

**Form 6-5**  
(Subrule 6-5(1))

COURT FILE NUMBER QBG-SA-00766-2022  
COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

PLAINTIFFS /  
RESPONDENTS CAITLIN ERICKSON and COY NOLIN

DEFENDANT/  
APPLICANT MILE TWO CHURCH INC.

DEFENDANTS 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, THE GOVERNMENT OF SASKATCHEWAN, JOHN DOES and JANE DOES

Brought under *The Class Actions Act*

**NOTICE OF APPLICATION**

**NOTICE TO RESPONDENTS**

This application is made against you. You are a respondent. You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Where: 520 Spadina Crescent E, Saskatoon, Saskatchewan

Date: To be heard at a date and time set by the Certification Judge

*(Read the Notice at the end of this document to see what else you can do and when you must do it.)*

**Remedy claimed or sought:**

1. An Order pursuant to Rules 1-3, 3-12 and 3-91(1) of *The King's Bench Rules* (the "Rules") and the inherent jurisdiction of this Honourable Court, directing that statements of defence in this action are not required until a reasonable time after the application for certification is finally determined; and
2. An order that the costs of this application are left to the judge who decides certification.

**Grounds for making this application:**

3. In class action proceedings in Saskatchewan, a statement of defence is not required until after certification, including for the reasons set out below.

**1. Fairness and efficiency**

4. It is both fair and efficient to extend the time for filing statements of defence in class action proceedings generally, and in this action in particular.

**(a) Amendments**

5. It is usual for class proceedings to evolve through case management and the certification process. Courts exercise their discretion generously and in favour of receiving whatever amendments and evidence may be necessary for a full and fair hearing of the certification issues.
6. The Statement of Claim issued August 8, 2022 (the "Claim") has already been amended once, on December 12, 2022 (the "Amended Claim"). The Claim named 22 defendants in addition to "John Does" and "Jane Does". The Amended Claim now names 26 defendants. As is usual in class proceedings, it is likely additional amendments to the Amended Claim will be made before certification is determined.

**(b) Particulars required**

7. The Amended Claim lacks sufficient particulars of the causes of action plead against the applicant, Mile Two Church Inc., including because the causes of action asserted against many of the individually named defendants in the Amended Claim contain *no* particulars. At paragraphs 65 and 75 of the Amended Claim the plaintiffs assert that the applicant is vicariously liable for the wrongdoing of its employees, agents, and representatives including individually named defendants, as well as unidentified school abusers, unidentified school abuse planners, unidentified church abusers and unidentified church abuse planners.
8. The applicant, as well as individually named defendants whose claims are not particularized, are unable to defend the Amended Claim without particulars. Extensive demands for particulars and extensive replies to those demands are required before statements of defence can be filed. The defendant, John Thuringer, has already served a demand for particulars dated January 20, 2023 on the plaintiffs.

**(c) Defending claims that disclose a reasonable cause of action**

9. Defendants to a proposed class action may not seek to strike claims that do not disclose a reasonable cause of action prior to certification, as that question is part of the certification test - the first criterion of the test is that the claim must disclose a reasonable cause of action (s. 6(1)(a) of *The Class Actions Act*, SS 2001, c C-12.01 (the "CAA"). Some, none, or all of the Amended Claim may survive this scrutiny.
10. It is fair and efficient that the defendants should only be required to defend claims that disclose a reasonable cause of action.

**(d) A multiplicity of defences is not fair or efficient**

11. The objectives of class action procedure include economies of time, effort and expense. The modern class action is designed to avoid, rather than encourage, the unnecessary filing of repetitious papers and applications.

12. It is clear statements of defence cannot now be filed without the filing of repetitious papers and applications, adding time, effort and expense to the parties and the Court. (It is also likely any statements of defence filed in advance of certification will require amendment after additional amendments to the Amended Claim leading up to certification, and after certification is determined.) The need for those amended pleadings will cause further time, effort and expense to the parties and the Court, as well as waste these same resources spent on earlier filings.
13. The waste of resources on statements of defence that must be amended as a result of amendments to the Amended Claim and/or determinations on the certification application will be significant given the scope and complexity of the legal issues plead in the Amended Claim. Those wasted resources will extend to up to 26 parties and their respective statements of defence (and possibly more if additional defendants are added to the action).
14. The plaintiffs have not identified how statements of defence filed in advance of certification will focus the litigation and narrow the issues on certification, or streamline the proceedings.

## **2. Certification to be heard first**

15. It is in the interests of all parties to have the appropriateness of a class action determined at the outset by certification.
16. Requiring the filing of statements of defence in advance of determining certification will delay the application for certification.
17. The relief sought on this application seeks to advance the certification application in a timely and cost effective way for all parties and the Court.

## **3. Jurisdiction**

18. Rules 1-3, 3-12 and 3-91(1) of the *Rules*, as well as this Court's inherent jurisdiction to govern its own process, provide this Court with the jurisdiction to make the orders requested.

19. Rule 1-3 asks this Court to make orders that are necessary to ensure matters are resolved in a timely and cost effective way.
20. Sections 14 and 16(1) of the CAA also indicate (a legislative policy) that class actions proceed in a fair and expeditious manner.

**Material or evidence to be relied on:**

21. This Notice of Application with proof of service;
22. Brief of Law (to be filed);
23. Draft Order;
24. The pleadings and proceedings had and taken herein; and
25. Such further and other material as counsel may advise.

**Applicable rules:**

26. Rules 1-3, 3-12 and 3-91(1) of *The King's Bench Rules*.

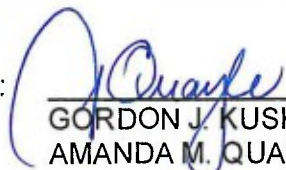
**Applicable Acts and regulations:**

27. *The Class Actions Act*, SS 2001, c C-12.01

DATED at Regina, Saskatchewan, this 23<sup>rd</sup> day of January, 2023.

**McDOUGALL GAULEY LLP**

Per:

  
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GORDON J. KUSKI, K.C. /  
AMANDA M. QUAYLE, K.C.  
Solicitors for the Defendant/Applicant,  
Mile Two Church Inc.

### NOTICE

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

### CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by a lawyer for the party:

|                                   |  |
|-----------------------------------|--|
| Name of firm:                     | McDougall Gauley LLP   |
| Name of lawyer in charge of file: | Gordon J. Kuski, K.C. / Amanda M. Quayle, K.C.   |
| Address of legal firm:            | 1500 – 1881 Scarth Street<br>Regina, Saskatchewan S4P 4K9  |
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