

KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 118**

Date: **2026 06 25**
Docket: KBG-SA-00495-2026
Judicial Centre: Saskatoon

BETWEEN:

DUTCHAK HOLDINGS LIMITED o/a WPD AMBULANCE
LLOYDMINSTER

Plaintiff

- and -

SASKATCHEWAN HEALTH AUTHORITY

Defendant

Counsel:

Gordon D. Hamilton and Corbin W. Golding
Shane J. Buchanan and Jayden P. Toth

for the plaintiff
for the defendant

FIAT
June 25, 2026

DANYLIUK J.

Introduction

[1] At its core this is a dispute centred on the validity of the defendant's [SHA] termination of a contract it had with the plaintiff [Dutchak]. Pursuant to that

contract several disputes were referred to an arbitrator. The arbitrator ruled in favour of SHA.

[2] In a separate Saskatoon action (*Dutchak Holdings Ltd. v The International Association of Fire Fighters, Local 3270*, KBG-SA-01294-2024), Dutchak has brought an appeal [Appeal]. While SHA insists on referring to the Appeal action as an application for judicial review it is, in fact, a statutory appeal and SHA's counsel would be well advised to refer to it as such in the future. The present matter arises from conflicting interpretations of the appeal and stay provisions set out in s. 18 of *The Ambulance Act*, SS 1986, c A-18.1.

[3] Rather than seek a stay pursuant to Rule 3-60 of *The King's Bench Rules* within the ambit of the Appeal, Dutchak opted to engage in an odd process. Dutchak commenced this action seeking a declaration as a remedy which, at bottom, amounts to a stay of proceedings which would prevent SHA from terminating its contract with Dutchak until the Appeal decision is rendered by this Court and, if applicable, the Saskatchewan Court of Appeal. Dutchak further seeks the remedy of an "interlocutory mandatory injunction requiring the SHA to continue to abide by the terms of the contract" (statement of claim, para. 16(a)) until these proceedings have been decided. Dutchak's claim does not seek costs.

[4] Compounding the oddity of this procedure is the fact that rather than proceeding via notice of application within the ambit of its action commenced by statement of claim, Dutchak filed an originating application in Form 3-49 seeking an interlocutory mandatory injunction.

[5] As this is an injunction the decision must be delivered swiftly. After a careful analysis of the evidence and the law, I have reached a determination. For the reasons set out below, I have determined I must dismiss the plaintiff's application for injunctive relief against the defendant.

Background Facts

[6] For the purposes of determining this application I do not need to do a deep dive into the surrounding factual matrix.

[7] The evidence filed on behalf of Dutchak came in the affidavit of Michael Androsoff, a chartered professional accountant and management consultant who provides such services to privately owned ambulance services including Dutchak. While SHA's counsel queried why the CEO of Dutchak would not have provided this evidence, for the purposes of this application it matters not. I do note that some portions of Mr. Androsoff's affidavit are offside *The King's Bench Rules*. For example, he adduces hearsay without justification or foundation, and without even providing the sources of the information. See para. 18 which states in part:

18. In my role as a consultant with Dutchak, I am personally aware that the community of Lloydminster has been requesting additional ambulance services for years. I heard sworn testimony from representatives for the Defendant that funding of an additional ambulance for Lloydminster had been approved and funded several years ago. ...

This is an improper averment. See Rule 13-30. It would be impossible to cross-examine Mr. Androsoff on his statement. Similar hearsay issues arise at paras. 9, 10, 13, and 21. There are also impugnable averments wherein Mr. Androsoff provides his opinion. He has not been qualified as an expert in any field, and in any event his opinions often appear more personal than professional. Yet further, his narrative starts more or less in the middle of events. There is little attempt to establish an overall factual context. It is as if Dutchak presumed members of this Court would somehow know all about this dispute between the parties. I caution counsel that significant care needs to be given to the drafting of affidavit material.

[8] Dutchak supplies ambulance services to numerous geographic areas

within this province and, at least previously, in Alberta. Mr. Androsoff describes Walter Dutchak as the “owner” of the corporate applicant (para. 9 of his affidavit). In that same paragraph Mr. Androsoff avers to some hearsay he learned from Walter Dutchak that on April 10, 2026 at midnight SHA terminated its contract with Dutchak. Again, it seems reasonable that Walter Dutchak would have been available to swear an affidavit for this application but instead the Court is provided with hearsay that is probably unnecessary. This may invite costs against Dutchak: see Rule 13-30(4).

[9] There was discord for a few years regarding Dutchak’s provision of ambulance services to the Lloydminster area. In 2021 Dutchak lost its contract for the Alberta side. On the Saskatchewan side Dutchak was involved with the provision of ambulance services for Lloydminster and area since 2013. The affidavit of Krista Remeshylo sworn June 2, 2026 provides significant detail about the dealings between these parties and the issues that had been expressed about Dutchak’s services.

[10] In October 2021 SHA terminated its contract with Dutchak. SHA’s position was that the termination rested upon Dutchak’s continued failure to comply with the contractual terms regarding provision of ambulance units. There was a second contract termination by SHA in June 2022, which was related to Dutchak’s loss of the contract with Alberta which in turn was a breach of the contract with SHA. Because of the “deemed continuation provision” in s. 18(12) of *The Ambulance Act* Dutchak continued to provide ambulance services.

[11] Not surprisingly Dutchak disputed the propriety of SHA’s termination(s) of the contract. Under s. 18 of *The Ambulance Act*, disputes proceed to arbitration. Section 18 reads as follows:

18(1) Where a board has entered into a contract pursuant to subclause 10(1)(a)(ii) and:

(a) the parties to the contract are unable to agree on the

interpretation or application of any of the provisions of the contract or of any of the provisions of this Act or the regulations pertaining to the contract;

(b) the board has terminated the contract for what the operator considers to be unjust reasons; or

(c) the board has:

(i) given notice pursuant to subsection 10(8); or

(ii) refused to renew the contract;

for what the operator considers to be unreasonable reasons;

either party may serve notice on the other party and the minister to the effect that the disagreement or the termination shall be referred to a mediator in accordance with this section.

(2) The notice required pursuant to subsection (1) shall be served personally or by registered mail.

(3) On receipt of the notice pursuant to subsection (1), the minister shall:

(a) appoint a mediator; and

(b) advise both parties in writing of the appointment.

(4) The mediator shall conduct a hearing with respect to the matter referred to him, at which each of the parties may present evidence and argument.

(5) Where the mediator determines that:

(a) he cannot resolve the dispute between the parties; or

(b) either or both of the parties refuse to participate in the mediation process provided in this section or in the resolution of the dispute;

the mediator shall report his findings to the minister.

(6) Where:

(a) the minister receives a report pursuant to subsection (5);
and

- (b) the mediator states in his report pursuant to subsection (5) that the mediation process will not resolve the dispute between the parties;

the minister shall appoint a single arbitrator to determine the dispute in accordance with *The Arbitration Act, 1992*.

(7) The notice required pursuant to subsection (1) is deemed to be an arbitration agreement for the purposes of *The Arbitration Act, 1992*.

(8) Where the arbitrator determines that a board has:

- (a) terminated a contract for unjust reasons; or
- (b) refused to renew a contract for unreasonable reasons;

the arbitrator may order that the contract be continued in force for any term that he may direct and may make any other order respecting the terms and conditions of the contract that he considers appropriate.

(9) A decision or order of the arbitrator may, with leave of a judge of the Court of King's Bench, be enforced in the same manner as a judgment or order of the court.

(10) The arbitrator may make any order as to costs between the parties to an arbitration pursuant to this section that the arbitrator considers appropriate.

(11) Either party to a dispute may appeal a decision or order of an arbitrator made pursuant to this section to a judge of the Court of King's Bench by notice of motion within:

- (a) 30 days after the day on which the decision was made; or
- (b) any further time that the judge may allow.

(12) Notwithstanding the referral of any dispute to mediation or arbitration pursuant to this section, the contract between the parties is deemed to continue as it existed when notice was served on the minister pursuant to subsection (1) until:

- (a) the dispute is resolved; or
- (b) the appeal period set forth in subsection (11) expires.

[12] As noted above, the interpretation of s. 18(12) is central to this dispute and is a hotly contested matter between these parties.

[13] The arbitration proceeded pursuant to s. 18. Arbitrator Doug Surtees presided and the hearing was held over numerous dates in 2025: May 26 to 29; June 9; July 16 to 18; July 21 to 23; and August 7 to 8. Arbitrator Surtees issued his decision [*Decision*] on March 10, 2026. At pages 6 to 10 of his *Decision* he outlined the four notices of dispute.

[14] The first dispute was from March 2016 and centred on certain details of the contract with the predecessor to SHA and whether that entity had breached its contract with Dutchak.

[15] The second dispute was from March 2018 and dealt with whether Dutchak had received proper funding under the contract.

[16] The third dispute was from October 2021 and revolved around SHA's termination of the Lloydminster ambulance contract with Dutchak. Dutchak claimed the termination was unjust.

[17] The fourth dispute was from April 2022 and challenged the SHA termination from April 2022, again alleging the termination was unreasonable or unlawful.

[18] Arbitrator Surtees set out the various issues arising under each dispute and reviewed the evidence and law surrounding same. Ultimately he determined the result of each of the four issues in favour of SHA.

[19] I am not conducting a deep review of the arbitral decision and reasons for that *Decision*. That is for the judge hearing the actual appeal. I am simply providing background.

Issues

[20] The issues before the court are:

1. What is the proper test for, and general legal principles related to, a mandatory interlocutory injunction?
2. Have the requirements of that test been met by Dutchak, such that injunctive relief ought to be granted?
3. Should any order regarding costs be granted?

Analysis

- 1. *What is the proper test for, and general legal principles related to, a mandatory interlocutory injunction?***

[21] Counsel did not differ as to the test for an injunction, or as to the general considerations surrounding same; rather, they differed as to matters of interpretation and application.

[22] One point of variance is the doctrine of abuse of process. SHA argued that Dutchak seeking an interlocutory mandatory injunction in a separate proceeding from its appeal in this Court amounted to an abuse of process. SHA argued that this application amounts to a duplicative process which, in effect, circumvents Dutchak's appeal and the proper processes to apply. This was raised in the nature of a preliminary objection to procedure, and as it is potentially dispositive of the application I will deal with it first.

[23] SHA's argument may be summarized as follows. Abuse of process is a flexible legal doctrine. Its purpose is protection of the integrity of an adjudicative process. Generally, it is employed through applications to dismiss or strike or stay pleadings, so as to prevent the administration of justice from being brought into disrepute. SHA cited *Nazeer v Fink*, 2025 SKCA 112 at para 37 *per* Bardai J.A. While

that case involved the striking of pleadings, SHA says the principles are equally applicable here given that Dutchak has commenced a parallel proceeding by issuing a statement of claim. SHA relies on decisions such as *Behn v Moulton Contracting Ltd.*, 2013 SCC 26, to support its argument that where Dutchak has a plain and direct route toward a remedy with the same effect, it cannot mount a collateral application in a parallel proceeding to do the same thing indirectly.

[24] I agree. Dutchak has commenced a separate legal proceeding against SHA in which it seeks relief against the *Decision* of Arbitrator Surtees. This does amount to a collateral attack. Dutchak is using a separate – and unnecessary – process to attempt to circumvent the effect of the *Decision* even while it appeals that *Decision* in another proceeding. This is abundantly plain from the prayer for relief set out at para. 16 of the within statement of claim:

16. Dutchak repeats each and every allegation of fact contained herein and seeks the following Relief:
 - a. A declaration that the SHA is not entitled to terminate its contract with Dutchak until the appeal proceedings to this Court as persona designate pursuant to the Act and a final judgment has been rendered by this Court or by the Court of Appeal pursuant to Section 18(11) of the *Ambulance Act*; and
 - b. An interlocutory mandatory injunction requiring the SHA to continue to continue [*sic*] to abide by the terms of the contract and the Act until a final decision has been rendered in Dutchak's appeal pursuant to the Act.

[25] Apart from some tortured syntax, which I have disregarded in my analysis, this entire action is aimed at enforcing a contract which Arbitrator Surtees, acting with jurisdiction, has already deemed to have been properly terminated by SHA on two occasions. In his decision he upheld SHA's position throughout and rejected the positions taken by Dutchak.

[26] I agree with Dutchak's counsel that the arbitration *Decision* is subject to Dutchak's right of statutory appeal. However, Dutchak ignores the concept that the matters involved in that appeal should be decided within the context of that appeal. Rule 3-60 provides an adequate alternate remedy – a stay. Dutchak has not sought a stay. Dutchak has not explained adequately why it has not sought a stay. It frankly makes no sense to me why Dutchak would commence this parallel action seeking to indirectly obtain what it could potentially directly obtain in a stay application. Indeed, the jurisprudence states that the test for a stay within an appeal is essentially the same as the test for interlocutory injunctive relief.

[27] This action and this application are unnecessary. Dutchak had valid options. As noted it could have (and should have) sought a stay under the appeal proceedings pursuant to Rule 3-60. I agree with SHA's counsel at para. 51 of his brief:

51. The Declaration Action [the within action] does not serve a distinct purpose justifying its separation from the Judicial Review [the appeal]. The SHA submits that [Dutchak] could have sought relief of this nature within the [appeal] under Rule 3-60 of *The King's Bench Rules*, as that is the proceeding in which the validity of the Merits Decision will be determined. [Dutchak] has identified no legal or practical barrier that prevented it from proceeding in that manner. In these circumstances, commencing separate proceedings operates not as a legitimate alternative route, but as a means of reshaping the issue before the Court.

[28] Again, I point out to SHA's counsel that the other proceeding is a statutory appeal and not a judicial review, and counsel should cease referring to it as the latter. It is a confusing and unhelpful tactic.

[29] Further, I agree that this process commenced by Dutchak amounts to a collateral attack on a valid and subsisting order and the appeal from the process giving rise to that order. There is no basis for Dutchak to commence wholly separate proceedings to deal with the suspension of the Arbitrator's *Decision*, a *Decision* which

Dutchak has appealed through an appropriate process.

[30] I have therefore concluded that the within application amounts to an abuse of process and must be dismissed on that basis. Further, and in the event I am incorrect on my determination of abuse of process, I proceed with an examination of Dutchak's application for a mandatory interlocutory injunction.

[31] I pause here to briefly comment on this aspect of Dutchak's application. During chambers I specifically inquired whether this was, in fact, a request for a mandatory injunction. Dutchak's position was that it was an application for a mandatory interlocutory injunction because the envisaged order was that SHA would be commanded to continue to honour the ambulance contract until the appeal was determined in this Court and possibly at the appellate level. This is another example of the clarity that proceeding with a stay application might have brought to this process. Nevertheless, Dutchak was entitled to cast its relief sought as it wished, and the parties and myself proceeded on the basis that Dutchak was seeking a mandatory interlocutory injunction.

[32] With that, I turn to the underlying legal framework for such an application.

[33] The test to be utilized on applications for interlocutory injunctions is as set out by the Saskatchewan Court of Appeal in *Mosaic Potash Esterhazy Limited Partnership v Potash Corporation of Saskatchewan Inc.*, 2011 SKCA 120 [PCS]:

[113] In the interest of clarity, it may be useful to recapitulate the basic points which have been developed in the course of these reasons and to summarize the approach a judge should typically take when deciding whether to grant interlocutory injunctive relief. This can be done as follows:

- (a) The judge should normally begin with a preliminary consideration of the strength of the plaintiff's case. The

general rule in this regard is that the plaintiff must demonstrate a serious issue to be tried, *i.e.* the plaintiff must have a claim which is not frivolous or vexatious. If the plaintiff raises a serious issue to be tried, it is necessary for the judge to turn to the matters of irreparable harm and balance of convenience.

(b) Irreparable harm is best seen as an aspect of the balance of convenience. The general rule here is that the plaintiff must establish at least a meaningful doubt as to whether the loss he or she might suffer before trial if an injunction is not granted can be compensated for, or adequately compensated for, in damages. Put another way, the plaintiff must demonstrate a meaningful risk of irreparable harm. If this is done, the analysis turns to the balance of convenience proper.

(c) The assessment of the balance of convenience is usually the core of the analysis. In this regard, the relative strength of the plaintiff's case, the relative likelihood of irreparable harm, and the likely amount and nature of such harm will typically all be relevant considerations. Depending on the particulars of the case, strength in relation to one of these matters might compensate for weakness in another. Centrally, the judge must weigh the risk of the irreparable harm the plaintiff is likely to suffer before trial if the injunction is not granted, and he or she succeeds at trial, against the risk of the irreparable harm the defendant is likely to suffer if the injunction is granted and he or she prevails at trial. That said, the balance of convenience analysis is compendious. It can accommodate a range of equitable and other considerations.

(d) The judge's ultimate focus in considering whether to grant interlocutory injunctive relief must be on the overall equities and justice of the situation at hand.

[34] This summary of the governing principles was confirmed at para. 28 of *Wildman v Kulyk*, 2013 SKCA 55. As well, the *PCS* test has been adopted and utilized in subsequent decisions of this court and by courts in other provinces. *PCS* established a fresh perspective on the classic test to be used on injunction applications in this province. No longer is there a mechanical application of the traditional three-part test,

as if it was a series of hurdles to overcome. The true focus of whether to grant an injunction must be on the overall equities and justice in the case.

[35] As I have already noted, this is essentially the test to be used with an application for a stay of an order pending appeal. This was discussed in *J.L. v T.T.*, 2023 SKCA 43 at paras 10-19. Specifically at para. 16 Chief Justice Richards noted as follows:

[16] The summary in *Mosaic [PCS]* does not translate perfectly into the context of an application to stay a lower court decision pending the resolution of an appeal. However, as modified to fit the Rule 15 context, it suggests that a decision about whether to grant a stay should be made by proceeding as follows:

- (a) The first step will normally be an assessment of the strength of the appeal. The general rule should be that, unless the appellant has raised a serious question as to the validity of the judgment under appeal, a stay is not appropriate. In other words, an appeal that is frivolous or vexatious cannot ground a stay. If the case is determined to involve a serious ground of appeal, the judge should turn to a consideration of irreparable harm and balance of convenience.
- (b) Irreparable harm is best seen as an aspect of the balance of convenience. The usual approach here is that the appellant must establish at least a meaningful doubt as to whether the loss they might suffer if the judgment is enforced during the time it takes for the appeal to be heard and decided will be something that is adequately compensable in damages that they would be able to recover. Put another way, the appellant must demonstrate a meaningful risk of irreparable harm. If this is done, the analysis turns to the balance of convenience proper.
- (c) The assessment of the balance of convenience will usually be the core of the analysis. In this regard, the relative strength of the appellant's case, the relative likelihood of irreparable harm, and the likely amount and nature of such harm will typically all be relevant

considerations. Depending on the particulars of the case, strength in relation to one of these matters might compensate for weakness in another. Centrally, the judge must weigh the risk of the irreparable harm the appellant is likely to suffer before the appeal is decided if the stay is not granted, and they ultimately succeed on appeal, against the risk of the irreparable harm the respondent is likely to suffer if the stay is granted and they prevail on appeal. Nonetheless, the balance of convenience analysis is compendious. It can accommodate a range of equitable and other considerations.

[36] Had Dutchak brought a stay application in the Appeal action, it is likely this is the test that would have applied.

[37] Counsel agreed this was the test on the extant injunction application, save for one facet. SHA's position was that the first criterion (serious question to be tried) is elevated when a mandatory injunction is sought. SHA argued that in such a case, the question is whether Dutchak has demonstrated that it has a "strong *prima facie* case". In *R v Canadian Broadcasting Corp.*, 2018 SCC 5, the Supreme Court unanimously held that this was the case since mandatory relief will often change the status quo or otherwise be burdensome to a respondent. Brown J. noted at para. 15:

[15] In my view, on an application for a mandatory interlocutory injunction, the appropriate criterion for assessing the strength of the applicant's case at the first stage of the *RJR* — *MacDonald* test is *not* whether there is a serious issue to be tried, but rather whether the applicant has shown a strong *prima facie* case. **A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the *status quo*, or to otherwise "put the situation back to what it should be", which is often costly or burdensome for the defendant and which equity has long been reluctant to compel. Such an order is also (generally speaking) difficult to justify at the interlocutory stage, since restorative relief can usually be obtained at trial.** Or, as Justice Sharpe (writing extrajudicially) puts it, "the risk of harm to the defendant will [rarely] be less significant than the risk to the plaintiff resulting

from the court staying its hand until trial”. The potentially severe consequences for a defendant which can result from a mandatory interlocutory injunction, including the effective final determination of the action in favour of the plaintiff, further demand what the Court described in *RJR — MacDonald* as “extensive review of the merits” at the interlocutory stage.

[Emphasis in bold added]

[38] While its brief argued the first criterion was a “serious question to be tried”, in argument Dutchak acknowledged that the more stringent “strong *prima facie* case” test applied. *R v Canadian Broadcasting Corp.* has been applied in Saskatchewan to elevate the first criterion of the interlocutory injunction test. See, for example: *Patel v Saskatchewan (Health Authority)*, 2022 SKQB 183; *Stebner v Canadian Broadcasting Corporation*, 2019 SKQB 91; and *Wilson v Adams Estate*, 2019 SKQB 39, to cite but a few.

[39] It is my finding, for the purposes of this application, that the higher “strong *prima facie* case” applies as the first criterion for the granting of a mandatory interlocutory injunction.

2. Have the requirements of that test been met by the plaintiff, such that injunctive relief ought to be granted?

[40] I propose to review the application before me within the legal framework for injunctions as set out in *PCS*. Each component of the test for interlocutory injunctive relief will be examined in turn, as will a review of the overall equities and justice within the present case. In the end analysis, “[t]he strength of the applicants’ case is to be considered as a whole with the ultimate question being whether it is just and equitable in the circumstances to grant the injunction”: Justice Ball in *Carlson Estate v Carlson Holdings Ltd.*, 2005 SKQB 189 at para 7; also see *PCS*.

[41] However, before doing that, I note that there was an initial deficiency raised by me with Dutchak’s counsel. Specifically, no undertaking as to damages was

filed along with the application. Given the relief sought – a mandatory interlocutory injunction – this was remarkable. Here, where the granting of the injunction sought would compel SHA to continue to pay large sums to Dutchak pending the latter’s appeal, SHA’s risk of loss was readily apparent.

[42] It was suggested this was not a fatal error, insofar as I could make any injunction order’s issuance conditional on an acceptable undertaking being filed by Dutchak. However, in more modern applications for injunctions the requirement for an undertaking as to damages has been taken more seriously. In *101280222 Saskatchewan Ltd. v Silver Star Salvage (1998) Ltd.*, 2019 SKCA 59, Chief Justice Richards held (para. 2) that the applicant’s “failure to provide an undertaking as to damages is fatal to its attempt to obtain injunctive relief.” Further at para. 21 Richards C.J.S. determined that such undertakings are almost always required in commercial cases and the effect of failing to provide an undertaking is best determined separately from the consideration of the test for granting injunctive relief. This is why I have considered this as a threshold issue.

[43] There have also been judicial calls for actual evidence as to the applicant’s ability to honour an undertaking, lest it become an “empty bag remedy” for the responding party who suffers actual damage because injunctive relief ought not to have been granted. See *Embee Diamond Technologies Inc. v Prince Albert (City)*, 2017 SKQB 128, aff’d 2018 SKCA 44; *Elite Property Management Ltd. v Cain*, 2020 SKQB 265.

[44] I further note that SHA raised the issue in its brief, which was filed June 4, 2026 prior to the chambers argument before me on June 9. Within those five days, Dutchak could have reacted by filing an undertaking as to damages and an affidavit devoted solely to Dutchak’s ability to honour such an undertaking. Instead, Dutchak did nothing. In *The Catalyst Group Inc. v Moyse*, 2015 ONSC 4388, similar

circumstances pertained. Injunctive relief was denied.

[45] I would dismiss the application for an injunction on this basis.

[46] While the lack of an undertaking is a serious deficiency in this case, the application fails for other reasons. As matters have turned out, this application does not turn solely on the lack of an undertaking and corresponding lack of supporting evidence, due to my analysis of the test for obtaining injunctive relief.

Strong *prima facie* case

[47] As explained at para. 17 of *R v Canadian Broadcasting Corp.*, a strong *prima facie* case is one where there is a strong likelihood on the law and the evidence that the plaintiff will make out the allegations in its statement of claim:

[17] This brings me to just what is entailed by showing a “strong *prima facie* case”. Courts have employed various formulations, requiring the applicant to establish a “strong and clear chance of success”; a “strong and clear” or “unusually strong and clear” case; that he or she is “clearly right” or “clearly in the right”; that he or she enjoys a “high probability” or “great likelihood of success”; a “high degree of assurance” of success; a “significant prospect” of success; or “almost certain” success. Common to all these formulations is a burden on the applicant to show a case of such merit that it is very likely to succeed at trial. Meaning, that upon a preliminary review of the case, the application judge must be satisfied that there is a *strong likelihood* on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice.

[48] That there is a significant difference between the standards of “serious question to be tried” and “strong *prima facie* case” cannot be disputed. Past cases have held to this distinction, and in a meaningful way. See the lengthy discussion of Justice Foley in *St. Brieux (Town) v Three Lakes (Rural Municipality No. 400)*, 2010 SKQB 73. In paras. 26 and 27 of that decision he cites *Potash Corporation of Saskatchewan*

Mining Limited v Todd, 1987 CanLII 4918, 53 Sask R 165 (SKQB), *per* Justice Cameron at para. 136:

[136] There can be no doubt the two tests differ, and more than just a little. The strong prima facie case test imposes upon a plaintiff the burden of establishing a strong probability that he will succeed should the case go to trial. So the relative strengths of the parties' cases must be considered by the Chambers Judge before whom the application comes; and he must be satisfied, to the extent required by the standard, that: (i) the plaintiff has a right; and (ii) the defendant is infringing it. At one time it was thought that the standard in relation to those two things differed, that while the plaintiff had to make out a prima facie case in relation to his *right*, he had only to show an arguable case in respect of the *infringement* of that right. This approach was rejected, however, in *Hubbard v. Vesper*, [1972] 1 All E.R. 1023 (C.A.), and rightly so, in my respectful opinion.

[Emphasis italics added by Justice Cameron;
emphasis underlined added by Justice Foley.]

[49] While there is no doubt Dutchak appears to be subjectively brimming with confidence about its prospects on appeal, the fact is that Arbitrator Surtees conducted a thorough factual and legal analysis in his 47-page decision. Dutchak may, in fact, win its appeal but “may” is not sufficient to ground a mandatory interlocutory injunction. Dutchak has not offered much in the way of cogent evidence on this application, and Dutchak has failed to demonstrate that it has a “strong and clear chance of success”, an “unusually strong and clear case” or “almost certain” success.

[50] The appeal will hinge on the proper interpretation of s. 18(12) of *The Ambulance Act*. I find the arguments and evidence from both sides are not compelling at this early stage, although SHA’s arguments were stronger than Dutchak’s. I cannot say with any degree of certainty whatsoever that SHA or Dutchak will almost certainly succeed on the appeal. While much ink and time were spilled on this application with either side trying to convince me of the rectitude of its s. 18(12) argument, at most I am conducting a limited weighing of same solely for the purpose of deciding whether to

grant injunctive relief.

[51] In particular I cannot find on its material herein that Dutchak has convinced me there is a strong case for effectively staying the arbitration decision **and** forcing SHA to continue to honour the contract. Dutchak has failed to demonstrate that its appeal of that decision will likely succeed.

[52] Simply put, on the material put before me on this application I cannot conclude there is a strong likelihood that Dutchak will ultimately prevail on this appeal. I hasten to add I am not determining that Appeal in advance, nor do my comments here bind the hands of the judge hearing the Appeal. My comments are limited strictly to the application for injunctive relief that is now before me.

[53] In sum, I cannot find that Dutchak has established a strong *prima facie* case on its Appeal and on that basis I cannot grant Dutchak the mandatory injunction it seeks.

Irreparable harm

[54] At paras. 57 to 61 of *PCS*, Richards J.A. (as he then was) discussed the standard of proof applicable to claims of irreparable harm. It was determined that the granting of an injunction generally, and the assessment of irreparable harm in particular, involves a weighing of risks as opposed to a weighing of certainties. Risks will flow from granting an injunction, as well as from refusing same. The balancing of such risks is integral to the overall process of determining whether injunctive relief ought to be granted.

[55] Regarding irreparable harm, Justice Richards' analysis determined that the same objects pertain to the assessment of how strictly an applicant must prove the prospect of irreparable harm as apply to the proving of the first branch of the test. He concludes (para. 61) that generally it will be sufficient for a party seeking interlocutory

injunctive relief to establish “a meaningful risk of irreparable harm or, to put it another way, a meaningful doubt as to the adequacy of damages if the injunction is not granted”. This standard has been adopted by numerous trial and appellate courts elsewhere in Canada.

[56] While arguably this is a relatively low standard, it remains incumbent upon Dutchak to demonstrate what its risks of harm are, and show that this harm is such that damages will not be able to compensate Dutchak adequately.

[57] Dutchak advances three areas that it argues amount to irreparable harm:

- a. The loss of qualified paramedics in this geographic area. There is some evidence that recruitment of personnel is not easy and that one paramedic has left the employ of Dutchak already. While I agree this is some evidence of harm which may be irreparable, that evidence is not particularly strong. How many employees does Dutchak have in the Lloydminster operation? Is the loss of one employee statistically significant? Why did that employee leave? What are the costs of recruitment and retention in these circumstances? Are those costs capable of being quantified and reduced to damages? Dutchak bore the onus on this application and has failed to bring forth evidence that should be at its disposal to bolster its injunction claim.
- b. Dutchak relies upon the fact that its equipment and base facilities will sit idle. It is difficult to see how this is not compensable in damages.
- c. Dutchak states it will lose its reputation and proffers evidence that this is already happening due to media coverage about the dispute with SHA. Likely, the findings in Arbitrator Surtees’ *Decision* could engender far more reputational harm than the refusal of a mandatory

injunction. As well, while some of these reports are in evidence before me what is not in evidence is any data as to any members of the public that were affected. The media information in evidence before me does not irresistibly point toward harm being suffered by Dutchak.

[58] The potential harm advanced by Dutchak is speculative and is not supported by adequate evidence. Much of it could be compensated by damages. I cannot find that Dutchak has demonstrated a meaningful risk of suffering irreparable harm, not on this evidence.

Balance of convenience

[59] As set out at para. 113 of *PCS*, at this stage it is necessary to balance the factors already reviewed (strength of the plaintiff's case; risk of irreparable harm; nature and degree of such harm) in light of equitable factors. The "balance of convenience" is aptly named. On the first side of the scale, the court places the risk of irreparable harm to the claimant if this injunction is denied but it wins on appeal. On the other side is placed the irreparable harm to SHA if this injunction is granted but SHA succeeds on the appeal. The balance of convenience can "accommodate a range of equitable and other considerations": *PCS* at para 113.

[60] A crucial distinction is that this is not merely a claim, a set of allegations which have yet to be adjudicated. Instead, this injunction is sought in the context of an appeal wherein the unsuccessful litigant (Dutchak) is the appellant and the applicant for a mandatory interlocutory injunction. Arbitrator Surtees' findings in his *Decision* are important. He determined that Dutchak had failed over time to honour its contract with SHA, insofar as the supplying of ambulances was concerned. This makes Dutchak's uphill battle even steeper.

[61] It is also the case that Dutchak's injunction, if granted, would effectively bind SHA to continue with a contract which the arbitrator has already found was rightfully terminated by SHA – not once, but twice. In general SHA's evidence is more fulsome by far than is Dutchak's, but on this point there is no contest. SHA has demonstrated the effects such an order would have on it, while Dutchak has not.

[62] I find Dutchak has failed to establish the balance of convenience favours it. In fact, the evidence establishes the contrary. I would also deny the injunction on this criterion.

Overall equities

[63] Para. 113(d) of *PCS* speaks of a chambers judge's ultimate focus being a consideration of the overall equities and justice of the situation at hand. The law no longer sees the three criteria for an interlocutory injunction as a series of hurdles which an applicant must overcome sequentially in order to succeed. The entire process is now really one of balancing. After consideration of the three segments of the test, a judge still must take a notional "three steps back" to look at the big picture, the forest rather than the trees.

[64] Three further comments pertain. While the above is legally correct, in the case of a mandatory injunction being sought the importance of satisfying the first criterion is heightened. Further, while there is not a requirement that Dutchak must show (to a high degree of proof) that the last two of the three criteria have been met with resounding success, the tests must still be met. Dutchak has not met either of them. Finally, the failure to file an undertaking or meaningful evidence supporting same, and the abuse of process, are added to the "mix" at this stage and these items are not supportive of Dutchak's position. Dutchak does not meet this fourth stage of the *PCS* injunction analysis.

[65] On the evidence and legal arguments before me I conclude that the interests of justice would not be served by granting the injunctive relief sought by Dutchak. Dutchak has not met the test. The application is therefore dismissed.

3. Should any order regarding costs be granted?

[66] SHA is the successful party on this application. SHA seeks solicitor-client costs. Respectfully, SHA does not meet the criteria set out in cases such as *Siemens v Bawolin*, 2002 SKCA 84. I cannot find that Dutchak has acted in a fashion that is “scandalous, outrageous or reprehensible” **within this litigation**. While I see the decision to commence a separate action and then to launch an originating application within that action to seek injunctive relief (all the while ignoring the ability to seek a stay within the appeal itself) as ill-conceived, a fair comparison between the acts of Mr. Bawolin and those of Dutchak does not put them on the same level in terms of a costs award. I therefore deny SHA’s request for solicitor-client costs.

[67] I do agree with SHA that tariff costs would be inadequate. Part 11 of *The King’s Bench Rules* is a codification of this Court’s inherent jurisdiction to award costs. This Court enjoys a plenary jurisdiction as to costs. I have considered all of the factors set out in Rule 11-1 as well as the many cases interpreting the proper assessment of cost awards. This is as much art as it is science.

[68] I therefore direct that SHA shall have its costs of the within application against Dutchak in any event of the cause and payable forthwith. This was a complex application, taking a significant amount of time in chambers. Both sides filed affidavit material and briefs. I have no doubt SHA expended considerable resources in defending an application that likely should never have been brought in this manner.

[69] Accordingly I exercise my discretion and fix the costs Dutchak must pay to SHA in the sum of \$10,000.00, all-inclusive.

Conclusion

[70] Accordingly I make the following order:

1. The plaintiff's application for injunctive relief is dismissed in its entirety.
2. The plaintiff shall pay costs of this application to the defendant. Those costs are fixed in the sum of \$10,000.00, all-inclusive. Those costs are payable in any event of the cause.

"R.W. Danyliuk" J.
R.W. DANYLIUK