CITATION: Uzelac v. Dufferin Aggregates, a division of CRH Canada Group Inc., 2025 ONSC 896
COURT FILE NO.: CV-17-576946
MOTION HEARD: 20241030
REASONS RELEASED: 20250210

SUPERIOR COURT OF JUSTICE – ONTARIO

BETWEEN:

GOJKO UZELAC and G. UZELAC TRUCKING

Plaintiffs

- and-

DUFFERIN AGGREGATES, a division of CRH CANADA GROUP INC. and 470474 ONTARIO LIMITED, carrying on business as AGGREGATE TRANSFER SYSTEMS

Defendants

BEFORE: ASSOCIATE JUSTICE McGRAW

COUNSEL: G. Sills and S. Gillman
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-Counsel for the Plaintiffs

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-Counsel for the Defendant Dufferin Aggregates, a division of CRH Canada Group Inc. ("CRH")

REASONS RELEASED: February 10, 2025

Reasons For Endorsement

I. Background

[1] This is a motion by the Plaintiffs under Rule 48.14(5) for a status hearing to extend the time to set this action down for trial.

[2] The Plaintiff Gojko Uzelac ("Uzelac") was employed as a truck driver by the Defendant CRH from 1962 until 2000. It is unclear if the co-Plaintiff G. Uzelac Trucking is an actual entity. Due to mandatory retirement provisions, when Mr. Uzelac turned 65 years of age in 2000 he was no longer eligible to be a union member. Therefore, the Plaintiffs subsequently continued to provide services to CRH until May 2017 through the Defendant 470474 Ontario Limited carrying on business as Aggregate Transfer Systems ("ATS") a trucking service used by CRH.

[3] The Plaintiffs commenced this action by Statement of Claim issued on June 12, 2017 alleging that the Defendants wrongfully terminated their employment or dependent contractor

services on May 11, 2017 by refusing to schedule them in April-May 2017, the termination was contrary to the *Human Rights Code* (Ontario)(the "Code"), the Defendants refused to pay proper rates in 2016 and provided them with poor delivery routes due to Mr. Uzelac's age. They further allege that he did not receive his statutory entitlements under the *Employment Standards Act, 2000* (Ontario). The Plaintiffs claim damages of $417,500 including $312,500 for wrongful dismissal and $100,000 for breaching the Code.

[4] CRH and ATS delivered their Statements of Defence on July 12, 2017 and July 17, 2017, respectively. The Plaintiffs delivered a Reply on July 25, 2017. On August 2, 2017, the Plaintiffs proposed that the parties attend early mandatory mediation in September 2017. CRH would not agree to attend mediation prior to examinations for discovery. The parties agreed to schedule examinations for discovery on January 18 and 23, 2018. On December 19, 2017, ATS served its first Notice of Change of Lawyers.

[5] The Plaintiffs served their affidavit of documents on January 5, 2018. Plaintiffs' counsel wrote to Defendants' counsel on January 8, 2018 to suggest that examinations for discovery be re-scheduled given that the Defendants had not served affidavits of documents. On January 10, 2018, ATS served its second Notice of Change of Lawyers. That same day, CRH advised that it would agree to reschedule examinations for discovery but would not agree to mandatory mediation prior to discoveries. On May 8, 2018, CRH delivered its first Notice of Change of Lawyers.

[6] On May 29, 2018, CRH advised that contrary to its previous position, it would agree to mandatory mediation. The following day, May 30, 2018, CRH delivered an unsworn affidavit of documents and clarified that it would only attend early mediation if ATS also agreed to do so. On June 1, 2018, facing receivership, ATS advised that it no longer intended to defend this action and therefore would not participate in mediation.

[7] On June 7, 2018, with follow-ups on June 11 and 21, 2018, the Plaintiffs wrote to CRH with respect to agreeing on a mediator or having a roster mediator appointed. The Plaintiffs wrote again on July 25, 2018, September 7, 2018 and October 3, 2018 to propose mediation dates. On October 5, 2018, CRH responded and advised that it was not prepared to attend mediation until after examinations for discovery. CRH also advised that it was unable to attend examinations until 2019. However, the Plaintiffs took no steps to schedule them and examinations for discovery were not scheduled in 2019. The pandemic started in March 2020 causing further delays.

[8] On August 31, 2020, Plaintiffs' counsel canvassed availability for examinations for discovery by Zoom in September or October 2020. CRH's counsel advised that counsel with carriage had changed firms. Plaintiffs' counsel followed up again on September 8, 2020 and on September 10, 2020 CRH delivered a second Notice of Change of Lawyers. CRH's counsel responded on September 14, 2020 and the parties finally agreed on dates for examinations for discovery which were conducted on November 9-10, 2020. The parties received discovery transcripts on December 7, 2020. The Plaintiffs have not delivered their answers to undertakings. During a call on May 7, 2021, CRH advised that it would not agree to attend mediation until it received the Plaintiffs' answers to undertakings. Counsel had another call on April 22, 2022 in

which CRH's counsel reiterated this position. CRH's counsel also requested that the Plaintiffs circulate a timetable given that, according to them, the set down deadline was June 12, 2022, the fifth anniversary of the commencement of the action. However due to the suspension of time periods from March 16, 2020 to September 14, 2020 pursuant to the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* (Ontario) the deadline to set the action down for trial was in fact not set to expire until December 12, 2022.

[9] On May 9, 2022, the Plaintiffs requested a case conference to seek the court's assistance in establishing a timetable and scheduling a summary trial. On May 10, 2022, the Plaintiffs requested the appointment of a roster mediator. CRH took the position that a roster mediator could not be appointed and refused to participate in mandatory mediation because the 5-year anniversary of the action was imminent. CRH also continued to take the position that it would not agree to a timetable, that a status hearing was required and that it would seek the dismissal of this action.

[10] ATS' counsel scheduled a motion for removal as lawyers of record which was initially returnable November 30, 2022. The motion did not proceed that day and was heard on August 15, 2023 at which time ATS' counsel was removed from the record.

[11] The Plaintiffs followed up on their request for the appointment of a roster mediator on September 30, 2022. In November 2022 and on January 13, 2023 the mediation coordinator canvassed mediation dates with the parties. On January 20, 2023, CRH agreed to attend mediation without prejudice to its position at a status hearing that the action should be dismissed. On January 25, 2023, the Plaintiffs confirmed that they would attend mediation on March 22 or 23, 2023. A notice of Assigned Mediator was issued on February 7, 2023 requiring the parties to file their Statements of Issues by March 13, 2023. CRH delivered its Statement of Issues on March 20, 2023, 7 days after the deadline. The Plaintiffs did not deliver a Statement of Issues and on March 21, 2023, a Certificate of Non-Compliance was issued against the Plaintiffs.

[12] On April 14, 2023, the Plaintiffs requested a case conference to seek a timetable for the completion of steps in this action. On July 25, 2023, Plaintiffs' counsel wrote to CRH's counsel delivering a draft discovery plan with a proposed timetable. CRH would not agree to a discovery plan and advised that it would seek the dismissal of this action. The Plaintiffs circulated another discovery plan on August 15, 2023 and requested a case conference which proceeded before Associate Justice Graham on September 8, 2023 where counsel spoke to the possibility of a timetable and a status hearing motion.

[13] The parties first appeared before me at a telephone case conference on November 21, 2023 to speak to the scheduling of this status hearing. The motion was originally scheduled for June 11, 2024. Due to medical issues involving Plaintiffs' counsel, a telephone case conference was held on May 7, 2024 and the motion was adjourned to October 30, 2024.

II. The Law and Analysis

Status Hearings Generally

[14] Rule 48.14 states:

> (1) Unless the court orders otherwise, the registrar shall dismiss an action for delay in either of the following circumstances, subject to subrules (4) to (8):
>
> 1. The action has not been set down for trial or terminated by any means by the fifth anniversary of the commencement of the action.
>
> …
>
> (5) If the parties do not consent to a timetable under subrule (4), any party may, before the expiry of the applicable period referred to in subrule (1), bring a motion for a status hearing.
>
> (6) For the purposes of subrule (5), the hearing of the motion shall be convened as a status hearing.
>
> (7) At a status hearing, the plaintiff shall show cause why the action should not be dismissed for delay, and the court may,
>
> (a) dismiss the action for delay; or
>
> (b) if the court is satisfied that the action should proceed,
>
> (i) set deadlines for the completion of the remaining steps necessary to have the action set down for trial or restored to a trial list, as the case may be, and order that it be set down for trial or restored to a trial list within a specified time,
>
> (ii) adjourn the status hearing on such terms as are just,
>
> (iii) if Rule 77 may apply to the action, assign the action for case management under that Rule, subject to the direction of the regional senior judge, or
>
> (iv) make such other order as is just.

[15] Although this action was not dismissed by the Registrar, the five-year anniversary to set it down for trial expired on December 12, 2022. Administrative dismissals by the Registrar did not resume until May 13, 2024.

[16] The well-established test on a motion for a status hearing is two-fold and conjunctive. The plaintiff bears the onus of demonstrating that: i.) there is an acceptable explanation for the delay; and ii.) that if the action were allowed to proceed, the defendant would not suffer non-compensable or actual prejudice (*Faris* v. *Eftimovski*, 2013 ONCA 360 at para. 32; *1196158 Ontario Inc.* v. *6274013 Canada Ltd.*, 2012 ONCA 544 at para. 32; *Kara v. Arnold*, 2014 ONCA 871 at para. 9; *Carioca's Import & Export Inc.* v. *Canadian Pacific Railway Limited*, 2015 ONCA 592 at para. 43).

[17] The plaintiff bears the onus to show cause why the action should not be dismissed for

delay (*Faris* at para. 33). The focus of the court's inquiry is on the conduct of the plaintiff who, as the party who commenced the proceeding, bears primary responsibility for its progress (*Faris* at para. 33; *1196158 Ontario Inc.* at para. 29). The conduct of the defendant may be relevant, such as where a plaintiff who tries to move an action along is faced with some resistance or tactics that are not consistent with a willingness to see a relatively straightforward case proceed expeditiously (*1196158 Ontario Inc.* at para. 29).

[18] Although the court must be guided by the applicable two-part test, the determination as to whether to allow an action to proceed is discretionary and determining whether it would be unfair for the action to be dismissed requires a consideration of the circumstances and a balancing of the parties' respective interests (*Koepcke* v. *Webster,* 2012 ONSC at para. 22; *Carioca's* at para. 43). While Rule 48.14 was designed to have some "teeth", the court should not take a rigid or purely formalistic approach to the application of timelines that would penalize parties for technical non-compliance and frustrate the fundamental goal of resolving disputes on their merits (*Kara* at para. 10). The court must apply a contextual approach weighing all of the relevant factors to determine the order which is just in the circumstances (*Kara* at paras. 12-14; *Cobalt Capital CA Textile Investments,* 2017 ONSC 4664 at para. 46).

[19] The Court of Appeal has identified two competing principles which arise from Rule 1.04(1) within the context of a disposition without trial: i.) the public interest in timely justice and discouraging delay; and ii.) permitting actions to be determined on their merits (*Faris* at para. 24; *Koepecke* at para. 23):

> "Dismissals for delay involve a careful balance between two competing values. On the one hand, the *Rules of Civil Procedure* need to be enforced in a way that ensures timely and efficient justice, in the interests of plaintiffs, defendants, and society in general. On the other hand, society in general, and the parties, have an interest in the resolution of disputes on their merits and in the availability of flexibility to avoid potentially draconian results, by providing the opportunity for parties to offer a reasonable explanation for delay when it takes them beyond established timelines." (*Kara* at para. 9)

[20] The Court of Appeal has also held that determining matters on their merits is generally preferred:

> "Expeditious justice must be balanced with the public interest in having disputes determined on their merits. Where, despite the delay, the defendant would not be unfairly prejudiced should the matter proceed for resolution on the merits, according the plaintiff an indulgence is generally favoured." (*Marché d'Alimentation Denis Thériault Ltée. v. Giant Tiger Stores Ltd.* (2007), 87 O.R. (3d) 660 (O.C.A.) at para. 34)

Have the Plaintiffs Provided An Acceptable Explanation For the Delay?

[21] For the reasons that follow, I conclude that the Plaintiffs have provided an acceptable explanation for the delay.

.

[22] Whether an explanation for delay is "acceptable" depends on the circumstances of each case (*Koepecke* at para. 22). "Acceptable" does not mean that the explanation must be "good", only "adequate" or "passable" and "cogent" and the terms "acceptable", "satisfactory" and "reasonable" are interchangeable in this regard (*2046085 Ontario Inc.* v. *Raby,* 2014 ONSC 774 at para. 6; *Greenwald* v. *Ridgevale Inc.,* 2016 ONSC 3031 at para. 17; *Carioca's* at para. 45; *Postmedia Network Inc.* v. *Meltwater Holding B.V.,* 2017 ONSC 6036 at paras. 13-15). The progress of an action does not have to be ideal and the court should not conduct a week by week or month by month analysis and should consider the overall conduct of the litigation (*Goldman* v. *Pace,* 2017 ONSC 1797 at para. 5; *Greenwald* at para. 17; *Carioca's* at para. 46). The court should also consider if the plaintiff has demonstrated an intention to advance the action (*Koepecke* at para. 15). A plaintiff may have to give a more a robust explanation to explain delay after five years than was the case after two years under the previous rule (*Erland* v. *Her Majesty the Queen in Right of Ontario,* 2019 ONSC at paras. 9 and 31; aff'd 2019 ONCA 689).

[23] In my view, the progress of this action has not been ideal, and there have been material periods of delay which are attributable to the Plaintiffs. However, considering the overall conduct of the litigation, I am satisfied that in the circumstances of this case the Plaintiffs' explanation is acceptable and adequate. This conclusion is based in part on the fact that the record before me demonstrates that the Plaintiffs intended to move this action forward. This is reflected through the Plaintiffs' efforts to schedule early mandatory mediation and settle the sequence of the litigation and later post-discovery efforts to again schedule mandatory mediation.

[24] The focus of the inquiry must be on the conduct of the Plaintiffs who bear primary responsibility for moving their action forward. However, the Defendants' conduct is also a relevant factor in assessing the explanation and the delay where, as here, it had a material impact on the progress of these proceedings (*1196158 Ontario Inc* at paras. 27-30; *Super A Hotels Investment and Management Group (Canada) Inc.* v. *1205723 Ontario Inc.,* 2020 ONSC 6785 at para. 25; *Houser* v. *TD Waterhouse Canada Inc.,* 2021 ONSC 7928 at paras. 12-14; *366012 Ontario Inc.* v. *Boudreau et al,* 2022 ONSC 2527 at paras. 26). I do not find that the Defendants intended to delay the action or to interfere with the Plaintiffs' efforts to move the action forward. However, steps that the Defendants took and did not take contributed to the delay and had the effect of creating resistance in moving the action forward (*1196158 Ontario Inc* at paras. 27-30).

[25] After the close of pleadings in July 2017 until October 2018, ATS changed counsel twice then advised that it did not intend to defend this action. During this period, CRH advised that it would not agree to early mediation, then advised that it would, changed its position again and also changed its counsel. This resulted in delays waiting for responses and positions from the Defendants and determining if mediation would proceed before examinations for discovery and resulted in the cancellation of discoveries scheduled for January 2018. It was not until October 2018 that CRH confirmed that it would not agree to early mediation and could not schedule discoveries until 2019. While the Plaintiffs tried to move the action forward, the Defendants' changing positions on mediation and the order of steps in the litigation and counsel changes delayed the action at the outset.

[26] I accept CRH's submission that there was a material period of delay largely attributable

to the Plaintiffs after October 2018. Although the Plaintiffs were aware that CRH would not agree to attend mediation prior to examinations for discovery, they took no steps until August 31, 2020 to schedule discoveries. Some delay was inevitable given CRH's inability to schedule discoveries until 2019. I also accept the Plaintiffs' submission that some of this delay as of March 2020 was attributable to the pandemic. However, this does not explain most of this pre-March 2020 delay. The Plaintiffs' explanation is that there were internal supervision and file management issues at Plaintiffs' counsel's Firm. Specifically, when the lawyer with carriage of the matter returned from maternity leave, the file was transferred back to her then transferred again to an associate where it remained dormant. In March 2023, the lawyer with carriage left on an early maternity leave due to repeated lapses in file management.

[27] I have concerns with the Plaintiffs' evidence regarding this period of delay. The Plaintiffs filed an affidavit from a law student in which the lawyer who had carriage of the file is not named nor are the Partners at the Firm who advised the student on certain statements in her affidavit. There is also no direct evidence from the Plaintiffs. At the same time, the affiant was not cross-examined and CRH has not moved to have it excluded. Accordingly, I am satisfied that the appropriate approach is to give this evidence less weight and balance it within the larger context and circumstances. In considering this explanation, I am mindful that the Court of Appeal has stated that the preference that actions be decided on their merits is even stronger where there is delay due to counsel's inadvertence:

> "The court's preference for deciding matters on their merits is all the more pronounced where delay results from an error committed by counsel. As the court stated in *Habib*, at para. 7, "[O]n a motion to set aside a dismissal order, the court should be concerned primarily with the rights of the litigants, not with the conduct of their counsel." In *Marché*, Sharpe J.A. stated, at para. 28, "The law will not ordinarily allow an innocent client to suffer the irrevocable loss of the right to proceed by reason of the inadvertence of his or her solicitor" (citations omitted). (*H.B. Fuller Company et al.* v. *Rogers (Rogers Law Office)*, 2015 ONCA 173 at para. 27)

[28] Notwithstanding the evidentiary issues, I accept the Plaintiffs' explanation that some of the delay during this time period, and later in the proceedings, was due to inadvertence arising from maternity leaves and related file management and supervision issues, and not the intentional actions of counsel or the Plaintiffs to delay the litigation. In my view, this is the kind of counsel inadvertence which the Court of Appeal has held should not be visited upon the client to deprive them of the right to proceed with their action.

[29] After examinations for discovery were completed, the Plaintiffs continued their attempts to schedule mandatory mediation. In my view, it was a combination of the Plaintiffs' own conduct together with CRH's ongoing refusal to schedule mediation which prevented mediation from happening sooner or at all. While it was not completely necessary for CRH to make the scheduling of mandatory mediation conditional upon receiving answers to undertakings, it was not unreasonable or uncommon. The delivery of answers often facilitates more meaningful mediation. There was also another period of delay between May 2021-April 2022 when the Plaintiffs did not contact CRH. At the same time, mediation is a mandatory step and even 7 months before the expiry of the set down date, CRH continued to resist and opposed the

appointment of a mediator by the mediation coordinator. The courts have held that a defendants' refusal to schedule mandatory mediation, even in the face of the impending expiry of a set down date, is a relevant factor in assessing delay and whether the set down date should be extended (*Houser* at para. 14; *Mohan Graphics Inc.* v. *Sherwin-Williams Canada Inc.*, 2022 ONSC 6610 at paras. 17-18).

[30] It is not helpful to the Plaintiffs that after their many efforts to schedule mediation, once CRH agreed and a mediator was appointed, the Plaintiffs failed to deliver their Statement of Issues resulting in the issuance of a Certificate of Non-Compliance and preventing mediation from taking place. However, this must be balanced against the fact that CRH filed its Statement of Issues 7 days past the deadline. This was also during the time, March 2023, when counsel left on an early maternity leave due to repeated lapses in file management, raising again the impact of lawyer inadvertence on the client. Further, mediation could have been rescheduled still without prejudice to CRH's position that the action should be dismissed if it did not settle.

[31] The Plaintiffs could have done more to move this action forward including answering their undertakings, delivering their Statement of Issues so that mediation could have proceeded and moving. However, taking into account the overall context and circumstances, I conclude that they have satisfied their onus. In reaching this conclusion I do not accept CRH's calculation that there was delay of 52.5 months attributable to the Plaintiffs in approach, accuracy or characterization. The court is not to conduct a month-by-month calculation of delay but even undertaking such an exercise, the individual and total amounts are inaccurate and some of the periods of delay can be attributed to both parties, CRH or no-one. I also reject CRH's assertion that it was improper for the Plaintiffs to request case conferences in an attempt to seek a timetable. Given that administrative dismissals had not resumed there was understandably some uncertainty with respect to how to proceed. Overall, case conferences provide an efficient, cost-effective and useful forum to speak to disputed issues before a status hearing is scheduled. Parties should be encouraged to take any steps which might avoid the additional delays, client costs and use of court resources associated with an opposed status hearing particularly in actions like this where mandatory mediation was the only remaining step which had been delayed, scheduled then did not proceed. As was the case here, mediation can proceed without prejudice to positions to be taken if a status hearing is necessary. Notwithstanding CRH's position, the case conference process ultimately resulted in the scheduling of a status hearing as CRH requested.

Have the Plaintiffs Established that the Defendants Would Not Suffer Non-Compensable Prejudice?

[32] I also conclude that the Plaintiffs have established that the Defendants would not suffer actual prejudice if this action is permitted to proceed (*1196158 Ontario Inc.* at para. 32).

[33] Actual prejudice is any prejudice which would impair the Defendants' ability to defend this action resulting from the Plaintiffs' delay, not due to the mere passage of time (*Carioca's* at para. 57; *H.B. Fuller Company et al.* v. *Rogers (Rogers Law Office)*, 2015 ONCA 173 at para. 37). It is a long-held principle that prejudice is inherent in long delays as memories fade and fail, witnesses become unavailable, and documents and other potential exhibits are lost giving rise to

a presumption of prejudice due to concerns of trial unfairness (*Langenecker v. Sauvé*, 2011 ONCA 803, at para. 11; *DK Manufacturing Group Ltd.* v. *MDF Mechanical Limited*, 2019 ONSC 6853 at para. 28; *1196158 Ontario Inc.* at para. 42). The longer the delay, the stronger the inference of prejudice to the defence flowing from that delay (*Langenecker* at para. 11). The plaintiff is not required to adduce affirmative evidence rebutting the presumption of prejudice, rather the court must consider all of the circumstances in evaluating the strength of the presumption (*1196158 Ontario Inc.* at para. 6(b); *DK Manufacturing* at para. 29).

[34] The parties have exchanged affidavits of documents, examinations for discovery have been completed and once undertakings have been answered mediation can proceed and the matter can be set down for trial. This is not an action where limited steps have been taken such as those where there has been no documentary or oral discovery giving rise to concerns about the preservation of documents and testimony. There are also numerous disputed issues which depend largely on legal arguments regarding the Plaintiffs' alleged entitlements and damages.

[35] One of CRH's primary arguments is that it would suffer actual prejudice because its key witnesses, Sidney Spears and Janet Bherer, are no longer employed by CRH and CRH does not have current contact information for them or know of their whereabouts. CRH has confirmed that Mr. Spears left CRH in December 2022 and Ms. Bherer left in March 2020. However, there is no evidence that CRH made any efforts to contact or speak to them including whether they would be available for trial. Helpfully, Plaintiffs' counsel located these witnesses by searching LinkedIn where it found publicly available information including their profiles and evidence of activity in 2024. More importantly, both witnesses were still employed by CRH 3-5 years after this action was commenced. As CRH's key witnesses, it would be expected that they were involved in the litigation and steps were taken to obtain evidence and statements from them before they left their employment (*Martellacci* v. *Pitney Bowes of Canada Ltd.*, 2024 ONSC 320 at paras. 18-19). There is no evidence that this was done and I reject their departures as a basis for prejudice along with CRH's submission that it should be presumed that their memories have faded.

[36] I also cannot conclude that any presumption of prejudice arises, and to the extent to which one does, it is a not a strong one and the Plaintiffs have rebutted it or that memories have faded to the extent to which CRH asserts. The delays in this action attributable to the Plaintiffs are more limited than cases where a strong presumption of prejudice arises such as over a period of 3-5 years where there is no activity. Given the more limited periods of delay, the amount of interaction between counsel and the Plaintiffs' engagement in attempting to move this action to mediation, there is also no basis to conclude that CRH could rely on the principle of finality such that they could reasonably conclude that the action was no longer proceeding (*Giant Tiger* at paras 38-40).

[37] Having considered and weighed all of the relevant factors discussed above, I conclude that the Plaintiffs have shown cause that the time to set this action down for trial should be extended. This is largely based on the Plaintiffs' intention as reflected by their efforts to move this action forward; the impact of counsel advertence related to file management; the Defendants' contribution to the delay through 5 counsel changes, a lawyer removal motion and CRH's positions with respect to mandatory mediation; and the fact that documentary and oral

discoveries have been completed. In the absence of prejudice, the most just result which properly balances the parties' interests and is consistent with Rule 1.04(1) and the preference that matters be tried on their merits is to grant the Plaintiffs an indulgence while imposing a timetable for the remaining steps to move this action to mediation and trial as efficiently and cost effectively as possible.

III. Disposition and Costs

[38] Order to go granting the Plaintiffs' motion to extend the set down date and directing the parties to comply with the following timetable, which may be amended on consent except the set down date which shall only be amended by further order of the court:

i.) February 28, 2025 – deadline for CRH to deliver sworn Affidavit of Documents;
ii.) March 15, 2025 – deadline for any outstanding answers to undertakings and positions on refusals;
iii.) May 31, 2025 – deadline for mandatory mediation;
iv.) July 31, 2025 – deadline to set action down for trial.

[39] If the parties cannot agree on any necessary amendments to the above timetable, they may schedule a telephone case conference with me to speak to them. I may also be spoken to regarding any issues with respect to outstanding undertakings and refusals. If the parties cannot agree on the costs of this motion, they may file written costs submissions not to exceed 3 pages (excluding Costs Outlines and other attachments) on a timetable to be agreed upon by counsel.

Released: February 10, 2025

_____
Associate Justice McGraw