CITATION: Strathdee v. Johnson & Johnson Inc., 2026 ONSC 1186
COURT FILE NO.: CV-16-00553046-00CP
DATE: 20260304

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
CINDY LOU STRATHDEE, MARIO NUNZIATO, MATTHEW STRATHDEE, SHAEDA BEGUM FAROOQI-WILLISON, GERALD DOUGLAS WILLISON, THÉRÈSE BERNIER, by her Estate Representative MARILYNE BERNIER, MARILYNE BERNIER, JANET HEATON and BARRY HEATON Plaintiffs	*Joel Rochon, Annelis K. Thorsen, Golnaz Nayerahmadi, Paul Miller,* and *Victoria Yang,* for the Plaintiffs
– and –	
JOHNSON & JOHNSON INC., JOHNSON & JOHNSON and JOHNSON & JOHNSON CONSUMER COMPANIES, INC. Defendants	*Gordon McKee, Jessica Lam, Leah Kelley* for the Defendants *Casey R. Churko, Steven Roxborough* and *Evatt Merchant,* for Interveners: Ennis and Kramar
	HEARD: December 10, 2025

LEIPER J.

REASONS FOR DECISION
(MOTIONS TO STAY AND TO CERTIFY)
PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992, S.0. 1992, C.6.

I. Introduction

[1] The defendants, ("Johnson" or "the defendants") moved to have this class action stayed as an abuse of process, and under the provisions of s. 5 of the *Class Proceedings Act, 1992*, S.O.

1992, c. 6 (the "*CPA*")[1] due to the existence of two overlapping class proceedings against Johnson in British Columbia (the "B.C. action") and in Québec (the "Québec action").[2]

[2] The plaintiffs seek to have the motion to stay dismissed and an order certifying this action under the *CPA*. They submit that the only remaining criterion, which they satisfy, is that a class proceeding would be the preferable procedure for the resolution of the common issues: *CPA* s. 5(1)(d).

II. Recent Procedural Background

[3] On May 27-30**,** 2025, I heard the plaintiffs' motion for certification and the defendants' motion for a stay. On June 25, 2025, I issued reasons which concluded that the criteria under s. 5(1)(a) - (c) and (e) of the *CPA* had been satisfied: *Strathdee v. Johnson & Johnson Inc*., 2025 ONSC 3738, (the "June Reasons"). I dismissed the defendants' motion to stay the plaintiffs' action based on delay.

[4] I adjourned the defendants' motion to stay the proceeding based on duplication and abuse of process, and the preferability analysis under s. 5(1)(d) of the *CPA*. I did so because the defendants' appeal of the B.C. certification order was outstanding. The parties advised that the appeal was to be heard on November 20, 2025, however before it could be argued, the defendants abandoned their appeal.[3]

[5] Accordingly, I provided the parties with a further opportunity to make supplementary submissions on the question of the stay for duplication and the preferability analysis of this proceeding.

III. The Remaining Issues on Certification

[6] On December 10, 2025, the parties delivered supplementary submissions on three outstanding issues:

i. Should the Ontario proceeding be stayed as an abuse of process?

ii. Would the Ontario class proceeding be the preferable procedure for the resolution of the common issues?

iii. Should the Ontario plaintiffs be granted leave to add a new statutory cause of action under the New Brunswick *Consumer Product Warranty and Liability Act*?

---

[1] The version applicable to these proceedings is the *CPA* in force for the period June 22, 2006, to July 7, 2020.
[2] Counsel to the plaintiffs in BC and Québec (Merchant Law Group) also commence a third action in Alberta on August 22, 2019. That action has apparently not moved to certification; I did not refer to it in the June 25, 2025 reasons nor do I discuss that action in these reasons. It appears to have been left dormant.
[3] The reasons for certification in the B.C. action are reported at *Ennis v. Johnson & Johnson*, 2024 BCSC 1759 ("*Ennis*").

IV. Summary of Findings

[7] For the reasons set out below, I decline to stay the Ontario proceeding as an abuse of process. I find that a class proceeding in Ontario is preferable procedure for the class members as I have defined the class and for resolving the common questions which I certified in the June Reasons. To the limited extent in which the B.C. and Ontario actions overlap, counsel will need to cooperate, communicate, and access case management to seek efficiencies and mitigate the potential for confusion. Counsel will need to keep the courts in all provinces apprised of the status and procedural orders being made in the other provinces to reduce the impact of any of overlapping issues.

[8] I deny leave to the plaintiffs to amend the claim to include new statutory relief under s. 27(1) of the Consumer *Product Warranty and Liability Act*, SNB 1978, c C-18.1 (the "*CPWL Act*").

V. Analysis of the Issues

Should the Ontario proceeding be stayed as an abuse of process?

[9] In the June Reasons, I explained the basis for adjourning the defendants' motion to stay based on duplication: at paras. 270-276. The defendants and interveners submitted then, and now, that a stay is warranted because allowing the Ontario action to proceed is contrary to the principles of comity, risks inconsistent findings and is inefficient.

The Principles Applied to Motions to Stay Proceedings

[10] The June Reasons reviewed the power of the court to stay a proceeding which is duplicative of another. Taking that discussion into account, and with the benefit of counsel's supplementary submissions, I summarize those principles as follows:

- A multiplicity of proceedings can harm the administration of justice and a stay is an available response to the issues arising from a multiplicity of proceedings, which can include the duplication of effort, confusion to plaintiffs, unfairness to defendants, and inappropriate use of judicial resources: *Courts of Justice Act*, R.S.O. 1990, c. C. 43, s. 138; *Drywall Acoustic Lathing Insulation 675 Pension Fund v. SNC-Lavalin Group Inc.*, 2020 ONCA 375, at para. 12. S*askatchewan (Environment) v. Metis Nation – Saskatchewan*, 2025 SCC 4, 500 D.L.R. (4th) 279, at para. 40; *Kirsh v. Bristol-Myers Squibb*, 2020 ONSC 1499, 47 C.P.C. (8th) 57, at paras. 122- 126, aff'd 2021 ONSC 6190 (Div. Ct.).

- The court should approach the question of whether to exercise its discretion to issue a stay in an overlapping or duplicative proceeding by examining the context of the litigation, the benefits to the class members, the legitimacy of the overlapping actions, questions of fairness and the repute of the administration of justice: *Kirsh v. Bristol-Myers Squibb*, 2021 ONSC 6190 (Div. Ct.), at para. 44; *Fantov v. Canada Bread Company, Limited*, 2019 BCCA 447, 31 B.C.L.R. (6th) 318, at paras. 53, 71-

72; *DALI 675 Pension Fund v, SNC Lavalin,* 2019 ONSC 6512, at paras. 15-19, aff'd in 2020 ONCA 375; *Boehringer Ingelheim (Canada) Ltd. v. Englund*, 2007 SKCA 62, 284 D.L.R. (4th) 94, at para. 40; *Silver v. Imax Corporation*, (2009) C.P.C. (6th) 273 (Ont. S.C.), at para. 133, leave to appeal refused, 2011 ONSC 1035 (Div. Ct.), 105 O.R. (3d) 212.

- The doctrine of abuse of process is flexible. At the heart of the doctrine, the courts identify the principles of fairness and the administration of justice: *Kirsh* 2021 (Div. Ct.), at para. 40.

- There is no presumption in favour of issuing a stay of a duplicative or overlapping class proceeding: *Kirsh* 2021 (Div. Ct.), at para. 44.

- The degree of overlap, and differences between proceedings is a consideration. Proceedings which are a "carbon copy" of each other have been found to offend principles of comity and risks the problems associated with multi-jurisdictional proceedings: *Kirsh*, 2021 (Div. Ct.), at paras. 46-49.

- While duplicative proceedings are not ideal, the courts may permit proceedings to overlap. In Ontario, there is no "first to file" rule: *Kirsh*, 2021 (Div. Ct.), at paras. 51, 55 and 57.

- There are mechanisms in place which may address the potential for confusion where there are overlapping class proceedings, including providing potential plaintiffs with notice of their options and choice of action: *Mignacca et. al. v. Merck Frosst Canada Ltd. et. al.*, (2009) 95 O.R. (3d) 269 (Div. Ct.), at para. 80.

[11] The next section of these reasons reviews decisions which have led to stays and others which have permitted overlapping class proceedings to proceed.

Prior Decisions on Stay Motions in Class Proceedings

[12] In 2011, Ball, J. stayed concurrent, duplicative class proceedings where the same law firm commenced proceedings in multiple provinces. In Saskatchewan, the firm encountered problems with the representative plaintiff and failed to adhere to court-imposed litigation timelines. Justice Ball expressed concern that the firm's approach to the litigation left the defendants "guessing as to whether and when any particular action will proceed": *Duzan v. GlaxoSmithKline Inc,* 2011 SKQB 118, 372 Sask. R. 108, at para 36.

[13] The Saskatchewan Court of Appeal found it significant, and "quite unusual" that a firm which had initiated duplicative, concurrent class proceedings in two provinces involving the same groups of individuals, downplayed the importance of one of those actions. The court found that class members would not suffer any prejudice if only one of those actions was allowed to proceed. The Court of Appeal found that these circumstances fell "solidly within the reach of the doctrine of abuse of process" even after considering all countervailing arguments by the respondents: *Boehringer Ingelheim (Canada) Ltd. v. Englund*, at paras. 41-53.

[14] The Manitoba Court of Appeal upheld a stay in circumstances where the same firm launched parallel, "carbon copy" proceedings in several provinces, and allowed the Manitoba action to lie dormant for ten years. The Court of Appeal found that principles of comity would be offended if the court were to permit class actions with the same players and allegations to proceed in two different jurisdictions: *Hafichuk-Walkin et al v. BCE Inc et al.*, 2016 MBCA 32, 395 D.L.R. (4th) 734, at paras. 55-57, leave to appeal refused, [2016] S.C.C.A. No. 217.

[15] In contrast, in *Kirsh* the motion judge declined to stay an Ontario action which overlapped and became duplicative of an action authorized in Québec. It appeared to Morgan, J. that the defendants made a strategic choice to attempt to stay the Ontario proceeding after several late in the day changes to the Québec pleading were made with the benefit of the "deep work" done in Ontario. Justice Morgan cited the concerns of Perell, J. in *Kutlu v. Laboratorios Leon Farma, S.A.*, 2015 ONSC 7117, at para 10, observing that "the Defendants' request for a stay of proceedings looks like a way of ensuring that they will go to trial on the merits with what they hope is "the least formidable foe": *Kirsh*, 2020, at para. 133.

[16] The Divisional Court upheld Morgan, J.'s refusal to stay the Ontario action, considering the context of the case, the litigation choices made by the defendants and the unique facts, despite the overlap between the two actions. The Divisional Court found that the decision to refuse the stay did not offend principles of comity, nor did it cast any disrespect on the authorization decision in the Québec proceedings: *Kirsh*, 2021 (Div. Ct.), at paras. 58-64.

[17] The Divisional Court in *Kirsh* reviewed the case law and concluded that avoiding duplicative proceedings is the "prevailing concern" in a motion to stay a proceeding which is similar to that certified in another jurisdiction in Canada: *Kirsh*, 2021 (Div. Ct.) at para. 44.

[18] In D*ALI 675 Pension Fund v. SNC Lavalin*, 2019 ONSC 6512, at paras. 40-42, Belobaba, J. declined to stay an Ontario action which was duplicative of a class proceeding in Québec prior to certification and the benefit of a complete record. In doing so, Belobaba, J. rejected the "first to file" principle, following the Divisional Court's analysis in *Mignacca v. Merck Frosst,* on the grounds that this could encourage arbitrary, unfair results.

[19] I turn next to applying the relevant factors to the circumstances of the case at bar.

Applying the Relevant Factors

Context

[20] The June Reasons set out the history of these actions in detail as part of the reasons declining to stay this action for delay. For that reason, I provide a shorter summary here of the facts for the context of the motion to stay this action for duplication.

[21] These actions have proceeded in parallel and share some but not all, features. They are not "carbon copies." The actions involve the same defendants, who are represented by the same firm in B.C., Ontario, and Québec. The causes of action arise from allegations that the defendants marketed an allegedly dangerous non-essential cosmetic talc-based "baby powder" without

adequate warnings. The actions pleaded include negligence, and statutory causes of action under related consumer protection legislation. The plaintiffs seek to prove that the product, when used in the perineal region for a prolonged period of time, increased the chances of those users contracting ovarian cancer, which has a high mortality rate.

[22] Each of the actions have different representative plaintiffs, represented by different firms in B.C. and in Ontario. The B.C. and Québec actions are being prosecuted by the intervener counsel in the Ontario proceedings. All three of the actions in Canada have met the common issues and a defined class test, with Ontario being the last jurisdiction to consider preferability.

[23] These actions have also experienced delays due to external circumstances out of the control of the plaintiff firms. The Canadian actions were delayed between 2021 and 2023 when the defendants (who face thousands of mass tort claims related to baby powder products across North America) pursued unsuccessful bankruptcy actions in the United States.

[24] The B.C. certification order is no longer subject to appeal, although the appeal in B.C. paused that action until October of 2025. Thus, B.C. is "first to certify." It is at the start of the discovery phase once the court approves a discovery plan. Ontario is at the end of the certification motion stage, absent a stay. If certified, discovery in the Ontario action may also begin.

Legitimacy of the Overlapping Actions

[25] There is no serious question that the Ontario and B.C. actions are legitimate actions. I say this because the plaintiff firms have sought certification on the strength of significant records, including expert evidence and research. Further, each firm has borne the expense and time required to assist the courts in B.C. and Ontario by way of intervenor submissions on the question of overlap, judicial comity, and potential for confusion. The defendants have abandoned their appeal in the B.C. action, and the certification order has been finalized.

[26] Given this context, and the record filed in this motion by Ontario plaintiff counsel, it is evident that this action was brought for a legitimate purpose. This is not a placeholder action initiated to extract a benefit for counsel to the detriment of class members. The June Reasons provide an outline of the evidence filed, which I will not repeat other than to observe that the expert evidence, examinations, and findings in those reasons provide support for a finding that the Ontario action has been brought for a legitimate purpose. I analyzed the question of the delay at the beginning of this action in the June Reasons, and concluded that a stay was not warranted.

Fairness and the Repute of the Administration of Justice

[27] Turning to the questions of fairness and the repute of the administration of justice, I begin by observing that although these actions all involve the alleged toxicity of baby powder, and increased risk of harm based on perineal use, these actions have different parameters. The class and legal scope of the Ontario action is broader than that in B.C. If both actions proceed, a larger class of purchasers of the product will be eligible for damages in Ontario. These outcomes are driven by the differences in the records as between Ontario and B.C. filed on certification, which produced corresponding differences in the scope of the class and common issues as determined in each of these two actions.[4]

[28] In *Micron Technology Inc. v. Hazan*, 2020 QCCA 1104, the Québec Court of Appeal upheld a decision denying a stay despite the existence of parallel proceedings in the Québec Superior Court and the Federal Court. The Court of Appeal considered the difference among the actions and the potential advantages to the class from the second action. In doing so, the Court of Appeal rejected a "first to file" approach. The Court reasoned that differences in the scope of the proposed class actions may be relevant because those differences suggest that additional proceedings may be necessary in the other forum "to cover all of the issues, remedies and class members:" *Micron Technology Inc.* at para. 52. I agree with that logic in approaching the question of overlapping but not wholly duplicative class proceedings.

[29] I am persuaded that the potential for a broader recovery for the class in the Ontario action does not require a stay to preserve the repute of the administration of justice. The Ontario action has a broader class, and a greater range of issues and potential remedies flowing from the resolution of those issues. Thus, the Ontario action provides potentially greater access to justice.

[30] The plaintiffs included a chart in their material which compares the B.C certification findings to the Ontario action, as discussed in the June Reasons. The chart summarizes the distinctions between Ontario and B.C. actions, notably the class definition, causes of action and potential remedies, with reference to the relevant paragraph numbers in the June Reasons, and the paragraphs in the B.C. ("*Ennis"*) certification order. It reads as follows:

	BC	**Ontario**
Class Definition		
End date of Class Period	September 23, 2024 (para. 2 of *Ennis* Certification Order)	Class period accounts for latency (paras. 70-75 of *Strathdee*)

[4] The Quebec action was authorized and that authorization was upheld on appeal on September 14, 2018. No further procedural updates were provided by class counsel to the Québec action, who also represent the plaintiffs in the B.C. action. Thus, given the delay and apparent lack of movement, I focus for the balance of these reasons on the B.C. action relative to the Ontario action.

EOC Sub-types	Invasive mucinous or clear cell excluded from *Ennis* Certification Order	All types are included; premature to limit class membership based on sub-type (paras. 65-66 of *Strathdee*)
EOC Diagnosis	Required (para. 2 of *Ennis* Certification Order)	Not required but advanced under the "EOC Class" (para. 83 of *Strathdee*)
Persons who purchased and/or used Baby Powder perineally but were not diagnosed with EOC	Excluded, the *Ennis* class definition requires an EOC diagnosis (para. 2 of *Ennis* Certification Order)	Included in the Class to preserve consumer protection claims and *Competition Act* claims (paras. 63-64 of *Strathdee*)
Minimum duration of usage	Minimum 10 years of daily use (para. 2 of *Ennis* Certification Order)	No minimum usage requirement (paras. 68-69 of *Strathdee*)
Québec residents	Excluded (para. 2 of *Ennis* Certification Order)	Included (para. 83 of *Strathdee*)
Causes of action		
Negligence – Failure to Warn	Certified (paras. 116, 180 of *Williamson*)	Certified (para. 37 of *Strathdee*)
Negligent testing and design	Struck (paras. 152-154, 160, 180 of *Williamson*)	Certified (para. 37 of *Strathdee*)
Negligent manufacturing	Struck (paras 156-160 of *Williamson*)	Certified (para. 37 of *Strathdee*)
Consumer protection legislation	Certified for BC (paras. 129, 180 of *Williamson*) AB, SK, MB and NB (para. 247 of *Ennis*) with EOC diagnosis	Certified for BC, AB, SK, MB, QC and NL; seeking to add NB (paras. 54-55 of *Strathdee*)
Competition Act	Excluded (see *Ennis* Certification Order)	Certified (paras. 56-57 of *Strathdee*)
Common Issues		
General causation	Included (para. 5(a) of *Ennis* Certification Order)	Included (paras. 98-127 of *Strathdee*)

	BC	**Ontario**
Failure to Warn	Included (paras. 5(b)-(c) of *Ennis* Certification Order)	Included, flows from the certification of the general causation common issue (para. 128 of *Strathdee*)

Negligent Manufacturing	Not discussed in *Ennis* Reasons and excluded in the *Ennis* Certification Order	Included (paras. 136-144 of *Strathdee*)
Negligent Testing, Development and Design	Rejected (paras. 90-91 of *Ennis*)	Included (paras. 150-154 of *Strathdee*)
Breach of consumer protection legislation	Included for BC, AB, SK, MB and NB consumer protection statutes (para. 5(d) of *Ennis* Certification Order)	Included for BC, AB, SK, MB, QC and NL (paras. 155-163 of *Strathdee*)
Breach of *Competition Act*	Excluded from *Ennis* Certification Order	Included (paras. 167-175 of *Strathdee*)
Punitive damages	Included, but limited to Class Members' claims (paras. 295-299 of *Williamson*)	Included (paras. 176-180 of *Strathdee*)
Restitutionary principles and disgorgement of revenues	Excluded (rejected at para. 294 of *Williamson*)	Included, slightly modified (paras. 181-187 of *Strathdee*)
Availability of Potential Remedies		
Damages in Negligence	Included	Included
Consumer protection damages for those diagnosed with EOC	Included	Included
Damages under consumer protection legislation/s. 36(1) of the *Competition Act* for those not diagnosed with EOC	Excluded from the Class Definition	Included
Section 36(1) of the *Competition Act*	*Competition Act* common issues excluded from *Ennis* Certification Order	Included under common issue 14 (para. 187 of *Strathdee*)
Aggregate damages for consumer protection legislation and *Competition Act* claims	Excluded from *Ennis* Certification Order	Included under common issue 15 (para. 187 of *Strathdee*)
Punitive Damages	Included (para. 5(e) of Ennis Certification Order)	Included under common issue 16 (para. 187 of Strathdee)

Recovery under restitutionary principles	Excluded	Included under common issue 17 (para. 187 of Strathdee)

[31] While it remains to be seen whether the causes of action in either province will succeed, the comparison chart reveals significant differences between the actions and the potential range of outcomes. These features weigh against staying the Ontario proceedings.

[32] As the Divisional Court observed in *Kirsh* at para. 50, and in *Mignacca*, there is no "hard and fast rule" that parallel multijurisdictional class actions should not be permitted to proceed. At the same time, principles of comity require the court to consider and respect decisions from other jurisdictions and to avoid undermining the decisions of those jurisdictions. The Divisional Court in *Mignacca* at paras. 85-86 acknowledged that certifying parallel multi-national proceedings introduces additional complexity. However, to the extent that there is overlap, there are mechanisms in place to reduce inefficiency and respond to unfairness through cooperation, communication, and case management directions: *Mignacca*, at para. 8.

[33] Thus, to summarize, I have considered the legitimacy of the Ontario action, the differences in the actions, the interests of the class in fairness and the potential for broader recovery posed by the Ontario action. I have reviewed the existing jurisprudence on when stays of proceedings have been granted to avoid an abuse of process. Having done so, I have concluded that allowing the Ontario to proceed does not amount to an abuse of process. Given the differences and the broader class which I have certified, I do not find that certifying this action would cause damage to the administration of justice. I conclude that a stay is not appropriate. That said, I must independently analyze whether an Ontario class action is the preferable procedure. I turn next to that analysis.

Is this class proceeding the preferable procedure for the resolution of the common issues?

[34] The preferable procedure analysis under s. 5(1)(d) of the *CPA* examines two questions which are informed by the three main goals of class proceedings, judicial economy, behaviour modification, and access to justice:

1. Would a class proceeding be a fair, efficient and manageable method of resolving the claim?

2. Is a class proceeding preferable, in a comparative sense, to other available procedures?

See: *Hollick v. Toronto (City)*, 2001 SCC 68, 3 S.C.R. 158, at paras. 27-28; *AIC Limited v. Fischer*, 2013 SCC 69, [2013] 3 S.C.R. 949, at paras. 16, 22; *Shah v. LG Chem Ltd*., 2018 ONCA 819, 142 O.R. (3d) 721, at para. 123, leave to appeal refused, 2019 CanLII 96499 (SCC).

Is a class proceeding fair, efficient and manageable?

[35] Product liability cases, such as this one, are eminently suitable for resolving common issues that will move the litigation forward: *Schick v. Boehringer Ingelheim (Canada) Ltd.*, 2011 ONSC 1942, 18 C.P.C. (7th) 128, at paras. 74-76. This type of claim examines the conduct of the defendants relative to users allegedly injured by their product and consumers who are entitled to protection from hazardous products, by law. The question of punitive damages is well suited for common resolution because any entitlement to punitive damages flows from an analysis of the conduct of the defendants. The fact that individual issues as to damages remain after resolving those common issues does not necessarily defeat certification of common issues: *Shah v. LG Chem Ltd*. at para. 124.

[36] The defendants submit that the range in relative risks posed by use of baby powder perineally and different subtypes of EOC, means that the individual issues causation trials will overwhelm any utility of the common issues, and thus make a class proceeding not preferable. The defendants rely on the discussion in *Price v. H. Lundbeck A/S*, 2022 ONSC 7160, aff'd, 2024 ONSC 845 (Div. Ct.), in which the court upheld a decision to refuse certification in an action in damages for injuries caused by an anti-depressant drug. In the circumstances of that case, Glustein, J. found that because of the widely diverging outcomes from the use of the drug, and lack of any common teratogenic pathway to the birth malformations, there was no workable way forward, and the action would break down into thousands of individual trials with every liability issue to be proved: *Price* at paras. 210-212.

[37] The defendants submit that as in *Price*, even if the representative plaintiff satisfied the common issues criterion, a class proceeding is not the preferable procedure because all it would accomplish would be to produce a "grouping of trials" while class members awaited an individual determination of whether their child's malformation was caused by ingesting citalopram, the drug at issue: *Price* at paras. 200, 209-210.

[38] The decision in *Price* is distinguishable from the case at bar. There are subtypes of EOC, which carry different relative risks of developing ovarian cancer depending on the histological subtypes of epithelial cancer. The set of sub-types of EOC is finite, with the legal significance of the relative risks and the interplay of other risk factors with the use of the baby powder product a matter of expert evidence, a full record, and determinations at the common issues trial. The number of individual malformations in *Price* was far greater. The contributing causation arguments were more complex.

[39] In the June Reasons I found that the expert evidence filed on certification provided some basis in fact to find that "[t]here is credible evidence of a high-water mark of statistically significant increased risk for perineal talc users of contracting the most common type of potentially lethal EOC from a product that has no therapeutic value and was marketed to users as "hypoallergenic" and "dermatologist tested." This evidence flows from accepted criteria used in the study of epidemiology and applied to the information on this question by accepted experts." While there may be several subtypes of EOC with a range of associations to use of talc, the evidence before me does not raise the spectre of thousands of trials on causation. To the contrary, I conclude that

the availability of expert evidence on the causation/association issues and the finite set of EOC subtypes, will move the litigation forward and is suitable to be decided on a common issue basis.

Is this class proceeding preferable to other procedures?

[40] The overriding policy concern in the preferability analysis in this case arises from the class proceedings in other provinces, particularly from the B.C. action. In *Winder v. Marriott*, 2019 ONSC 5766, at paras. 54-76, Perell, J. discussed the problems presented by overlapping class proceedings in different provinces, in the context of a carriage motion including:

> a) Multiple actions prevent the "optimal" outcome, that being a class proceeding that resolves all the claims and defences, distributes compensation and releases for all of the group's claims, in a single proceeding;
>
> b) Multiple actions duplicate evidentiary records, fact-finding, legal analysis, and appeals, which is wasteful of lawyers and judicial resources;
>
> c) Multiple actions risk the "embarrassment of inconsistent outcomes;"
>
> d) Multiple actions risk undermining the ability of counsel to effectively prosecute a diluted class for cost-benefit reasons; and
>
> e) Sometimes more than one class action flowing from the same wrongdoing is advantageous, for example where there are advantages available in one province to proceeding that are not available in another province.

[41] The defendants and intervener counsel contend on the second question that the Ontario action is not preferable given the existing B.C., Québec class proceedings and 89 individual actions in Canada. The defendants submit that comity and recognition of the B.C. action yields a finding that the Ontario action is not preferable. Further, the existence of individual actions in Ontario reveals a valid alternative route for those Ontario plaintiffs who are excluded from the class proceeding in B.C. or who seek to make claims under the causes of action which were not certified in B.C.

[42] The defendants tendered evidence about individual actions commenced in both B.C. and in Ontario. Counsel, Ms. Alame's affidavit describes that as of December 14, 2023, there were 58 actions commenced in Ontario and served on the defendants in which the plaintiffs alleged injury arising from perineal use of talc. Of those actions, 28 plaintiffs alleged that they had been diagnosed with ovarian cancer. Counsel's affidavit also described 28 actions that have been commenced in B.C., with 21 pleading the plaintiff had been diagnosed with ovarian cancer, and three actions have been commenced in Alberta, with all three plaintiffs alleging ovarian cancer associated with their use of baby powder.

[43] Ms. Alame's written response to cross-examination on her affidavit, dated September 6, 2024, provided additional detail about the individual actions in Ontario and in B.C. The results of those inquiries are that in several of the individual actions, the plaintiffs have delivered extensive medical records and/or expert reports; in one of the individual actions, the plaintiff's examination for discovery has been scheduled; in a few of the individual actions, the plaintiff has brought, or has advised of their intention to bring, motions to add defendants and amend their claim; in one of the individual actions, the law firm representing the plaintiff has inquired about setting the action down for trial; and one of the B.C. individual actions has been discontinued.

[44] Further, searches conducted as of September 6, 2024, revealed that 17 additional individual plaintiffs brought actions in the B.C. Supreme Court against the defendants by women who pleaded allegations concerning their use of talc-based baby powder and cancer diagnoses. Of those 17, seven of those actions specifically pleaded ovarian cancer. A similar search conducted in Ontario yielded two additional individual actions as of August 27, 2024, with one of them including a pleading from the plaintiff that she has ovarian cancer.

[45] The existence of individual claims is relevant to the questions raised by the preferable procedure analysis. First, having shown some basis in fact for common issues by way of expert evidence, it is evident that for each individual claim alleging links between the use of the defendants' talc product and ovarian cancer, the individual plaintiffs will have to bear significant costs to establish the complexities of their case through expert evidence. Judicial economy is not served by hundreds of similar or identical claims, particularly in cases where one of the goals of class proceedings, behaviour modification, is sought to be vindicated by the action: *Kibalian v. Allergan Inc.*, 2022 ONSC 7116 at paras. 68-69, leave to appeal refused, 2023 ONSC 2728 (Div. Ct.).

[46] Further, and in responding to the question of multiple class and individual actions, the defendants recognized in their certification factum, that the existing class actions and individual claims could receive a single production set, with multiple plaintiffs examining defendant representatives together. Given the evidence of the mass tort claims in the U.S. against these defendants, some of which was part of the certification record, the defendants have been confronting the fact that for years they have faced lawsuits in multiple jurisdictions. The reality here is that the "optimal outcome" discussed in *Winder* of a single lawsuit combining all common legal issues into one judicial determination, is not possible in this litigation on either declining the Ontario action on the basis of preferability or on certifying this action and adding another action to the existing ones.

[47] The defendants emphasize the importance of comity relative to the other class proceedings certified in B.C. and authorized in Québec. They submit that this court should respect and defer to the preferability analysis in *Ennis*, which applied the relevant criteria and rejected the submissions of plaintiff counsel from Ontario made at the time of certification of the B.C. action. Ontario plaintiff counsel submitted that the B.C. action was not preferable because the Ontario action was broader in scope and would advance the class members' claims most effectively. The defendants submit that because Armstrong, J. rejected this submission and found the Ontario action's litigation plan wanting, this fact must weigh against the Ontario plaintiffs on the issue of preferability in these proceedings.

[48] Given this submission, and in determining how to apply the principle of comity in these unique circumstances, it is important to review the contours of Armstrong, J.'s preferability analysis, which preceded the plaintiffs' certification motion in the case at bar. In his careful, detailed analysis of preferability as between Ontario and B.C., Armstrong J. found as follows:

i. The fact that a class proceeding is similar to the subject of other proceedings was not a barrier to certification: *Ennis* at para. 206.

ii. Absent a decision on the Ontario certification application, no decision could be made on the question of whether the basis of liability in Ontario exceeds the quality of the B.C. claims: *Ennis* at para. 211.

iii. The Ontario action faces a motion to dismiss for delay, that might yet be granted at the time of the certification application: *Ennis* at para. 213.

iv. There is no certification order in Ontario, and thus comity does not affect the decision at this stage: *Ennis* at para. 213.

v. The circumstances are unusual because the B.C. class claim is more advanced than in Ontario and the competing interests of the class plaintiffs in each province may be better resolved in applications after the Ontario certification application is resolved: Ennis at para. 214.

vi. Justice Armstrong was not satisfied that the Ontario action demonstrated a focused plan to advance the interests of the class plaintiffs given that it did not obtain its opinion evidence until September 2021, five years after commencing the claim. As compared to the steps taken by B.C. class counsel, Armstrong J. found that the issue of the resources and plans was a neutral factor and did not favour either party: Ennis at para. 218.

vii. Justice Armstrong concluded that in the absence of material on remote participation, that the location of the action was a neutral factor in the preferability analysis. Ennis at paras. 220-222.

viii. The location of evidence and witnesses favoured Ontario because it is closer to more prospective class members but did not preclude a B.C. Canada-wide action being litigated: Ennis at paras. 223-224.

[49] In concluding the preferability analysis in *Ennis* at paras. 243-245, Armstrong, J. wrote:

> [243] This conclusion is based on the facts known at this point in time, and in recognition of the uncertainty stemming from the application to dismiss the Ontario claim for want of prosecution and the extent to which the Ontario claim might be certified.

> [244] Once the dismissal application in Ontario has been decided, the parties will have leave to make further submissions.
>
> [245] I therefore order that the British Columbia proceeding be certified, and if the Ontario claims are certified, then sections 12 and 13 of the CPA provide an avenue to resolve what would then become a carriage dispute to avoid the duplication of actions.

[50] Given the defendants' decision to abandon their appeal of this decision, the defendants accept this analysis, including its contingency features. Justice Armstrong focussed on the test, while considering access to justice for class members, and fairness to the litigants, based on the history of both actions, the materials available and factoring in the uncertainty over the continued viability of the Ontario action in September of 2024.

[51] I disagree with the defendants that comity requires that the Ontario action cannot now be certified because the B.C. proceedings have been certified. First, that is not how I read the decision in *Ennis*. Justice Armstrong noted the possibility of both actions being certified and referred to sections 12 and 13 of the *Class Proceedings Act* R.S.B.C. 1996, c. 50, as statutory answers to any issues of duplication as between the proceedings. Those provisions read:

> **Court may determine conduct of proceeding**
>
> 12. The court may at any time make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms it considers appropriate.
>
> **Court may stay any other proceeding**
>
> 13. The court may at any time stay any proceeding related to the class proceeding on the terms the court considers appropriate.

[52] Justice Armstrong also granted leave to the parties to make further submissions following a decision on the defendants' motion to stay or dismiss the Ontario claim as an abuse of process. I read the decision in *Ennis* as a decision made based on the known elements and the potential future outcomes in Ontario at the time.

[53] Second, I disagree that the benefits achieved by comity outweigh access to justice concerns for the broader class defined for certification in the Ontario action. This would amount to a first to be certified rule, without regard to the differences and the broader class served by the findings made on this certification motion. The Supreme Court articulated the principle in *Sanis*, that "Courts are expected to give comity – or full faith and credit – to recognize one another's judgments on subjects which cross provincial boundaries": *Sanis* at para. 14. Comity is achieved by paying attention to decisions in parallel proceedings, respecting those findings, while

recognizing that differences in evidence may yield a different outcome that must be factored into the preferability analysis.

[54] As for the current litigation plan, while it is clearly not complete, the Court of Appeal for Ontario has observed that deficiencies or gaps can be addressed through the case management process: *Price v. Smith & Wesson Corporation*, 2025 ONCA 452 at para. 136, leave to appeal to the S.C.C. requested, 41991 (September 22, 2025); *Keatley Surveying Ltd. v. Teranet Inc*., 2015 ONCA 248, 125 O.R. (3d) 447 at para. 75. I agree. Litigation plans will be iterative, particularly prior to discovery.

[55] Finally, I conclude that the interests of the class members are best served by having access to the broader class action. The findings in the June Reasons establish some basis in fact for causes of action in negligent design, negligent manufacture and breach of the *Competition Act* on behalf of a class that includes purchasers and users of Baby Powder who were not diagnosed with EOC. It includes Québec residents who are class members in the Québec action, which does not appear to have moved ahead in over five years, despite final authorization being confirmed by the Québec Court of Appeal in 2018. The Ontario action does not contain the restrictions on class membership present in the BC action based on sub-types of EOC, duration of use of baby powder, or date of EOC diagnosis. The Ontario action provides for potential consumer protection and *Competition Act* remedies for all Class Members – not just those diagnosed with EOC.

[56] As an alternative submission, the defendants seek a certification order which "carves out" the B.C. and Québec actions from the Ontario action to achieve complete autonomy as between the three actions. This would remove the issue overlap. However, it would introduce a layer of complexity for class members given the limitations in B.C. on the class definition around extent of use, histologic sub-type of EOC and date of diagnosis. I am concerned that this may not be in the interest of the class members. Indeed, given significant differences between the Ontario and the B.C. actions, and what appears to be a dormant Québec action (as well as the Alberta action which has not been certified), carve-outs at this stage risk trading one type of complexity for another. For example, such an exclusion would move some but not all of the Ontario resident class members to the B.C. action.

[57] In *Litvin et al v. Mackenzie Financial Corporation et al*, 2025 ONSC 6138, C. MacLeod, RSJ certified the action prior to an upcoming certification decision in a parallel action commenced in B.C., MacLeod, RSJ wrote, at para. 67:

> [67] There is no national framework for class proceedings in Canada as there is in the United States because in Canada the federal government has no competence to legislate in the area of property and civil rights or civil procedure. The framework for national class proceedings is reliant entirely on the principles of comity and stare decisis and to a lesser extent on reciprocal enforcement of judgments. There would be a significant problem should a court in one province conclude there is no liability while the court in another concluded that there was on the same set of facts in relation to overlapping classes. There would equally be a conflict of laws problem if two different

> courts purported to grant damages to members of overlapping classes. Class proceedings judges across the country are aware of this.

[58] At para. 69, McLeod, RSJ. noted that the options are not exclusive or mandatory within s. 5 of the *CPA*. A court may "refuse certification, limit certification or it may forge ahead. In some cases, this requires coordination between courts. In others it means removing residents of certain provinces from the class or classes."

[59] Section 5(6) of the *CPA* came into force in 2020, before this action began. The parties did not discuss this provision, no doubt because of the timing, although the interveners referenced this section of the *CPA* in their factum. Section 5(6) provides:

> If a class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, has been commenced in a Canadian jurisdiction other than Ontario involving the same or similar subject matter and some or all of the same class members as in a proceeding under this Act, the court shall determine whether it would be preferable for some or all of the claims of some or all of the class members, or some or all of the common issues raised by those claims, to be resolved in the proceeding commenced in the other jurisdiction instead of in the proceeding under this Act.

[60] Section 5(7) sets out several objectives to guide the analysis in s. 5(6). These objectives arise from the jurisprudence and work done by the Uniform Law Commission prior to s. 5(7) becoming law. For that reason, I find it useful to consider the question of preferability and whether to exclude the B.C. or Québec class members from Ontario class at this stage of the proceeding, through the lens of the objectives in s. 5(7) which are:

> i. ensuring that the interests of all parties in each of the applicable jurisdictions are given due consideration,
>
> ii. ensuring that the ends of justice are served,
>
> iii. avoiding irreconcilable judgments where possible, and
>
> iv. promoting judicial economy.

[61] At this stage, Ontario is the action that presents the broadest access to justice for the class. Individual issues of causation, timing of diagnosis, and evidence of period of use of the talc-based baby powder will necessarily be part of the individual issues trials. The interests of the class as it relates to access to justice favours not carving out a subclass based on technical criteria related to date of diagnosis, frequency of use and sub-type of EOC. This could unnecessarily confuse case management, communications and disputes over class membership in advance of the common issues trials. Counsel can address issues of potential duplicative recovery by designing the damages process to account for these individual differences as among class members.

[62] I must consider the interests of the defendants including the cost and complexity of responding to multiple claims and duplicating effort. To date, the defendants have had to respond to certification motions in two provinces, and the authorization motion in Québec, as well as the various individual actions. There are some potential efficiencies available to the defendants who are represented by a single firm across Canada, in contrast to the plaintiffs in B.C. and Ontario who are represented by different firms, with similar but not identical case strategies and proposed expert evidence. Also, even if class members in B.C. and/or Québec were excluded from the Ontario action, that would not eliminate many of the Ontario claims. The efficiencies are reduced by trying to "fit" the Ontario action, which is broader than the others, around a sub-set of other claims.

[63] Serving the ends of justice is a broad inquiry, that will take meaning as the litigation evolves. The litigation is still at an early stage, and modifications can be made either after discovery, or on pre-trial motions or even before trial. The differences between the classes do not persuade me that members can or should be divided into groups depending on certification. If the Québec action stays dormant, and Ontario excludes Québec claimants, then those class members may not have access to justice. The B.C. action limits class membership based on date of exposure, diagnosis and frequency of use. Assuming for the moment that both the Ontario actions and B.C. actions proceed and arrive at findings of liability, then the individual questions of damages are amenable to potentially sorting or avoiding double recovery based on those variables. The continuity of defendant counsel will aid in preventing inefficiencies or unfairness to the defendants in that event.

[64] The risk of irreconcilable judgments has been confronted at certification. The proceedings have diverged because different evidence and submissions were made at certification. As McLeod RSJ noted above, "There would be a significant problem should a court in one province conclude there is no liability while the court in another concluded that there was on the same set of facts in relation to overlapping classes" (emphasis added). I agree. Here, different evidence led to different parameters for certification. I do not see different outcomes in that regard as being "irreconcilable." Rather, they are understandable because they rest on different evidence and witnesses, and thus yielded different outcomes.

[65] The objective of judicial economy supports having a single national class action. Unfortunately, because of the way the actions have unfolded to date, that is not possible. Four class actions have begun, three by the same firm. All are defended by the same firm. Two appear to be active at this point, with significant differences. If the Ontario action was not certified in the name of judicial economy, that would pose a real risk to the ends of justice and the objective of the interests of the parties, specifically the class interest in access to justice. Carving out the B.C. and Québec classes would not appreciably increase judicial economy: the expert evidence on causation and use would still be required on the common issues trial. For now, the two active actions appear destined to cross and criss-cross one another until they either converge, and proceed in parallel with their differences apparent or lead to a stay or other modification of their parameters based on unknown future developments.

[66] There may be issues that arise as these actions move forward in parallel. There are tools to manage the reality of overlapping class proceedings. These arise from the flexibility of the *CPA*,

the courts' ability to case manage and the potential for cooperation among counsel to avoid duplication of effort and to manage the overlapping aspects of these actions. The court may yet revisit a stay, order decertification in whole or in part, or coordinate with judges in other jurisdictions on procedural matters as appropriate. As Morgan, J. observed in *Palmer v. Attorney General of Canada*, 2026 ONSC 927 at para. 119-120, where there are overlapping claims, the Court may have to ensure there is no duplication of compensation at a later stage after certification. Class members may have to opt for one claim for another.

[67] From the jurisprudence, I distil two obvious propositions. First, it is preferable that courts attempt to reduce overlapping claims. However, where duplication exists and cannot be avoided after a reasoned analysis, the Court and the litigants must manage those cases appropriately. All of this must be determined with a view to achieving the policy objectives of the *CPA.*

[68] Therefore, in weighing and balancing the objectives, the principles of preferability and the unusual features of this litigation, I conclude that the Ontario action should be certified on the issues and for the class as defined in the June Reasons.

Should the Ontario plaintiffs be granted leave to add a new statutory cause of action under the New Brunswick Consumer Product Warranty and Liability Act?

[69] In the June Reasons, I permitted the plaintiffs to make supplementary submissions on the proposed cause of action under the pleaded consumer protection legislation in New Brunswick.

That portion of the reasons reads:

> [48] The defendants submit that the claims under New Brunswick and Yukon's consumer protection legislation are also bound to fail because those statutes do not prohibit deceptive trade practices: *Consumer Protection Act*, S.N.B. 2024, c. 1; *Consumers Protection Act*, R.S.Y. 2002, c. 40.
>
> [49] The plaintiffs did not address this argument in their materials. The defendants did not provide any analysis of either of these statutes other than to assert that neither piece of legislation prohibits deceptive trade practices.
>
> [50] A search of the *Consumer Protection Act*, S.N.B. 2024, c. 1 on the CanLII site notifies the reader that, "This statute has not come into force." The New Brunswick provincial website contains the full text of the statute and the date on which this statute received royal assent (June 7, 2024). It is unclear from the defendants' submissions if they are referring to a statute that is not yet in force, or its predecessor legislation.
>
> [51] Given my decision to adjourn the motion to stay this action and final consideration of preferability, if necessary, the parties may make further submissions about the New Brunswick consumer protection legislation.

> [283] If requested, I may grant the plaintiffs an additional limited opportunity to respond to the issue of whether the consumer protection claims under the New Brunswick and Yukon legislation are "bound to fail" based on the defendants' submissions that those statutes do not prohibit deceptive trade practices. [Emphasis added.]

June Reasons, at paras. 48-51 and 283.

[70] The plaintiffs have acknowledged that the *Consumer Protection Act*, S.N.B. is not in force. Accordingly, I do not certify that cause of action.

[71] The plaintiffs in their supplementary submissions went on to seek to amend the statement of claim to include relief under the *CPWL Act.*

[72] This amendment was not part of any submissions on the original certification motion. The proposal is not responsive to the "limited" leave granted in the June Reasons. This action has been extant since 2016. Adding a newly pleaded statute, which the defendants submit requires privity and is duplicative of the claims in negligence which are capable of being certified, reopens common issue questions which have been addressed. As Morgan, J. observed in *Corless v. Bell Mobility* 2023 ONSC 6227 at para. 55:

> The policy of judicial economy and the imperative of using scarce court resources efficiently have prompted courts to take a principled stance against what the Alberta Court of Appeal has labelled "litigation in installments", *Robertson v. Wasylyshen*, 2003 ABCA 279, at para. 19, and the British Columbia Court of Appeal has dubbed "litigation by slices": *Mayer v. Mayer*, 2012 BCCA 77, at para. 96. Regardless of what it is called, an approach to litigation that sees a party taking one approach at an early stage while saving other arguments and issues for a later day has been found to be unacceptable.

[73] In the circumstances of this certification hearing and the circumscribed limits on the supplementary submissions, I decline to grant leave to the plaintiffs to amend the statement of claim to add relief under the *CPWL Act.*

VI. Conclusion

[74] The motion to stay for abuse of process is dismissed. The motion for leave to amend the statement of claim to add relief under the *CPWL Act* is dismissed.

[75] In accordance with these reasons and the June Reasons, I certify this action as a class proceeding with the common issues and class definition as set out in those reasons.

[76] If the parties are not able to agree as to costs, they may suggest a timetable for the exchange of brief (maximum 3 pages) submissions on costs, to be determined on an in-writing basis.

Leiper J.

Released: March 04, 2026

CITATION: Strathdee v. Johnson & Johnson Inc., 2026 ONSC 1186
COURT FILE NO.: CV-16-00553046-00CP
DATE: 20260304

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CINDY LOU STRATHDEE, MARIO NUNZIATO, MATTHEW STRATHDEE, SHAEDA BEGUM FAROOQI-WILLISON, GERALD DOUGLAS WILLISON, THÉRÈSE BERNIER, by her Estate Representative MARILYNE BERNIER, MARILYNE BERNIER, JANET HEATON and BARRY HEATON

Plaintiffs/ Responding Parties

– and –

JOHNSON & JOHNSON INC., JOHNSON & JOHNSON and JOHNSON & JOHNSON CONSUMER COMPANIES, INC.

Defendants/ Moving Parties

REASONS FOR DECISION

Leiper J.

Released: March 04, 2026