CITATION: Morrison v. Hatts Off Inc. et al., 2025 ONSC 4320
COURT FILE NO.: CV-23-80958
DATE: 2025-07-29

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ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	
JAMAR MORRISON Plaintiff/Responding Party	T. Planeta, L. Visser, counsel for the Plaintiff/Responding Party
- and -	
HATTS OFF INC., NAYLON NINE HOLDINGS LIMITED, GORDON NAYLOR, BRONWYN NAYLOR, ALADINE HANNA & HATTS OFF SPECIALIZED SERVICES INC. Defendants/Moving Parties	S. Zacharias, counsel for the Defendants/Moving Parties
	HEARD: July 18, 2025

REASONS FOR DECISION ON MOTION

The Honourable Justice M. Valente

Introduction

[1] This putative class action focuses on allegations of systemic negligence and breaches of fiduciary duty in children's homes owned and operated by the

Defendants. The proposed representative Plaintiff, Jamar Morrison, is a former resident of those homes. Mr. Morrison’s certification record contains, in part, his affidavit detailing his own experiences at the Defendants’ homes and affidavits from six other former residents of the Defendants’ homes (otherwise collectively referred to as the “Supporting Affiants”).

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[2] The parties have exchanged certification materials but cross-examinations in anticipation of the certification motion have yet to be conducted.

[3] In their amended notice of motion, the Defendants seek production from Mr. Morrison of his Toronto Catholic Children’s Aid Society file in his possession as well as production from the Supporting Affiants of their respective Children’s Aid Society files. In the alternative, to the relief sought against the Supporting Affiants, the Defendants seek an order requiring the applicable Children’s Aid Societies to deliver up the respective files of the Supporting Affiants. In seeking this relief, the Defendants rely on s. 12 of the *Class Proceedings Act*, 1992, SO 1992, c. 6, and in the case of the alternative relief, Rule 30.10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[4] The Defendants’ counsel advised the court that the Children’s Aid Societies at issue take no position on the motion and have approved a form of draft order should the court grant the alternative relief sought against them.

[5] The approved draft order requires production by:

(a) Mr. Morrison of his Children's Aid Society file in his possession with respect to his placement in the Defendants' homes for the duration of his time there; and

(b) the applicable Children's Aid Society of the file of each of the Supporting Affiants with respect to their placement in the Defendants' homes for the duration of their placements save for certain exceptions, including but not limited to, solicitor/client privileged material, documents originating from entities other than the producing agency or the Defendants, third party confidential informant information, information prohibited from being disclosed by legislation or a publication ban, and the names and personal information of any individuals referred to in the records who were not involved with the placements.

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Background Facts

[6] The proposed representative plaintiff commenced this putative class action in February 2023. He was in the care of the Defendants, Hatts Off Inc. and Hatts Off Specialized Services Inc. (‘HOSS’), now bankrupt, from 2010 to 2013.

[7] Hatts Off Inc. is a for-profit group home which has existed in various forms since the mid 1980’s.

[8] The Defendant, Gordon Naylor, has always led the Hatts Off operations either personally, through HOSS, or more recently through Hatts Off Inc. I refer to the sole proprietorship, HOSS and Hatts Off Inc. collectively as “Hatts Off”.

[9] The Defendants, Bronwyn Naylor and Aladine Hanna, were at all material times senior executives of the Hatts Off group homes, with the latter Defendant holding title to certain of the lands from which the homes operate.

[10] The Plaintiff alleges that Mr. Naylor incorporated the Defendant, Naylor Nine Holdings Limited (‘Naylor Nine’), to take title to the balance of the lands from which the Hatts Off group homes operate.

[11] In his amended statement of claim, Mr. Morrison alleges that Hatts Off did not have sufficient policies and procedures in place to protect putative class members and their rights, and where polices and procedures did exist, they were not followed with any consistency. Mr. Morrison further claims that putative class

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members were treated in an abusive and demeaning manner and otherwise systematically denied their dignity and basic rights. The Plaintiff's allegation is that notwithstanding the fiduciary duties owed by the Defendants to putative class members, they diverted funds meant for putative class members to real estate holdings held by Gordon Naylor through Naylor Nine and Aladine Hanna.

[12] The Plaintiff's 1,470 page certification record was served in May 2024. It includes evidence from Mr. Morrison and the Supporting Affiants detailing their experiences at the Hatts Off homes at various times from 1989 to 2021.

[13] Mr. Morrison's affidavit includes as exhibits a small subset of documents from his Toronto Catholic Children's Aid Society file. I am advised by counsel where Mr. Morrison relies on a document from his Children's Aid Society file that is not an exhibit to his affidavit, the relevant document has been produced to the Defendants.

[14] None of the Supporting Affiants reference their Children's Aid Society records.

[15] The Plaintiff's certification record also includes affidavits from former Hatts Off employees attesting to the Defendants' failure to protect the interests of children in their care, as well as information about the size of the class, and Ministry

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of Children, Community and Social Services documents which address a number of failures on the part of Hatts Off, including failures to document serious incidents, to develop plans of care and to make staff aware of their reporting duties.

[16] The Plaintiff's record also includes the evidence of two proposed experts, Dr. Jennifer Freyd and Dr. Kiaras Gharabaghni. Dr. Gharabaghni opines among other matters, that there is "a common methodology or common evidence that could be used to assess whether the Defendants (or some of them) breached the standard of care owed to the children in their care". This common evidence includes documents relating to the licensing process, site reviews, serious occurrence report data, and documents internal to the service provider.

[17] The Defendants delivered a 4,676 responding certification record. It includes affidavits from each of the personal Defendants and the opinion of proposed expert, Rhonda Hallberg.

[18] Among the approximate 4,500 pages of policy and procedure manuals attached as exhibits to Bronwyn Naylor's affidavit are specific policies with respect to the retention of a long list of documents for all children in the care of Hatts Off, including "any assessments related to the child"; "all incidents and serious occurrence reports"; "all plans of care"; "all other relevant information

documentation or assessments”; and “Service Agreements”, all of which are to be held in the Hatts Off administrative offices.

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[19] The creation and retention of these types of records are mandated by the *Child, Youth and Family Services Act*, 2017, SO 2017, c. 14, sch 1. (‘*CYFSA*’). The Regulations to the *CYFSA* require licensees, like Hatts Off, to create and maintain a “Resident case record” with many categories of information, including a record of complaints made by or about a resident that “the licensee considers to be a serious nature”, occurrences of abuse or mistreatment, or the use of restraints and service agreements. The case record is to be retained by the licensee for a minimum of 20 years (see: *O Reg* 156-18 at ss. 84(1), 88, 93(1) and 93(2).)

[20] The Hatts Off policy and procedural manuals are consistent with the record keeping requirements of the *CYSFA* and there is nothing to suggest that the Defendants have not fulfilled this mandate. Rather the evidence is otherwise. Specifically, the Defendants have produced in their responding record Mr. Morrison’s file consisting of some 393 documents, some of which are documents from the Toronto Catholic Children’s Aid Society. The Defendants have also produced in their responding certification record detailed, and in some instances, highly sensitive information about the Supporting Affiants, including

contemporaneous documents that appear to have originated with one or more of the relevant Children's Aid Societies.

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[21] In her report, Ms. Hallberg outlines methods for determining whether systemic negligence exists and provides suggested methods for reaching a determination. Dr. Gharabaghni, in his reply report, confirms that Ms. Hallberg's proposed methods are consistent with his own.

Position of the Parties: s. 12 of the *Class Procedures Act,* 1992

[22] The Defendants submit that there is no class privilege that attaches to the records of Children's Aid Societies unless they contain information that is already the subject of a recognized privilege such as solicitor-client privilege.

[23] The Defendants also adopt the apparent conclusion of Glustein, J. in *Kaplan v. Casino Rama Services Inc.*, 2018 ONSC 3545 ('*Kaplan*'), that by the affiant putting into evidence selected extracts of records in their possession, "the court can reasonably conclude that the information relied upon by the [affiant] is relevant to the issues before the court on the certification motion" (at para. 39).

[24] Finally, the Defendants submit that production of the various Children's Aid Societies' files are a matter of basic fairness because without the files, the Defendants would have no access to contemporaneous records and will be

required to cross-examine Mr. Morrison and the Supporting Affiants solely on their affidavit assertions.

[25] In opposing the Defendants' motion for production at this stage of the proceedings, the Plaintiff relies on the principle that production is only available pre-certification where the requested documents are necessary and relevant to the issues on certification. The Plaintiff submits that the Defendants cannot meet this test.

[26] The Plaintiff submits that at its core, the Defendants' motion is asking the court to delve into the merits of the case before the parties have made full documentary production. Relying on the Court of Appeal's recent direction in *Price v. Smith & Wesson Corporation*, 2025 ONCA 452 ('*Price*'), the Plaintiff submits that the court ought to resist this temptation.

[27] In *Price* at para. 106, the Court of Appeal stated that at certification it is "unfair to impose a higher evidentiary burden on a plaintiff than the *CPA* requires. Motion judges and defence counsel should resist the temptation to jump to a substantive determination on the merits without a complete evidentiary record".

[28] The Plaintiff also asserts that the Defendants' motion for production of the Supporting Affiants' files from the Children's Aid Societies must fail for being

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premature. The Defendants bring their motion without having delivered a pleading. Courts do not grant third-party production prior to the close of pleadings absent exceptional circumstances that do not exist in this instance.

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Analysis

[29] While I accept the Defendants' submission that there is no common law class privilege that attaches to the files of Children's Aid Societies, I am mindful that there are indeed rules that preclude the production of the files of Children's Aid Societies. Section 285 of the *CYFSA* provides that this court cannot order the production of certain classes of documents pursuant to s. 292 (1)(f) i of that same legislation upon which the Defendants rely. Included in these prohibited documents are child abuse register reports that record that a child is or may be suffering from abuse, assessments regarding secure treatment, adoption records and records that are prohibited from being disclosed under federal legislation such as the *Youth Criminal Justice Act*, SC 2002, c.1.

[30] Apart from the statutory prohibitions regarding the production of Children's Aid Society files, our courts are vigilant to protect the privacy of young people's

records. The Supreme Court made clear in its decision in *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, at para. 18 and *R v. Jarvis*, 2019 SCC 10, at para. 86, that the protection of the privacy of young persons is important in respecting their dignity, personal integrity, and autonomy, and underlines the societal consensus on the value of protecting children's privacy.

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[31] In its 2024 decision in *R v. Canadian Broadcasting Corporation*, 2024 ONCA 765, at para. 65, the Court of Appeal stated that the protection of young people's privacy accords with our society's deepest values embodied in rights guaranteed under the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982.

[32] In keeping with the direction of the Supreme Court and the Court of Appeal, this court has found that there is a high burden on the party seeking production of the files of Children's Aid Societies in light of the extraordinary invasion of privacy inherent in accessing these files. As Mew, J. observed in *Gibson v. Beygozlu*, 2024 ONSC 382, at para. 24, citing *Dalcourt-Wilkins v. Gupta*, 2021 ONSC 3160:

> Child welfare involvement is highly intrusive and child welfare files are replete with deeply personal information. Their disclosure is prejudicial in that it will inevitably involve the exposure of personal and irrelevant information about the adult plaintiffs' or other persons' lives. Unbounded requests for disclosure such as the ones in this case must therefore cause concern that the moving defendants seek such records for the unstated and irrelevant purpose of finding means of attacking the plaintiffs' credibility ….

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[33] Given this guidance in the jurisprudence from all levels of our courts, I cannot accept that by participating in a legal proceeding as a party or otherwise, one undoes the societal consensus on the value of protecting the privacy of children.

[34] I also do not accept that by referring to a discrete selection of documents in his Children's Aid Society file, Mr. Morrison is signalling in his affidavit the relevance of his entire Children's Aid Society file for purposes of the certification motion.

[35] Moreover, I am of the view that the Defendants have misinterpreted the conclusion of Glustein, J. in *Kaplan*. In that case, the court found that the defendants' reliance on a particular investigation report was relevant to the certification motion because it clearly addressed an issue pertinent to the certification motion; specifically, the size and scope of the class. For this reason, the court ordered limited production of those discrete portions of the report that spoke to the size and scope to the class.

[36] The court's limited production order in *Kaplan* is grounded in the test for pre-certification production. That test is whether the requested documents are

necessary and relevant to the issues on certification; not whether production is required as a matter of basic fairness to the requesting party.

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[37] In *Dine v. Biomet*, 2015 ONSC 1911 (‘*Dine*’), Belobaba, J. observed that the rule that production of documents before certification will only be ordered if the moving party can show that the document is relevant to issues on certification “reinforces two essential themes in class action legislation and case law” (at para. 10):

> First, that the certification motion is a procedural motion that has nothing to do with the merits of the proceeding. There is therefore little room for individualized evidence, which in excess may result in unnecessary confusion and misdirection. This point has been noted repeatedly in the context of medical records by courts from Newfoundland to British Columbia:
>
> > The medical records of the plaintiffs are clearly relevant to the merits of their individual claims but, as noted above, the certification stage is not meant to determine the merits of the action. Indeed the Court must be vigilant to ensure that the certification application does not become mired down in the merits of an individual claim.
> >
> > [T]he introduction of individual medical records at this stage would be more likely to improperly confuse the issues on the certification action with a premature consideration of the merits of an individual claim.
>
> Secondly, that the class action is designed to proceed in stages - certification; the common issues trial; the individual assessments - and the nature and focus of permitted discovery at each stage should vary accordingly. If, as a general rule, discovery before the common issues trial is limited to the common issues, and discovery of individual class members is only allowed once the common issues are resolved, then it must follow that “pre-discovery discovery” before certification must be limited to the issues on certification. Otherwise, the intended legislative design is turned on its head.

> The judicial discretion to control the discovery process is particularly important in a class proceeding "where the size of unrestricted discovery and production may have the effect of extending the action for years and increasing the costs astronomically." If the class action is to remain viable as a vehicle for improved access to justice, it cannot be front end-loaded at the certification stage with evidence that is unnecessary and irrelevant. [Citations omitted] (see: *Dine*, at paras. 11 – 13).

[38] Finally, at para. 14 of *Dine*, Belobaba, J. stated that in "the vast majority of pre-certification production motions, requiring the moving party to demonstrate relevance will hardly ever be unfair, to either side". I not only agree with the statement but find that the matter before me is no exception.

[39] In the circumstances of this case, I find that the Defendants have not established how the respective Children's Aid files of Mr. Morrison and the Supporting Affiants are relevant to the issues on certification. Perhaps this conclusion is not surprising given that the Supreme Court in *Rumley v. British Columbia*, 2001 SCC 69 ('*Rumley*'), at para. 30 and the Court of Appeal in *Francis v. Ontario*, 2021 ONCA 197 ('*Francis*'), have held that in cases involving allegations of systemic negligence, certification can be reasonably determined without reference to the circumstances of any individual class member. In *Francis*, the Court found that the prison's actions could be determined on an institution-wide basis through the prison's own records and while "individual circumstances may ultimately be relevant to the proof of individual levels of damages, they are not required for proof of the duty of care on a system-wide basis…" (at para. 110).

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[40] I conclude that the Defendants have not met their burden of showing that the various Children's Aid Societies records are germane to the issues on certification for the following reasons:

- The Defendants have not attempted to explain why Mr. Morrison's entire Children's Aid Society file is necessary to inform the certification issues whereas the redacted records of the Supporting Affiants are sufficient for the same purpose.

- Whereas the Defendants submit that Mr. Morrison's Children's Aid Society records are necessary so that they "can assess whether it enables them to test the strength of [the] assertions in his affidavit", this argument falls short of establishing that production of the file is necessary to inform the certification process. The decisions of this court in both *Dine* and *Kaplan* make clear that it is insufficient to assert that records may be relevant to certification. As Glustein, J. stated in *Kaplan* at para. 9, citing *Dine*, "[b]ald assertions or statements that the documents may be relevant will not suffice", or in other words, fishing trips are not sufficient for pre-certification discovery (see also: *Papassay v. The Queen*, 2016 ONSC 7014 ('*Papassay*'), at para. 42).

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- The Defendants submit that the Children's Aid files are relevant to determine whether there is some basis in fact for the issues as to whether they breached their duties owed to the proposed class members. However, this submission is founded on a misunderstanding of the "some basis in fact" test. On the certification motion, Mr. Morrison need not prove that there is some basis in fact that the Defendants breached their alleged duties. Rather all that is required of the Plaintiff on certification is to show some basis in fact that the proposed common issues exist and that they extend across the proposed class members. Mr. Morrison is not required to demonstrate at the certification hearing that the claims will be ultimately successful or even that there is a *prima facie* case (see: *Price*, at para. 99, citing *Lilleyman v. Bumble Bee Foods LLC*, 2024 ONCA 606 ('*Lilleyman*')). "All that is required to succeed is 'some evidentiary foundation' or 'some minimal evidence" : *Lilleyman* at paras. 71 and 74". (see: *Price*, at para. 99)

- The Defendants submit that production of the various Societies' files is necessary to assess the "existence of any complaints or concerns" raised by Mr. Morrison and the Supporting Affiants to their respective case workers. Given the Supreme Court's guidance in *Rumley*, I find that this line of inquiry is not necessary to inform the certification process.

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> Moreover, it risks creating "unnecessary confusion and misdirection", as Belobaba, J. observed in *Dine*, at para. 11. Furthermore, as Pierce, J. stated in *Papassay,* the proposed inquiry "may well embarrass the [plaintiff], encumber the record with irrelevancies, extend the time required for the certification motion (with a resultant increase in the costs), and distract the court from a focused analysis of the issues to be decided at certification" (at para. 41).

[41] Having found that the Defendants have not established that the Children's Aid Societies' files are relevant to the issues to be addressed on the certification motion, I am not otherwise moved to order pre-certification production of the records on the basis of "basic fairness", or more specifically, as the Defendants submit, that it would be unfair to them to conduct cross-examination without the benefit of the files.

[42] I accept the Plaintiff's submission that at certification it is inevitable that the parties conduct cross-examinations without fulsome documentary production. As explained by Belobaba, J. in *Dine*, the sequency of discovery is a feature of class action proceedings and is necessary to control costs and achieve access to justice. Moreover, as I have noted earlier in these Reasons, the Defendants have in their possession voluminous documents relevant to the case of the Plaintiff and the

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Supporting Affiants, some of which appear to originate from the files of the relevant Societies. In these circumstances, I am not satisfied that the Defendants will be prejudiced in conducting pre-certification examinations without the files that they seek.

[43] I turn now to the Defendants' request that the Supporting Affiants' Children's Aid Society files be produced pursuant to Rule 30.10.

Position of the Parties – Rule 30.10

[44] The Defendants submit in reliance upon this court's decision in *Bernatchez v. Barrie Police Services Board and Henderson*, 2019 ONSC 4607 ('*Bernatchez*') that where facts are in dispute, as they are in this case, the examination of parties and witnesses is not an adequate substitute for the accounts of non-parties. The Defendants further advance the argument of fairness in support of the position that production from the various third party Societies is appropriate in this instance.

[45] For his part, the Plaintiff submits that the threshold for granting orders pursuant to Rule 30.10 is high and should only be granted in exceptional circumstances particularly when the party moving for third party production has not plead as is the case of these Defendants (see: *Spina v. Shoppers Drug Mart Inc.*, 2020 ONSC 4000; *Singh v. RBC Insurance Agency Ltd.*, 2023 ONSC 6721

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(‘*Singh*’). The Plaintiff submits that production will only be ordered pursuant to Rule 30.10 prior to the close of pleadings where production is necessary for the moving party to plead or there is some reason that delayed disclosure would prejudice the moving party, neither of which are applicable in this instance (see: *Singh*, at para. 6).

Analysis

[46] I am not satisfied that the facts in *Bernatchez* are applicable to the matter before me. In that personal injury action where Christie, J. granted third party document production from a police department, pleadings had closed, it was conceded that the documents were material to the determination of the action and there was no suggestion that any of the documents were already in the moving party’s possession.

[47] While I accept the Plaintiff’s submissions, my focus in determining production from the third parties pursuant to Rule 30.10 is the requirements of the Rule itself.

[48] Rule 30.10(1) provides that a court may order third party production of non privileged documents where it is satisfied that:

(a) the document is relevant to a material issue in the action; and

(b) it would be unfair to require the moving party to proceed to trial without having discovery of the document.

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[49] Given the prevailing jurisprudence regarding document production in class proceedings, to have any meaningful application to the matter before me, the requirements of Rule 30.10(1) must be read within the context of the current status of these class proceedings. Within this context, the issue to be determined is whether the Societies' records are relevant to a material issue at pre-certification, and whether would it be unfair to require the moving party to proceed to the certification hearing without the records ? I have already concluded that the answer to both questions is "no".

[50] Otherwise, following this court's guidance in *Singh* and given the state of the pleadings, I am not satisfied that the documents sought are required for the Defendants to plead and nor do I find that delayed disclosure of the records to a later date would prejudice the Defendants.

Conclusion

[51] For the above reasons, I decline to order that the Plaintiff produce his complete Toronto Catholic Children's Aid Society file and that the Supporting Affiants produce their respective Children's Aid Society files. I likewise decline to

order production from the applicable Children's Aid Societies of the files of each of the Supporting Affiants.

Costs

[52] The parties have agreed that the successfully party is to be awarded costs in the all inclusive sum of $12,500. I am grateful to the parties for their agreement with respect to costs of the motion. Accordingly, the Plaintiff shall have his costs of the motion fixed in the sum of $12,500 as agreed.

Disposition

[53] An order will issue:

1. Dismissing the Defendants pre-certification production motion; and
2. Awarding the Plaintiff his costs of the motion in the all inclusive sum of $12,500, by the Defendants, payable within 30 days.

Justice M. Valente

Released: July 29, 2025

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