COURT OF APPEAL FOR ONTARIO

CITATION: 1086289 Ontario Inc. (Urban Electrical Contractors) v. Welland (City), 2026 ONCA 352
DATE: 20260519
DOCKET: COA-24-CV-0855, COA-24-CV-0938, COA-24-CV-1159 & COA-24-CV-1252

Tulloch C.J.O., Lauwers, Sossin, Wilson and Pomerance JJ.A.

DOCKET: COA-24-CV-0855

BETWEEN

1086289 Ontario Inc., operating as Urban Electrical Contractors

Plaintiff/Defendant by Counterclaim

and

The Corporation of the City of Welland

Defendant/Plaintiff by Counterclaim (Respondent)

and

Rounthwaite Dick & Hadley Architects Inc.* and Toronto Organization Committee for the 2015 Pan Am and Parapan Am Games

Third Parties (Appellant*)

and

Exp. Services Inc. and Elite Construction Inc.

Fourth Parties

BETWEEN

Elite Construction Inc.

Plaintiff

and

The Corporation of The City of Welland* and Toronto Organization Committee for the 2015 Pan Am and Parapan Am Games

Defendants (Respondent*)

and

Rounthwaite Dick & Hadley Architects Inc.

Third Party (Appellant)

and

Exp. Services Inc. and 1086289 Ontario Inc. operating as Urban Electrical Contractors

Fourth Parties

DOCKET: COA-24-CV-0938

AND BETWEEN

Cydahlia Howran, by her Litigation Guardian, Jennifer Freeman, and Jennifer Freeman personally

Plaintiffs (Respondents)

and

Cody Howran**, Christine Fournier**, The Corporation of the City of Kawartha Lakes*, The Dominion of Canada General Insurance Company, and John Doe

Defendants (Appellant*/Respondents**)

DOCKET: COA-24-CV-1159

AND BETWEEN

Thrive Capital Management Ltd., Thrive Uplands Ltd., 2699010 Ontario Inc., and 2699011 Ontario Inc.

Plaintiffs (Appellants)

and

Noble 1324 Queen Inc.*, Michael Hyman*, Giuseppe Anastasio*, David Bowen, Noble Developments Corporation*, Hampshire and Associates Incorporated*, Noble 12826 Leslie Corp.*, Wilshire Holdings Inc.*, Noble 376 Derry Corp.*, Noble 390 Derry Corp.*, 2704536 Ontario Inc.*, 2724136 Ontario Inc.*, Hamshire Holdings Inc.*, Azan Homes Inc.*, Lisa Susan Anastasio*, Rajeree Etwaroo, Guiseppe Anastasio Jr.*, Sandra Azan-Hyman*, Justin Hyman*, Alan Hyman*, Morris Hyman*, Vince Iozzo, Joseph Perruccio, Celia Losiggio, Marco Caruso, Rubens Tarzia, Artsyl Technologies Inc., MRG Custom Concrete Forming Inc., ISH Investment Corporation, Glazepro Inc., John Walker, 2445362 Ontario Inc., 2577146 Ontario Limited, Lecos Auto Sales Ltd., 1782998 Ontario Inc., Car Nation Canada Inc., Unique Chrysler Dodge Jeep Ltd., Strada Construction and Ferlisi Construction and Con Strada Construction Group Inc.

Defendants (Respondents*)

AND BETWEEN

Noble 1324 Queen Inc., Michael Hyman, Giuseppe Anastasio, Noble Developments Corporation and Hampshire and Associates Incorporated

Plaintiffs by Counterclaim (Respondents)

and

Thrive Capital Management Ltd.*, Thrive Uplands Ltd.*, Harjot Somal, Tardip Gill and Ray Thapar

Defendants by Counterclaim (Appellants*)

DOCKET: COA-24-CV-1252

AND BETWEEN

Evertz Technologies Limited and Evertz Microsystems Limited

Plaintiffs/Responding Parties (Appellants)

and

~~Lawo AG, Lawo Holding AG, Lawo Inc., Lawo Group USA, Inc., Lawo Corp.,~~ Providius Corp., Tony Zare, (a/k/a Antony Zarezadeqan), Ayman Al Khatib, Jackson Wiegman ~~and Albert Faust~~

Defendants/Moving Parties (Respondents)

Andrew Lundy and Zohar Levy, for the appellant Rounthwaite Dick & Hadley Architects Inc. (COA-24-CV-0855)

Kevin A. McGivney and Natalie D. Kolos, for the appellant The Corporation of the City of Kawartha Lakes (COA-24-CV-0938)

Earl A. Cherniak, K.C., William Pepall, Rebecca Shoom and Hugh Scher, for the appellants Thrive Capital Management Ltd., Thrive Uplands Ltd., 2699010 Ontario Inc. and 2699011 Ontario Inc. (COA-24-CV-1159)

James C. Orr and Jonathan H.W. Careen, for the appellants Evertz Technologies Limited and Evertz Microsystems Limited (COA-24-CV-1252)

Sean Dewart and Brett Hughes, for the respondent The Corporation of the City of Welland (COA-24-CV-0855), and the respondents Cody Howran and Christine Fournier (COA-24-CV-0938)

Evan Rankin, for the respondents Cydahlia Howran, by her Litigation Guardian, Jennifer Freeman, and Jennifer Freeman personally (COA-24-CV-0938)

Jason Wadden, Michael O'Brien and Aditi Gupta, for the respondents Noble 1324 Queen Inc., Michael Hyman, Giuseppe Anastasio, Noble Developments Corporation, Hampshire and Associates Incorporated, Noble 12826 Leslie Corp., Wilshire Holdings Inc., Noble 376 Derry Corp., Nobel 390 Derry Corp., 2704536 Ontario Inc., 2724136 Ontario Inc., Hampshire Holdings Inc., Azan Homes Inc., Lisa Susan Anastasio, Guiseppe Anastasio Jr., Sandra Azan-Hyman, Justin Hyman, Alan Hyman and Morris Hyman (COA-24-CV-1159)

Anu Koshal, Rachel Chan and Almut MacDonald, for the respondents Providius Corp., Tony Zare, (a/k/a Antony Zarezadeqan), Ayman Al Khatib and Jackson Wiegman (COA-24-CV-1252)

Heard: October 23-24, 2025

On appeal from the order of Justice Meredith A. Donohue of the Superior Court of Justice, dated July 12, 2024, with reasons reported at 2024 ONSC 3966 (COA-24-CV-0855).

On appeal from the order of Justice Annette Casullo of the Superior Court of Justice, dated July 30, 2024, with reasons reported at 2024 ONSC 4277 (COA-24-CV-0938).

On appeal from the order of Justice Jessica Kimmel of the Superior Court of Justice, dated September 25, 2024, with reasons reported at 2024 ONSC 5297 (COA-24-CV-1159).

On appeal from the order of Justice Colin P. Stevenson of the Superior Court of Justice, dated October 25, 2024, with reasons reported at 2024 ONSC 5778 (COA-24-CV-1252).

By the Court:

I. OVERVIEW

[1] These appeals require the court to reconsider the framework governing the disclosure of partial settlement agreements in multi-party civil litigation, and, in particular, the continued validity of the rule articulated in *Handley Estate v. DTE Industries Limited*.[1] The appeals were heard together because they raise common issues of law concerning the characterization of non-disclosure as an abuse of process, the appropriate remedial response to such conduct, and the interaction

[1] 2018 ONCA 324, 421 D.L.R. (4th) 636.

between the common law and the recently enacted r. 49.14 of the *Rules of Civil Procedure*.[2]

[2] The judgment is divided into two parts. In the first, we address the common issues. In the second, we apply the principles arising from that analysis to the individual appeals.

[3] At the centre of the common issues is the rule set out in *Handley Estate*, which provides that where parties enter into a partial settlement agreement that changes the adversarial landscape of the litigation, the agreement must be disclosed immediately to the non-settling parties and to the court; failure to do so constitutes an abuse of process; prejudice need not be shown; and a stay of proceedings is the only available remedy. The automatic and exceptionless nature of this rule is squarely in issue in these appeals.

[4] For the reasons that follow, we conclude that *Handley Estate* was wrongly decided. In our view, the rule departs from the fundamental principles that govern the doctrine of abuse of process. That doctrine has long required a contextual and discretionary assessment, directed to whether the impugned conduct results in unfairness, prejudice, oppression, or otherwise undermines the integrity of the administration of justice. These governing principles also require that any remedy be proportionate to the nature and consequences of the abuse. The *Handley*

[2] R.R.O. 1990, Reg. 194.

Estate rule, by contrast, mandates both a finding of abuse of process and the imposition of the most severe remedy, without regard to the circumstances of the case.

[5] Having determined that *Handley Estate* was wrongly decided, we must consider whether it should nonetheless be maintained in the interests of certainty and stability in the law. Applying the governing principles, we conclude that the advantages of overruling the decision outweigh any disadvantages. The rule has proven to be unduly rigid, capable of producing disproportionate outcomes, and a source of uncertainty and satellite litigation. The continued application of this rule would impede the principled development of the law governing abuse of process.

[6] We, therefore, overrule *Handley Estate* and restore the application of ordinary abuse of process principles to cases involving the non-disclosure of partial settlement agreements. Under this framework, the determination of whether there has been an abuse of process, and the selection of an appropriate remedy, are matters for the informed discretion of the court, to be exercised in light of all of the relevant circumstances.

[7] We also address the relationship between this common law framework and r. 49.14 of the *Rules of Civil Procedure*, which came into force after the events giving rise to these appeals. In our view, the rule reflects and reinforces the discretionary and proportionate approach that properly governs this area. Rule

49.14 clarifies the scope and timing of disclosure obligations and provides for a range of remedial responses, thereby avoiding the rigid consequences associated with the *Handley Estate* rule.

[8] Finally, we address the implications of this revised framework for appellate jurisdiction. We conclude that orders granting a stay of proceedings remain final and appealable to this court, while orders imposing remedies short of a stay, as well as orders declining to grant a stay in this context, are generally interlocutory and appealable to the Divisional Court, with leave.

[9] We turn now to the common issues.

II. COMMON ISSUES

[10] There are three common issues:

(1) Was *Handley Estate* wrongly decided;

(2) Should the decision be overruled; and

(3) Is r. 49.14 of the *Rules of Civil Procedure* to be applied to these appeals, if at all?

[11] Further, while none of the parties specifically raised the issue of jurisdiction, two of the appeals in this case are from denials of stays. Accordingly, we also address the question of whether remedies awarded short of a stay under the new rule and the common law of abuse of process constitute final or interlocutory orders.

[12] We address these issues in turn.

III. ANALYSIS

[13] We begin by defining what has become known as the *Handley Estate* rule. The *Handley Estate* rule at issue in these appeals rests on the following propositions:

(1) A plaintiff may settle an action against one or more other parties while leaving the action to continue against the remaining parties.

(2) Such a settlement agreement can change the adversarial position of the settling parties as set out in their pleadings into a co-operative one.[3] A metaphor used in the jurisprudence is that such an agreement

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[3] Brown J.A referred particularly to “Mary Carter” and “Pierringer” agreements, although the *Handley Estate* rule is broader, as explained at para. 39 of *Handley Estate*. In para. 35, footnote 1 of that decision, Brown J.A. described a Mary Carter agreement as typically having the following features:

> (i) the contracting defendant guarantees the plaintiff a certain monetary recovery and the exposure of that defendant is "capped" at that amount; (ii) the contracting defendant remains in the lawsuit; (iii) the contracting defendant's liability is decreased in direct proportion to the increase in the non-contracting defendant's liability: [*Pettey v. Avis Car Inc.* (1993), 13 O.R. (3d) 725 (Gen. Div.)], at p. 732; [*Laudon v. Roberts*, 2009 ONCA 383, 249 O.A.C. 72], at para. 36 [leave to appeal refused, [2009] S.C.C.A. No. 304]; *Moore v. Bertuzzi*, 2012 ONSC 3248, 110 O.R. (3d) 611, at para. 67.

Brown J.A noted at para. 39, footnote 2 of *Handley Estate* that a “Pierringer agreement” has the following features, citing Paul M. Perell & John W. Morden, *The Law of Civil Procedure in Ontario*, 3rd ed. (Toronto: LexisNexis Canada, 2017), at p. 762:

> (1) the settling defendant settles with the plaintiff; (2) the plaintiff discontinues its claim [against] the settling defendant; (3) the plaintiff continues its action against the non-settling [defendant] but limits its claim to the non-settling defendant's several liability (a 'bar order'); (4) the settling defendant agrees to co-operate with the plaintiff by making documents and witnesses available for the action against the non-settling defendant; (5) the settling defendant agrees not to seek contribution and indemnity from the non-settling defendant; and (6) the plaintiff agrees to indemnify the settling defendant against any claims over the by non-settling defendants.

could "change entirely the landscape of the litigation."[4] For example, the agreement could impact "the strategy and line of cross-examination to be pursued and evidence to be led by" the non-settling parties.[5]

(3) Because of these possible effects, the fact that such a settlement agreement has been reached must be disclosed to the non-settling parties and to the court immediately.[6] The disclosure obligation extends to terms of the agreement relevant to the litigation.

(4) Failing to disclose such a settlement agreement is an abuse of the process of the court.

(5) The party moving for a stay based on a failure to disclose need not prove that the responding party's failure to disclose prejudiced the moving party. Prejudice is not relevant to the abuse of process inquiry.[7]

(6) The "only remedy… is to stay the claim of the non-disclosing party". Only an automatic and exceptionless stay can communicate the

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[4] *Handley Estate*, at paras. 37, 45, citing *Aecon Buildings v. Stephenson Engineering Limited*, 2010 ONCA 898, 328 D.L.R. (4th) 488, at para. 13, leave to appeal refused, [2011] S.C.C.A. No. 84.
[5] *Handley Estate*, at para. 36, per Brown J.A., citing *Laudon v. Roberts*, 2009 ONCA 383, 249 O.A.C. 72, at para. 39, leave to appeal refused, [2009] S.C.C.A. No. 304, quoting *Pettey v. Avis Car Inc.* (1993), 13 O.R. (3d) 725 (Gen. Div.), at pp. 737-38.
[6] *Handley Estate*, at para. 36, per Brown J.A., citing *Laudon*, at para. 39, quoting *Pettey*, at pp. 737-38.
[7] *Handley Estate*, at para. 45, citing *Aecon*, at para. 16; *Handley Estate*, at para. 46.

> seriousness of the default and permit to court to control its own process in the interests of justice.[8]

[14] The automatic and exceptionless nature of the remedy is squarely in issue in these appeals. It has led to efforts by parties and the courts to create exceptions where strict application of a mandatory rule would create an injustice in a specific case. Some of these efforts have led to disputes about the true meaning of the imprecise metaphor: “change entirely the landscape of the litigation”. The word “immediate” has similarly been interpreted flexibly. Mandatory exceptionless rules create perverse incentives. We now turn to the issues.

1. The *Handley Estate* Rule Was Wrongly Decided

[15] The *Handley Estate* decision rests on the common conviction of all courts that abuses of process must be prevented or remedied because they can lead to injustice. However, the *Handley Estate* rule presents a two-fold problem. First, it stipulates that the failure to disclose a partial settlement on a timely basis is an abuse of process, whether there is evidence of unfairness, prejudice or oppression to the parties or prejudice to the administration of justice.[9] Second, it prescribes a stay of proceedings as the only remedy, thus ending the litigation. In prescribing this invariable outcome, *Handley Estate* is an outlier. It does not, and cannot, fit

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[8] *Handley Estate*, at para. 45, citing *Aecon*, at para. 16.

[9] We note in passing that the etymology of “prejudice” is “pre-judgment” but another usage is as having an undue adverse impact. The latter sense of the word is at issue in the abuse of process cases.

comfortably into the universally accepted framework for abuse of process. The *Handley Estate* rule is the antithesis of the discretionary approach that is at the heart of the abuse of process doctrine, as we will explain.

[16] Neither the question of whether there has been an abuse of process, nor the question of remedy, is determined by categorical considerations. The question of whether there has been an abuse of process depends upon a host of factors, including the existence of prejudice, and the impact of the conduct on the repute of the justice system. The remedy for an abuse of process depends on, among other things, the nature of the abuse, the character of the prejudice and the extent to which the aggrieved party can be adequately redressed by something less draconian than the termination of the case. In some cases, a stay will flow from a showing of prejudice to the integrity of the administration of justice alone.

[17] In short, both the determination of whether there has been an abuse of process, and the determination of an appropriate remedy require careful, discretionary assessments. Courts have consistently rejected formulaic approaches. A doctrine designed to serve the ends of justice, applied mechanically, acts contrary to its own animating objective.[10] The judicial power to control the court's process is an essential feature of the administration of justice,

[10] *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at para. 1; *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19, [2013] 2 S.C.R. 125, at para. 30; see also *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at paras. 52-53.

but, absent the defining element of discretion, that power becomes an arbitrary instrument, too blunt to do justice in individual cases.

A. The history of the doctrine

[18] This focus on discretion is evident in the history of the doctrine. The inherent power of courts to control, and prevent abuse of, their processes was recognized "from early times" as Lord Blackburn L.C. stated in *Metropolitan Bank v. Pooley*.[11] He proclaimed that courts have long had the authority to see that their process "was not abused by a proceeding without reasonable grounds, so as to be vexatious and harassing–the court had a right to protect itself against such an abuse". This power did not flow from a statute or rule, but, rather, "seemed to be inherent in the jurisdiction of every Court of Justice to protect itself from the abuse of its own procedure", the Lord Chancellor noted.

[19] The inherent power to prevent abuse of the judicial process is the "very life-blood, [the] very essence, [the] immanent attribute" of a Superior Court.[12] It is rooted in "the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administrating justice according to law in a regular, orderly and effective manner."[13] For those courts that derive their jurisdiction from statute, the power to

[11] (1885), 10 App. Cas. 210 (U.K. H.L.).
[12] I.H. Jacob, "The Inherent Jurisdiction of the Court" (1970), *23 Curr. Legal Probs.* 23, at pp. 27-28.
[13] Jacob, at pp. 27-28.

control the court's process is necessarily implied in the grant of power to function as a court of law.[14]

[20] The doctrine of abuse of process operates to prevent or remedy a litigant's conduct that is unfair, improper, prejudicial, or oppressive and vexatious.[15] It seeks to prevent "abuse of the decision-making process".[16] As noted in *Foy v. Foy (No. 2)*, the employment of judicial proceedings for improper purposes not only interferes with the business of the courts but tarnishes the image of the administration of justice.[17]

[21] The doctrine of abuse of process "engages the inherent power of the court to prevent misuse of its proceedings in a way that would be manifestly unfair to a party or would in some way bring the administration of justice into disrepute".[18]

B. The application of the doctrine

[22] The doctrine of abuse of process has broad application. It reaches across the juridical spectrum, applying in criminal prosecutions, civil litigation and administrative proceedings.[19] The expansive reach of the doctrine makes perfect

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[14] *R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331, at paras. 18-19.
[15] *C.U.P.E.*, at para. 35
[16] *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52, [2011] 3 S.C.R. 422, at para. 34, citing *Danyluk*, at para. 20.
[17] (1979), 26 O.R. (2d) 220 (C.A.), at p. 237, *per* Blair J.A. (dissenting, but not on this point).
[18] *R. v. Varennes*, 2025 SCC 22, 504 D.L.R. (4th) 583, citing *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4, 500 D.L.R. (4th) 279, at paras. 33-36.
[19] *C.U.P.E.*, at para. 36; *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, [2022] 2 S.C.R. 220, at para. 34; *Behn v. Moulton Contracting Ltd.*, 2013 SCC 26, [2013] 2 S.C.R. 227, at para. 39.

sense: its purpose is to preserve the integrity of the judicial process, an objective common to all types of proceedings.

[23] Moreover, the primary focus is the integrity of courts' adjudicative functions, and less on the interests of parties.[20] A finding of abuse of process may yield a personal remedy for a litigant. However, the doctrine safeguards interests – the fair and proper administration of justice – that transcend the parties before the court.[21]

[24] Within each discrete area of law – civil, criminal, and administrative – different acts might qualify as abusive. In the civil context, abuse of process can arise where there is re-litigation of issues, multiplicity of proceedings, vexatious conduct, abusive pleadings, or self-help remedies, to name a few examples.[22] In criminal matters, the doctrine is concerned with the conduct of state officials that can render a trial unfair or otherwise call into question or undermine the integrity of the proceedings.[23] In the administrative context, inordinate delay has been held to be capable of damaging the public interest in the fairness of the process.[24]

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[20] *Abrametz*, at para. 36; *C.U.P.E.*, at para. 43; *R. v. Conway*, [1989] 1 S.C.R. 1659, at p. 1667; *R. v. Scott*, [1990] 3 S.C.R. 979, at p. 1007.
[21] *Behn*, at para. 41; *Figliola*, at paras. 24-25 and 31.
[22] See P. M. Perell, "A Survey of Abuse of Process", in T. L. Archibald and R. S. Echlin, eds., *Annual Review of Civil Litigation 2007* (Toronto: Thomson Reuters, 2007), 243; see *Behn* for its application in the context of self-help remedies.
[23] *R. v. Brunelle,* 2024 SCC 3, 488 D.L.R. (4th) 581, at para. 27; *R. v. Cawthorne*, 2016 SCC 32, [2016] 1 S.C.R. 983, at para. 25; *R. v. Anderson*, 2014 SCC 41, [2014] 2 S.C.R. 167, at para. 50; *R. v. Jewitt*, [1985] 2 S.C.R. 128, at pp. 135-37.
[24] *Abrametz*, at para. 38; *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, at paras. 105-7.

[25] The doctrine calls for a holistic evaluation of the acts in issue and the resulting impact on the process. This includes an assessment of whether the impugned action is fueled by improper intent, has resulted in prejudice, oppression or unfairness, or whether it has otherwise undermined the integrity of the administration of justice.[25]

[26] Thus, the first question to be asked – whether there has been an abuse of process – is not governed by categorical pre-determinations. Common to the application of the doctrine across the areas of law is judicial discretion. The doctrine is characterized by its flexibility.[26] It is not encumbered by specific requirements.[27] Yet that is precisely what the *Handley Estate* rule does. It compels a finding of abuse of process, whether or not the failure to disclose the settlement has resulted in unfairness, prejudice, or oppression to a party, and whether or not there is prejudice to the integrity of the judicial system. This is inconsistent with the traditional analysis of whether there has been an abuse of process, which calls for sensitive attention to the context and circumstances of the case.

[27] Judicial discretion is also critical as it relates to remedy, which is the second question in the abuse of process analysis.[28] As this court observed in *Abarca v. Vargas*, “There is no law supporting the conclusion that an abuse of process must

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[25] See e.g. *Métis Nation*, at para. 33; *Varennes*, at paras. 53-54; *Jewitt*, at pp. 136-37; *R. v. Power*, [1994] 1 S.C.R. 601, at pp. 612-15; *R. v. O’Connor*, [1995] 4 S.C.R. 411, at para. 59.
[26] *Métis Nation*, at para. 34; *Abrametz*, at para. 35; *Behn*, at para. 40; *C.U.P.E.*, at paras. 37-38.
[27] *Métis Nation*, at para. 34; *Abrametz*, at para. 35; *Behn*, at para. 40; *C.U.P.E.*, at paras. 37-38.
[28] *Métis Nation*, at para. 32; *Abrametz*, at paras. 74-76.

lead inevitably to the dismissal of the associated claim."[29] This is because "[i]n each case the court must assess the gravity of the abuse in determining the severity of its response, bearing in mind the principle of proportionality."[30] This approach should not be surprising "since instances of abuse of process fall across the spectrum from egregiously contemptuous conduct to relatively minor breaches of procedural rules."[31]

[28] As we have summarized above, the *Handley Estate* rule compels a stay of proceedings when there is an abuse of process without any consideration of prejudice. In effect, this is a remedy without a preceding wrong. It also prevents crafting a remedy responsive to the circumstances of the case.

[29] In *O'Connor*, L'Heureux-Dubé J. observed that, whether at common law, or under the *Charter*, judges have the remedial flexibility to use "a scalpel instead of an axe."[32] The scalpel is the tool of choice in the civil context as well. It is well settled that a stay is reserved for "the clearest of cases".[33] It is the most draconian of judicial orders, amounting to a judicial termination of the proceedings. This will be justified in cases where the unfairness or prejudice to a party or to the integrity of the judicial process is so egregious that it outweighs the interest in allowing the case to proceed.

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[29] 2015 ONCA 4, 123 O.R. (3d) 561, at para. 29.
[30] *Abarca*, at para. 29.
[31] *Abarca*, at para. 29.
[32] *O'Connor*, at para. 69.
[33] *O'Connor*, at paras. 68, 82; *Brunelle*, at para. 29.

[30] When the high threshold for a stay is not met, other remedies must be considered. In the criminal context, this may consist of exclusion of evidence, disclosure, or a reduction in sentence. In the administrative law context, this may include making use of internal tribunal procedures, obtaining an order of *mandamus*, a reduction in sanction, or ordering or setting aside costs.[34] In the civil context, the new subrule 49.14(7) contemplates a range of consequences for non-compliance with the partial settlement agreement disclosure rule, including orders for costs, further examinations for discovery, striking out evidence, staying proceedings, and such other orders as are just.

C. The standard of review

[31] A finding that there is an abuse of process must rest on a correct legal foundation, but once that is established, then both the finding and the discretionary remedy attract appellate deference. This is how we reconcile the somewhat inconsistent holdings of the Supreme Court.

[32] This court has, consistent with the principles discussed above, treated abuse of process as a finding that is owed deference.[35] As set out in the preceding

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[34] *Abrametz*, at paras. 74-100.

[35] *Pine Glen Thorold Inc. v. Rolling Meadows Land Development Corporation*, 2025 ONCA 604, 178 O.R. (3d) 241, para. 37, leave to appeal requested, [2025] S.C.C.A. No. 459; *SIF Solar Energy Income & Growth Fund v. Aird & Berlis LLP*, 2024 ONCA 946, at para. 19; *Davies v. Clarington (Municipality)*, 2023 ONCA 376, 167 O.R. (3d) 33, at para. 48; *The Catalyst Capital Group Inc. v. VimpelCom Ltd.*, 2019 ONCA 354, 145 O.R. (3d) 759, at para. 24, leave to appeal refused, [2019] S.C.C.A. No. 284; *Khan v. Law Society of Ontario*, 2020 ONCA 320, 446 D.L.R. (4th) 575, at para. 10, leave to appeal refused, [2020] S.C.C.A. No. 288; *Visic v. Elia Associates Professional Corporation*, 2020 ONCA 690, at para. 8, leave to appeal refused [2020] S.C.C.A. No. 473; *Currie v. Halton Regional Police Services Board* (2003), 233 D.L.R. (4th) 657 (Ont. C.A.), at para. 16.

section, the Supreme Court has emphasized the flexible nature of the doctrine. In *C.U.P.E.*, Arbour J. referred to the discretionary nature of abuse of process as part of the doctrine's "attraction".[36] However, a recent line of Supreme Court cases has asserted that abuse of process is a question of law alone and that the applicable standard of review is that of correctness.[37] In *Abrametz*, Rowe J. asserted, without reference to any specific authority, that the standard of review for abuse of process is correctness. He reiterated this principle in *Métis Nation*, citing, as authority, his earlier decision in *Abrametz.* Shortly thereafter, Rowe J. noted that "abuse of process is a broad concept that applies in various contexts" and that it is "characterized by its flexibility".[38]

[33] Respectfully, it is difficult to reconcile a correctness standard of review with the nature of fact-finding and the discretionary features of abuse of process. The abuse of process framework calls for a careful balancing of competing interests. This is the type of determination that should attract deferential review.

[34] There is some ambivalence in *Métis Nation* on the issue of discretion. After identifying the standard of review as one of correctness, Rowe J. went on to assert that the choice of remedy "is discretionary" and therefore "generally entitled to deference".[39] Rowe J. observed that such determinations "may only be interfered

[36] *C.U.P.E.*, at para. 42.
[37] *Abrametz*, at para. 30; *Métis Nation*, at para. 31.
[38] *Métis Nation*, at para. 34.
[39] *Métis Nation*, at para. 32.

with if there is a legal error (considered to be an error in principle), a palpable and overriding factual error (viewed as a material misapprehension of the evidence) or a failure to exercise discretion judicially (which includes acting arbitrarily or being 'so clearly wrong as to amount to an injustice')".[40]

[35] The same level of deference ought logically to apply to the question of whether there has been an abuse of process. Like the choice of remedy, the determination of whether conduct is oppressive, vexatious, prejudicial, or otherwise undermines the integrity of the administration of justice, calls for weighing competing considerations and the exercise of judicial discretion.

[36] We reconcile this inconsistency as noted above: when a finding that there is an abuse of process rests on a correct legal foundation, then both the finding and the discretionary remedy attract appellate deference.

D. Conclusion

[37] To conclude, the nuances that define the doctrine of abuse of process are entirely absent from the *Handley Estate* rule, both as it relates to finding an abuse of process, and to the fashioning of an appropriate remedy. The time has come to exchange the *Handley* axe for a more precise scalpel, that can better achieve

[40] *Métis Nation*, at para. 32, citing *Canada (Transportation Safety Board) v. Carroll-Byrne*, 2022 SCC 48, at para. 41, and *P. (W.) v. Alberta*, 2014 ABCA 404, 378 D.L.R. (4th) 629, at para. 15.

justice in individual cases and can fit more comfortably within the time-honoured framework that governs abuse of process.

[38] The new r. 49.14 of the *Rules of Civil Procedure* sets out requirements for the disclosure of partial settlement agreements along with remedies for failing to do so. As we discuss below, the elements of the new rule reflect the discretion present in the broader common law abuse of process doctrine. We first address the origins and nature of the new rule before moving to our reasons for why *Handley Estate* should be overruled under the second prong of the test from *David Polowin Real Estate Ltd. v. Dominion of Canada General Insurance Company*.[41] The reasons for creating the new rule are closely connected to the reasons for why *Handley Estate* was wrongly decided.

2. The Application of Rule 49.14

A. Why a new rule was created

[39] Although the *Handley Estate* rule is of relatively recent vintage, it has been a source of significant controversy within the legal profession. Numerous academic articles have been published on the topic, and the rule has been heavily litigated in the courts. Concerns were expressed by both lawyers and judges which prompted the Civil Rules Committee to explore whether a new rule governing partial settlement agreements should be added to the *Rules of Civil Procedure*.

[41] (2005), 76 O.R. (3d) 161 (C.A.), leave to appeal refused, [2005] S.C.C.A. No. 388.

The committee consulted with the bar and other stakeholders on the need for a new rule, and the terms of any such rule. The new rule, r. 49.14, came into force on June 16, 2025.

[40] The creation of the new rule was prompted by a number of concerns with the *Handley Estate* rule. First, and perhaps most importantly, the *Handley Estate* rule has been seen as unduly harsh.[42] As discussed above, in its blanket operation, it can lead to punitive and unfair outcomes. Indeed, this court previously recognized that the *Handley Estate* rule has taken on a deterrent role.[43]

[41] Second, the harshness of the rule has resulted in an understandable desire to limit the scope of the disclosure obligation. The rule has failed to adequately account for cases in which prejudice arises, but no stay is warranted.[44] To avoid the remedy, the disclosure obligation itself has been construed narrowly.[45] It has been limited to partial settlement agreements which "chang[e] entirely the landscape of the litigation in a way that significantly alters the dynamics of the litigation".[46]

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[42] Barbara L. Grossman & Ara Basmadjian, "*Waxman v. Waxman*: Failure to Immediately Disclose a Partial Settlement Agreement That Changes the Litigation Landscape Will Result in a Stay of Proceedings" (2022) 53 Advoc. Q. 251, at p. 253; Edwin G. Upenieks & Julia M.E. Chumak, "The Balancing Act for Canadian Litigators: Encouraging Settlement between Parties and the Procedural Risks of Entering into Settlement Agreements in Multi-Party Litigation" (2023) 53 Advoc. Q. 393, at p. 410; Stephen Aylward, "A Shifting Landscape: Non-Disclosure of Partial Settlements in Multi-Party Litigation" Ann. Rev. Civil (Toronto: Thomson Reuters, 2023), at p. 38.
[43] *Tallman Truck Centre Limited v. K.S.P. Holdings Inc.*, 2022 ONCA 66, 466 D.L.R. (4th) 324, at para. 28, leave to appeal refused, [2022] S.C.C.A. No. 170.
[44] Aylward, at pp. 41-42.
[45] *Bennington Financial Corp. v. Medcap Real Estate Holdings Inc.*, 2024 ONCA 90, at para. 15.
[46] *Crestwood Preparatory College Inc. v. Smith*, 2022 ONCA 743, 164 O.R. (3d) 291, at para. 57.

[42] Third, the obligation to disclose has been criticized for being unclear and uneven in its application.[47] Although the rule calls for "immediate" disclosure of partial settlement agreements, "immediacy" has been given a somewhat flexible interpretation. In some cases, the obligation has been satisfied even where disclosure was not made until several days, or even weeks, after the settlement was reached.[48] The "immediate" disclosure requirement has also, at times, been relaxed by allowing for rolling disclosure of the settlement terms.[49] The requirement to disclose "immediately" has been even less certain in cases involving parties under disability, given the requirement for court approval of a proposed settlement.

[43] The extent of the disclosure obligation has been unclear – both in terms of what types of agreements give rise to the disclosure obligation and, once the obligation is triggered, what terms of the agreements need to be disclosed. Identifying whether an agreement "chang[es] entirely the landscape of the litigation in a way that significantly alters the dynamics of the litigation" and which of the specific terms in the agreement has brought about that result is no easy task.

[44] Finally, as a result of the lack of clarity in the disclosure obligation and the harshness of the remedy, the *Handley Estate* rule has become a "trap for the

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[47] Upenieks; Katherine T. Di Tomaso et al., "Obligation to Immediately Disclose a Partial Settlement Agreement That Changes the Litigation Landscape in Multi-Party Litigation" (2024) 55 Advoc. Q. 86.
[48] See e.g., *Kingdom Construction Limited v. Perma Pipe Inc.*, 2023 ONSC 4776, 7 C.C.L.I. (6th) 236, aff'd 2024 ONCA 593.
[49] See e.g., *CHU de Québec-Université Laval v. Tree of Knowledge International Corp.*, 2022 ONCA 467, 162 O.R. (3d) 514.

unwary" and a tool for those who would seek to take advantage of minor slips and inadvertent non-compliance.[50] As the motion judge noted in the *Thrive* decision under appeal, the *Handley Estate* rule's sole focus on the plaintiff's failure to disclose ignores broader issues of unfairness in the litigation, including the defendant's own conduct.

[45] The rule's incentives have generated a whole host of unnecessary litigation – this court alone heard nearly a dozen cases dealing with the *Handley Estate* rule between 2022 and 2024.[51] In this way, the rule has done the exact opposite of securing "the just, most expeditious and least expensive determination of every civil proceeding on its merits."[52]

B. How the new rule differs from the *Handley Estate* rule

[46] Rule 49.14 was created to address the concerns that have been identified. It differs from the *Handley Estate* rule in three key ways.

[47] First, the rule expands the scope of available remedies. Under r. 49.14(7), when a party fails to disclose a partial settlement agreement, the court has a number of remedies to choose from to address any prejudice caused by the non-disclosure. These approaches include ordering costs, ordering or permitting further examinations for discovery, ordering additional disclosure or production of

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[50] Grossman, at pp. 261-262.
[51] Grossman, at p. 253.
[52] Grossman, at p. 262, citing r. 1.04 of the *Rules of Civil Procedure*.

documents, striking out all or a part of a party's evidence, adjourning a hearing, staying the proceedings, or making any other order as is just.

[48] Second, the rule expands the scope of the disclosure obligation. Rule 49.14 is not limited merely to partial settlement agreements that "entirely" change the litigation landscape and "significantly" alter the dynamics of the litigation. Instead, the rule applies whenever there is a partial settlement agreement. This change avoids litigation surrounding whether or not the agreement needs to be disclosed.

[49] Third, the rule clarifies the disclosure obligation, both in terms of what must be disclosed and when disclosure must occur. The rule clarifies that all terms other than the monetary value of the settlement must be disclosed – a much clearer standard than all terms which "change the adversarial orientation of the proceeding".[53] The rule also provides for a defined time limit for disclosure: in most circumstances, the settlement must be disclosed by the earlier of seven days after the agreement is reached or the taking of any further step in the proceeding. If the partial settlement requires court approval, the new rule sets out a specific procedure for the timing of the disclosure, tied to the filing of the motion record and the approval by the court.

[50] By clarifying the timing and extent of the disclosure obligation, expanding its scope, and making available a broader range of remedies, r. 49.14 empowers the

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[53] *CHU*, at para. 55.

court to address any type of prejudice arising from non-disclosure of partial settlement agreements in a fair manner, tailored to the facts of a particular case. It removes the mandatory stay of an action which has resulted in unfair outcomes and provides certainty to counsel concerning their obligations. It also removes the incentive for litigants who might be inclined to take advantage of minor inadvertent delays in disclosure. This will bring the law relating to partial settlement disclosure in line with the broader abuse of process framework.

C. The new rule and the common law abuse of process

[51] This discussion demonstrates that the substantive elements of r. 49.14 reflect what we believe is the nuanced position that the common law on abuse of process would have reached, in this narrow area of partial settlements in civil actions, had the *Handley Estate* rule not curtailed its development. The parties addressed whether r. 49.14 could or should be applied retrospectively. On close examination, this issue falls away because, having reversed *Handley Estate*, the rule and the common law are consistent with one another. While r. 49.14 adds technical details as to when a partial settlement agreement must be disclosed, a breach of the timelines in the rule does not automatically entail a finding that an abuse of process has occurred. It is a strong indicator, but under r. 49.14, both the finding of an abuse of process and the resulting remedy remain in the discretion of

the judge. This approach is consistent with the common law abuse of process principles set out above.

3. *Handley Estate* Should be Overruled

[52] As this court confirmed in *Polowin*, determining that a case has been wrongly decided is not sufficient to determine that it should be reversed.[54] The court must still weigh "the advantages and disadvantages of correcting the error of the previous decision".[55] Only where the advantages of overruling outweigh the disadvantages will this court dispense with *stare decisis* and discard its past precedents.[56]

[53] As this court noted in *Stamford Kiwanis*, the weighing exercise "focuses on the nature of the error including the effect and future impact of either correcting or maintaining the error, the effect and impact on the parties and future litigants, and the integrity and administration of our justice system."[57]

[54] The advantages of reversing *Handley Estate* outweigh any disadvantages. It should be overruled.

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[54] *Polowin*, at para. 107.
[55] *Stamford Kiwanis Non-Profit Homes Inc. v. Municipal Property Assessment Corporation*, 2025 ONCA 450, 177 O.R. (3d) 161, at para. 39.
[56] *Stamford Kiwanis*, at para. 41.
[57] *Stamford Kiwanis*, at para. 39.

A. The new r. 49.14 does not militate against overruling *Handley Estate*

[55] Partial settlement disclosure will be governed by r. 49.14 going forward, but reversing *Handley Estate* still has a beneficial effect. This is true for three reasons.

[56] First, it is axiomatic in a common law legal system that a wrongly decided case should be overruled in the interests of justice and of the proper development of the law. While there might be reasons to leave a long-standing precedent in place even though it was wrongly decided, such instances must be rare.

[57] Second, reversing *Handley Estate* will remove any ambiguity regarding the interaction between the common law disclosure regime and r. 49.14. For example, in *Smialek et al. v. Status Construction Ltd. et al.*, Schabas J. held that:

> Rule 49.14 applies broadly to any "partial settlement agreement." It is not limited to settlements which change the adversarial landscape, and does not address that situation at all. In these circumstances, I do not read Rule 49.14 as overruling or changing the remedy compelled by *Handley*.[58]

[58] In other words, there is a judicial view that *Handley Estate* still applies to certain kinds of partial settlement agreements, i.e. those that entirely change the litigation landscape. Assuming without accepting that there are scenarios where a court might find *Handley Estate* still applies and r. 49.14's remedial requirements do not, reversing *Handley Estate* will resolve such an issue.

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[58] 2025 ONSC 5229, at para. 25.

[59] Third, r. 49.14 does not assist the courts in other provinces which have relied on the rule.[59] In *Green v. Canadian Imperial Bank of Commerce*, this court considered an argument that legislative responses to the potential adverse effects of a wrongly decided precedent meant there was no need to reverse the precedent.[60] Feldman J.A., for the majority, rejected this argument:

> One could argue that the court need not reverse its own decision when the legislature is able to fix the statutory language and clarify its intent with amendments to the legislation. However, where the court is in the position to revisit its interpretation and is satisfied that the *Polowin* test is met, and especially when the court's revised interpretation could be given effect in other affected provinces, the better course is for the court to act. Otherwise, each province would have to take separate action. In *Polowin*, the legislature had already amended the legislation for the future, but the court nevertheless reversed its decision, in part in order to protect those not covered by the amendment.[61]

[60] A similar conclusion is warranted in this case. Indeed, the erroneous reasoning in *Handley Estate* has only recently taken root in other provincial superior courts. Overruling *Handley Estate* now will ensure that other provinces are not relying on an erroneous precedent before it becomes too entrenched in their jurisprudence. It will also provide other provinces with assistance as they fashion their own rules regarding the disclosure of partial settlement agreements.

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[59] For the application of *Handley Estate* in other jurisdictions, see e.g., *Ball v. 1979927 Alberta Ltd.*, 2024 ABKB 229; *Erickson v. Mile Two Church Inc.,* 2025 SKKB 71, [2025] 9 W.W.R. 317.
[60] 2014 ONCA 90, 118 O.R. (3d) 641, aff'd 2015 SCC 60, [2015] 3 S.C.R. 801.
[61] *Green*, at para. 74.

B. Concerns about juridical instability are not persuasive

[61] Whenever a precedent is reversed, there will be potential concern over those cases that were subject to the prior rule that is now regarded as wrongly decided. These consequences, while concerning, are not determinative of the issue.

[62] The harsh consequences of the automatic stay and difficulties applying terms such as "entirely change the litigation landscape" and "immediate disclosure" have been raised in the past, including by the motion judge in the *Thrive* decision now on appeal. However, this is the first occasion that a five-judge panel was sought to consider the question of reversing *Handley Estate*. The recent applications of *Handley Estate* by this court were, therefore, not necessarily affirmations of its underlying principles, but rather instances of horizontal *stare decisis*.[62]

[63] As well, the significant volume of cases reaching this court on the *Handley Estate* issue is itself a symptom of the uncertainties which arise in interpreting and applying the existing thresholds. Reversing *Handley Estate* and restoring the ordinary principles of abuse of process will lead to a more transparent and consistent case law in the area.

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[62] For instances of three-judge panels of this court rejecting a departure from the *Handley Estate* rule, see e.g., *Tallman Truck*, at paras. 27-28; *Waxman v. Waxman*, 2022 ONCA 311, 471 D.L.R. (4th) 52, at para. 47, leave to appeal refused, [2022] S.C.C.A. No. 188.

[64] That said, this is not a case such as *Fernandes v. Araujo*, in which this court overruled a past precedent resting on "unstable foundations".[63] The frequency and recent nature of these applications of *Handley Estate* mean parties across Ontario, and in other jurisdictions where *Handley Estate* has been adopted, are relying on the precedent. Accordingly, they are making litigation decisions and fashioning strategies with this precedent in mind. In *Stamford Kiwanis*, the court underscored that few decisions had followed the precedent at issue and that this court had never affirmed it.[64]

[65] However, this consideration cuts both ways. On the one hand, reversing a recent precedent can heighten disruption. On the other hand, as the majority observed in *Green*, relying on the pre-*Polowin* decision *R. v. White*, there is less confusion and more certainty in quickly correcting an error rather than letting it take deeper root.[65] We are persuaded that similar reasoning applies in this case.

C. Overruling *Handley Estate* prevents unjust outcomes

[66] Chief among the benefits is that overruling *Handley Estate* will safeguard against disproportionate and unjust outcomes, which have been set out in detail in the preceding sections. This court is obliged to discharge its role of preventing the

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[63] 2015 ONCA 571, 127 O.R. (3d) 115.
[64] *Stamford Kiwanis*, at para. 78.
[65] *Green*, at para. 76; *R. v. White* (1996), 29 O.R. (3d) 577 (C.A.), at p. 605.

abuse of process doctrine from operating in an unfair manner or producing "undesirable result[s]".[66]

[67] With respect to preventing injustice, this case parallels this court's decision in *York Region Standard Condominium Corporation No. 1206 v. 520 Steeles Developments Inc.*, which reversed *York Condominium Corp. No. 46 v. Medhurst, Hogg & Associates Ltd. et al*. (1983).[67] The court in *Medhurst* held that a failure to provide notice under s. 14(1) of the *Condominium Act* and its successor provisions automatically resulted in an action being deemed a nullity.[68]

[68] Harvison Young J.A., writing for the unanimous five-judge panel in *Steeles Developments*, explained her conclusion under the second prong of *Polowin*, as follows:

> Further, *Medhurst* is not simply a case which, with the benefit of the subsequent jurisprudence, would likely have been decided differently by this court, but is a decision which has the potential to cause injustice. As noted above, holding that nullity must result from non-compliance can lead to inconvenience and injustice to the very constituency – condominium owners – that the provision was intended to protect. Automatically invalidating otherwise meritorious claims for breach of the notice requirement serves no intended purpose. The fact that adhering to *Medhurst* would impose harsh unintended results on precisely those the Act was enacted to protect, both the condominium owners in this

[66] *C.U.P.E.*, at para. 53.
[67] *York Region Standard Condominium Corporation No. 1206 v. 520 Steeles Developments Inc.*, 2020 ONCA 63, 444 D.L.R. (4th) 415; *York Condominium Corp. No. 46 v. Medhurst, Hogg & Associates Ltd. et al.* (1983), 41 O.R. (2d) 800 (C.A.).
[68] R.S.O. 1980, c. 84.

> litigation and condominium owners who may be litigants in the future, weighs against following it. [Emphasis added.][69]

[69] A similar logic applies in this context. *Handley Estate* is a decision which has the potential to cause injustice, by automatically staying an otherwise meritorious case without any consideration of whether such a stay is appropriate in the circumstances. As discussed above, the *Handley Estate* rule functions as an axe, rather than a scalpel.

[70] For these reasons, we conclude that the benefits of reversing *Handley Estate* outweigh the disadvantages, and pursuant to the *Polowin* test, *Handley Estate* should now be reversed.

4. Reversing *Handley Estate*: The Issue of Jurisdiction

[71] In *CHU*, the respondent argued that a refusal to grant a stay was an interlocutory decision, and therefore, this court lacked jurisdiction to hear the appeal.[70] This court concluded that it was reasonable to treat the order under appeal as a final order for determining appeal rights, relying in part on *Aecon Buildings v. Brampton (City)*.[71] The conclusion in *CHU* has been cited in at least one other setting involving an appeal from a denial of a stay.[72] *Handley Estate* itself

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[69] *Steeles Developments*, at para. 40.
[70] *CHU*, at para. 37.
[71] 2010 ONCA 773.
[72] See *Halton Standard Condominium Corporation No. 550 v. Del Ridge (Appleby) Inc.*, 2023 ONCA 753, 169 O.R. (3d) 556.

also arose in the context of an appeal from a decision denying a stay on abuse of process grounds, though the court did not address the jurisdictional question in that case.

[72] Sections 6(1)(b) and 19(1)(b) of the *Courts of Justice Act* ("*CJA*") make clear that only final orders are appealable to this court, while interlocutory orders are appealable to the Divisional Court, with leave.[73] A final order is one that determines the real matter in dispute between the parties, the very subject matter of the litigation, or any substantive right to relief of a plaintiff or substantive right of a defendant, while an interlocutory order is one which does not do so.[74]

[73] Having reversed the *Handley Estate* framework for challenges to partial litigation agreements and having broadened the abuse of process analysis along the lines set out above, we conclude it is appropriate to revisit the question of this court's jurisdiction over appeals from challenges to partial litigation agreements. Questions regarding appeal routes from determinations under the new r. 49.14 are also sure to arise.

[74] While none of the parties raised this aspect of the *Handley Estate* framework in arguing these appeals, providing clear guidance at the outset of the partial

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[73] R.S.O. 1990, c. C.43.
[74] *Drywall Acoustic Lathing Insulation Local 675 Pension Fund v. SNC-Lavalin Group Inc.,* 2020 ONCA 375, at para. 16; *Johnson v. Ontario*, 2021 ONCA 650, 158 O.R. (3d) 266, at paras. 11-12.

settlement disclosure framework, which will govern future litigation, will avoid unnecessary disputes over the pathway of appeals.

[75] We also note that the *stare decisis* analysis is more straightforward in the jurisdictional context than in the context of reversing the *Handley Estate* rule itself. In our view, the *Polowin* framework is not engaged. Where this court has determined that a prior precedent establishing this court's jurisdiction was wrong, that error will be corrected irrespective of whether it might meet or not meet the criteria in the second prong of *Polowin*.

[76] There are two jurisdictional issues to be addressed under the post-*Handley Estate* framework: (1) the appeal routes from remedies imposed under r. 49.14(7) or at common law following a finding of abuse of process; and (2) the appeal routes from a finding that r. 49.14 has not been violated or where a court has found no abuse of process occurred.

A. Appeal routes from a breach of r. 49.14 or a finding of abuse of process

[77] Under the current approach, where a stay is ordered after a challenge to a litigation agreement, that order is final, and an appeal lies to this court.

[78] However, under the new framework, an array of remedies short of a stay may be available to deal with litigation agreements, either under r. 49.14(7) or under the common law abuse of process analysis set out above.

[79] Most of the available remedies do not end the litigation, for example, costs, further examinations, or more extensive discovery. These are interlocutory orders from which the appeal will lie to the Divisional Court, with leave.

[80] As this court observed in *Drywall Acoustic*, the key distinction is whether the order below forecloses a substantive claim or defence on the merits. In the partial litigation agreement context, this means that a stay will generally result in appeals to this court because the claim is foreclosed, while remedies short of a stay (including the denial of a stay) will generally result in appeals to the Divisional Court, with leave, because the claim remains to be determined.

B. Appeal routes from a finding that r. 49.14 was not breached or that no abuse of process has occurred

[81] Generally, while orders granting stays of proceedings are final, orders denying such stays are interlocutory.[75] However, this rule generally has been read together with the broader principle that it is an order's legal nature that governs appellate jurisdiction.[76] An order that forecloses a substantive claim or defence that could be determinative of the entire action has long been held to be final for the purposes of appeal.[77]

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[75] *Halton*, at para. 12.
[76] *Paulpillai Estate v. Yusuf*, 2020 ONCA 655, at para. 16.
[77] *Ball v. Donais* (1993), 13 O.R. (3d) 322 (C.A.).

[82] This conclusion has been applied explicitly to orders denying stays on the basis of an abuse of process under r. 21.01(3)(d) of the *Rules of Civil Procedure*.[78] This context gave rise to the court's conclusion in *Aecon Buildings v. Brampton (City)* that the denial of a stay on the basis of abuse of process in the context of failing to disclose a partial settlement agreement is interlocutory.[79]

[83] The reasoning from *Ball v. Donais* has been used to justify appeals to this court on the basis of denials of stays in other settings as well, for example, where it was argued that the court had no subject matter jurisdiction or should decline to exercise that jurisdiction on the basis of *forum non conveniens*.[80] As explained in *Locking v. Armtec Infrastructure Inc*., such cases were treated as final because they "involved access to the court system or the disposition of a substantial issue forming part of the dispute between the parties".[81]

[84] While the broader jurisdictional question in these other areas of stay motions is not before us, the jurisdictional question in relation to partial litigation agreements, going forward, may be helpfully simplified.

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[78] *Camdev Corp. v. Campeau*, [1996] O.J. No. 3814 (C.A.); *Ontario v. Lipsitz*, 2011 ONCA 466, 281 O.A.C. 67, leave to appeal refused, [2011] S.C.C.A. No. 407.
[79] See *CHU*, at paras 43-45.
[80] *Manos Foods International Inc. v. Coca-Cola Ltd.* (1999), 125 O.A.C. 66 (C.A.); see also *Abbott v. Collins*, (2002), 62 O.R. (3d) 99 (C.A.), at paras. 5-6; *Alfano v. Piersanti*, 2012 ONCA 442, at paras. 8-12; *Hopkins v. Kay*, 2014 ONCA 514, at paras. 8-9; *M.J. Jones Inc. v. Kingsway General Insurance Co.* (2003), 68 O.R. (3d) 131 (C.A.); *Husky Food Importers & Distributors Ltd. v. JH Whittaker & Sons Limited*, 2023 ONCA 260, 480 D.L.R. (4th) 517, at para. 16.
[81] 2012 ONCA 774, 299 O.A.C. 20, at para. 16.

[85] A finding that r. 49.14 has not been breached and that no remedy is warranted is an interlocutory decision, which would give rise to an appeal to the Divisional Court, with leave, pursuant to the *CJA*. This is because, to adapt the language from *Locking*, the decision does not determine access to the court system or dispose of any substantial issue forming part of the dispute between the parties. Rather, an alleged abuse of process arising from a partial settlement agreement is entirely collateral to the merits of the dispute. We distinguish such a case from those under r. 21.01(3)(d) in which the moving party is alleging an abuse of process on the basis of a collateral attack or *res judicata*, which concerns whether the merits of the case have already been determined in another forum.[82]

[86] Further, going forward, and contrary to this court's earlier statement in *Aecon Buildings v. Brampton (City)* and *CHU*, where a stay for abuse of process is sought in relation to a partial litigation agreement but no abuse of process is found, that decision should be treated as interlocutory, because the litigation continues.

C. The implications for the grouped appeals and other appeals which have been launched

[87] We recognize that two of the four appeals before us (*Howran* and *Welland*) arose as a result of denials of motions for a stay under the *Handley Estate* framework. In our view, in light of the prevailing approach confirmed in *Aecon*

[82] See *Camdev Corp.*; *Lipsitz*.

Buildings v. Brampton (City) and *CHU* at the time these appeals were brought, it would be unfair to require the appellants in these cases now to seek leave to pursue their appeals before the Divisional Court. This is especially true given that these two appeals were grouped together with two appeals in which this court's jurisdiction to hear the appeal is not in issue. We take the same approach to cases that are queued awaiting the results in these grouped appeals.

IV. INDIVIDUAL APPEALS

1. Welland (Stay denied): Appeal Allowed

A. Overview

[88] The appellant, Rounthwaite Dick & Hadley Architects Inc. ("RDH"), appeals from the dismissal of its motion to stay the proceedings against it as an abuse of process under the *Handley Estate* rule.

[89] RDH claims that three parties to the proceedings entered into a settlement agreement that entirely changed the litigation landscape. The settling parties then breached their immediate disclosure obligations by waiting to disclose the agreement for approximately one month.

[90] The motion judge refused a defendant's motion for a stay and did not apply the *Handley Estate* rule. For the reasons set out below, the appeal is allowed and the motion remitted for a fresh hearing.

B. Issues

[91] RDH raises four issues on appeal. However, given the decision to overturn the rule in *Handley Estate*, we only address whether Welland should be ordered to make further disclosure and pay costs. We do so after recounting the factual background.

C. Background

[92] The underlying proceedings relate to the design and construction of the Welland International Flatwater Centre (the "Flatwater Centre"), a canoe and kayak facility intended for use in the 2015 Pan American and Parapan American Games. There were three main actions, involving counterclaims, crossclaims, and third and fourth party claims, relating to nonpayment for materials and services, design deficiencies, and construction delays.

[93] The five parties to the proceedings at the time of the motion were:

- Consulting architects: RDH
- Property owner: The Corporation of the City of Welland ("Welland") – the respondent
- General contractor: Elite Construction Inc. ("Elite Construction")
- Electrical subcontractor: Urban Electrical Contractors ("Urban Electrical")
- Geotechnical consultant: Exp Services Inc. ("Exp")

[94] The litigation landscape prior to the agreement can best be described as “everyone against everyone”. As of the date of the motion, litigation was moving at a glacial pace.

[95] Nevertheless, Welland needed the outstanding issues with the Flatwater Centre to be rectified before it hosted the 2022 Canada Summer Games. On December 7, 2021, Welland entered into a settlement agreement with Elite Construction and Urban Electrical. Under the agreement, Welland would provide a payment to Elite Construction to carry out the remaining remedial work on the Flatwater Centre. The responsibility for that payment would be decided by a future agreement or a court order, and liability was not resolved. The agreement also resolved Urban Electrical’s claims, but this provision is not relevant to the appeal.

[96] Welland and Elite Construction disclosed the agreement to the non-settling parties on January 12, 2022, about a month later.

[97] RDH submitted that this settlement agreement changed the litigation landscape by implementing a plan where liability could be allocated to RDH on an agreed-to basis between Welland and Elite Construction. RDH argued that Welland and Elite Construction were working together to determine the alleged damages with respect to the construction defects, the degree of liability, and a method to allocate damages to RDH and Exp. RDH and Exp brought a motion to

stay the proceedings against them as an abuse of process, arguing that the agreement should have been immediately disclosed to the non-settling parties.

D. Decision Below

[98] Applying the *Handley Estate* framework, the motion judge determined that the settlement agreement did not significantly alter the adversarial positions of the parties in a way that would give rise to an abuse of process if not immediately disclosed. The motion judge noted that the settlement agreement did not agree on damages, or on liability, or on a method to allocate damages to third and fourth parties. She stated that RDH did not provide any evidence as to what in the litigation landscape the settlement agreement completely altered, or how it did so.

[99] Rather, the motion judge found that Welland and Elite Construction were attempting to resolve the litigation in a cost-efficient and timely way, but they did not settle liability or apportion it between RDH and Exp. Welland and Elite Construction were in an adversarial position with RDH both before and after the settlement. It was always their lone common interest in this “everyone versus everyone” litigation environment to impose liability on RDH. As such, the limited cooperative steps taken by Welland and Elite Construction did not rise to the level of altering the dynamics of the litigation.

[100] Alternatively, if the settlement agreement should have been immediately disclosed, the motion judge found that disclosure of the agreement was “prompt

enough". Citing this court's decision in *CHU*, the motion judge noted that whether disclosure is "immediate" depends on the factual dynamics of the case.[83]

[101] The motion judge concluded that, "[i]n the context of this ponderously moving litigation … sending correspondence in roughly a month's time is in the range of 'immediate' disclosure".

[102] On this basis, the motion judge dismissed the motion.

E. Analysis

[103] In light of the decision to reverse *Handley Estate*, the implications for this appeal are clear. It must be remitted for a rehearing of the motion. The motion judge's two key conclusions – that the settlement agreement did not significantly alter the landscape of the litigation, and in the alternative, was disclosed "promptly enough" – were directly tied to the analytic framework of *Handley Estate*. The parties developed their motion records and directed their submissions with the threshold questions of the *Handley Estate* framework in mind. That framework no longer applies.

[104] While the motion judge's findings on the record are entitled to deference, those findings cannot determine the result of the motion on the discretionary abuse of process framework, which we have set out above. Under this framework, RDH must demonstrate that delayed disclosure of the settlement agreement constituted

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[83] *CHU*, at para. 66.

an abuse of process and that the remedy it seeks (e.g. a stay or further disclosure and costs) is proportionate. None of the motion judge's findings answer these questions.

[105] Taking the most salient example, because prejudice formed no part of the *Handley Estate* framework, neither the parties nor the motion judge engaged with the potential prejudice to the non-settling parties arising from the timing of the settlement agreement's disclosure. Prejudice either to the parties or the administration of justice is now a significant consideration in the abuse of process analysis.

[106] For these reasons, the parties now should have the opportunity to re-argue the motion, if RDH still wishes to bring it, with the framework as we have explained it in mind. This will allow the parties to develop their records and make submissions tailored to addressing whether delayed disclosure constituted an abuse of process in this case, and if so, what the appropriate remedy is.

F. Disposition

[107] On this basis, the appeal is allowed and the motion remitted for a fresh hearing on the abuse of process framework outlined above.

2. Evertz (Stay granted): Appeal Dismissed

A. Overview

[108] Evertz is a broadcast technology company. The individual respondents were Evertz employees who founded Providius. References to Providius in these reasons means Providius Corp., Tony Zare, Ayman Al Khatib, and Jackson Wiegman. Evertz claims that they stole its technology. Evertz sued Providius and its founders for the “defendants’ theft of Evertz's confidential information to pilfer Evertz’s hard-earned advantage in the emerging market for IP-based broadcast networks.” Evertz also sued Lawo, a German broadcast technology company that competed with Evertz and which owned a 49% stake in Providius. Evertz claimed that Providius conspired with Lawo by entering into an agreement under which Lawo manufactured, marketed, and sold this stolen technology. Evertz also sued Lawo, but not Providius, in Delaware, based on the same underlying facts.

[109] On June 4, 2022, Evertz settled both actions with Lawo. Lawo and Evertz selectively and progressively revealed details of the settlement to Providius, but it was not until February 24, 2023, over eight months after it had been signed, that Evertz provided the full text of the settlement agreement to Providius.

[110] The motion judge stayed the Evertz action by applying the rule in *Handley Estate*. In his view, the terms of the settlement changed the litigation dynamics between the parties by giving Evertz business leverage over Providius in a manner that entirely changed the litigation landscape and had to be disclosed immediately.

B. Issues

[111] The issue is whether this appeal should be allowed or dismissed in the wake of our decision to overrule *Handley Estate*. This issue turns on whether, under the abuse of process doctrine as we have explained it, it is necessary to remit the case for further evidence and argument, as is the case in *Welland*, found elsewhere in these reasons. We conclude that the motion judge made sufficient factual findings to ground an abuse of process and reached the appropriate disposition of staying the action. We, therefore, dismiss the appeal.

[112] We address the issue after describing the facts in more detail.

C. Background

a. The underlying dispute and Ontario settlement agreement

[113] In 2018, Evertz sued Lawo and Providius in Ontario for breach of contract, breach of confidence, and other torts (the "Ontario Action"). Shortly after, in 2019, Evertz sued Lawo, but not Providius, in the U.S. federal court in Delaware for patent infringement (the "Delaware Action") based on the same underlying facts as in the Ontario Action. Lawo and Providius entered into a joint defence and common interest privilege agreement with respect to the Ontario Action. Neither defendant crossclaimed against the other.

[114] On June 4, 2022, Evertz settled both actions with Lawo. The Ontario settlement agreement required Evertz and Lawo to cooperate in having Evertz's

claim against Lawo dismissed in Ontario, in exchange for Lawo eventually paying its several share of liability. The settlement agreement also required Lawo to terminate its agreement with Providius for an exclusive licence to sell Providius products and to dispose of its shares in Providius, subject to Providius's Unanimous Shareholder Agreement which placed restrictions on the transfer of Providius shares. The settlement agreement also gave Evertz an option to purchase Lawo's shares in Providius, even though the same Unanimous Shareholder Agreement restricted this. The settlement agreement did not require the parties to cooperate in Evertz's claim against Providius.

[115] Paragraphs 9(a)-(h) of the settlement agreement contained indemnities in favour of Lawo. Paragraph 9(a) specifically required Evertz to indemnify Lawo for any claims brought in relation to the provisions of the agreement, including Lawo's termination of the licensing agreement and divestment of its shares of Providius. The motion judge also found that the settlement agreement required Lawo's nominees on Providius's board to resign. It did not do so expressly, but the necessity for resignations is implicit in the conflict of interest to which a remaining director would otherwise be subject affecting fiduciary duties.

b. Progressive disclosure of the Ontario settlement agreement

[116] On June 4, 2022, Lawo told Providius that the two parties were no longer in "common interest" and that Lawo's nominees on Providius's board were resigning, effective immediately. On June 7, Lawo told Providius that Evertz and Lawo had

settled the Ontario action. Lawo terminated its licensing agreement with Providius on June 8.

[117] On June 27, Lawo gave Providius a 4-page excerpt of the settlement agreement which set out Evertz and Lawo's agreement to cooperate in having Evertz's claim against Lawo dismissed in Ontario, in exchange for Lawo paying its several share of liability. The excerpt also set out the indemnities from paras. 9(b)-(h) but omitted para. 9(a). Providius was not satisfied with this disclosure. It repeatedly demanded production of the full settlement agreement and opposed Evertz's motion to dismiss their claim against the Lawo defendants. Evertz contested this full disclosure request on the basis that the rest of the settlement agreement, in particular para. 9(a), related to the Delaware Action. It represented to the court in its factum on the dismissal motion, dated February 16, 2023, that Providius had knowledge of all the relevant terms relating to the Ontario Action. On February 24, 2023, more than eight months after it had been signed, Evertz provided the full settlement agreement to Providius. The Ontario Action against Lawo was dismissed on consent on May 8, 2024.

D. Analysis

[118] Although he would have been "prepared to accept full disclosure if it had happened on June 27, 2022", the motion judge found that, the eight-month disclosure delay was unacceptable and that a stay was automatic under *Handley Estate*. He noted, "Piecemeal disclosure of some but not all the material terms is

unacceptable".[84] Evertz's piecemeal disclosure was insufficient, as was the "functional" disclosure of Lawo terminating the licensing agreement and removing its nominees from Providius's board. In all, the failure to disclose fully painted a misleading picture of the adversarial orientation of the parties.

[119] The motion judge rejected Evertz's argument that para. 9(a) of the settlement agreement merely set business terms that did not need to be disclosed. In his view, para. 9(a) changed the litigation dynamics between the parties by giving Evertz business leverage over Providius in a manner that entirely changed the litigation landscape and had to be disclosed immediately. Lawo's termination of the licensing agreement had to be considered together with the fact that Lawo not only agreed to divest itself from Providius but also gave Evertz the opportunity to purchase its Providius shares, and Evertz's agreement to indemnify Lawo against any claims brought because of these decisions. In the motion judge's view, before the settlement agreement, Lawo and Providius were aligned in business and litigation interests. After the settlement agreement, this "partnership" ended; Providius gained a potential counterclaim against Evertz and a crossclaim against Lawo for executing the agreement. We agree with the motion judge. If the indemnity in paragraph 9(a) were anodyne, Evertz would not have felt the need to hide it for so long.

[84] Citing *Handley Estate*, at para. 3.

[120] Evertz argues that the motion judge erred in applying the *Handley Estate* rule to two terms in the settlement agreement that did not exist. We do not accept this argument. The motion judge was entitled to consider the effect of the settlement agreement in addition to its express terms. He found that by signing the agreement, Lawo's nominees were compelled to resign from Providius's board. Regardless of whether there was an express term in the settlement agreement, it was open to him to conclude that they could no longer discharge their fiduciary duties. It was also open to him to conclude that Lawo gave Evertz an option to purchase its Providius shares despite the transfer restrictions in Providius's Unanimous Shareholder Agreement, especially given that Evertz also granted the indemnity noted above. The constellation of facts showed that Lawo effectively switched sides and acted largely at Evertz's behest, while giving Providius the misleading impression that it was acting independently.

[121] The abuse of process doctrine is engaged because Evertz repeatedly misled Providius and the court that the settlement agreement need not be disclosed because it related solely to the Delaware Action. In short, the settlement agreement did change the adversarial position of the settling defendants into a cooperative one, rendering the failure to fully disclose an abuse of process.

[122] With respect to the appropriate remedy, the motion judge did not comment on whether he would have awarded a lesser remedy given that the stay under *Handley Estate* was automatic. He also made no express finding of prejudice given

that it was unnecessary under *Handley Estate*. However, his findings of fact support the conclusion that Evertz's conduct caused prejudice to Providius, and that this is one of the "clearest cases" in which a stay is warranted.

[123] The motion judge found that "Evertz only produced all the terms under pressure of this motion and its own pending motion to dismiss against the Lawo defendants". He further found that Evertz never intended to put the settlement agreement before the court. As the motion judge noted, Evertz represented to the court in its factum on February 16, 2023, before the complete settlement agreement was disclosed on February 24, that Providius had "knowledge of all the terms of the Delaware Litigation settlement that relate to the Ontario action, and ha[d] in fact seen those terms in their entirety". The motion judge observed that Evertz's "editing process invites motions such as this one" and that Evertz should have instead sought the direction of the court. He clearly found that the eight months' delay was unacceptable. It is also implicit from these findings that Evertz generated unnecessary litigation through its improper refusal to disclose the agreement.

[124] Prejudice to the parties is one of the factors that can influence whether an abuse of process exists, but it is not a prerequisite. In this case, it is especially problematic in terms of prejudice to the administration of justice that Evertz misled the court.

[125] Evertz's misleading of the court, combined with the burden of unnecessary litigation which Evertz caused and the unacceptable delay, is sufficient to ground a finding of abuse of process in this case. We are not satisfied that a lesser remedy such as costs would be appropriate given the severity of the abuse of process in Evertz misleading the court. We, therefore, see no reason to remit the case to the motion judge for evidence and a determination of whether Providius was prejudiced by Evertz's failure to disclose in a timely way.

E. Disposition

[126] The appeal is dismissed.

3. Howran (Stay denied): Appeal Dismissed

A. Overview

[127] The motion judge refused to stay the plaintiffs' action against Corporation of the City of Kawartha Lakes. The City appeals on the basis that the plaintiffs' failure to immediately disclose the terms of a partial settlement agreement compelled a stay under the *Handley Estate* rule.

[128] The infant plaintiff, Cydahlia Howran ("Cydahlia"), and her mother, Jennifer Freeman ("Jennifer"), suffered injuries in a motor vehicle accident. On October 26, 2021, the plaintiffs agreed to the terms of a settlement with two of the defendants: Cody Howran ("Cody") and Christine Fournier ("Christine"). The complete terms of this agreement were not disclosed to the City immediately, indeed not until August

14, 2023. On September 7, 2023, the City brought a motion to permanently stay the action against it for abuse of process. The motion judge dismissed the City's motion on the basis that the City had been provided with the essential terms of the agreement early in the litigation and was not misled in its litigation strategy. There was no abuse of process.

B. Issues

[129] Because we have overturned *Handley Estate*, this appeal turns on whether, under the abuse of process doctrine, properly understood, it is necessary to remit the case for further evidence and argument. We conclude that it is not. The motion judge found that the City suffered no prejudice or unfairness from the lack of immediate disclosure. Nor is this a case where the plaintiffs' conduct can be said to have harmed the integrity of the judicial process. As a result, the abuse of process doctrine, as we have explained it above in these reasons, is not called into play on the facts of this case. The motion judge's findings are sufficient to dispose of the appeal, unlike in *Welland*, dealt with elsewhere in these reasons.

C. Background

[130] On August 31, 2014, Cody was driving northbound on Kawartha Lakes County Road 49 in a car owned by his mother, Christine. Cody's common law spouse, Jennifer, was seated in the back of the car with their infant daughter, Cydahlia. Cody lost control of the car, entered a ditch on the west side of the road

and struck a tree stump. Cydahlia suffered an injury to her spinal cord that rendered her quadriplegic.

[131] In 2016, Cydahlia and Jennifer sued the City, Cody and Christine. In their statement of claim, Cydahlia and Jennifer plead that Cody operated the vehicle negligently, Christine failed to maintain it properly, and that the City was negligent for failing to maintain the road by removing the tree stump the vehicle struck. The defendants crossclaimed against each other, raising substantially the same allegations of negligence.

[132] Christine's vehicle, which Cody was driving, was insured under a policy of insurance issued by Travelers Insurance Company of Canada ("Travelers"), which had a liability limit of $1 million.

a. The agreement

[133] On September 26, 2017, counsel for the plaintiffs advised the City that they were in the process of negotiating a "Cooperation Agreement" with Cody and Christine. A copy of the draft agreement was provided to the City. It contained a number of terms, but importantly, stated that the parties would "cooperate on liability issues at the trial of the proceeding against [the City]".

[134] Negotiations then stalled. Negotiations resumed in January 2020, but proceeded slowly and did not conclude until June 17, 2021. The agreement's finalization remained subject to counsel receiving instructions from their clients and

to court approval. On August 18, 2021, counsel for the plaintiffs told the City that an agreement had been reached but that it was not signed and court approval had not been obtained.

[135] Jennifer's examination for discovery took place on September 10, 2021. Cody's discovery took place over two days, with a significant gap in time between the two: October 6, 2021 and January 17, 2023.

[136] In the interim, minor revisions to the agreement were made, and final terms reached on October 26, 2021, but the agreement was not signed. On November 11, 2021, Travelers made an advance payment of $1 million, its policy limits, to be held in trust for the plaintiffs. Although the City was kept reasonably up to date on the evolving state of the agreement, despite numerous requests from the City, a copy of the final agreement was not provided until August 14, 2023.

[137] On September 7, 2023, the City moved to permanently stay the action for failing to make immediate disclosure of the partial settlement agreement.

[138] The final agreement was signed on September 27, 2023. It contained the same cooperation term that had been disclosed to the City in September 2017. The plaintiffs provided the City with the signed agreement and moved for court approval pursuant to r. 7.08 of the *Rules of Civil Procedure*.

b. The motion judge's decision

[139] The motion judge dismissed the motion for a stay and granted the motion for approval of the agreement. She found that the respondents "were acutely aware of their obligation to disclose the terms of the Cooperation Agreement" and had effectively done so through providing the City with the 2017 draft agreement and sharing updates as negotiations progressed. She noted that this was not a case of "litigation by ambush" and that "[t]he City was not in any way misled." The City had been advised at an early stage, and before examinations for discovery, that negotiations were ongoing and that the draft agreement required Cody and Christine to cooperate with the plaintiffs. This notice allowed the City to alter its litigation strategy, and specifically its approach to examinations for discovery, if it chose to do so.

[140] The motion judge also noted that, until the agreement received court approval, it was not final. If approval had not been obtained, the advance payment held in trust would have been refunded. As a result, she considered that the disclosure obligation did not arise until her decision to approve the settlement.

D. Analysis

[141] We see no basis to interfere with the findings of the motion judge, which are entitled to deference and are dispositive of this appeal. The motion judge's findings reflect that the City suffered no prejudice or unfairness. It was aware of the

essential terms of the agreement in 2017 and was apprised of negotiations as they progressed. It was never misled about the positions of Cody and Christine.

[142] Indeed, the positions of Cody and Christine were obvious from the outset. Cody and Christine are family members of the plaintiffs and Christine's insurance policy limits would not come close to paying the damages sustained by Cydahlia and Jennifer. Their common interest was always to shift liability onto the City, both for their own sake and for that of their family members. Although legally adversaries, the practical interests of Cody and Christine were always aligned with those of the plaintiffs Cydahlia and Jennifer.[85] The cooperation agreement did not come as a surprise to the City.

[143] The City points to Cody's answers on discovery as proof that it suffered prejudice. On the first day of discovery, before the agreement was finalized, Cody was able to answer the City's questions without much difficulty. However, when discovery resumed over a year later, after the agreement was finalized, Cody said that he had little memory of the accident. Because the final agreement was reached in between the two discovery dates, the City argues that Cody feigned a lack of memory as part of his cooperation with the plaintiffs. We reject this argument. The motion judge found Cody's lack of memory to be unsurprising given the significant amount of time that had passed between the accident and the

[85] *Dobson (Litigation Guardian of) v. Dobson*, [1999] 2 S.C.R. 753, at para. 72.

examinations for discovery. That Cody's memory deteriorated further in the substantial period between discovery dates is also not inherently suspicious. In any event, the City was aware by Cody's second discovery date that a Cooperation Agreement had been reached. As the motion judge observed, if Cody was truly being uncooperative, there were things that the City could have done to address that issue. Its litigation strategy was not impaired by the non-disclosure of the final agreement.

[144] In the absence of any prejudice or unfairness to the City, there is no reason to invoke the doctrine of abuse of process. This is not a case in which broader harm to the administration of justice could be asserted. There is simply nothing to remedy.

E. Disposition

[145] The appeal is dismissed.

4. Thrive (Stay granted): Appeal Allowed

A. Overview

[146] The appellants, Thrive Capital Management Ltd., Thrive Uplands Ltd., 2699010 Ontario Inc., and 2699011 Ontario Inc. brought a civil fraud action against the respondents alleging misuse of investment funds. On September 25, 2024, the motion judge stayed the action on the basis that the appellants failed to immediately disclose a settlement reached with one of the defendants, David

Bowen. The agreement provided that, in exchange for not pursuing sanction against Mr. Bowen for contempt of a *Mareva* injunction, he would pay $110,000 to the appellants. He also agreed to co-operate with and assist the appellants in the main action. Applying the rule in *Handley Estate*, the motion judge found that this agreement changed the adversarial orientation of the parties and therefore required immediate disclosure, which did not occur. The motion judge relied on the rule in *Handley Estate,* finding that the non-disclosure gave rise to an abuse of process. She stayed the proceedings, but stated that, but for the *Handley Estate* rule, she would not have chosen this remedy. As she put it: "[A stay] is not the remedy that I would have imposed if I had any discretion to impose a different one".

[147] We have set aside the inflexible and mandatory features of the *Handley Estate* rule. It is, therefore, appropriate to allow this appeal and remit the matter to the motion judge for a discretionary assessment of the appropriate remedy for the abuse of process that she found.

B. Background

[148] The appellants commenced their action in April 2020, alleging that the respondents converted and fraudulently dissipated investment funds approximating $9 million. The funds were advanced by the appellants to the respondents for the purchase and development of two properties.

[149] On April 23, 2020, a *Mareva* injunction was granted against the Original Defendants[86] requiring them to, among other things, account for the appellants' funds. On June 19, 2020, the Original Defendants were found to be in contempt of that injunction. Contempt proceedings took place over the next several years. The first sentencing hearing in relation to the contempt was held on November 5, 2020.

a. The Bowen Agreement

[150] The motion judge found that prior to the initial sentencing hearing, the appellants and one of the Original Defendants, David Bowen, reached an agreement (the "Bowen Agreement"). The Bowen Agreement was eventually reduced to writing and signed by the parties on January 19, 2021. It provided that, in return for the appellants not pursuing sanctions against Bowen for contempt, Mr. Bowen would do the following:

- repay the appellants $110,000 of their funds that he acknowledged having received;
- cooperate with the appellants, including by providing them with relevant documents and information, and, "at the [appellants'] request, prepare and swear affidavit(s) for use in the Thrive Action,

[86] At that time, the named defendants were Noble 1324 Queen Inc., Michael Hyman, Giuseppe Anastasio, David Bowen, Noble Developments Corporation, Hampshire and Associates Incorporated, and are referred to as the "Original Defendants". The Original Defendants excluding David Bowen are referred to as the "Developer Defendants".

and fully cooperate with the [appellants] to provide all necessary information to ensure the affidavit(s) is complete and accurate"; and

- "take all other steps reasonably requested by the [appellants] to assist with the Thrive Action."

[151] It was expressly acknowledged that the Bowen Agreement was not a settlement of the main action against Mr. Bowen, was without prejudice to any other relief claimed in the main action, and that the appellants would continue those proceedings against him.

b. Disclosure and post-disclosure conduct

[152] The existence of the Bowen Agreement was first disclosed to the rest of the Original Defendants during a r. 39.03 examination of Mr. Bowen, conducted at the request of the appellants in March 2022, more than a year after it was reached. At the beginning of the examination, counsel for the appellants asked Mr. Bowen, "And you've also agreed to provide cooperation to the plaintiffs in this litigation?" Mr. Bowen confirmed that to be true. Later during a cross-examination by counsel for one of the respondents, Mr. Anastasio, Mr. Bowen outlined the details of the agreement and the existence of a written agreement.

[153] On April 20, 2023, the respondents stated their intention to bring a motion for a dismissal or stay of the main action, based on the appellants' failure to make a timely and complete disclosure of the Bowen Agreement. The written copy was

first provided to the respondents on April 25, 2022, in response to their request for production. The court was first made aware of the Bowen Agreement at the re-sentencing hearing on May 3, 2022.[87] This motion was not formally brought until a year later, on April 16, 2024.

C. Decision Below

a. Non-disclosure of the partial settlement agreement

[154] The motion judge applied the *Handley Estate* rule as discussed in *Skymark Finance Corporation v. Ontario*.[88] She observed that the immediate disclosure of settlement agreements to non-settling parties is necessary when an agreement changes the litigation landscape and that failure to disclose automatically constitutes an abuse of process requiring a stay of proceedings.

[155] Applying those principles, the motion judge found that the terms of the Bowen Agreement changed the adversarial relationship between the appellants and Mr. Bowen into a co-operative one, thereby changing the landscape of the litigation and triggering the immediate disclosure obligation. She found that the appellants should have disclosed the Bowen Agreement at the November 5, 2020

[87] The first contempt sentencing decision of Koehnen J. was set aside by this court on October 15, 2021 (*Thrive Capital Management Ltd. v. Noble 1324*, 2021 ONCA 722, 463 D.L.R. (4th) 377, at para. 36). A second sentencing hearing was held on May 3, 2022, with a decision rendered on July 12, 2022 (see *Thrive Capital Management Ltd. v. Noble 1324 Queen Inc.*, 2022 ONSC 4081).
[88] 2023 ONCA 234, 166 O.R. (3d) 131.

sentencing hearing or, at the very latest, once the written agreement was executed on January 19, 2021.

[156] The motion judge rejected the appellants' assertion that they disclosed the Bowen Agreement at the first sentencing hearing on November 5, 2020. She found that the limited disclosure made at the hearing did not satisfy the immediate disclosure obligation because the appellants failed, at that time, to disclose Mr. Bowen's agreement to repay $110,000, and his willingness to co-operate with, and assist, the appellants in the action. Those were the very terms that changed the litigation landscape.

[157] The motion judge observed that the appellants did not provide a copy of the written Bowen Agreement to the court or to the respondents even after it was signed on January 19, 2021. As noted, its existence was first disclosed to the respondents on April 25, 2022, in response to a request for its production made during the examination of Mr. Bowen and was not disclosed to the court until the following month. The motion judge found that this did not satisfy the appellants' immediate disclosure obligation.

[158] The appellants also argued that the immediate disclosure rule was not triggered because Mr. Bowen had not paid the $110,000 under the agreement. The motion judge disagreed, finding that the disclosure obligation arose before the obligation to pay was triggered. She further found that, in any event, the parties

had partially performed the terms of the agreement. The appellants did not seek sanctions against Mr. Bowen for contempt and Mr. Bowen co-operated with the appellants as it related to both the contempt proceedings and the action itself.

[159] Finally, the motion judge ruled that the respondents' delay in bringing the motion did not prevent the respondents from seeking a remedy for the non-disclosure.

b. The question of remedy

[160] Although finding that the disclosure obligation had been breached, the motion judge was disinclined to impose a stay of the proceedings as the remedy. She made it clear that, were it not for the rule in *Handley Estate*, which she was bound to follow, she would have considered alternate remedies. She referred to the proposed amendment to the *Rules of Civil Procedure* which, as she put it: "is intended to respond to … the concern that a presumptive stay is an extraordinary remedy, and that more flexibility is required to address non-compliance". As she explained in paras. 72 and 73 of her reasons:

> The Rule amendment has not come into effect. Accordingly, I remain bound to follow the Court of Appeal's directive and have no choice but to stay the Action. This is not the remedy that I would have imposed if I had any discretion to impose a different one. Having presided over the second half of the contempt proceedings, I have witnessed the conduct of the Developer Defendants in this proceeding firsthand, and have not been impressed by them. Nor was the court particularly impressed by the defences that they raised.

> That is reflected in the many endorsements that have been issued, both before and after my involvement.
>
> In the circumstances of this case, the court would have been open to hearing submissions about other remedies to impose if that was an option. Unfortunately, that is not an option based on the current state of the law.

D. Analysis

[161] The disposition of this appeal flows quite naturally from the reasons of the motion judge. While finding that the immediate disclosure rule was breached by the appellants, she stayed the proceedings only because of the mandatory nature of the *Handley Estate* rule. That rule has now been set aside and replaced with a flexible, discretionary approach. A stay is just one of the remedies available for non-disclosure of a partial settlement. As the most draconian option, it is reserved for the “clearest of cases”.

[162] It is clear from the motion judge’s reasons that she would have found an abuse of process regardless of the change to the rule. The agreement should have been disclosed, and the appellants only found out about the agreement as a result of Mr. Bowen’s cross-examination. However, the motion judge indicated that she would have opted for a different remedy if she had the discretion to do so. Such discretion now exists.

E. Disposition

[163] The appeal is, therefore, allowed. The stay is set aside, and the matter is remitted to the motion judge for a discretionary assessment of the appropriate remedy for the abuse of process that she found.

V. CONCLUSION

[164] For the foregoing reasons, we conclude that the rule articulated in *Handley Estate* should not be sustained. That rule's stipulation that non-disclosure of partial settlement agreements that change the adversarial landscape of the litigation constitutes, in every case, an abuse of process, even where prejudice was not shown, coupled with its prescription of a mandatory and exceptionless stay of proceedings as the sole remedy, is inconsistent with the fundamental principles that govern the doctrine of abuse of process. The doctrine has always required a contextual and discretionary inquiry, directed to whether the impugned conduct gives rise to unfairness, prejudice, oppression, or otherwise undermines the integrity of the administration of justice, and, if so, what remedy is appropriate and just in the circumstances.

[165] We, therefore, overrule *Handley Estate*. Going forward, failures to disclose partial settlement agreements are to be assessed under ordinary abuse of process principles. Such failures might, depending on the circumstances, constitute an abuse of process. However, that determination is not to be made categorically, but rather by reference to the particular facts of the case, including the nature of the

non-disclosure, its timing, its effect on the litigation, and any resulting prejudice or harm to parties or to the administration of justice.

[166] Where an abuse of process is established, the remedy must be fashioned in accordance with the principle of proportionality. A stay of proceedings remains available, but only in the clearest of cases, where the prejudice to a party or to the integrity of the judicial process is such that no lesser remedy would suffice. In other cases, courts retain the discretion to impose a range of remedies responsive to the circumstances, including those now reflected in r. 49.14 of the *Rules of Civil Procedure*.

[167] In our view, r. 49.14 is consistent with, and reinforces, this approach. The rule clarifies the scope and timing of the disclosure obligation and provides for a spectrum of remedial responses. A breach of the rule does not, in and of itself, mandate a finding of abuse of process or the imposition of any particular remedy.

[168] We also clarify that, under the revised common law framework and r. 49.14, appeal routes are to be determined by the legal nature of the order in question. Orders granting a stay of proceedings are final and appealable to this court. Orders imposing remedies short of a stay, as well as orders declining to grant a stay in this context, are generally interlocutory and appealable to the Divisional Court, with leave.

[169] Applying these conclusions to the appeals before us, we allow the appeals in *Welland* and *Thrive*. We dismiss the appeals in *Evertz* and *Howran*. Where appropriate, matters are remitted for reconsideration in accordance with these reasons. If the parties cannot agree on the issue of costs, each party may make brief written submissions of no more than five pages, plus costs outlines, within 14 days of the release of these reasons.

[170] In the result, the law governing undisclosed partial settlement agreements is restored to a principled and flexible footing. The doctrine of abuse of process is to be applied in a manner that is attentive to context, guided by proportionality, and directed toward the fair and orderly administration of justice.

Released: May 19, 2026 "M.T."

"M. Tulloch C.J.O."
"P. Lauwers J.A."
"L. Sossin J.A."
"D.A. Wilson J.A."
"R. Pomerance J.A."