

CANADA / JUDGMENT

Mack v. Blakey

2023 BCSC 2271

COURT

Supreme Court of British Columbia

DECIDED

27 December 2023

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2023 BCSC 2271 Mack v. Blakey

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mack v. Blakey,

2023 BCSC 2271

Date: 20231227

Docket: M202517

Registry: Vancouver

Between:

Geoffrey Mack

Plaintiff

And

Janet Louise Blakey, Lakes District Maintenance Inc. and His Majesty the King in Right of the
Province of British Columbia Represented by the Minister of Transportation

Defendants

And

Janet Louise Blakey

Third Party

- and -

Docket: M2057635

Registry: Prince George

Between:

Cedric Shane Miller, also known as Shane Miller

Plaintiff

And

Janet Louise Blakey, Lakes District Maintenance Inc. and His Majesty the King in the Right of the Province of British Columbia, as Represented by the Ministry of Transportation and Infrastructure

Defendants

And

Lakes District Maintenance Inc. and His Majesty the King in Right of the Province of British Columbia, as Represented by the Ministry of Transportation and Infrastructure, Janet Louise Blakey and Geoffrey Mack

Third Parties

Before: The Honourable Mr. Justice Tindale

Reasons for Judgment

In Chambers

Counsel for the Plaintiff Geoffrey Mack:

R. Mannering

(Appearing by video conference)

Counsel for the Plaintiff Cedric Shane Miller:

Counsel for Defendant and Third Party

Janet Louise Blakey:

Counsel for Defendant and Third Party Lakes District Maintenance Inc.:

D. Byl

L.A.J. Dunn, KC

N.M. McFadyen

A. Erickson

(Appearing by video conference)

Place and Date of Hearing:

Prince George, B.C.

August 21, 2023

Place and Date of Judgment:

Vancouver, B.C.

December 27, 2023

- [1] There are multiple applications before the court seeking orders relating to the manner in which the quantum and liability portions of the *Miller v. Blakey et al*, Prince George Registry No. 2057635 (the "Miller Action") and *Mack v. Blakey et al*, Vancouver Registry No. M202517 (the "Mack Action") actions be heard.

Background

- [2] On February 2, 2019, on Highway 16 at or near Summit Lake Road, in Houston, British Columbia a motor vehicle owned and operated by Janet Louise Blakey collided with a motor vehicle operated by Geoffrey Mack (the "MVA").
- [3] Cedric Shane Miller was a passenger in the motor vehicle operated by Geoffrey Mack. Both Mr. Miller and Mr. Mack were seriously injured in the MVA.
- [4] At the time of the MVA Lakes District Maintenance Inc. ("LDM") was appointed and retained by His Majesty the King in Right of the Province of British Columbia (the "Province") to provide highway maintenance services for that portion of Highway 16 where the MVA occurred.

Mack Action

- [5] On March 10, 2020 Geoffrey Mack filed a Notice of Civil Claim commencing the Mack Action.
- [6] On July 16, 2020 the defendant LDM filed a Response to Civil Claim denying liability in the Mack Action. LDM also filed a Third Party Notice against the defendant Janet Louise Blakey in the Mack Action.
- [7] On July 23, 2020 the defendant the Province filed a Response to Civil Claim denying liability in the Mack Action. The Province also filed a Third Party Notice against the defendant Janet Louise Blakey in the Mack Action.
- [8] On October 15, 2020 the defendant Janet Louise Blakey filed a Response to Civil Claim denying liability in the Mack Action.
- [9] On January 21, 2021 the defendant Janet Louise Blakey filed a Response to Third Party Notice in response to LDM's Third Party Notice in the Mack Action.

- [10] A Notice of Trial was filed on January 31, 2023 scheduling a 14-day trial to commence on July 2, 2024 in the Mack Action.

Miller Action

- [11] On March 17, 2020 Cedric Shane Miller filed a Notice of Civil Claim commencing the Miller Action.
- [12] On September 2, 2020 the defendant Janet Louise Blakey filed a Response to Civil Claim denying liability in the Miller Action. The defendant Janet Louise Blakey also filed a Third Party Notice against LDM and the Province.
- [13] On September 14, 2020 LDM filed a Response to Third Party Notice in the Miller Action.
- [14] On November 23, 2020 an order was pronounced by Madam Justice Church adding LDM and the Province as defendants in the Miller Action.
- [15] On January 29, 2021 the Province filed a Response to Amended Civil Claim denying liability in the Miller Action.
- [16] On February 26, 2021 the Province filed a Response to Third Party Notice in the Miller Action.
- [17] There is no trial date presently set in the Miller Action.

Applications before the Court

Miller Action Applications

- [18] On August 2, 2023 the plaintiff Cedric Shane Miller filed a Notice of Application (the "Miller Application") seeking the following orders:
- 1) That the issues of liability and quantum in actions Miller v. Blakey et al, Prince George Registry No. 2057635 (the "Miller Action") and Mack v. Blakey et al, Vancouver Registry No. M202517 (the "Mack Action") be severed;
 - 2) The Miller Action and the Mack Action be heard at the same time for the purpose of the liability trial only on July 2, 2024, at the Prince George Courthouse, at 250 George Street, Prince George, BC;
 - 3) That separate quantum trials in the Miller Action and the Mack Action be scheduled to be heard after judgment has been rendered on liability, and all appeals have been exhausted;
 - 4) If any of the Two Actions should be settled prior to trial, leaving only one of the actions to be determined, then that single action can proceed to trial on both liability and quantum on a date to be agreed upon by the parties; and
 - 5) Costs in the cause.

- [19] On August 3, 2023 the defendant and third-party, Janet Louise Blakey filed an Application Response consenting to paras. 1 - 4 of the Miller Application and opposing any order for costs against her.
- [20] On August 3, 2023 the defendant and third-party, the Province filed an Application Response consenting to paras. 1 and 3 of the Miller Application. The Province takes no position on paras. 2, 4 and 5 of the Miller Application.
- [21] On August 14, 2023 Geoffrey Mack filed an Application Response consenting to paragraphs 1-4 of the Miller Application. Mr. Mack took no position on the granting of paragraph 5 of the Miller Application.
- [22] On August 16, 2023 the defendant LDM filed an Application Response opposing the orders sought in paras. 1, 3 and 5 of the Miller Application. LDM takes no position on the granting of the orders sought in para. 4 of the Miller Application. With regard to the orders sought in para. 1 of the Miller Application LDM took the following position:

The Application Respondent strenuously objects to the three applications seeking an order severing liability from quantum in this action and the Miller action, and is seeking an order that full trials in both actions are heard at the same time instead of severed. However, if severance is granted, the Application Respondent consents to the venue of trial being Prince George.

- [23] On August 1, 2023 the defendant and third-party in the Miller Action Janet Louise Blakey filed a Notice of Application (the "Blakey Application") seeking the following orders:
- (1) The liability portion of this action and the related Mack v. Blakey, Lakes District Maintenance Inc., and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the Ministry of Transportation and Infrastructure, Supreme Court Action No. VLC-S-M_202517, Vancouver Registry (hereinafter referred to as the "Mack" action), be severed and heard separately from and before any assessment of damages, subject to the direction of the trial judge;
 - (2) The liability trial of this action to be heard at the same time as the liability trial in the Mack action, at the Prince George Courthouse, 250 George Street, Prince George, BC;
 - (3) The evidence on the issue of liability in one action, both at trial and in pre-trial proceedings, shall be evidence on the issue of liability in both actions;
 - (4) The implied undertaking as to confidentiality be waived, with respect to listed documents of the parties and transcripts of examinations for discovery on the issue of liability, for the parties in this action and in the Mack action;
 - (5) The separate quantum trial in this action and in the related Mack action be scheduled to be heard on a date after judgment is rendered and all appeals have been exhausted;

- (6) If this action or the related Mack action be settled prior to trial leaving only one of the actions to be determined, then that single action can proceed to trial on both liability and quantum on a date to be agreed upon by the parties; and
- (7) Costs to the defendant, Janet Louise Blakey, in any event of the cause.
- [24] On August 16, 2023 the defendant LDM filed an Application Response opposing paras. 1 - 5 and 7 of the Blakey Application and taking no position on the order sought in para. 6.
- [25] On August 9, 2023 the Province filed an Application Response taking no position on any of the relief sought in the Blakey Application.
- [26] On August 9, 2023 the defendant and third-party LDM filed a Notice of Application (the "LDM Application") seeking the following orders:
- (1) The trial for the within action, Prince George Registry Action No. 2057635 (the "Miller Action"), be heard at the same time as the trial for Vancouver Action No. M202517 (the "Mack Action") (collectively, the "Two Actions"), at the Vancouver Registry, or alternatively the Prince George Registry, subject to the direction of the trial judge;
 - (2) All documents produced in either of the Two Actions shall be available to any named party in either and can be used in either or both of the Two Actions;
 - (3) All transcripts from Examinations for Discovery conducted in the Two Actions, including further request for documents and information arising from any Examinations for Discovery, shall be made available to any party in the Two Actions and can be used as Evidence in the Two Actions;
 - (4) The parties can adopt and use against an adverse party at trial the questions and answers from transcripts from any Examinations for Discovery and any answers to interrogatories in the Two Actions;
 - (5) The parties can adopt and use against any adverse party at trial any responses to Notices to Admit, in any of the Two Actions;
 - (6) A party may apply for an order that the Two Actions be tried separately in the event a material change in circumstances suggests a common trial will result in delay, complication or prolongation of the trial or otherwise prejudice a party; and
 - (7) Costs against any party opposing this application.
- [27] On August 11, 2023 the defendant and third-party Janet Louise Blakey filed an Application Response consenting to the relief sought in paras. 2 - 6 of the LDM Application. Mrs. Blakey opposed the relief sought in paras. 1 and 7 of the LDM Application.

Mack Action Applications

[28] On July 24, 2023 Geoffrey Mack filed a Notice of Application (the "Mack Application") seeking the following orders:

- 1) The issues of liability and quantum in actions Mack v. Blakey et al, (Vancouver Registry No. M202517 and Miller v. Blakey et al, (Prince George Registry No. 2057635) (the "Two Actions") be severed;
- (2) The Two Actions will be heard at the same time for the purpose of the liability trial only on July 2, 2024 at the Vancouver Courthouse, 800 Smyth Street, Vancouver BC;
- (3) The separate quantum trials in the Two Actions be scheduled to be heard after judgment is rendered and all appeals have been exhausted;
- (4) If any of the Two Action should be settled prior to trial, leaving only one of the actions to be determined, then that single action can proceed to trial on both liability and quantum on a date to be agreed upon by the parties; and
- (5) Costs in the cause.

[29] On July 25, 2023 the Province filed an Application Response consenting to paras. 1 and 3 of the Mack Application and taking no position in respect to the orders sought in paras. 2, 4 and 5 of that application.

[30] On August 2, 2023 the defendant and third-party Janet Louise Blakey filed an Application Response consenting to paras. 1, 3 and 4 of the Mack Application and opposing paras. 2 and 5 of that application.

[31] On August 15, 2023 the defendant LDM filed and Application Response opposing paras. 1 - 3 and 5 of the Mack Application. LDM took no position with regard to the relief sought in para. 4 of the Mack Application.

[32] On August 2, 2023 the defendant and third-party Janet Louise Blakey filed a Notice of Application (the "Blakey Application 2") seeking the following orders:

If the liability portion of this action and the related Miller v. Blakey et al, (Prince George Registry No.2057635) action (herein referred to as the "Miller" action), are ordered to be severed and heard separately from and before any assessment of damages:

- 1) The liability trial of this action be heard at the same time as the liability trial in the Miller action, at the Prince George Courthouse, 250 George Street, Prince George, BC.
- 2) The evidence on the issue of liability in one action, both at trial and in pre-trial proceedings, shall be evidence on the issue of liability in both actions.
- 3) The implied undertaking as to confidentiality be waived, with respect to list the documents of the parties and transcripts of examinations for discovery on the issue of liability, for the parties in this action and in the Miller action.

4) Costs to the defendant, Janet Louise Blakey, in any event of the cause.

[33] On August 9, 2023 the Province filed an Application Response taking no position with regard to the relief sought in paras. 1 - 4 of the Blakey Application 2.

[34] On August 14, 2023 Geoffrey Mack filed an Application Response consenting to the order sought in paras. 1 - 3 of the Blakey Application 2. Mr. Mack opposed the costs award being sought by Mrs. Blakey.

[35] On August 16, 2023 the defendant LDM filed an Application Response consenting to the granting of the orders sought in paras. 1 - 3 of the Blakey Application 2 on the following terms:

The Application Respondent strenuously object to the three applications seeking an order severing liability from quantum in this action and the Miller action, and is seeking an order that full trials in both actions are heard at the same time instead of severed. However, if severe is granted, the Application Respondent consents to the orders as set out above.

[36] On August 15, 2023 the defendant and third-party LDM filed a Notice of Application (the "LDM Application 2") seeking the following orders:

- (1) The trial for the within action, Vancouver Registry Action No. M. 202517 (the "Mack Action"), be heard at the same time as the trial for Prince George Registry Action No.2057635 (the "Miller Action") (collectively, the "Two Actions"), at the Vancouver Registry, or alternatively the Prince George Registry, subject to the direction of the trial judge;
- (2) All documents produced in either of the Two Actions shall be available to any named party in either and can be used in either or both of the Two Actions;
- (3) All transcripts from Examinations for Discovery conducted in the Two Actions, including further request for documents and information arising from any Examinations for Discovery, shall be made available to any party in the Two Actions and can be used as Evidence in the Two Actions;
- (4) The parties can adopt and use against an adverse party at trial the questions and answers from transcripts from any Examinations for Discovery and any answers to interrogatories in the Two Actions;
- (5) The parties can adopt and use against any adverse party at trial any responses to Notices to Admit, in any of the Two Actions;
- (6) A party may apply for an order that the Two Actions be tried separately in the event a material change in circumstances suggests a common trial will result in delay, complication or prolongation of the trial or otherwise prejudice a party; and
- (7) Costs against any party opposing this application.

[37] On August 15, 2023 the defendant and third-party Janet Louise Blakey consented to the orders sought in paras. 2 - 6 of the LDM Application 2 and opposed the order sought in paras. 1 and 7 of that application.

[38] On August 16, 2023 Geoffrey Mack filed an Application Response opposing the orders sought in paras. 1 - 7 of the LDM Application 2.

Position of the Parties

Cedric Shane Miller

[39] Cedric Shane Miller argues that liability in the Miller Action and the Mack Action should be heard at the same time. Mr. Miller argues that the witnesses required for the liability trials are the same and the venue for the trial should be Prince George.

[40] Mr. Miller notes that the counsel for the defendant LDM has estimated that a liability only trial would take 15 days. Mr. Miller is of the view that the trial for the assessment of his damages would be six or seven days and counsel for Mr. Mack has estimated that the trial for Mr. Mack's damages would take 10 days.

[41] The total length of trial is estimated to be 32 days. Mr. Miller argues that if the liability and quantum issues are severed that would save him 10 days of trial and Mr. Mack seven days of trial because neither of them would have to attend at the others damages trial.

[42] Mr. Miller also argues that that if the liability issue is determined it is highly likely that the parties will come to a settlement on the quantum of damages.

[43] Mr. Miller argues that both the trials on the Miller Action and the Mack Action are judge alone. Mr. Miller further argues that there is no commonality of witnesses between Mr. Miller and Mr. Mack in terms of their injuries and damages.

[44] Mr. Miller argues that if the trial of this matter was to be heard in Vancouver most of the witnesses would have to travel there by air which would require them to come to Prince George to fly to Vancouver.

[45] Mr. Miller notes that he will be filing a Notice of Discontinuance against the Province.

Geoffrey Mack

[46] Geoffrey Mack adopts the submissions of Mr. Miller.

[47] Mr. Mack further argues that if the Mack Action and Miller Action are heard as an omnibus trial they will not result in any savings of court time.

[48] Mr. Mack notes that Mr. Dunn, KC who is counsel for Janet Louise Blakey has deposed in his 1st affidavit made on July 27, 2023 that he does not have availability for a five-week trial until early 2028.

- [49] Mr. Mack argues that this would cause him significant prejudice to have his trial delayed until 2028.
- [50] Mr. Mack argues that there is no overlap in the lay witnesses that he would call for his damages trial with the lay witnesses being called in the Miller Action. Mr. Mack also argues that there may not be any overlap in the medical witnesses called in either action.

Janet Louise Blakey

- [51] Janet Louise Blakey argues that a liability determination may aid in the settlement of both the Miller Action and the Mack Action.
- [52] Mrs. Blakey argues that both trials are judge alone and the issues are not interwoven with regard to the damage assessments in either the Miller Action or the Mack Action.
- [53] Mrs. Blakey also notes that her counsel Mr. Dunn, KC is not available for a five-week trial until 2028. A liability only trial could take place in 2024.
- [54] Mrs. Blakey argues that that the appropriate venue for the Mack Action and the Miller Action is Prince George because the majority of the witnesses reside in the Burns Lake area. Flying witnesses to Vancouver will increase the cost of the trial.
- [55] Mrs. Blakey argues that any expert witnesses could likely attend by video conferencing.
- [56] Mrs. Blakey argues that there is a real likelihood that the determination of liability could end these matters.

LDM

- [57] LDM agrees that the liability issue should be heard together in both the Miller Action and the Mack Action. LDM says however that this should be accomplished by an omnibus trial.
- [58] LDM argues that if liability is severed from the quantum of damages issues this would result in three separate trials.
- [59] LDM estimates that approximately 15 days of trial time is required to determine the liability issues.
- [60] LDM argues that if seven days is required from the quantum assessment in the Miller Action and 10 days is required for the quantum assessment in the Mack Action whether there is an omnibus trial or three separate trials 32 days of court time will still be required.
- [61] LDM argues that a determination of liability will not resolve the issues between the parties because there is no dispute that Mrs. Blakey crossed the centre line and collided with the Mack vehicle. LDM says that there is no way that Mrs. Blakey will be released from the Miller Action or the Mack Action after a liability trial.
- [62] LDM argues that the damages and liability issues are interwoven. For example Mr. Mack could give evidence as to the dynamics and forces involved in the MVA.

[63] LDM says that it no longer opposes the venue of the trial being in Prince George. LDM notes however that there is not a trial date secured in Prince George as of yet.

[64] LDM argues that if there is a single omnibus trial the parties can exchange witness schedules so that Mr. Miller for instance does not have to attend at the quantum assessment of Mr. Mack and vice versa.

Decision

[65] There is no dispute between the parties that the liability assessment in the Miller Action and the Mack Action should be heard together.

[66] There is also no dispute between the parties that the liability assessment in the Miller Action and the Mack Action should be heard in Prince George.

[67] The issue between the parties is whether or not the liability and quantum assessments in the Miller Action and the Mack Action should be severed.

[68] The issues of severance and mode of trial are governed by Rules 12-5 (67) and (68) of the Supreme Court Civil Rules, BC Reg. 3/2016 (the "Rules").

[69] Rule 12-5 (67) reads:

Trial of one question before others-The court may order that one or more questions of fact or law arising in an action be tried and determined before the others.

[70] Rule 12-5 (68) of the Rules reads:

Trial by different modes of trial-The court may order that different questions of fact arising in an action be tried by different modes of trial.

[71] The issue of consolidation of proceedings is governed by Rule 22-5 (8) which reads:

Consolidation-Proceedings may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day.

[72] In *Nguyen v. Bains et al* 2001 BCSC 1130 Madam Justice Martinson summarized the points to be considered on a severance application at para. 11.

[11] Courts have considered the question of when some issues should be tried before others. These are some of the points that have been made:

- a) A judge's discretion to sever an issue is probably not restricted to extraordinary or exceptional cases. However, it should not be exercised in favour of severance unless there is a real likelihood of a significant saving in time and expense.
- b) Severance may be appropriate if the issue to be tried first could be determinative in that its resolution could put an end to the action for one or more parties.
- c) Severance is most appropriate when the trial is by judge alone.

- d) Severance should generally not be ordered when the issue to be tried is interwoven with other issues in the trial. This concern may be addressed by having the same judge hear both parts of the trial and ordering that the evidence in the first part applies to the second part.
 - e) A party's financial circumstances are one factor to consider in the exercise of the discretion.
 - f) Any pre-trial severance ruling will be subject to the ultimate discretion of the trial judge.
- [73] In *Hashimi v. Miki* 2019 BCSC 2287 Justice Crerar in reviewing the case law regarding applications pursuant to Rule 22-5 stated the following at paras. 7 and 8:
- [7] The leading case in this area is the decision of Master Kirkpatrick (as she then was) in *Merritt v. Imasco Enterprises* (1992) 2 CPC (3d) 275 (BCSC) at paras. 18 and 19. Paragraph 19 sets out four non-exhaustive considerations:
- a) will the order sought create a saving in pre-trial procedures (in particular, pretrial conferences)?
 - b) will there be a real reduction in the number of trial days taken up by the trials being heard at the same time?
 - c) what is the potential for a party to be seriously inconvenienced by being required to attend a trial in which the party may have only a marginal interest? And
 - d) will there be a real saving in expert's time and witness fees.
- [8] Two other factors that are typically considered under this rule were provided by Master Joyce (as he then was) in *Shah v. Bakken*, (1996) 20 BCLR (3d) 393 at para. 15:
- a) Is one of the actions at a more advanced stage than the other?
 - b) While the order result in a delay of the trial of one of the actions and, if so, does any prejudice which a party may suffer as a result of that delay outweigh the potential benefits which the combined trial might otherwise have?
- [74] The issue of liability in the Miller Action and the Mack Action will be determined by calling the same witnesses given the nature of the MVA and the fact that Mr. Miller was a passenger in the vehicle driven by Mr. Mack.
- [75] All parties agree that the liability portion of the Miller Action and Mack Action should be heard together and will take 15 days.
- [76] There is also no dispute that the quantum assessment of Mr. Miller will take seven days and the quantum assessment of Mr. Mack will take 10 days.
- [77] Mr. Miller, Mr. Mack and Mrs. Blakey are of the view that the liability assessment for Mr. Miller and Mr. Mack should be severed from the quantum assessments.

- [78] One of the reasons to sever the issues of liability and quantum are that a determination of liability may result in a settlement of the damages for Mr. Miller, Mr. Mack or both.
- [79] LDM says that no matter what the outcome of the liability assessment is Ms. Blakey for instance will not be released from liability for the MVA and a trial will be required in any event. I do not agree with that position because once liability is determined between Mrs. Blakey and LDM it is highly probable that an agreement can be reached on the quantum of damages for Mr. Miller, Mr. Mack or both of them.
- [80] Further if the liability and quantum assessments are severed from one another this will clearly result in a time saving and cost reduction for Mr. Miller and Mr. Mack even if their trials proceed because they will not be required to sit through unrelated testimony.
- [81] LDM says that with a schedule of witnesses Mr. Miller and Mr. Mack would not be required to attend for the evidence related to the quantum assessment of the other. I do not agree that this approach would result in a savings of court days because often in lengthy trials witnesses become unavailable or take longer than anticipated which results in trial schedules being adjusted.
- [82] Also of concern to the court is the fact that Mr. Dunn, KC counsel for Mrs. Blakey is not available for a lengthy trial until 2028. Severing the liability issues from the quantum assessment would result in the respective trials being shorter which would allow more options for trial dates in the near future.
- [83] Both the Miller Action and Mack Action are presently set to be heard by way of judge alone.
- [84] There also does not appear to be any commonality between the witnesses that would be called for the quantum assessments in the Miller Action and the Mack Action.
- [85] In my view based on all of the above the issues of liability and quantum in the Miller Action and the Mack Action should be severed. Further there will be a real likelihood of a significant saving of court time if the liability portions of the Miller Action and the Mack Action are severed from the assessment of damages and are heard together.
- [86] As I understand the position of all the parties they are in agreement that the liability trial should be heard in Prince George. In my view given the location of the MVA and the residence of the lay witnesses who are from the Burns Lake area the balance of convenience favours that this matter be heard in Prince George.

Summary

[87] In summary I make the following orders:

- 1) The liability portion of the Miller Action and the related Mack Action be severed and heard separately from and before any assessment of damages, subject to the direction of the trial judge.

- 2) The liability trial of the Miller Action to be heard at the same time as the liability trial in the Mack Action, at the Prince George Courthouse, 250 George Street, Prince George, BC.
- 3) The evidence on the issue of liability in one action, both at trial and in pre-trial proceedings, shall be evidence on the issue of liability in both actions.
- 4) The separate quantum trial in the Miller Action and in the Mack Action be scheduled to be heard on a date after judgment is rendered and all appeals have been exhausted.
- 5) If the Miller Action or the Mack Action be settled prior to trial leaving only one of the actions to be determined, then that single action can proceed to trial on both liability and quantum on a date to be agreed upon by the parties.
- 6) The LDM Application and the LDM Application #2 are dismissed.

Costs

- [88] The central issue to be determined on these applications was whether or not the liability portions of the Miller Action and the Mack Action be severed from the quantum assessments.
- [89] LDM opposed the severance applications brought in the Miller Application, Mack Application, Blakey Application and the Blakey Application 2.
- [90] All of the parties by the time of the hearing were in agreement that the Miller Action and the Mack Action should be heard together with regard to liability and that the trial should take place in Prince George.
- [91] The Miller Application, Mack Application and the Blakey Application were substantially successful.
- [92] In my view the Miller Application, Mack Application and the Blakey applications where necessary though it was redundant to file the Blakey Application 2.
- [93] The applicants on the Miller Application, Mack Application and the Blakey Application are entitled to their costs in the cause as against LDM.

"The Honourable Mr. Justice Tindale"

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