

**CITATION:** BFT Mortgage Services Inc. v. Getz, 2025 ONSC 2908  
**COURT FILE NO.:** CV-24-455-0000  
**DATE:** 2025-05-15

**SUPERIOR COURT OF JUSTICE – ONTARIO**

491 Steeles Avenue East, Milton ON L9T 1Y7

**RE:** BFT Mortgage Services Inc., Plaintiff

**AND:**

Desiree Getz, Defendant

**BEFORE:** Justice Kurz

**COUNSEL:** Matthew Gibson, for the plaintiff

**HEARD:** In Chambers, in writing

**ENDORSEMENT**

***Introduction***

[1] This action was brought in Halton (Milton) by a Hamilton corporation, represented by a Hamilton lawyer, regarding a mortgage default on an Owen Sound property. As set out below, it should have been commenced in Owen Sound, as the action has no connection to Halton. Nonetheless, the Plaintiff obtained a default judgment on the mortgage, including possession of the subject property.

[2] On September 2, 2024 I reviewed the Plaintiff's motion for possession and raised the issues of whether this action was brought in the wrong location and whether the judgment should be set aside. I did so because it is *prima facie* unfair to a Defendant to

be sued in a venue that, as Google Maps demonstrates, is approximately 165 km. and a two-plus hour drive from the courthouse in her home jurisdiction.<sup>1</sup>

[3] The Plaintiff responded by stating that the Consolidated Practice Direction for the Central West Region (the “Practice Direction”), which encompasses both Halton and Owen Sound, allowed mortgage actions to be commenced in any of Brampton, Milton and Owen Sound. The Practice Direction states:

Pursuant to Rule 13.1.01(3) of the *Rules of Civil Procedure*, Brampton, Milton, Orangeville, or Owen Sound have been designated as the place for commencement of mortgage proceedings for property located anywhere in the Central West Region.<sup>2</sup>

[4] It is perhaps understandable that the Plaintiff wishes to interpret that Practice Direction in the manner most advantageous and convenient to itself and its counsel, whether or not that interpretation is prejudicial to the Defendant or overburdens the court. But, as that Practice Direction is established under the authority of r. 1.07 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as am., (the “Rules”), it must be read in light of the interpretive provisions of those *Rules*.

[5] The key interpretive provisions of the *Rules* are set out in r. 1.04(1) and (1.1)., which read as follows:

### **Interpretation**

#### **General Principle**

**1.04** (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

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<sup>1</sup>[https://www.google.ca/maps/dir/Ontario+Courts+of+Justice,+491+Steeles+Ave+E,+Milton,+ON+L9T+1Y7/Owen+Sound+Courthouse,+611+9th+Ave+E,+Owen+Sound,+ON+N4K+6Z4/@44.0344836,-81.6327009,8z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x882b6fb1ab1de4ab:0xe48e00c37bfb965c!2m2!1d-79.8879619!2d43.5274938!1m5!1m1!1s0x8829fb897e7a0aa9:0xfaaa9e119b7b1e!2m2!1d-80.9263208!2d44.5620567!3e0?entry=ttu&g\\_ep=EgoyMDI1MDQzMC4xIKXMDSoASAFQAw%3D%3D](https://www.google.ca/maps/dir/Ontario+Courts+of+Justice,+491+Steeles+Ave+E,+Milton,+ON+L9T+1Y7/Owen+Sound+Courthouse,+611+9th+Ave+E,+Owen+Sound,+ON+N4K+6Z4/@44.0344836,-81.6327009,8z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x882b6fb1ab1de4ab:0xe48e00c37bfb965c!2m2!1d-79.8879619!2d43.5274938!1m5!1m1!1s0x8829fb897e7a0aa9:0xfaaa9e119b7b1e!2m2!1d-80.9263208!2d44.5620567!3e0?entry=ttu&g_ep=EgoyMDI1MDQzMC4xIKXMDSoASAFQAw%3D%3D)

<sup>2</sup> [https://www.ontariocourts.ca/scj/practice/practice-directions/central-west/consolidated-pd-central-west/#B\\_Designated\\_Counties\\_for\\_the\\_Commencement\\_of\\_Mortgage\\_Proceedings](https://www.ontariocourts.ca/scj/practice/practice-directions/central-west/consolidated-pd-central-west/#B_Designated_Counties_for_the_Commencement_of_Mortgage_Proceedings)

### ***Proportionality***

(1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

[6] The intention of the drafters of the Practice Direction had to be in accord with the *Rules* under which they were created, including their fundamental principles of procedural justice. Allowing mortgagees to bring mortgage actions in the manner that is least just, expeditious or fair to mortgagors, particularly those who are alleged to be in arrears of their mortgage, cannot be said to further those principles.

[7] If the court were to apply the reasoning articulated by the Plaintiff, its convenience, that of its counsel, or its simple desire to shop for the venue most favourable to its interests would trump any other consideration. The court would be required to ignore the absence of any logical connection between the cause of action and the proposed venue or the interests of the defendant/mortgagor. Without reference to any principle of procedural fairness, a defendant/mortgagor could be required to participate in proceedings commenced hours from their home jurisdiction, in a venue with no connection to the cause of action upon which they are being sued.

[8] To take it a step further, the Plaintiff is effectively telling the court that it should not be required to justify the procedural fairness or proportionality of its unilateral decision to choose a venue with no rational connection to the underlying cause of action.

[9] That state of affairs does not strike me as being incongruent with the intentions articulated in r. 1.04(1) and (1.1).

### ***The Toronto-Dominion Bank v. The Other End Inc. et al.***

[10] Firestone R.S.J. was considering similar principles, albeit without making specific reference to rr. 1.04(1) and (1.1), when he wrote the following in *The Toronto-Dominion Bank v. The Other End Inc. et al.*, 2025 ONSC 85 (“*The Other End*”), at para. 26:

More broadly, while plaintiffs are generally entitled at first instance to choose where they commence proceedings, their decisions must be informed and reasonable. They do not have 'carte blanche' to choose a particular venue without first considering whether the proposed Judicial Region and location has a rational connection to the matters at issue in the proceeding. In making this determination, consideration should be given to the relevant factors enumerated under Rule 13.1.02(2). Forum shopping is never appropriate.

[11] At para. 29, Firestone R.S.J. pointed out that the relatively recent innovation of Zoom platforms as a method of hearing various proceedings “are not intended as a means for circumventing the requirement to choose a venue rationally connected to the matters at issue or to otherwise engage in forum shopping.”

[12] Firestone R.S.J. could not have been more clear when he wrote at para. 30:

**30** The practice of forum shopping must stop. It is not fair to other litigants or the court system as a whole.

[13] Based on those finding and principles, Firestone R.S.J. transferred the action before him from London, which had no connection to the cause of action, to Toronto, where he sits as Regional Senior Justice.

### ***The Practice of Forum Shopping is Endemic in Halton***

[14] The practice of forum shopping is particularly endemic in the Halton Region. At present, this court in Halton struggles under the weight of hundreds of written “basket” motions (at one recent point the court had approx. 400 outstanding motions in writing, which required months to process). It should not have to bear the burden of proceedings which have no connection to it.

[15] In a supplementary affidavit deposed in the name of his legal assistant, counsel for the Plaintiff complains about the length of time that it has taken to deal with this motion. In fact, it is in part motions such as this which lead to delays in the resolution of properly brought written motions, whether they are for civil or family law relief or simple requests for uncontested divorces.

[16] The same point has recently been made by two of my Halton colleagues. In *Calloway REIT v MYJKL Investments Ltd.*, 2025 ONSC 2372, at para. 11, Chozik J. cited Firestone L.A.J.'s decision in *The Other End* and continued, writing:

Multiple problems result with this kind of forum shopping. It is rampant in Halton Region, where hundreds upon hundreds of in-writing and other motions in civil proceedings are brought that have no connection to this judicial region. Halton Region has one of the fastest growing populations in Ontario. The influx of proceedings unrelated to this region results in delays for those litigants who either have no choice of judicial region (such as litigants in family law proceedings) or whose civil disputes are tied to Halton Region. This practice of bringing motions, and the underlying actions or applications, in judicial regions unrelated to those actions must stop. It is unfair to the litigants who have properly brought their matters in the appropriate judicial region, and it creates improper strain on limited judicial resources.

[17] Citing the principles set out in rr. 1.04(1) and (1.1) (without specifically naming the specific subrules) and the court's inherent jurisdiction to control its process, Chozik J. directed that the matter, which concerned property in Pickering, Ontario (Central East Region) be sent to that region.

[18] In *Business Development Bank of Canada v. Ang*, 2025 ONSC 1752, Mills J. was faced with a summary judgment motion in an action which should have been commenced in Toronto. She found that the action before her had no logical connection to Halton. Looking to the location of counsel, the parties and the cause of action itself, Mills J. found at para., 5 that:

there is nothing to suggest that Halton Region is an appropriate venue to bring this action. Toronto is clearly the most convenient venue for the proper adjudication of the issues raised in this proceeding and the parties involved.

[19] Citing the words of Firestone R.S.J. at para. 26 of *The Other End*, Mills J. wrote at para. 7:

**7** The hope or expectation that an earlier hearing date may be obtained for a summary judgment motion or a trial, is nothing more than forum

shopping. This practice must stop. It is unfair to the litigants who have properly brought their matters in the appropriate Judicial Region, and it creates improper strain on limited judicial resources.

[20] Mills J. directed the plaintiff before her to seek leave of the Regional Senior Judge of the Toronto Region to transfer the action before her. She adjourned the plaintiff's motion for summary judgment *sine die*.

[21] What Mills J. described is occurring in this case as well. When asked to justify the decision to bring this proceeding in Halton rather than Owen Sound, counsel simply referred to the Practice Direction as giving his client licence to chose as it pleased between Brampton, Milton and Owen Sound regarding venue. The Plaintiff makes no effort to justify bringing this action in Milton on the basis of any connection to Halton. Thus, I can only conclude that the general rationale offered by Mills J. for so many actions being brought in Halton which should have been brought elsewhere applies here as well.

[22] I add, however, that Milton and its courthouse is far closer to Toronto where Mills J. called for the action before her to be transferred, than it is to Owen Sound. Thus, the concern raised by Mills J. is compounded here.

### ***The Scope of This Court's Inherent Jurisdiction to Control its Process***

[23] Firestone R.S.J. made his decision in *The Other End* under r. 13.1.02(2), which allows a party to move for a transfer of venue of a proceeding. No such motion was brought by the Defendant in this case, who was sued in a venue more than two hours from her home venue. But the absence of such a motion does not mean that this court must passively acquiesce to venue shopping. The ills of that practice affect this court as well as the other litigants in a legal proceeding brought in the wrong venue. In addition, it is the duty of the court to look after the interests of all litigants, including those who do not defend an action. The point is made, for example in r. 19.06, which requires a plaintiff to prove its unliquidated damages before a judge, even in the face of a noting of default and the r. 19.02(a) deemed admission of the truth of the allegations in the statement of claim.

[24] It is trite to say that this court, as a superior court of justice, possesses the inherent jurisdiction to control its process. In *R. v. Cunningham*, 2010 SCC 10, a criminal case concerning the discretion of the court to refuse to allow counsel to remove themselves from the record, Rothstein J., writing for the court, stated at para. 18:

**18** Superior courts possess inherent jurisdiction to ensure they can function as courts of law and fulfil their mandate to administer justice (see I. H. Jacob, "The Inherent Jurisdiction of the Court" (1970), 23 *Curr. Legal Probs.* 23, at pp. 27-28). Inherent jurisdiction includes the authority to control the process of the court, prevent abuses of process, and ensure the machinery of the court functions in an orderly and effective manner

[25] In *R. v. Rose*, [1998] 3 S.C.R. 262, (S.C.J.), a case dealing with the constitutionality of the *Criminal Code*'s rules regarding the order of jury final addresses, L'Heureux-Dubé J., concurring with the majority, wrote the following at para. 130 regarding the court's inherent jurisdiction to ensure the fairness of the trial process:

However, the inherent jurisdiction of superior court judges to remedy procedural unfairness during the trial has always existed at common law. In *R. v. Osborn*, [1969] 1 O.R. 152, the Ontario Court of Appeal correctly observed that courts have from the earliest times invoked an inherent jurisdiction to prevent the abuse of trial process resulting from oppressive or vexatious proceedings. In *Selvey v. Director of Public Prosecutions*, [1968] 2 All E.R. 497, at p. 520, Lord Guest referred to the overriding duty of the trial judge to ensure that a trial is fair. He wrote that this duty: "springs from the inherent power of the judge to control the trial before him and to see that justice is done in fairness to the accused".

[26] L'Heureux-Dubé J. added the following comments regarding the scope of that inherent jurisdiction at para. 131, citing the article of I. H. Jacob entitled "The Inherent Jurisdiction of the Court" (1970), 23 *Curr. Legal Probs.* 23, as follows:

a trial judge always possesses an inherent jurisdiction to ensure that the trial is conducted fairly. Inherent jurisdiction cannot be circumvented by narrow or confining statutory language. Jacob aptly described this fundamentally important residual power in this way, at pp. 27-28:

For the essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused. Such a power is intrinsic in a superior court; it is its very life-blood, its very essence, its immanent attribute. Without such a power, the court would have form but would lack substance. The jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law. The juridical basis of this jurisdiction is therefore the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner.

[27] In *R. v. Felderhoff* (2003), 68 O.R.(3d) 481 (Ont. C.A.), Rosenberg J.A., writing for the Ontario Court of Appeal stated at para. 40, regarding the role of the trial judge:

It would undermine the administration of justice if a trial judge had no power to intervene at an appropriate time and, like this trial judge, after hearing submissions, make directions necessary to ensure that the trial proceeds in an orderly manner. I do not see this power as a limited one resting solely on the court's power to intervene to prevent an abuse of its process. Rather, the power is founded on the court's inherent jurisdiction to control its own process.

[28] In *Abrams v. Abrams*, 2010 ONSC 2703, a case dealing with this court's inherent jurisdiction to issue case management directions in an estates matter, D.M. Brown, as he then was, wrote at para. 32:

[32] Whichever view one takes of how to articulate the source of a court's inherent powers, the commentators unite in recognizing that courts, at least superior courts of record, enjoy inherent powers to regulate and control their own process and proceedings other than those which are conferred on them by legislation, including delegated legislation such as rules of practice.<sup>3</sup> Indeed, less than two years ago, former Chief Justice

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<sup>3</sup> Citing the article by I. H. Jacob cited above and M.S. Dockray, "The Inherent Jurisdiction to Regulate Civil Proceedings" (1997), 113 Law Q. Rev. 120 at 126.

Lesage, and now Justice Code of this court, in their Report of the Review of Large and Complex Criminal Cases Procedures wrote:

[A]t common law "the trial judge" has significant case management powers, both when hearing motions at the pre-trial stage and when hearing evidence at trial. All trial courts, whether statutory courts or superior courts, have the implied power to control their own process and ensure a fair trial. It is from this broad power that the common law developed an expansive list of remedial tools designed to ensure the fairness and effectiveness of trial processes.<sup>4</sup>

[29] At para. 33, D.M. Brown J. cited an article by Justice Casey Hill,<sup>5</sup> which "exhaustively reviewed the origins and scope of a judge's inherent powers to manage a criminal trial". D.M. Brown J. found that Justice Hill's comments apply with equal force to civil proceedings. Among the excerpts of the Justice Hill article cited by D.M. Brown J. were the following:

Originally cast in terms of inherent authority to control the processes of the court and prevention of abuse of the process, it is today recognized that a trial judge has a duty to manage the trial process balancing fairness to the parties as well as efficient and orderly discharge of court process. Judicial management of litigation recognizes that "there is more at stake than just the interests of the accused". Management involves control, direction and administration in the conduct of a trial. This power, settled within a broad discretion, relates to the entirety of the trial proceeding extending beyond the scope of pre-trial case management rules designed for "effective and efficient case management".

...

With the court's compass steadily pointed toward trial fairness, a trial judge's obligation to the administration of justice includes prevention of unnecessary delay or abuse of the court's process as well as attention to conservation of cost and resources.

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<sup>4</sup> (Toronto: Queen's Printer for Ontario, 2008) at 70.

<sup>5</sup> "The Duty to Manage a Criminal Trial" (Paper presented to the National Justice Institute, April 2009)

...

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs.

[30] D.M. Brown J. continued at para. 34 regarding the breadth of the court's inherent powers:

[34] These inherent powers are broad. It is difficult to set the limits upon the powers of the court in the exercise of its inherent jurisdiction to control and regulate its process because those limits cannot impair the need of the court to fulfill its judicial functions in the administration of justice.<sup>6</sup> That said, the exercise of inherent powers must not undermine principles of procedural natural justice or fairness. As the Court of Appeal recently pointed out, while a trial court has the inherent jurisdiction to control its own process, that jurisdiction does not extend to dismissing cases without hearing the available evidence and submissions.<sup>7</sup>

### ***Discussion***

[31] This court has the inherent discretion, subject to an explicit rule, to determine that a proceeding has been brought in the wrong location and make orders accordingly. It is important that that jurisdiction be exercised to ensure fairness to all parties and to avoid an abuse of process. Because the Practice Direction must be read in the light of rr. 1.04(1) and (1.1), counsel for plaintiffs in mortgage actions are not granted *carte blanche* to bring actions in venues which have no relation to the parties or the cause of action. That is unfair to the other party and as set out above, it places undue burdens in some judicial locations.

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<sup>6</sup> Citing Jacob, at 33

<sup>7</sup> *Park v. Lee* (2009), 98 O.R. (3d) 520, [2009] O.J. No. 3746 (C.A.), at p. 521 O.R.

[32] The Practice Direction is general in nature. It does not determine which location is closest to Brampton, Milton or Owen Sound. It would make little sense to attempt to set out in a chart or map, which location has the closest connection to Brampton, Milton or Owen Sound. But the Practice Direction contains the implicit assumption that the principles of the *Rules of Civil Procedure*, including procedural justice, expeditiousness for both parties, the least expensive process and proportionality will be observed.

[33] That assumption is not met when a litigant, who is allegedly in default under a mortgage, and may not be able to afford legal counsel, is required to participate in an action brought hours away from the home whose mortgage is the subject of that action. Proceeding in that manner may be most convenient to counsel for the plaintiff or their client. But it discourages participation by the defendant, even if they have a full or partial defence to the action.

[34] The process thus becomes the substance by inviting default judgment against a party cowed by the prospect of defending an action in a venue, hours away from their home and with no logical connection to the plaintiff's claim.

[35] Thus, the process of suing in the wrong venue may prevent a litigant from raising a meritorious defence. For example, there may be a defect in service of the statement of claim. The defendant in a mortgage action may be able to argue that the mortgage calculations are wrong and that there is no default. Or they may be able to argue that, despite the default, the fees charged by the mortgagee violate s. 8 of the *Interest Act*, R.S.C.1985, c. I-15, in the manner described in *Krayzel Corp. v. Equitable Trust Co.*, 2016 SCC 18, [2016] 1 S.C.R. 273 and *P.A.R.C.E.L. Inc. v. Acquaviva*, 2015 ONCA 331, 126 O.R. (3d) 108. In rare occasions, there may be an improper scheme to take advantage of a mortgagor, such as the one found in *Martin v. 2670082 Ontario Corp.*, 2024 ONSC 3982

[36] Interpreted as I have suggested above, the Practice Direction cannot be read as intending to arbitrarily discourage participation in mortgage litigation by what is almost always the weaker party, merely to suit the convenience of the stronger one.

[37] It also cannot be intended to allow litigants to overwhelm courts with proceedings that have no connection to their venue.

[38] As the cases cited above and this endorsement demonstrates, litigants must be on notice that this type of litigation conduct will no longer be accepted.

**Order**

[39] It is very tempting to transfer this proceeding to Owen Sound. In the future that will occur in the proper circumstances.

[40] But to do so at this stage, when I have dealt with it at length, including the requirement of an additional occupancy check in a previous endorsement, would not meet the requirements of the *Rules* cited above. Rather, in this case, in light of the delay in considering the issues raised and the fact that the directions in this endorsement and other cases cited above came after this action was brought, I grant the Plaintiff leave to issue a writ of possession.

[41] But in light of the concerns I have cited, the Plaintiff shall not charge the Defendant any fees or costs for any part of this motion.

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Kurz J.

**Released:** May 15, 2025