically whenever the immediate disclosure rule is breached.	17	2025 ONCA 198
	Skymark Finance Corporation v Ontario	The immediate disclosure rule is not designed to discourage settlements. The rule simply compels the immediate disclosure of settlement agreements when they profoundly impact the litigation.	48	2023 ONCA 234
	Tallman Truck Centre Limited v K.S.P. Holdings Inc.	The immediate disclosure rule focuses on the effect of the agreement at issue rather than the label assigned to it. Non-settling defendants are not required to demonstrate actual prejudice for the immediate disclosure rule to be engaged. The remedy of a stay for breach of the immediate disclosure rule goes beyond ensuring that justice is achieved between the parties. It also enables the Court to enforce and control its own process by deterring future breaches of this well-established rule.	23, 27–28	2022 ONCA 66, 466 DLR (4th) 324, leave to appeal to SCC refused, 2022 CanLII 96460
	Waxman v Waxman	The immediate disclosure rule focuses on the effect of the agreement at issue rather than the label assigned to it. Non-settling defendants are not required to demonstrate actual prejudice for the immediate disclosure rule to be engaged.	24, 37	2022 ONCA 311, 471 DLR (4th) 52, leave to appeal to SCC refused, 2022 CanLII 96459

Legislation

Tab	Statutes / Rules	Section(s) / Rule(s)	Citation
	The King's Bench Rules	4-44, Part 5	Sask Gaz December 27, 2013, 2684