CITATION: Meehan et al v. Good et al, 2025 ONSC 3347
COURT FILE NO.: CV-14-60040
DATE: 2025/05/28

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: The Estate of Michael Meehan, by his litigation administrator Anthony Meehan, Anne Meehan, by her litigation guardian Anthony Meehan, Michael Meehan, Katarina Meehan, Kathleen Meehan, and Anthony Meehan

AND:

Donald Good, Donald R. Good A Professional Corporation o/a Donald R. Good & Associates, Ian Stauffer, John Cardill, and Tierney Stauffer LLP

BEFORE: The Honourable Justice A. Kaufman

COUNSEL: Bryan D. Rumble, for the Plaintiffs

Joseph Y. Obagi, for the Defendant, John Cardill.

HEARD: April 17, 2025

RULINGS ON PRE-TRIAL MOTIONS

[1] These reasons address three mid-trial motions. The plaintiffs seek leave to admit late-served expert reports and to call Ms. Tara Sweeney as a participant expert at trial. The defendant seeks a ruling that the plaintiffs' claim is limited to damages arising from an alleged improvident settlement, and objects to the plaintiffs calling multiple experts on the same issue.

1. Nature of the claim

[2] In their Statement of Claim, the plaintiffs allege that, due to Mr. Good's negligence, they lost the opportunity to obtain accident benefits from their insurer, Wawanesa Mutual Insurance Company ("Wawanesa"). The defendant argues that the plaintiffs limited their claim during examinations for discovery to Mr. Cardill's failure to advise on a limitation period to initiate a claim against Mr. Good concerning an alleged improvident settlement.

Pleaded claims

[3] The plaintiffs allege that Mr. Cardill negligently failed to inform them of the limitation period for commencing a separate negligence claim against their former solicitor, Mr. Donald Good. Mr. Good represented the plaintiffs in two actions arising from a motor vehicle accident: a tort claim against the at-fault driver (action 270/01) and an accident benefits claim against Wawanesa (action 257/04). Both actions were settled before trial.

[4] In paragraphs 44 and 46 of the Statement of Claim, the plaintiffs assert that Mr. Good's negligence prevented them from obtaining accident benefits, including rehabilitation, attendant care, and weekly indemnification benefits. They seek damages equivalent to the benefits they would have received from Wawanesa

Positions given at Discovery

[5] During examinations for discovery on June 2, 2020, the defendant's counsel sought particulars on the plaintiffs' special damages claim. The plaintiffs' counsel stated that the claim was for the difference between the settlement amount received and the amount the claims should have been settled for:

> Mr. Rumble: I think what we're claiming, generally, is the difference between what the cases should have been resolved for and not what the cases did resolve for. This isn't a case where there will be specific special damages that would exist post settlement. All the damages are at or near the time the cases resolved or should have resolved whether by way of trial or any other method.
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> Because the measure of damages is the difference between what the case should have resolved for and what the case did resolve for; right?
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> I think the method by which we would do that is in the context of a report from a solicitor or they would provide an opinion as to what an appropriate resolution of the case would be. And that would be something that they would be able to testify to based on the information that existed at the time. And if there were any deficiencies in such evidence what those deficiencies would have led to.

Analysis

[6] The plaintiffs argue that while their main submission remains that the settlement was improvident, they also seek to advance an alternative theory of liability, contending that Mr. Good was negligent in settling the claim, as Ms. Meehan would have been entitled to accident benefits absent the settlement. To quantify these foregone benefits, they propose introducing evidence of her post-settlement health and rehabilitative needs. They assert that this alternative claim was pleaded in their Statement of Claim, so the defendant should not be surprised that they are asserting this claim at trial.

[7] I disagree. A Statement of Claim may be narrowed by positions taken during litigation, including at discovery. In 2020, the plaintiffs stated that their damages were based on the

difference between the settlement amount received and the amount the claims should have been settled for, based on information available at the time. Allowing the plaintiffs to re-introduce a theory of liability at trial, after limiting their claim during discovery, would unfairly prejudice the defendant.

[8] The defendant notes that, had they known the plaintiffs intended to rely on Ms. Meehan's post-settlement health and needs, they would have taken additional steps, such as requesting an independent medical examination.

[9] Accordingly, the plaintiffs are precluded from advancing any theory of liability beyond the improvident settlement claim.

2 – Should the plaintiffs be granted leave to rely on late served reports?

[10] The plaintiffs seek leave to rely on four expert reports, but the defendant only object to the late service of Ms. Heather Condello's report and Mr. Gary Will's supplementary report. I will briefly review the sequence of events leading to their delivery.

[11] On January 24, 2024, at a case conference, I granted an extension, unopposed by the defendant, for the plaintiffs to serve expert reports *on liability* by May 31, 2024, and ordered examinations for discovery of Messrs. Cardill, Meehan and Good to be completed by March 29, 2024.

[12] On April 16, 2024, the plaintiffs retained Mr. Will to prepare a report on Mr. Donald Good's alleged breach of the standard of care. Mr. Will anticipated delivering his report by the end of June 2024.

[13] On April 24, 2024, the plaintiffs retained Ms. Grace Maitland-Carter to prepare a report on Mr. John Cardill's alleged breach of the standard of care.

[14] On May 27, 2024, the defendant agreed to extend the deadline for the plaintiffs' expert reports by 30 days, to June 30, 2024.

[15] The plaintiffs served Ms. Maitland-Carter's report on June 28, 2024, and requested a further extension to deliver Mr. Will's report by July 15, 2024, which the defendant did not consent to. The plaintiffs served Mr. Will's report on July 17, 2024.

[16] Ms. Maitland-Carter's report addresses Mr. Cardill's duty, under a limited scope retainer, to advise the plaintiffs about the limitation period to commence a claim against Mr. Good.

[17] Mr. Will's report addresses Mr. Good's standard of care in settling the plaintiffs' claims and Mr. Cardill's failure to advise the plaintiffs in writing about the limitation period to commence a claim against Mr. Good.

[18] Ms. Maitland-Carter's report was served within the agreed upon deadline, and the defendant no longer objects to the late delivery of Mr. Will's initial report.

[19] On July 31, 2024, the plaintiffs retained Ms. Condello, an occupational therapist, to prepare a retrospective future cost of care report regarding Ms. Meehan's injuries from the motor vehicle accident. Her report, served on August 15, 2024, relies on Ms. Meehan's medical records, including post-settlement records, and concludes that Ms. Meehan faces significant functional challenges due to mood disorders and chronic pain, with future care costs ranging from $69,004 to $324,840 annually.

[20] On August 20, 2024, the plaintiffs retained Mr. Will to prepare a supplementary report addressing damages and commenting on Ms. Condello's report. Mr. Will's supplementary report notes that Mr. Good should have considered medical and rehabilitation benefits quantified by a life care planner. This supplementary report was served on August 21, 2024.

Analysis

[21] Rule 53.03[1] requires a party intending to call an expert to serve a signed report at least 90 days before the pre-trial conference. Rule 53.08 allows a trial judge to grant leave to rely on a report served late if the party responsible for non-compliance demonstrates:

(a) there is a reasonable explanation for the failure; and

(b) granting leave would not:

(i) cause prejudice to the opposing party which could not be compensated for by costs or an adjournment; or

(ii) cause undue delay in the conduct of the trial.

[22] The test under Rule 53.08 is conjunctive, requiring both conditions to be satisfied.

Explanation for the delay

[23] The plaintiffs must provide a reasonable explanation for the late service of Ms. Condello's report and Mr. Will's supplementary report. Rule 53.03(1) requires expert reports to be served 90 days before the pre-trial conference, but the plaintiff's obtained an order extending the time to serve expert reports on liability to May 31, 2024, and the defendant consented to a further extension to June 30, 2024. Thus, I assess the delay from June 30, 2024.

[24] The plaintiffs offer two explanations for the delay. First, they note that examinations for discovery of Mr. Good and Mr. Cardill, ordered at the January 24, 2024 case conference, occurred in February and March 2024, with transcripts received on April 9 and 12, 2024, respectively.

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

[25] The plaintiffs state that they could not obtain expert reports without these transcripts and that Mr. Will, upon delivering his initial report, indicated he could not opine on damages without a future cost of care analysis, prompting the plaintiffs to retain Ms. Condello and obtain Mr. Will's supplementary report

[26] These explanations are unpersuasive.

[27] As the defendant highlights, Mr. Cardill was cross-examined on his affidavit for a summary judgment motion, and the parties agreed those transcripts would serve as discovery transcripts at trial. The plaintiffs should have been aware of the substance of Mr. Cardill's evidence and could have initiated the expert retention process earlier than when the transcripts from the March 2024 examination became available.

[28] More significantly, during Mr. Michael Meehan's examination for discovery on June 2, 2020, the plaintiffs' counsel undertook to particularize damages in an expert report. At the January 24, 2024 case conference, the plaintiffs obtained an extension for liability reports only. The Condello and supplementary Will reports address damages, not liability.

[29] Even if an extension had been obtained for the service of damages reports, the plaintiffs fail to explain why the need for a future cost of care report only became apparent upon receiving Mr. Will's initial report. This action was commenced over a decade ago. The requirement to prove damages is not an issue that only arose recently. One would assume that there would be preliminary conversations with Mr. Will about the scope of the report, his preliminary views, and the evidence required to base his conclusions.

[30] In *Agha v. Munroe*,[2] RSJ Edwards reviewed the 2022 amendment to Rule 53.08, noting at para. 7 that late delivery of expert reports had drawn significant judicial criticism. At paras. 30 and 32, he emphasized that the amended rule signals that expert reports must be served timely under Rule 53.03, and courts will not routinely grant leave for late reports absent a reasonable explanation. RSJ Edwards stated, at paras. 30 and 32:

> The purpose of the new rule is, in my view, clear and obvious. The first purpose is to send a very loud and clear message to all sides of the Bar, that expert reports are to be served in a timely manner and in accordance with the provisions of Rule 53.03(1) and (2).
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> Lawyers and litigants need to adapt to the new rule immediately. The late delivery of expert reports simply will not be rubber-stamped by the court. By shifting the onus to the party seeking the indulgence and changing the word "shall" to "may", the exercise of the court's discretion will, in my view, result in far fewer adjournments and more productive pre-trials. There will always be circumstances that

[2] 2022 ONSC 2508.

> are beyond the control of counsel and the parties which will fall within the definition of a "reasonable explanation" for failing to comply with the timelines for the service of expert reports. In this case, no such reasonable explanation was provided to the court.

[31] Similarly, here, the plaintiffs have not provided a reasonable explanation for the late delivery of Ms. Condello's report and Mr. Will's supplementary report. Accordingly, leave to rely on these reports is denied.

3. Is Ms. Tara Sweeney a participant expert?

[32] Ms. Tara Sweeney does not qualify as a participant expert.

[33] In 2011, the plaintiffs, through their then-counsel Mr. Cardill, retained Ms. Sweeney to provide expert evidence on Mr. Donald Good's standard of care in the context of an assessment of his accounts

[34] The plaintiffs now seek to call Ms. Sweeney as a participant expert at trial to opine on the proper handling and presentation of an accident benefits claim, asserting that her opinion stems from her observations and participation in the events at issue

[35] The Court of Appeal clarified in *Westerhof* v. *Gee Estate*,[3] that participant experts are witnesses with specialized skill, knowledge, training, or experience, *not engaged by a party to the litigation*, who may provide opinion evidence without complying with Rule 53.03 of the *Rules of Civil Procedure*, if: (1) their opinion is based on their observation of or participation in the events at issue; and (2) the opinion was formed in the ordinary exercise of their expertise while observing or participating in those events. Ms. Sweeney had no direct involvement in Mr. Good's handling of the plaintiffs' personal injury actions. She was retained as a litigation expert by the plaintiffs through Mr. Cardill.

[36] Ms. Sweeney also does not qualify as a "non-party expert," as she was engaged by the plaintiffs through their then counsel.

[37] The plaintiffs argue they can only call Ms. Sweeney via a summons due to a conflict, as she was previously retained by Mr. Cardill.

[38] I disagree. There is no property in a witness, including an expert witness. A party may even call an expert previously retained by an opposing party, subject to limitations such as exposure to privileged material from the opposing solicitor.[4] Here, Ms. Sweeney was retained by the plaintiffs through Mr. Cardill to provide an opinion based on their medical records, medical assessments, and Mr. Good's files, all of which belong to the plaintiffs. No legal impediment prevents her from testifying as a litigation expert.

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[3] 2015 ONCA 206.
[4] *Labbee v. Peters (1996*), 10 C.P.C. (5th) 312 (Alta. Q.B.).

4 – Should the court permit the plaintiff to call multiple experts on the same issue

[39] The defendant argues that the court, as gatekeeper, should prohibit the plaintiffs from calling duplicative expert evidence from Ms. Tara Sweeney, Mr. Gary Will, and Ms. Grace Maitland-Carter, asserting that their opinions and expertise overlap and that the plaintiffs must select one expert to testify.

[40] Ms. Maitland-Carter's report addresses Mr. Cardill's duty of care under a limited scope retainer to advise the plaintiffs about the limitation period for a claim against Mr. Donald Good. As a lawyer and assessment officer for over 20 years, she brings expertise in costs assessments.

[41] Mr. Will, an experienced personal injury lawyer, opines on whether Mr. Good and Mr. Cardill met the standard of care in their handling the plaintiffs' files.

[42] Ms. Sweeney, also an experienced personal injury lawyer, provided a 2011 report on the steps a personal injury lawyer would likely take to advance the plaintiffs' accident benefits action for litigation or settlement. While her opinion focuses on the accident benefits action, any deficiencies identified would also apply to the tort action.

[43] The defendant contends that the proposed expert evidence is duplicative and unnecessary, arguing that distinctions in the experts' specialties are immaterial. The defendant further urges the court to exercise its inherent jurisdiction to prevent redundant evidence, preserve judicial resources, and minimize costs by requiring the plaintiffs to choose one expert.

[44] The plaintiffs argue that Mr. Will and Ms. Maitland-Carter's evidence is not duplicative, as they address Mr. Cardill's standard of care from distinct perspectives: Mr. Will as a personal injury lawyer and Ms. Maitland-Carter as an assessment of costs expert, typically retained on a limited scope basis.

[45] Given Mr. Cardill's dual practice in personal injury and costs assessments, the plaintiffs submit that both experts are necessary to fully evaluate whether he met his standard of care.

[46] Additionally, the plaintiffs submit that the test to exclude evidence for duplication is a high one and requires *undue* duplication. Even if Mr. Will and Ms. Maitland-Carter provide similar conclusions on Mr. Cardill's standard of care, this does not amount to undue duplication.

Analysis

[47] These reasons only address the issue of whether the plaintiffs' proposed expert evidence is impermissibly duplicative.

[48] When expert evidence meets threshold admissibility requirements, the trial judge applies a discretionary gatekeeping step to assess its admissibility. [5]

[49] In this gatekeeping role, the judge balances the benefits and risks of admitting the evidence, determining whether the benefits justify the potential harm to the trial process. In other words, the "trial judge must decide whether expert evidence that meets the preconditions to admissibility is sufficiently beneficial to the trial process to warrant its admission despite the potential harm to the trial process that may flow from the admission of the expert evidence".[6]

[50] As such, this gatekeeping step does not involve the application of bright line rules, but instead requires an exercise of judicial discretion. This cost-benefit analysis is case-specific and requires judicial discretion, weighing factors such as relevance, necessity, and potential prejudice.[7]

[51] Duplicative expert evidence is one circumstance where the gatekeeping function may be engaged.[8] True duplication occurs when a party seeks to introduce testimony from multiple experts with the same specialization who essentially reiterate each other's evidence.[9] In such cases, trial judges have commonly refused to admit multiple experts on the same issue, instead requiring the party to select only one expert to testify.[10]

[52] However, the mere fact that two experts may testify to the same issue and offer similar observations does not automatically constitute undue duplication warranting exclusion. Duplication is not prohibited; rather, the law prevents undue or unnecessary repetition.[11] There are circumstances where calling multiple experts with similar specializations may be appropriate. [12]

[53] For example, in *Hayes v. Symington*,[13] the trial judge permitted the defendant to call two experts in emergency medicine to testify on the standard of care, despite both experts reaching the same conclusion. This was justified because the experts had different

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[5] *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182, at para. 23; *St. Marthe v. O'Connor*, 2021 ONCA 790, 159 O.R. (3d) 148, at para. 31.
[6] *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182, at para. 24, citing *R. v. Abbey*, 2009 ONCA 624, 97 O.R. (3d) 330, at para. 76.
[7] *R. v. Abbey*, 2009 ONCA 624, 97 O.R. (3d) 330, at para. 79.
[8] *Cheesman et al. v. Credit Valley Hospital et al.*, 2019 ONSC 1907; *Davies v. The Corporation of the Municipality of Clarington*, 2016 ONSC 1079.
[9] *Cheesman et al. v. Credit Valley Hospital et al.,* 2019 ONSC 1907, at para. 67; *Parliament et al. v. Conley and Park,* 2019 ONSC 3044, at para. 58
[10] *Suwary v. Women's College Hospital*, 2009 CanLII 5156 (Ont. S.C.); *Kulyk v. Cramp*, 2014 ONSC 5354, 69 C.P.C. (7th) 57; and *Gorman v. Powell*, 2006 CanLII 35624 (Ont. S.C.).
[11] *Cheesman et al. v. Credit Valley Hospital et al.*, 2019 ONSC 1907, at paras. 69, 71; *Parliament et al. v. Conley and Park*, 2019 ONSC 3044, at paras. 59-60; and *Majerczyk v. Manalo*, 2023 ONSC 3064, at paras. 23-24
[12] *Cheesman et al. v. Credit Valley Hospital et al.,* 2019 ONSC 1907, at para. 70.
[13] 2015 ONSC 7362.

experiences: one was an academic, the other a practitioner. The court emphasized that identical conclusions do not render expert evidence inadmissible for being unduly repetitive, especially when the differing backgrounds add value. Moreover, the trial judge found that the plaintiff had not demonstrated any prejudice or unfairness in allowing both experts to testify.

[54] The court must also consider the broader context of expert evidence in personal injury litigation, where excessive use of experts can escalate costs and hinder access to justice, contrary to the principles Canada in *Hryniak v. Mauldin.*[14] A party cannot expect to call every witness they want in a civil trial even if that witness may have relevant evidence to give the court.[15]

[55] The defendant argues that allowing multiple experts on the same issue is inefficient and costly, and that the court's gatekeeping role includes ensuring trials are conducted expeditiously and fairly.

[56] To determine whether the plaintiffs' expert evidence is impermissibly duplicative, I assess whether the benefits of allowing all proposed experts outweigh the costs, including increased trial time and expense.

[57] Regarding Mr. Cardill's standard of care, permitting both Mr. Will and Ms. Maitland-Carter to testify would increase litigation costs and judicial resources due to overlapping testimony. However, because this case is being tried by a judge alone and not by a jury, there is less concern of prejudice and confusion of the trier of fact by permitting the second expert to testify on the same issue.

[58] On the benefits side, Mr. Will and Ms. Maitland-Carter offer distinct perspectives on Mr. Cardill's standard of care: Mr. Will as a personal injury lawyer (typically on a full scope retainer) and Ms. Maitland-Carter as an assessment of costs expert (typically on a limited scope retainer). These differing viewpoints may enhance the court's understanding of Mr. Cardill's dual practice and the nuances of his obligations.

[59] For example, although the alleged breach of the standard of care involves a failure to advise of a limitation period in writing—a standard of care that any lawyer may testify to and is not unique to any particular practice—allowing both experts to testify can enhance the court's understanding of different aspects of Mr. Cardill's practice and the nuances involved in the standard of care owed by him as a lawyer practicing personal injury and assessment of costs. Specifically, Mr. Will is proposed to provide opinion evidence on the standard of care owed by a personal injury lawyer typically retained on a full-scope retainer. In contrast, Ms. Maitland-Carter is proposed to give opinion evidence on the standard of care owed by a costs assessment expert, who is usually retained on a limited-scope retainer.

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[14] 2014 SCC 7, [2014] 1 S.C.R. 87

[15] *Desmond v. Hanna et al., and Henry v. Hanna et al.*, 2023 ONSC 4097, at para. 16.

[60] Therefore, having both experts testify about Mr. Cardill's standard of care will likely aid the court in better understanding whether he met the applicable standard in his dual practice areas. Since the court's task is to determine whether Mr. Cardill met the standard of care, this enhanced understanding and appreciation of his practice areas and the standard of care owed weighs in favor of allowing the Plaintiffs to call both experts.

[61] In balancing the costs and benefits, I conclude that the advantages of permitting a second expert on Mr. Cardill's standard of care outweigh the associated costs. Despite the additional time, resources, and expense involved in examining a second expert, this is not a situation where the second expert's testimony will be redundant or unnecessary. The second expert's contribution will not unduly prolong the trial.

[62] Regarding the duplicative evidence on Mr. Good's standard of care, I come to the opposite conclusion. I find the evidence from Mr. Will and Ms. Sweeney to be largely duplicative. Both are experienced personal injury lawyers who reach the same conclusion from a similar perspective. Allowing both to testify would not add substantial value and risks unnecessary repetition.

[63] Accordingly, the plaintiffs will not be permitted to call both Mr. Will and Ms. Sweeney to testify regarding Mr. Good's standard of care.

Disposition

[64] The Court orders that:

1. The plaintiffs are precluded from presenting a theory of liability other than an improvident settlement

2. The plaintiffs may not rely on Ms. Heather Condello's report or Mr. Gary Will's supplementary report at trial.

3. Ms. Sweeney is neither a non-party expert nor a participant expert.

4. The plaintiffs may call Ms. Grace Maitland-Carter and Mr. Gary Will to testify as litigation experts on Mr. John Cardill's alleged breach of the standard of care

5. The plaintiffs may not call both Mr. Gary Will and Ms. Tara Sweeney to testify on Mr. Donald Good's alleged breach of the standard of care; they must choose one expert.

Justice A. Kaufman

Date: May 28, 2025