QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2021 SKQB 204**

Date: **2021 07 20**
Docket: QBG 789 of 2020
Judicial Centre: Regina

BETWEEN:

JACOB WASSERMAN, CAROL BRONS, and LYLE BRONS

PROPOSED PLAINTIFFS/APPLICANTS

-and-

THE GOVERNMENT OF SASKATCHEWAN AS REPRESENTED BY THE MINISTER OF HIGHWAYS AND INFRASTRUCTURE; AND HER MAJESTY THE QUEEN, AS REPRESENTED BY THE ATTORNEY GENERAL FOR SASKATCHEWAN; THE GOVERNMENT OF ALBERTA, AS REPRESENTED BY THE MINISTRY OF TRANSPORT; HER MAJESTY THE QUEEN, AS REPRESENTED BY THE ATTORNEY GENERAL FOR ALBERTA; HER MAJESTY THE QUEEN OF CANADA, AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA; JASKIRAT SINGH SIDHU; ADESH DEOL TRUCKING LTD.; SUKHMANDER SINGH; ANSWER TRAILER RENTALS & LEASING LTD.; CHARLIE'S CHARTERS LTD.; NFI GROUP INC. OPERATING AS MOTOR COACH INDUSTRIES; PREMIER HORTICULTURE LTEE./PREMIER HORTICULTURE LTD.; AND SASKATCHEWAN GOVERNMENT INSURANCE

PROPOSED DEFENDANTS

-and-

ADAM HEROLD BY HIS ADMINISTRATOR *AD LITEM* RUSSELL HEROLD, RUSSELL HEROLD, RAELENE HEROLD, JAXON JOSEPH BY HIS ADMINISTRATOR *AD LITEM* CHRIS JOSEPH, ANDREA JOSEPH, LOGAN HUNTER BY HIS ADMINISTRATOR *AD LITEM* SHAUNA NORDSTROM, SHAUNA NORDSTROM, PETER SNATERSE, JACOB LEICHT BY HIS ADMINISTRATOR *AD LITEM* KURT LEICHT, CELESTE LEICHT, MARK CROSS BY HIS ADMINISTRATOR *AD LITEM* BRAD CROSS, BRAD CROSS AND MARILYN CROSS

RESPONDENTS

Counsel:

John Rice, Anthony Leoni, David Brundige, Q.C., Louis Browne, and Sean Watson for the plaintiffs/applicants

Kevin Mellor and Sharon Fox for the respondents

Michael Morris, Q.C., Sharon Pratchler, Q.C., and Jared Biden for the Government of Saskatchewan

Frances Chan for the Government of Alberta

Christine Ashcroft, and Jenilee Guebert for the Government of Canada

Jason Clayards and James Ehmann, Q.C. for Sukmander Singh, and Deol Trucking Ltd.

Sheila E. Caston, Q.C., and Michael Tomka for Jaskirat Singh Sidhu

Brett Stevenson for Answer Trailer Rentals & Leasing Ltd.

Jane Wootten and Don Harmon for Saskatchewan Government Insurance and Charlie's Charters Ltd.

Amanda Quayle, Q.C. for NFI Group Inc., operating as Motor Coach Industries

Nathanial Day for Premier Horticulture Ltee./Premiere Horticulture Ltd.

Richard Edwards for Ryan Straschnitzki

Matthew Riskin for Kaleb Dahlgren, Morgan Gobeil, Mattieu Gomercic, Xavier Labelle, Layne Matechuk, and Tyler Smith

Shaun Parthev, Q.C. for the Estate of Glen Doerksen

FIAT MITCHELL J.
July 20, 2021

I. Introduction

[1] On April 6, 2018, a chartered bus carrying the Humboldt Broncos hockey team of the Saskatchewan Junior Hockey League; members of its coaching staff, and supporters was travelling to Nipawin, Saskatchewan for a final playoff game. Twenty-

nine people, including the driver, Glen Doerksen, were on the bus. As the bus approached the intersection of Highway 35 and Highway 335, a semi-trailer unit driven by Jaskirat Singh Sidhu failed to obey the posted stop sign, in addition to other prior speed reduction notifications, and drove at high speed directly into the path of the oncoming bus.

[2] The ensuing collision proved catastrophic. Almost immediately, 16 lives were extinguished. Most of the victims were vigorous young men, elite junior hockey players on the verge of adulthood. The 13 survivors of the crash suffered grave, and, for some, life-threatening, physical injuries. These individuals like their deceased team-mates were young, vibrant athletes, and for them the injuries they now must endure are life-altering, and permanent.

[3] Subsequently, Mr. Sidhu was charged with, and pled guilty to, 16 counts of dangerous driving causing death contrary to s. 249(4) of the *Criminal Code*, RSC 1985, c C-46 and 13 counts of dangerous driving causing bodily harm contrary to s. 249(3) of the *Criminal Code*. Following a lengthy hearing, Cardinal P.C.J. sentenced Mr. Sidhu to eight years' incarceration on each count of dangerous driving causing death to be served concurrently, and five years' incarceration on each count of dangerous driving causing bodily harm to be served concurrently with all other counts. See: *R v Sidhu*, 2019 SKPC 19, 45 MVR (7th) 63.

[4] In addition to the criminal proceeding, numerous civil lawsuits related to this tragic event have been initiated not only by representatives of the deceased but also by some survivors. To date, 17 such lawsuits including this proposed class action, have been filed in courts in Saskatchewan, and Alberta. (A chart identifying these actions,

the named parties, and the courts in which they have been filed is attached as Appendix "A" to this fiat.)

[5] This application is brought by Jacob Wasserman, Carol Brons and Lyle Brons [Applicants] the proposed plaintiffs in this class action: *Wasserman v Saskatchewan*, QBG 789 of 2020. Initially, the proposed plaintiffs in this action, which was commenced on April 2, 2020, were Carol and Lyle Brons, parents of Ms. Dayna Brons, the Humboldt Bronco's physiotherapist who died in the crash. Subsequently, on December 2, 2020 the statement of claim was amended, and Jacob Wasserman added as a proposed plaintiff. Mr. Wasserman, a goalie with the team, was left a paraplegic following the crash. Despite this amendment to the style of cause, the proposed class action continues to be referred to as the *Brons Class Action*. Accordingly, I will describe it as such in this fiat.

[6] The Applicants' motion pursuant to ss. 29 and 37 of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01 [*QB Act*] and Rule 1-5 of *The Queen's Bench Rules* seeks an order staying a related civil action, *Herold v Saskatchewan*, QBG 1960 of 2018 [*Herold Action*] pending the resolution of the certification hearing in the *Brons Class Action* which is scheduled to commence on April 18, 2022.

[7] The Applicants contend that allowing one or more of the many related civil actions to proceed in tandem with the *Brons Class Action* raises the spectre of inconsistent judicial rulings which may impact detrimentally on the yet to be certified class action, as well as result in inconsistent verdicts. These are potential pitfalls, they submit, which both the *QB Act* and the Rules seek to minimize, if not avoid altogether.

[8] The Applicants also advised that plaintiffs' counsel in all other related civil actions, save for the *Herold Action*, have agreed to hold their particular action in abeyance pending the disposition of the certification application in the *Brons Class Action*. Only plaintiffs' counsel in the *Herold Action* have declined to await the result of the certification hearing, and, instead, wish to continue to prosecute their clients' claim.

[9] The respondents to this application are the named plaintiffs in the *Herold Action* [Respondents]. They strongly oppose the relief which the Applicants seek. They argue that chronologically their action was the first one to be filed, and a considerable amount of preparatory work for trial has already been completed, not to mention money expended.

[10] Furthermore, the Respondents assert that their claim could likely be adjudicated, and any appeal resolved before the proposed class action may be certified, and if certified, a common issues trial is concluded. Consequently, they maintain their interests would be severely prejudiced if their action is now suspended, even temporarily.

[11] These reasons explain why taking all the circumstances into account, I conclude it is appropriate to direct a temporary stay of the *Herold Action* on terms. My order is as follows:

1. The *Herold Action* is temporarily stayed until:

    a. the certification of the *Brons Class Action*, and delivery of opt-out notices by the Brons plaintiffs, or

b. the application seeking certification of the *Brons Class Action* is dismissed.

2. While the temporary stay of the *Herold Action* is in place, counsel for the Herold plaintiffs may participate in all pre-certification processes which may be relevant to the *Herold Action*, including but not limited to:

a. oral questioning of Mr. Sidhu by counsel for the proposed defendants in the *Brons Class Action*, and

b. any pre-trial discovery of other relevant witnesses including Mr. John Stevenson, in the event they agree to participate in this matter.

II. Procedural History

[12] I begin by offering a brief overview of the procedural history of this application which should assist in understanding how it came to be.

A. *The Herold Action*

[13] Initiated in July 2018, the *Herold Action* is one of these seventeen civil actions. This lawsuit is in its very early stages. Pleadings have not closed, and, apart from the Amended Statement of Claim filed on March 17, 2020, the only progress in this litigation to date is an application filed on Apri1 22, 2020 by the Government of Saskatchewan [Saskatchewan] seeking to have all claims against it stayed pursuant to Part IV of *The Automobile Accident Insurance Act*, RSS 1978, c A-35. Saskatchewan's

application was the catalyst for the Applicants' application seeking a stay of the *Herold Action*.

[14] The plaintiffs in the *Herold Action* are the parents and administrators *ad litem* of five individuals killed in the crash. Four were players on the Humboldt Broncos hockey team: Adam Herold, Logan Hunter, Jaxon Joseph, and Jacob Leicht. The fifth – Mark Cross – was the team's assistant coach.

[15] These plaintiffs seek punitive damages and other relief for these wrongful deaths against Saskatchewan, Mr. Sidhu, Adesh Deol Trucking Ltd., and NFI Group Inc. (operating as Motor Coach Industries).

B. *The Brons Class Action*

[16] As noted, the statement of claim in the *Brons Class Action* was commenced on April 2, 2020, and an amended statement of claim filed on December 2, 2020.

[17] The proposed representative plaintiffs seek to certify a class with the following definition as set out at para. 2 of the Applicants' Brief of Law:

> a. All person who were on the bus, including the Humboldt Broncos hockey team, staff, therapists, coaches, a radio analyst and related personnel involved in the collision;
>
> b. All family members of the persons on the bus involved in the collision who are entitled to bring a claim pursuant

> to ss. 3 and 4 of *The Fatal Accidents Act*, RSS 1978, c F-11;
>
> c. All first citizens who attempted to assist at the scene of the collision;
>
> d. All first responders, including police officers, paramedics, firefighters, accident reconstructionists, 911 operators, and their associates; and
>
> e. Medical personnel who attended and treated the passengers on the bus at the scene of the collision, including STARS ambulance and other ambulance workers.

[18] It is anticipated that common issues for which certification will be sought include negligence, governmental liability, and breaches of the *Canadian Charter of Rights and Freedoms* [*Charter*], amongst others. On behalf of the proposed class, the representative plaintiffs seek aggravated, exemplary, and punitive damages. They also seek damages pursuant to s. 24(1) of the *Charter*, for alleged breaches of the *Charter*.

C. Notice of Application

[19] On January 29, 2021, Mr. Rice, lead counsel for the Applicants commenced this application seeking the following relief:

> 1. An Order that the action commenced and prosecuted by Adam Herold by his administrator *ad litem*/personal representative Russell Herold and others against Jaskirat Singh Sidhu and others, Court of Queen's Bench for Saskatchewan, QBG No. 1960 of 2018 (the "*Herold Action*") be stayed until the certification action in the within action (the "*Brons Action*") is determined;

> 2. An Order that the commencement of further class proceedings in the Province of Saskatchewan arising out of a motor vehicle collision occurring on April 6, 2018 at the intersection of Highways 30 and 335 involving a bus by the Defendant, Jaskirat Singh Sidhu, (the "Humboldt Bus Crash"), be prohibited without leave of the Court until the certification application in the *Brons Action* is decided;
>
> 3. An Order that the Applicants shall be at liberty to apply for a continuation of the order staying the *Herold Action* if certification is granted in the *Brons Action;*
>
> 4. An Order that, if certification is not granted in the *Brons Action*, the stay of the *Herold Action* and the prohibition against the commencement of further class proceedings in the Province of Saskatchewan in respect of all claims arising out of the Humboldt Bus Crash shall both be lifted following the exhaustion or expiry of the appeal process, and
>
> 5. Such further and other relief and direction as counsel may request and this Honourable Court deems just.

[20] Simply put, it is the culmination of three appearances before Layh J. in the *Herold Action*. Due to COVID-19, these were telephone appearances precipitated by the request of Applicant's counsel that he adjourn Saskatchewan's motion to strike all claims against it, until an application staying the *Herold Action* could be brought.

[21] On January 7, 2021, in a document entitled "Synopsis of Telephone Conference Call", Layh J. directed as follows:

> [2] Mr. Rice advised that by February 1, 2021, he will have his materials prepared and served for the application before Justice Mitchell. Among other parties, the plaintiffs in QBG 1960 of 2018 will be named as respondents. Mr. Mellor, counsel for the plaintiffs [in the *Herold Action*] stated that upon service of the Notice of Application and supporting materials, he would be able to prepare and respond to the application within three weeks.
>
> [3] The Local Registrar, in consultation with Justice Mitchell, shall provide to Mr. Mellor and Mr. Rice dates in early March 2021 that the application might be heard.

[22] Subsequently, I heard this application on March 5, 2021. At its conclusion, I reserved my decision.

III. Issues

[23] Two general issues require resolution on this application.

[24] First, what is the applicable standard for staying an individual action prior to the certification of a proposed class action?

[25] Second, applying this standard should the *Herold Action* be stayed pending a decision on the certification application in the *Brons Class Action*? If so, what, if any, terms should attach to this temporary stay?

IV. Relevant Statutory Provisions and Rules

[26] The two provisions of the *QB Act* invoked by the Applicants read as follows:

> **Multiplicity of proceedings avoided**
>
> **29**(1) The court shall grant to the parties to an action or matter all remedies to which the parties appear to be entitled with respect to any legal or equitable claims that they have properly brought forward so that:
>
> (a) all issues in controversy between the parties are determined as completely and finally as possible; and
>
> (b) a multiplicity of legal proceedings concerning the issues is avoided.
>
> (2) Relief pursuant to subsection (1) may be granted either absolutely or on any terms and conditions that a judge considers appropriate.
>
> …

> **Stay of proceedings**
>
> **37**(1) Nothing in this Act prevents a judge from directing a stay of proceedings in any action or matter before the court if the judge considers it appropriate.

[27] Rule 1-5 is one of the Foundational Rules, rules which "strongly influence and guide" the conduct of litigation in Saskatchewan. See: *Brooks v Brooks*, 2013 SKQB 325 at para 15, 429 Sask R 146. For present purposes, the relevant provisions of this Rule read as follows:

> **1-5**(1) To implement and advance the purpose and intention of these rules described in rule 1-3, the Court may, subject to any specific provision of these rules, make any order with respect to practice or procedure, or both, in an action, application or proceeding before the Court.
>
> (2) Without limiting subrule (1), and in addition to any specific authority the Court has pursuant to these rules, the Court may do one or more of the following:
>
> (a) grant, refuse or dismiss an application or proceeding;
>
> …
>
> (c) give orders or directions or make a ruling with respect to an action, application or proceeding or a related matter;
>
> …
>
> (e) impose terms, conditions and time limits;
>
> …
>
> (h) adjourn or stay all or any part of an action, application or proceeding, extend the time for doing anything in the proceeding or stay the effect of a judgment or order[.]

[28] Section 15 of *The Class Actions Act*, SS 2001, c C-12.01 [*CAA*] authorizes a judge of this Court to "stay or sever any action related to the class action on any terms the court considers appropriate". On its face, the broad language used in

this section suggests it also would operate in these circumstances. However, it is deceptive. Section 2 of the *CAA* defines "class action" to mean "an action certified as a class action pursuant to Part II". As the *Brons Class Action* has yet to be certified, the power to stay any related action pursuant to the *CAA* cannot operate at this time.

[29] I make this observation because cases from other provinces referred to by counsel have invoked the power found in those provinces' class action statutes to stay a related civil action. See, for example: *Workman Optometry v Aviva Insurance*, 2021 ONSC 3843 [*Workman Optometry*]; *Carter v Lifelabs*, 2020 ONSC 7340 [*Carter*]; *Singh v RBC Insurance Agency Ltd.*, 2020 ONSC 5368 [*Singh*]; *Vaeth v North American Palladium Ltd.*, 2016 ONSC 5015 [*Vaeth*]; *Dumoulin v Ontario (Ontario Realty Corp.)*, 2004 CanLII 1285 (Ont Sup Ct) [*Dumoulin*]; *Northfield Capital Corp. v Aurelian Resources Inc.*, (2007), 84 OR (3d) 748 (Ont Sup Ct), and *Matheson v Wood World Markets/Marches M*, 2011 NSSC 85.

[30] The statutory language found in those statutes is not as narrow as the language contained in the *CAA*. For example, read together ss. 1(2)(a), and 13 of the *Class Proceedings Act, 1992*, SO 1992, c 6 would clothe a superior court to stay a related civil action, "regardless of whether it is has been certified as a class proceeding". In other words, language like this would accommodate the Applicant's application.

[31] Unlike other provinces, statutory authority to stay the *Herold Action* in these circumstances must be found outside the *CAA*. However, this reality does not detract in any way from the relevance of the analysis undertaken by those courts pursuant to their respective provincial class action statutes.

V. Relevant Legal Principles

A. Staying Civil Proceedings Generally

1. Position of the Parties

[32] The Respondents assert that in these circumstances the standard for staying the *Herold Action* is a stringent one. It is their submission that despite the fact there are numerous civil claims before this Court relating to the Humboldt Broncos bus crash, none should be stayed unless it can be shown allowing it to proceed amounts to an abuse of process. Then only in the "clearest of cases" should a stay of proceedings be ordered. In short, the Respondents assert the "clearest of cases" standard is the applicable one.

[33] The Applicants, not surprisingly, disagree. They assert that the "clearest of cases" standard has no application in these circumstances, or at all. Instead, principles identified in cases which are tailored to class actions generally should govern the determination of this application.

2. The Law

[34] As noted, the Applicants have invoked two sections of the *QB Act*, as well as one Foundational Rule to ground their application. Of these provisions, ss. 29 and 37 of the *QB Act* are the most pertinent. Section 29, for example, authorizes this Court to grant a remedy to avoid multiplicity of proceedings, which may be granted either absolutely or on any terms considered appropriate. As well, pursuant to s. 37, judges of this Court are empowered to enter a stay of proceedings where they consider

it appropriate to do so. See: *CE Design Ltd. v Saskatchewan Mutual Insurance Company*, 2021 SKCA 14 at para 83, 455 DLR (4th) 417.

[35] Section 37, particularly, codifies what is already the inherent jurisdiction of a superior court to control its own process. See: *Boehringer Ingelheim (Canada) Ltd. v Englund*, 2007 SKCA 62 at paras 33-35, 299 Sask R 298 [*Boehringer Ingelheim*].

[36] *Onion Lake Cree Nation v Stick*, 2018 SKCA 20, [2018] 5 WWR 111 [*Onion Lake*] offers important guidance on how s. 37 is to be applied. This case involved an appeal taken by Onion Lake against a Chamber Judge's refusal to stay an originating application seeking disclosure of its 2014 and 2015 audited consolidated financial statements among other documentation. Onion Lake had argued a stay was warranted to avoid an abuse of process because of a constitutional challenge it had launched concurrently in the Federal Court of Canada against the relevant federal legislation – the *First Nations Financial Transparency Act*, SC 2013, c 7. The Saskatchewan Court of Appeal rejected this argument and dismissed Onion Lake's appeal.

[37] Writing for the court, Ryan-Froslie J.A. specifically elaborated on the scope of s. 37 as follows at paras. 47–50:

> [47] The court's power to grant a stay of proceedings is discretionary. As stated in s. 37 of *The Queen's Bench Act, 1998*, such stays may be granted if the judge considers it "appropriate" in the circumstances. Section 37 provides no guidance as to how judges should exercise their discretion, but jurisprudence from both this Court and the Court of Queen's Bench provides assistance.
>
> [48] In *Leier v Shumiatcher* (1962), 39 WWR 446 (Sask CA) [*Leier*], Davies J. (*ad hoc*), writing for this Court stated:

> [2] Considerable argument was addressed to the court as to the circumstances under which a discretion to stay proceedings may be exercised, and the extent and limitation thereof. There is the principle, sanctioned by high and respected authority, that the discretion should be exercised only under extraordinary circumstances: *Rowe v. Brandon Packers Ltd.* (1961), 35 WWR 625, 35 CR 410 (Man. C.A.), and the cases therein considered. **I am, however, respectfully of the opinion that the right to exercise a discretion should not be curtailed by any inflexible rule of law, but should be guided in each instance by the merits of the matter under review.** I am convinced that a judge, whose duty it is to exercise the discretion, has not only an inherent right to do so, but where the attainment of justice demands, an obligation and an unfettered right to do so, subject to any limitations imposed by statute or the rules of court: *Re Trade Union Act; Re Blackwoods Beverages Ltd. and Dairy Employees, Truck Drivers and Warehousemen, Local No. 834* (No. 1) (1956) 18 WWR 481, at 486. **The exercise of the discretion must not, of course, be capricious or arbitrary, but must have as its foundation admissible evidence of record from which the judge may reasonably draw conclusions.** Where a discretion has been exercised without evidence, or (what is tantamount to it) evidence from which no reasonable conclusion should be drawn, the discretion has been based on a wrong principle of law and cannot stand: *Boychuk v. Korzenowski*, [1924] 2 WWR 750 (Sask. C.A.). …
>
> [Emphasis added]

See also *Laxton Holdings Ltd. v Non-Marine Underwriters, Lloyd's, London*, [1987] 3 WWR 570 (Sask CA) at 572–573 [*Laxton*].

[49] It is clear the discretion to grant a stay of proceedings is not governed by rigid principles or criteria. Instead it is to be guided by the particular circumstances of each case. Its exercise must not be arbitrary or capricious but rather based on admissible evidence. There can be no exhaustive list of factors a judge should consider when determining whether to grant a stay of proceedings as the relevant factors will, of necessity, be determined by the context in which the request for a stay arises. Finally, judges should bear in mind when exercising their discretion that the ultimate effect of the stay will always be either to forestall or postpone access to the courts and, thus, justice.

> [50] The onus rests with the person seeking the stay to establish the basis for it. To do so, he or she must show prejudice should the proceedings be allowed to continue (*Laxton* at 574; *Leier* at 447).

[38] The court in *Onion Lake* went on to discuss the doctrine of abuse of process and its interaction with s. 37 of the *QB Act*. It noted that this doctrine is a "flexible one" and there is "no set test or rules" for assessing what constitutes an abuse of the court's process: *Onion Lake* at para 52. For purposes of the issues raised on that appeal, Ryan-Froslie J.A. noted *Boehringer Ingelheim* had already held that "two lawsuits between the same parties that effectively deal with the same subject matter" may constitute an abuse of process: *Onion Lake* at para 54. She closed her analysis of the applicable law as follows at para. 54:

> **54** …The ultimate question for the court must always be whether the circumstances giving rise to the actions brings the administration of justice into disrepute or result in unacceptable unfairness to one of the parties.

[39] It is noteworthy that at no point in *Onion Lake* did the court refer to the clearest of cases standard. Yet, the Respondents insist this is the standard which I should apply when deciding whether to stay the *Herold Action*.

[40] The clearest of cases is the exceptional and rarely invoked standard utilized when determining whether a criminal prosecution should be stayed because the conduct of state actors – police or prosecutors – has been reprehensible enough to amount to an abuse of process. In *R v O'Connor*, [1995] 4 SCR 411 [*O'Connor*], for example, the Supreme Court of Canada per L'Heureux-Dubé J. constitutionalized the common law doctrine of abuse of process under s. 7 of the *Charter*. At para. 69 of *O'Connor*, she emphasized that the "clearest of cases" burden remained as the

applicable standard to be met to justify the remedy of a judicial stay of proceedings under s. 24(1) of the *Charter*.

[41] In Saskatchewan, at least, the clearest of cases standard is not typically associated with civil matters. The Respondents pointed me to authorities from other provinces where this standard has been employed when determining if a civil action should be stayed as an abuse of process. See, for example: *Alberta Treasury Branch v Ghermezian*, 2002 ABCA 101, [2002] 8 WWR 606; *Bergman v Innisfree (Village)*, 2020 ABQB 661 [*Bergman*]; and *Salasal v Cuthbertson*, 2015 ONCA 115, 124 OR (3d) 401. In *Bergman*, for example, the court noted at para. 59 that an abuse of process may be made out if it can be shown that permitting a disputed matter "to proceed would nevertheless interfere with the integrity of the administration of justice as it relates to finality, consistency and judicial economy".

[42] Even when confronting arguments that a proceeding should be stayed because it amounts to an abuse of the court's process, the Saskatchewan Court of Appeal has refrained from applying the "clearest of cases" standard. In *Canada (Attorney General) v Merchant Law Group LLP*, 2017 SKCA 62, [2017] 10 WWR 664 [*Merchant Law Group (SKCA)*], Ryan-Froslie J.A., again writing for the court, concluded that there "is no set test for determining whether something amounts to an abuse of process". Rather, such a determination is discretionary, as is the appropriate remedy. See: *Merchant Law Group (SKCA)* at para 100. See further: *Bear v Merck Frosst Canada & Co.*, 2011 SKCA 152, 345 DLR (4th) 152.

3. Conclusion

[43] This survey of the pertinent jurisprudence from our province persuades me that this Court's authority to stay the *Herold Action* even temporarily pursuant to s. 37 of the *QB Act* is not determined by employing the clearest of cases standard. Rather, it must be assessed on a more holistic basis taking into account not only the interests of the parties in the *Herold Action*, most especially the plaintiffs, but also the interests of the parties in the *Brons Class Action*, as well. At the end of the day, the question devolves to whether it is in the interests of justice viewed through the lens of finality, consistency and judicial economy to permit these duplicative actions to proceed in tandem.

[44] In any event, the Applicants do not base their argument for a temporary stay on the doctrine of abuse of process *per se*. Rather they contend it is not in the interests of justice, and more specifically the values of consistency and judicial economy as reflected in the Foundational Rules, especially Rule 1-3, to permit both actions to proceed contemporaneously.

B. Relevant Criteria for Staying Related Civil Actions

[45] Central to a determination of this application is identifying the relevant criteria to be applied when assessing whether in these circumstances the *Herold Action* should be temporarily stayed.

[46] To begin, it is important to emphasize that one of the fundamental objectives sought to be achieved by rules of civil procedure, not to mention s. 29 of the *QB Act*, is the avoidance of multiplicity of proceedings. In *Vaeth*, for example, the court

enumerated the perils which may flow from undisciplined and multiple civil proceedings at para. 37 as follows:

> [37] Civil procedure encourages the avoidance of a multiplicity of proceedings. Multiple proceedings that litigate the same issue are obviously inefficient, a waste of scarce judicial resources, and the cause of expense and delay in the administration of justice. And multiple proceedings that litigate the same issues entail the possibility of inconsistent results that may be embarrassing to the administration of justice and instill sentiments of unfairness because similarly situated parties experience and perceive different outcomes. Multiple proceedings against the same defendant over the same issue may compromise the ability of the defendant to defend itself because it must defend itself over and over again, and while this circumstance may explain why the outcomes of virtually identical cases can be contradictory, it is not fair to the defendants.

To similar effect, see: *Canadian Pacific Railway Company v Kelly Panteluk Construction Ltd.*, 2020 SKCA 123 at paras 51-53 [*Panteluk Construction*].

[47] The policy rationales underpinning the *CAA* and other class proceedings legislation are now well-established and include access to justice, judicial economy, behaviour modification and procedural fairness. See, for example: *Western Canadian Shopping Centre Inc. v Dutton*, 2001 SCC 46 at paras 27-29, [2001] 2 SCR 534; *Vaeth*, at para 41; *Hamm v Canada (Attorney General)*, 2020 ABQB 765 at para 43 [*Hamm*]; and *TL v Alberta (Director of Child Welfare)*, 2009 ABCA 182 at para 29, 6 Alta LR (5^{th}) 85.

[48] A class action proceeding principally through the mechanism of a common issues trial is especially well-suited to enable courts and parties to resolve or to advance myriad individual claims in a single comprehensive proceeding which will yield consistent results. Such a proceeding not only allows both plaintiffs and defendants the opportunity to present their respective claims or defences in as efficient

a manner as possible, it facilitates the optimal use of judicial resources. See: *Vaeth* at para 41; *Hamm* at para 43; and *Singh* at para 131.

[49] At the same time, class proceedings statutes such as the *CAA* are not intended to prohibit related individual actions from proceeding in tandem with a class action. Typically, this is where the opt-out procedure provided for in s. 18 of the *CAA* becomes critical. This process allows individual plaintiffs post-certification to choose between participating in the class action or maintaining their litigation autonomy and pursuing the defendants in a separate civil lawsuit. See, for example: *Vaeth* at paras 44-45; *Hamm* at paras 44-45; *Carter* at para 13; *Durling v Sunrise Propane Energy Group Inc.*, 2011 ONSC 266 at paras 17-20; *Dumoulin* at paras 8-10, and *Abdulrahim v Air France*, 2010 ONSC 5542 at para 66.

[50] Recent jurisprudence, principally out of Ontario, has coalesced around a four-part inquiry for assessing whether an individual action or actions should be stayed temporarily pending a decision respecting the certification of a class action. Originally identified by Farley J. in *Hollinger International Inc. v Hollinger Inc.*, 2004 CanLII 7352 at para 5 (Ont Sup Ct) [*Hollinger*], this inquiry requires consideration of the following four factors:

> a. whether there is substantial overlap of issues in the two proceedings;
>
> b. whether the two cases share the same factual background;

> c. whether issuing a temporary stay will prevent unnecessary and costly duplication of judicial and legal resources, and
>
> d. whether the temporary stay will result in an injustice to the party resisting the stay.

[51] The *Hollinger* factors have been endorsed and applied most notably in *Carter* at para 14; *Singh* at para 131; and *Vaeth* at paras 54-55, all authorities cited by counsel on this application, as well as *Rooney v Arcelormital S.A.*, 2013 ONSC 6062 at para 74 [*Rooney*], and most recently, *Workman Optometry* at para 14. The court in *Hamm*, it should be acknowledged, engaged in an analysis similar to that in *Hollinger*; however, Bercov J. did not explicitly invoke this four-part inquiry.

[52] Additional and instructive guidance respecting principles relevant to assessing whether a temporary stay of an individual action pending a certification application may be gained from these and other authorities.

[53] First, a lower threshold applies when a temporary, as opposed to a permanent, stay of an individual action is sought while a class action proceeds. See: *Singh* at para 131, and *Rooney* at para 75. In *Bank of Montreal v Ken Kat Corporation*, 2010 ONSC 1990, 66 CBR (5^{th}) 249, for example, the court citing *Hollinger* stated at para. 69:

> **69** Temporary stays pending the resolution of another proceeding are typically granted when the other proceeding would "substantially reduce the issues to be determined" or if success in the other proceeding could render the outstanding issues in the case "substantially moot" or otherwise have a "material" impact…

[54] Second, a temporary stay of an individual civil action, in circumstance where a class action is pending, is appropriate if the defendants to the two actions "cannot be in two places at once". An individual action and class action require coordination and administration, the need for which generally supports a temporary stay of an individual action: *Vaeth* at para 57. See also: *Singh* at para 131.

VI. Should the *Herold Action* Be Stayed Temporarily?

A. Application of the *Hollinger* Factors

[55] I turn now to apply the *Hollinger* factors to determine whether in these circumstances, the *Herold Action* should be temporarily stayed pending the resolution of the *Brons Class Action* certification application. In the event, I find that a temporary stay is appropriate, I will consider what, if any, conditions should attach to the order.

1. Is There "Substantial Overlap" in the Two Actions?

[56] It is obvious that not only is there significant and substantial overlap between the *Herold Action* and the *Brons Class Action*, the two actions are virtually identical. Each arises out of the same tragic event, the Humboldt Broncos bus crash; each names the same defendants, and each asserts similar, if not the same, causes of action, and seeks similar heads of damages. There can be no dispute, in my view, that this factor is clearly satisfied.

2. Do the Cases Share the Same Factual Background?

[57] Again, this factor is satisfied. The *Herold Action* and the *Brons Class Action*, not to mention the many other civil lawsuits which have also been commenced

in this Court, all emerge from the Humboldt Broncos bus crash. This factor, like the first one, in my view, militates in favour of a temporary stay of the *Herold Action*.

3. Will a Temporary Stay Prevent Unnecessary and Costly Duplication of Judicial and Legal Resources?

[58] In my view, a consideration of the third *Hollinger* factor in the context of this application must take into account the fact that a number of other civil actions in addition to the *Herold Action* have also been filed. These actions name the same cast of defendants, and advance similar, if not identical, causes of action. As the focus of the analysis under this factor invites a court to weigh the cost to available judicial and legal resources, generally, of allowing duplicative actions to proceed in tandem, it would be unrealistic, if not myopic, to ignore the existence of other related civil actions, the fates of which will surely be affected by the results of this application.

[59] That said, it is also relevant that apart from the *Herold Action*, most plaintiffs' counsel agreed to hold their particular actions in abeyance, pending the resolution of the certification application in the *Brons Class Action*. As part of their application, the Applicants filed the Affidavit of Rabia Nayyar sworn January 29, 2021, amplified by the Supplementary Affidavit of Rabia Nayyar sworn February 26, 2021. These affidavits disclosed e-mails and other correspondence between counsel for the Applicants and plaintiffs' counsel in related actions other than the *Herold Action* indicating their willingness to await the determination of the *Brons Class Action* certification hearing.

[60] I acknowledge that the agreement by those counsel to hold-off prosecuting their civil actions will assist to minimize the strain on the resources of this

court, judicial and otherwise, were the *Herold Action* permitted to proceed. However, their forbearance is purely voluntary. If this application is denied, and the *Herold Action* is allowed to proceed at the same time the *Brons Class Action* moves towards a certification hearing, there is no reason compelling those other counsel to refrain from prosecuting their own action. Consequently, in addition to the *Brons Class Action* it is conceivable that not one, but approximately a dozen related civil actions could be working their way through this Court and the Alberta Court of Queen's Bench, at the same time.

[61] In *Panteluk Construction*, the Court of Appeal recently addressed the issue of multiple actions and when a stay of proceedings in such a situation may be warranted. Writing for the court, Ottenbreit J.A. noted at para. 53 that the "rule against multiple proceedings is one of the more basic common law principles". "[M]ultiple proceedings", he continued, "will increase the cost and complexity of litigation and can or may lead to inconsistent results that undermine the credibility of the system and create a potential for injustice".

[62] At the same time, the court observed that "the rule against multiplicity has never been an absolute bar to the commencement and prosecution of multiple actions": *Panteluk Construction* at para 54. It continued at para. 57:

> **[57]** . . .Certainly, identical issues and relief claimed in two actions where one will do…is prima facie a misuse of the court's process. On the other hand, mere similarity and, in my view, even substantial similarity in some aspects, does not compel a finding of abuse of process in all cases.

[63] Treating a multiplicity of proceedings as a form of abusive litigation, Ottenbreit J.A. stated at para. 58:

> **[58]** The doctrine of abuse of process is a flexible one, as was noted above. What amounts to an abuse is case specific and requires a contextual approach. It is important to remember the core of the doctrine engages a court's inherent power to prevent the misuse of its judicial proceedings. Any examination of whether an abuse exists must be sensitive to whether, on the whole, it can be said a party's use of the court's process amounts to such a misuse.

[64] Accepting this, it must be remembered that all the plaintiffs in the related civil actions, including the *Herold Action*, are, at this time, putative plaintiffs in the *Brons Class Action*. It is no misstatement, then, to say that all the actions related to the class action involve the same plaintiffs and seek the same relief against the same cast of defendants. While I would not characterize the desire of the plaintiffs in the *Herold Action* to continue to prosecute their action as a "misuse of the judicial process" to quote Ottenbreit J.A. in *Panteluk Construction* at para 57, the effect of permitting this and any other related civil actions to proceed pending the certification application in the *Brons Class Action* is tantamount to this Court countenancing multiple proceedings which could imperil the integrity of the judicial process. More significantly, it would also undermine the policy objectives sought to be advanced by class actions.

[65] All these considerations persuade me that a temporary stay of the *Herold Action* would, indeed, prevent unnecessary and costly duplication of judicial and legal resources.

4. Will A Temporary Stay Result in An Injustice to the *Herold Action* Plaintiffs?

[66] The fourth and last of the *Hollinger* factors requires a consideration of the injustice or prejudice which would flow to the plaintiffs in the *Herold Action*, should a temporary stay of their action be imposed. I conclude that with great respect to the

Respondents, any injustice which might flow to them as a result of a temporary stay can be managed, if not mitigated in the interim.

[67] At the hearing, counsel for the Respondents submitted that the injustice or prejudice which his clients will suffer may be categorized as follows: (a) legal process prejudice; (b) financial prejudice; and (c) psychological harm. I will deal with each of these categories in turn.

a. Legal Process Prejudice

[68] The Respondents' arguments respecting what counsel describes as "legal process prejudice" is rooted in the Respondents' assertions that they will not participate in the class action; they have selected their own counsel and wish to pursue their own independent lawsuit, and will opt out of the class action if it is certified. To be sure, the affidavits filed by most of the plaintiffs in the *Herold Action* advance these views most strenuously.

[69] These arguments engage s. 18 of the *CAA*. As noted, s. 18 provides that a "class member involved in a class action may opt out of the action in the manner and within the time stated in the certification". Section 2 of the *CAA* defines "class action" to mean "an action as a class action pursuant to Part II". Plainly as a matter of law, the opportunity for a putative plaintiff to opt out of a class action only crystallizes after certification, not before. Prior to certification then, any assertion by such a party that they will opt-out of the class action has no legal effect and does not prevent them from altering their position post-certification.

[70] At the same time, the s. 18 opt-out "does not preclude legitimate individual actions that have good reason to proceed": *Workman Optometry* at para 12.

As the court in *Workman Optometry* opined at para. 12, if the statutory opt-out opportunity "automatically locked in all potential litigants until certification was decided, there would be no need for a temporary stay motion". See also, for example: *Singh* at para 75, and *Rooney* at paras 72-73.

[71] On a temporary stay application such as this one, the question becomes are there good reasons to allow the *Herold Action* to proceed in tandem with the *Brons Class Action*?

[72] The Respondents submit that they commenced their lawsuit in July 2018, a few months after the Humboldt Broncos bus crash had occurred. They contend that they are now ready to proceed to trial, and the trial of their action can be completed before the class action proceeds. In an affidavit sworn on November 26, 2020, Mr. Russell Herold, the father and administrator *ad litem* of Adam Herold [First Russell Herold Affidavit] averred at para. 7 as follows:

> 7. The class action lawsuit is not certified yet. It's certification will only be heard in the fall of 2021. With any appeals it could be 2023 till we get to deal with the strike application. 5 years after I lost my son with more court to attend to. This stalling of our action is causing financial and emotional distress on myself and my family that should not be allowed and is unfair.

[73] The Respondents are also anxious, quite rightly in my view, that the questioning of Mr. Sadhu, the driver of the semi-trailer unit, and a named defendant in all the lawsuits relating to the Humboldt Broncos bus crash, occur prior to his deportation from Canada. As well, the Respondents have identified a second civilian witness who has important and relevant evidence to provide but who is presently in ill-health. In a second affidavit sworn on February 22, 2021, [Second Russell Herold Affidavit], Mr. Herold averred at para. 24 as follows:

> 24. It is my information and belief and I verily believe the same to be true, after discussing with Kevin Mellor [Respondents' lawyer] his conversation with John Stevenson (the RCMP officer who investigated the 1997 crash at the Armley Corner that killed six residents and who had warned the government of the dangers of the intersection) is not of good health. It is my information and belief and I very belief the same to be true, after discussing with Kevin Mellor, that we need this evidence to assist in proving bad faith of the Government of Saskatchewan.

[74] Turning first to the Respondents' assertion that if permitted to proceed, their lawsuit would likely be completed before the *Brons Class Action* certification hearing and any subsequent appeals are concluded. With respect, I believe the Respondents are overly optimistic about their ability to prosecute their lawsuit as expeditiously as they assert.

[75] The following chart gleaned from my review of the court file in *Herold v Sidhu*, Regina, QBG 1960/2018 (Sask QB) outlines the progress of this proceeding:

Date	**Document**	**Description**
July 9, 2018	Statement of Claim	Named defendants were Mr. Sidhu; Deol Trucking Ltd., and John Doe Bus Manufacturer
March 17, 2020	Amended Statement of Claim filed pursuant to Rule 3-72(1) of *The Queen's Bench Rules*	Added as named plaintiffs: Chris Joseph as administrator *ad litem* of Jaxon Joseph; Chris Joseph; Andrea Joseph; Shauna Nordstrom as administrator *ad litem* of Logan Hunter; Shauna Nordstrom; Peter Snaterse; Kurt Leicht as administrator *ad litem* of Jacob Leicht; Kurt Leicht; Celeste Leray-Leicht; Brad Cross as administrator *ad litem* of Mark Cross; Brad Cross, and Marilyn Cross Added as named defendants: Government of Saskatchewan (Ministry of Highways and Infrastructure), and NFI Group Inc. (operating as Motor Coach Industries).

April 22, 2020	Notice of Application brought by Government of Saskatchewan	Seeking an order pursuant to Rules 7-9(1)(a), and 7-9(2)(a) striking out all claims against it, and costs.
June 8, 2020	Application by Government of Saskatchewan	Requesting the court to establish a schedule to facilitate the Government's Rule 7-9 application.
June 18, 2020	Fiat of McCreary J.	Issuing a consent order relieving the Government of Saskatchewan from filing its statement of defence until after its Rule 7-9 application is determined.

[76] To date, pleadings have yet to close in the *Herold Action* as no statement of defence has been filed by any defendant. Nor has mandatory mediation under s. 42 of the *QB Act* taken place. Questioning is some ways down the line. To be frank, there is still much to be done before the *Herold Action* is even ready to be set down for trial, let alone reach a courtroom.

[77] Progress towards the certification application in the *Brons Class Action* continues apace. A two-week hearing is now scheduled to commence on April 18, 2022.

[78] I share the Respondents' desire to complete the questioning of Mr. Sidhu before he may be deported from Canada. At the hearing, Ms. Caston who represents Mr. Sidhu in all lawsuits advised that to her knowledge, Mr. Sidhu will be released from jail sometime in November 2021, and it will be some months after that before any deportation will happen.

[79] All counsel in these actions have a strong interest in having Mr. Sidhu questioned sooner rather than later. If I determine that a temporary stay of the *Herold Action* should issue, one of this stay's conditions could be to allow the Respondents' counsel to participate fully in the questioning of Mr. Sidhu which will inevitably take

place, either later this year or in early 2022. This should remove any prejudice to the Respondents.

[80] As stated in the Second Russell Herold Affidavit at para. 24, the Respondents have identified Mr. Stevenson as a potentially important witness. There is nothing before me to indicate that Mr. Stevenson is even willing to co-operate with Respondents' counsel, let alone provide evidence. In the event that he is prepared to be deposed, this can be managed in the same way as the questioning of Mr. Sidhu.

b. Financial Prejudice

[81] It is true that financial need may in certain circumstances allow a related individual action to proceed in tandem with the certification process in a class action. In *Vaeth*, for example, the court at para. 56 suggested it would be appropriate in the situation of "a personal injury claim where an individual with a substantial claim may actually need the compensation sooner than the later of a class action that requires certification before it can progress".

[82] Similarly, in *Workman Optometry*, Belobaba J. permitted certain individual actions brought by insured persons seeking compensation for business income losses occasioned by the global COVID-19 pandemic, to proceed at the same time as two proposed class actions involving the same insurance companies. He reasoned at para. 19 that the individuals pursuing these separate actions had "legitimate reasons" for doing so, namely "they have substantial insurance claims", and "they have established the need for speedy judicial determinations".

[83] The circumstances of the *Herold Action* are, in my view, distinguishable. The action involves fatality claims. While the Respondents are seeking damages as

result of the deaths of their sons, this is not the primary motivation for their lawsuit. In the Second Russell Herold Affidavit, Mr. Herold averred as follows at para. 15:

> 15. I want to advance my lawsuit to hold responsible those that should be held responsible for my son's death. That is my responsibility and each of the fellow parents in Q.B.G. No. 1960 of 2018 has advised me and I verily believe the same to be true that they feel the same way.

[84] Financial need would not appear to be an immediate concern in this case, in any event. See: *Humboldt Broncos Memorial Fund Inc. (Re)*, 2018 SKQB 341.

[85] Rather, the financial prejudice which the Respondents assert they will suffer if the *Herold Action* is stayed, even temporarily, relates to the amount of time, effort and money they have already expended in the preparation of their lawsuit. In the Second Russell Herold Affidavit, Mr. Herold avers at paras. 19-21 as follows:

> 19. I have done a lot of research regarding the cause of this accident and in particular the Government of Saskatchewan and Mr. Sidhu's involvement. I have done many Freedom of Information Requests and have received an expert report regarding the sightlines of the Armley Corner intersection. This took a lot of time and expense. I have (with the other parents who have joined me in our lawsuit) spent many hours preparing our case, speaking with government officials in the Government of Saskatchewan including personal meetings with legal counsel and the Ministry of Highways, speaking with officials with the Government of Canada, trucking industry people, politicians, Corrections Canada officials, and Canadian Border Services and experts to name a few.
>
> 20. I together with the other parents have spent approximately $110,237.64 to date on this lawsuit and are ready to go.
>
> 21. I together with the other parents have spent $32,216.55 to date in receiving an experts report regarding sight lines in respect of the Armley Corner.

[86] At the risk of over-simplification, the Respondents fear that these expenditures may be "thrown away" should a temporary stay of the *Herold Action* be directed.

[87] With respect, I am of the view that the Respondents' fears are not warranted. To begin, as noted the *Herold Action* is not "ready to go" despite Mr. Herold's averment to the contrary. Furthermore, the efforts which Mr. Herold and others have put to preparing their lawsuit will not be wasted if a temporary stay is directed. This prepatory work will still be available to them for purposes of prosecuting their action in the event the *Brons Class Action* is not certified or if it is, the Respondents exercise their right to opt-out pursuant to s. 18 of the *CAA*. I am persuaded that the financial prejudice alleged by the Respondents can be appropriately managed and mitigated.

c. Psychological Harm

[88] The final category of injustice or prejudice which the Respondents assert they will experience if the *Herold Action* is temporarily stayed relates to the psychological harm they aver they will suffer if their action does not move forward now. Frankly, this is the most difficult, and delicate, factor to assess on this application.

[89] Affidavits filed by Mr. Russell Herold; Ms. Ralene Herold; Mr. Chris Joseph; Ms. Shauna Nordstrom, and Mr. Kurt Leich, all aver that any delay of the *Herold Action* occasioned by a temporary stay will cause each of them considerable emotional and psychological distress.

[90] In the Second Russell Herold Affidavit, for example, Mr. Herold poignantly describes at length the devastating impact the loss of his son, Adam, has had

on him and other members of the Herold Family: Second Russell Herold Affidavit at paras. 2-13. At para. 7, Mr. Herold avers that he suffers from "severe depression, loneliness, worry, anxiety and from anger resulting from the death of my son". The intensity of these feelings will only be exacerbated, he avers, if "my lawsuit is delayed": Second Russell Herold Affidavit at para. 14.

[91] Counsel for the Respondents submitted that this affidavit evidence is uncontroverted, and, in addition, no evidence has been presented by any of the Applicants that they, too, are subject to such deep-seated emotions and feelings.

[92] Far be it for me to gainsay these statements of the Respondents. However, with all due respect to counsel, I cannot accept that the Applicants and other putative class members do not also experience emotions of this kind. The fact that none of the named Applicants or other putative class members filed affidavits attesting to the impact of this catastrophic event on their lives and those of their families is of little moment. I believe I can take judicial notice of the fact that there is more than enough grief, anguish, heartache, and devastation to go around.

[93] Furthermore, I can also take judicial notice of the crippling and life-altering injuries suffered by many of the 13 survivors, including Mr. Wasserman, a representative plaintiff, who was rendered a paraplegic, as a result of the Humboldt Broncos bus crash. All these individuals, too, are putative class members, and must endure these hardships for the rest of their natural lives.

[94] In *Carter*, when considering whether psychological harm amounts to prejudice suffered by a party by virtue of a temporary stay of an individual action, Belobaba J. at para. 15(iii) citing *Mustapha v Culligan of Canada Ltd.*, 2008 SCC 27,

[2008] 2 SCR 114 stated that "[a]ny alleged 'distress and anxiety' short of psychiatric harm (no evidence here) is not actionable". This laconic statement of principle implies that in circumstances such as these, medical evidence should be filed to support assertions presented in affidavits of depression, anxiety or other emotional maladies being visited upon parties from a delay. Like *Carter*, no such evidence was led in this case.

[95] That said, I accept that the Respondents will suffer some emotional hardship if the *Herold Action* is stayed temporarily. At the same time, proceeding with this action will also cause stress and anxiety to them, as these are typically strong emotions which the litigation process induces in most litigants. Consequently, on balance I am not persuaded that these various considerations are enough to demonstrate the Respondents will suffer an injustice.

d. Conclusion on the Application of the *Hollinger* Factors

[96] I acknowledge that this application is unusual as it has been brought by the putative plaintiffs in a proposed class action, and not by a named defendant. Yet, in my view, this does not detract from applying the *Hollinger* factors in this case.

[97] When the circumstances of this application are viewed through the lens of the *Hollinger* factors, I am satisfied that in the interests of justice, a temporary stay of the *Herold Action* should be ordered on terms. As counsel for the Applicants stated at the hearing, a temporary stay is the "least worst option" for all parties to these proceedings.

VII. Order

[98] Accordingly, I conclude it is appropriate to direct a temporary stay of the *Herold Action* on terms. My order is as follows:

1. The *Herold Action* is temporarily stayed until:

   a. the certification of the *Brons Class Action*, and delivery of opt-out notices by the Brons Plaintiffs, or

   b. the application seeking certification of the *Brons Class Action* is dismissed.

2. While the temporary stay of the *Herold Action* is in place, counsel for the Herold plaintiffs may participate in all pre-certification processes which may be relevant to the *Herold Action*, including but not limited to:

   a. oral questioning of Mr. Sidhu by counsel for all parties in the *Brons Class Action*; and

   b. any pre-trial discovery of other relevant witnesses including Mr. John Stevenson, in the event they agree to participate in this matter.

[99] Counsel requested that the matter of costs be addressed in a separate hearing. To facilitate this, counsel is invited to arrange for such a hearing through the auspices of the Local Registrar's office.

[100] In conclusion, I thank all counsel for their submissions, both oral and written.

G.G. MITCHELL

Appendix A

Action	Judicial Centre	Counsel for the Plaintiff(s)	Defendant(s)
Brons, QBG 789/20 JCR	Regina	Rice Harbut Elliott LLP and Willows Wellsch Orr & Brundige LLP	1. Jaskirat Singh Sidhu, Adesh Deol Trucking Ltd., Sukhmander Singh 2. The Government of Saskatchewan, as represented by the Minister of Highways and Infrastructure, and Her Majesty the Queen, as represented by the Attorney General for Saskatchewan 3. The Government of Alberta, as represented by the Ministry of Transport, and Her Majesty the Queen, as represented by the Attorney General for Alberta 4. Her Majesty the Queen of Canada, as represented by the Attorney General of Canada 5. Answer Trailing Rentals & Leasing Ltd. 6. Charlie's Charters Ltd. 7. NFI Ground Inc., operating as Motor Coach Industries 8. Premier Horticulture Ltee/Premiere Horticulture Ltd. 9. Saskatchewan Government Insurance
Herold, QBG 1960/18 JCR	Regina	Nychuk & Company	1. Jaskirat Singh Sidhu, Adesh Deol Trucking Ltd. 2. The Government of Saskatchewan (Ministry of Highways and Infrastructure) 3. Motor Coach Industries Inc. and Motor Coach Industries Limited
Patter, QBG 695/20, JCR	Regina	Miller Thomson LLP	1. Jaskirat Singh Sidhu, Adesh Deol Trucking Ltd.
Dahlgren, QBG 23/21, JCS	Saskatoon	Bennett Jones LLP	1. Jaskirat Singh Sidhu, Adesh Deol Trucking Ltd. 2. Answer Trailer Rentals & Leasing Ltd. 3. Charlie's Charters Ltd. 4. Her Majesty the Queen in Right of Alberta 5. The Government of Saskatchewan

			6. The Government of Canada 7. Motor Coach Industries Limited 8. Premier Horticulture Ltee/Premier Horticulture Ltd. 9. John Doe I, John Doe II, ABC Corporation, DEF Corporation, GHI Corporation, and JKL Corporation
Gobeil, QBG 26/21, JCS	Saskatoon	Bennett Jones LLP	1. Jaskirat Singh Sidhu, Adesh Deol Trucking Ltd. 2. Answer Trailer Rentals & Leasing Ltd. 3. Charlie's Charters Ltd. 4. Her Majesty the Queen in Right of Alberta 5. The Government of Saskatchewan 6. The Government of Canada 7. Motor Coach Industries Limited 8. Premier Horticulture Ltee/Premier Horticulture Ltd. 9. John Doe I, John Doe II, ABC Corporation, DEF Corporation, GHI Corporation, and JKL Corporation
Gomercic, QBG 25/21, JCS	Saskatoon	Bennett Jones LLP	1. Jaskirat Singh Sidhu, Adesh Deol Trucking Ltd. 2. Answer Trailer Rentals & Leasing Ltd. 3. Charlie's Charters Ltd. 4. Her Majesty the Queen in Right of Alberta 5. The Government of Saskatchewan 6. The Government of Canada 7. Motor Coach Industries Limited 8. Premier Horticulture Ltee/Premier Horticulture Ltd. 9. John Doe I, John Doe II, ABC Corporation, DEF Corporation, GHI Corporation, and JKL Corporation

Labelle, QBG 22/21, JCS	Saskatoon	Bennett Jones LLP	1. Jaskirat Singh Sidhu, Adesh Deol Trucking Ltd. 2. Answer Trailer Rentals & Leasing Ltd. 3. Charlie's Charters Ltd. 4. Her Majesty the Queen in Right of Alberta 5. The Government of Saskatchewan 6. The Government of Canada 7. Motor Coach Industries Limited 8. Premier Horticulture Ltee/Premier Horticulture Ltd. 9. John Doe I, John Doe II, ABC Corporation, DEF Corporation, GHI Corporation, and JKL Corporation
Matechuk, QBG 531/20, JCS	Saskatoon	Bennett Jones LLP	1. Jaskirat Singh Sidhu, Adesh Deol Trucking Ltd. 2. Answer Trailer Rentals & Leasing Ltd. 3. Charlie's Charters Ltd. 4. Her Majesty the Queen in Right of Alberta 5. The Government of Saskatchewan 6. The Government of Canada 7. Motor Coach Industries Limited 8. Premier Horticulture Ltee/Premier Horticulture Ltd. 9. John Doe I, John Doe II, ABC Corporation, DEF Corporation, GHI Corporation, and JKL Corporation
Smith, QBG 24/21, JCS	Saskatoon	Bennett Jones LLP	1. Jaskirat Singh Sidhu, Adesh Deol Trucking Ltd. 2. Answer Trailer Rentals & Leasing Ltd. 3. Charlie's Charters Ltd.

			4. Her Majesty the Queen in Right of Alberta 5. The Government of Saskatchewan 6. The Government of Canada 7. Motor Coach Industries Limited 8. Premier Horticulture Ltee/Premier Horticulture Ltd. 9. John Doe I, John Doe II, ABC Corporation, DEF Corporation, GHI Corporation, and JKL Corporation
Straschnitzki, QBG 492/20, JCS	Saskatoon	Edwards Injury Law	1. Jaskirat Singh Sidhu, Adesh Deol Trucking Ltd. 2. Answer Trailer Rentals & Leasing Ltd. 3. John Doe, Administrator ad litem of Glen Doerksen, deceased 4. Charlie's Charters Ltd. 5. Motor Coach Industries Limited 6. Her Majesty the Queen in Right of Alberta 7. The Government of Saskatchewan 8. Premier Horticulture Ltee/Premier Horticulture Ltd. 9. ABC Company Ltd.
Straschnitzki, 2001-04633	Calgary	Edwards Injury Law	Same defendants as in the Saskatoon *Straschnitzki* action
Dalhgren, 2003-07218	Edmonton	Bennett Jones LLP	Same defendants as in the Saskatoon *Dalgren* action
Gobeil, 2003-06880	Edmonton	Bennett Jones LLP	Same defendants as in the Saskatoon *Gobeil* action
Gomercic, 2003-06904	Edmonton	Bennett Jones LLP	Same defendants as in the Saskatoon *Gomercic* action
Labelle, 2003-06905	Edmonton	Bennett Jones LLP	Same defendants as in the Saskatoon *Labelle* action
Matechuk, 2101-01941	Edmonton	Bennett Jones LLP	Same defendants as in the Saskatoon *Matechuk* action
Smith, 2003-06906	Edmonton	Bennett Jones LLP	Same defendants as in the Saskatoon *Smith* action