

CITATION: Goulamhousen v. RBC Dominion Securities Inc, 2025 ONSC 4156
COURT FILE NO.: CV-23-711470
DATE: 20250710

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Goulamhousen

Plaintiff

AND:

RBC Dominion Securities Inc.

Defendant

BEFORE: Associate Justice Josefo

COUNSEL: *A. Monkhouse*, for the Plaintiff

C. Pilkington & J. VanDerMeulen, for the Defendant

HEARD & DECIDED: July 10, 2025

ENDORSEMENT

Plaintiff seeks:

- 1. a timetable for delivery of materials for defendant's pending motion,**
- 2. to examine Mr. David Agnew as a witness on defendant's pending motion.**

[1] In this wrongful dismissal action, plaintiff seeks to examine for discovery Mr. David Agnew, the CEO of the defendant corporation. Defendant asserts that Mr. Agnew is not sufficiently knowledgeable about the plaintiff's employment, and also that the examination of him would be oppressive. Thus, defendant has scheduled a motion to substitute Mr. Stephen Harrop, the Branch Manager of the defendant who had primary dealings with the plaintiff, and who himself reported up the executive ladder to a Vice President, Mr. Foster. Defendant's motion is to be heard August 20, 2025.

[2] Subsequently, following delivery of the defendant's motion record, on July 2, 2025, plaintiff informed defendant that, pursuant to Rule 39.03, plaintiff seeks to examine Mr. Agnew as a witness on that pending motion. The plaintiff at the Case Conference today seeks an Order that Mr. Agnew be examined as a witness on defendant's pending motion. Plaintiff also sought a timetabling Order for this pending "regular motion".

Timetabling for the Pending Motion?

[3] As to a timetabling Order for a pending motion, it is very rare that the Court would presume to timetable a matter to be subsequently heard as a regular motion. Imagine if we were called upon to timetable matters for counsel for all of the many pending motions on our dockets—we would have no time to actually hear and decide those motions. Counsel are expected to address timetabling matters on their own, without the need for judicial intervention, and to cooperate in scheduling appearances or the delivery of materials. Alternatively, if cooperation proves difficult, then counsel can rely on the timelines and deadlines set out in the Rules.

[4] While in this case I was told by both counsel that they were “mainly” or “for the most part” in agreement on the timetable, defendant did not believe sufficient time was allotted for its reply. Nor was there agreement, obviously, on aspects of the timetable as pertains to the examination of Mr. Agnew as a witness for the pending motion.

[5] Below I set out my disposition of plaintiff’s request to examine Mr. Agnew as a witness, which will solve that portion of the proposed timetable. As for the remainder, I expect that counsel will either agree, or revert to the timelines proposed by the Rules. I will not make a timetable Order for a pending motion for reasons expressed above.

Examine Mr. Agnew as a Witness on a Pending Motion?

[6] I address whether Mr. Agnew is to submit to an examination pursuant to Rule 39.03.

[7] Counsel for plaintiff submitted that Mr. Agnew is best positioned to testify to what knowledge he has or lacks, and to describe the scope of and how he obtained his knowledge, regarding the plaintiff as pertains to the pending motion. It was further submitted that Mr. Agnew is best placed to explain how/why his being a witness for the defendant at the discovery could be oppressive. Counsel attempted to distinguish such line of questioning from Mr. Agnew’s alleged actual knowledge of the matters covered in the within litigation.

[8] In my view, the propriety and appropriateness (including whether it would be oppressive or not) for Mr. Agnew to be examined for discovery is the very issue to be determined by the Court at the August 20th motion. It is thus oppressive in and of itself to require him to appear as a witness for that pending motion, and to purportedly answer questions as to how/why his being there is oppressive. It is also oppressive to try to use defendant’s pending motion, which seeks to substitute another witness for Mr. Agnew, to nevertheless prematurely achieve the plaintiff’s goal of examining Mr. Agnew before there is a ruling from the Court on the defendant’s motion.

[9] Moreover, to try to navigate between asking what, if any, knowledge Mr. Agnew may have about the plaintiff, the scope of it, and how he obtained such knowledge, as purportedly contrasted with the substance of that knowledge (the specifics of what he actually knows about the plaintiff), is such an exceedingly fine line, if there be a line at all, as to be practically impossible to navigate. I find that to be a “distinction without a difference”.

[10] Overall, I find the request to examine Mr. Agnew as a witness on defendant's pending motion to be an abuse of process, with plaintiff trying to achieve an "end run" around, and so to circumvent, the very issue to be decided at the pending substitution motion brought by defendants. In that regard, see *Clarke v Madill* 2001 CanLii 28089, para 35, 47, 54. I also find this premature attempt to examine Mr. Agnew as a witness on the pending motion to be a likely "fishing expedition", as that old phrase is used.

[11] I thus decline to Order Mr. Agnew to attend as a witness to be examined on defendant's pending motion. Any summons issued in that regard is quashed.

[12] I would add that, procedurally, it is generally not appropriate to determine such contested matters at a case conference, absent a complete record. In this case, thankfully, both sides put in helpful materials. Yet, again, Case Conferences, as presently constituted under the existing Rules, are limited to 15 minute matters which are not typically all that contentious.

[13] I could have thus dismissed the plaintiff's request on that basis alone. Yet to avoid the parties further bogging down in this clearly highly contested litigation, I have ruled on the merits of the request.

Costs

[14] The parties did not address costs. Given the pending motion is to be heard in about six weeks, the parties can, if desired, address costs of today from the Associate Justice assigned with this motion.

Associate Justice Josefo

Date: July 10, 2025