

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

BETWEEN:)	
)	
YONG WANG)	<i>Self represented</i> Plaintiff (Appellant)
Plaintiff (Appellant))	
)	
- and -)	
)	
)	
CHRISTOPHER BANTON)	<i>William J. Jesseau</i> , for the Defendant
Defendant (Respondent))	(Respondent)
)	
)	
)	
)	HEARD at Toronto: August 5, 2025

2025 ONSC 4565 (CanLII)

SHORE J.

REASONS FOR DECISION

[1] The Appellant, Mr. Wang, is appealing the decision of Associate Justice McAfee (“motion judge”), dated March 28, 2025, restoring the action to the trial list, following an administrative dismissal, and dismissing the Appellant’s motion for disclosure.

[2] For the reasons below, the appeal is dismissed, with costs payable from the Appellant to the Respondent in the sum of \$4,000 inclusive of HST, payable forthwith.

Background:

[3] There is a long history in this file. I will only briefly set out the history most relevant to the appeal before this Court.

[4] The action arises out of a motor vehicle accident that occurred on March 5, 2010. The Statement of Claim was issued on February 29, 2012.

[5] On February 7, 2022, the Appellant attended a defence medical assessment with the aid of a Mandarin interpreter (the “Interpreter”).

[6] Subsequently, the Appellant sought an order that the Respondent provide the name, emergency contact phone number for, and the qualifications of the Interpreter.

[7] On January 11, 2023, the parties were advised that in March 2019, the matter was administratively struck from the trial list, and they would require an order of the court for the matter to be reinstated. The Respondent moved to bring the motion.

[8] On March 7, 2023, Justice Koehnen signed an endorsement that the Appellant's motion for outstanding disclosure should be heard together with the Respondent's motion.

[9] On March 7, 2024, the motions came before the motion judge: the Respondent's motion for an order dismissing the action for delay, or in the alternative, restoring the action to the trial list and the Appellant's motion for an order dismissing the defence for violating the disclosure order of Justice Koehnen, amongst other relief.

[10] In the decision dated March 28, 2024, the motion judge dismissed the Appellant's motion for disclosure, and granted the Respondent's alternate relief, restoring the matter to the trial list.

[11] This is the order subject to this appeal.

[12] A motion to dismiss the action, on the grounds that the Appellant is a vexatious litigant, is scheduled to be heard in December 2025.

Jurisdiction:

[13] The Respondent raised a preliminary issue, whether this Court has jurisdiction to hear this appeal from an associate judge, because the decision is interlocutory and not a final order.

[14] It is clear from reading the decision, that the motion judge made an interlocutory order, in that it does not finally dispose of the issues in this case.

[15] An appeal of an interlocutory order from an associate judge lies to the Superior Court of Justice not the Divisional Court (*Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 17). The appeal was started in the wrong court.

[16] However, every judge of the Divisional Court is a judge of the Superior Court of Justice. I have read the material filed by the parties and I am prepared to reconstitute this Court as a sitting of the Superior Court of Justice.

Standard of Review:

[17] The standard of review on questions of law is correctness and palpable and overriding error on questions of fact.

Grounds of Appeal:

[18] The grounds of appeal raised by the Appellant can be summarized as follows:

- a. The motion judge erred and breached a prior order of Justice Koehnen, in failing to order disclosure of the interpreter’s emergency contact information;
- b. The decision to restore the action was “unfair”;
- c. The motion judge erred in admitting the affidavit of Mr. Marston;
- d. The motion record was not properly served; and
- e. Counsel for the Respondent committed fraud and lied to the Court.

Disclosure:

[19] The Appellant submits that the motion judge erred in “breaching” Justice Koehnen’s order, dated March 7, 2023, and in not ordering the Respondent to produce the Interpreter’s emergency contact information.

[20] The relevant provision of Justice Koehnen’s order provides as follows:

A motion is already scheduled in this matter for March 7, 2024. It is unclear what specific relief the plaintiff is seeking on its own motion. I order the two motions to be heard together on March 7, 2024.

If the plaintiff is seeking production of documents from the defendant, it should make that clear to the defendant immediately. The defendant should produce those documents within 30 days, absent some compelling reason not to. The failure of the defendant to produce those documents may be an argument that the plaintiff can raise to defeat the defendant’s motion on March 7, 2024.

[21] The Appellant was seeking disclosure of the emergency contact phone number for the Interpreter. The motion judge held that, “I am not satisfied that the plaintiff is entitled to an emergency contact phone number...”. With respect to the Appellant’s submissions that the Respondent breached the order of Justice Koehnen by not providing the Interpreter’s emergency phone number, the motion judge found:

On the plaintiff’s motion, the plaintiff seeks an order dismissing the defence of the defendant for violating the order of Justice Koehnen. For the reasons above, I am not satisfied that the defendant is in violation of the order of Justice Koehnen.

[22] Other than submitting that it is unfair that he proceeds without this information, and he has a right to documentary disclosure, the Appellant has not provided any reason why this exercise of discretion should be overturned. It was open to the motion judge to make a determination under Justice Koehnen’s order as to whether the disclosure should be ordered. There is no breach of an order nor any error of law.

[23] The Appellant submits the motion judge erred in not ordering the disclosure under r. 30.02 and r. 30.10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. The provisions provide:

30.02 (1) Every document relevant to any matter in issue in an action that is or has been in the possession, control or power of a party to the action shall be disclosed as provided in rules 30.03 to 30.10, whether or not privilege is claimed in respect of the document. R.R.O. 1990, Reg. 194, r. 30.02 (1); O. Reg. 438/08, s. 26.

(2) Every document relevant to any matter in issue in an action that is in the possession, control or power of a party to the action shall be produced for inspection if requested, as provided in rules 30.03 to 30.10, unless privilege is claimed in respect of the document. R.R.O. 1990, Reg. 194, r. 30.02 (2); O. Reg. 438/08, s. 26.

...

30.10 (1) The court may, on motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged where the court 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. R.R.O. 1990, Reg. 194, r. 30.10 (1).

[24] The Interpreter is not a party to the proceedings and was not served with the motion material. Therefore, it would not be appropriate to make an order under r.30.10 in this case.

[25] The appeal cannot succeed on this ground.

[26] The Appellant submits that the interpreter committed perjury. This is not an issue before this Court on the appeal.

“Unfair” Decision:

[27] The Appellant submits the decision to reinstate the action is unfair. The Appellant may feel the decision to reinstate the action onto the trial-list is unfair, but that does not amount to an error of law in these circumstances.

[28] At the commencement of the motion, the motion judge took a recess to confirm the matter was struck from the trial list administratively (and not by a judge) to ensure the Court had

jurisdiction to restore the action to the trial list. It was an administrative dismissal, and therefore the motion judge had jurisdiction to return the matter to the trial list.

[29] The motion judge went through the various considerations as to whether to order the matter back on the list, and concluded, at paragraph 11, that:

It is not reasonable or just to have this action remain indefinitely struck from the trial list, particularly when the defendant is requesting that the action against him be restored to the trial list. The time has come for leave to be granted in that regard. Leave is granted to restore the action to the trial list.

[30] I find there was no error in restoring this matter onto the trial list. The appeal cannot succeed on this ground.

Admissibility of Evidence:

[31] The Appellant submits that the affidavit of Mr. Marston is “illegal” and should not have been accepted by the Court. Mr. Wang points to a number of statements that he submits are untrue.

[32] The reliability and weight to be afforded to the affidavit evidence is at the discretion of the motion judge. If there were misleading statements in the affidavit, it does not make the affidavit “illegal” or “inadmissible” *per se* but can go to the weight attached to the evidence.

[33] I find no error in this regard.

Service:

[34] The Appellant spent a lot of time in his materials about whether the motion material was properly served or filed, and whether the motion judge “lied to the Court”.

[35] The motion material was dated February 21, 2025. The Appellant acknowledges being served on February 22, 2025. The material was filed February 26, 2025, and uploaded to Case Center on February 29, 2025. This should put the matter to rest.

[36] However, the Appellant suggests that some of the commissioner’s stamps were missing or possibly forged. The motion judge addressed the issue and found that “[t]he issues raised concerning the exhibit stamps appear to be typographical errors”.

[37] The Appellant tried to reargue this matter on the appeal and submits that the motion judge lied to the court in making this finding. An appeal is not a rehearing of the motion. The Appellant failed to show an error in law or a palpable or overriding error in a finding of fact.

[38] The Appellant made accusations regarding digital signatures being illegal. When counsel directed Mr. Wang to the practice direction permitting digital signatures, he continued to suggest that counsel acted illegally. He further alleged that counsel committed fraud on the court.

[39] To accuse a judge of lying is a serious allegation, as is alleging that a lawyer is taking “illegal” actions in a case. In this case, the allegations were grossly unfounded. The Appellant’s scorched earth approach to the litigation will go to the issue of costs.

[40] For the reasons above, the appeal is dismissed.

Costs:

[41] The Respondent requested an amount higher than on a partial indemnity basis. The Respondent is seeking costs on a substantial indemnity basis in the sum of \$4,163.37.

[42] In exercising my discretion under s. 131 of the *Courts of Justice Act*, I have considered the factors set out in r. 57.01 of the *Rules of Civil Procedure*. The Respondent was successful on the appeal. Many of the grounds raised by the Appellant were not appropriate. His allegations about both the motion judge and counsel lying, committing perjury, or otherwise acting outside the law were completely unfounded and inappropriate.

[43] This is an appropriate case to exercise my discretion and order costs closer to a substantial indemnity basis.

Order:

[44] The appeal is dismissed.

[45] The Appellant shall pay the Respondent costs in the sum of \$4,000.00, inclusive of HST, payable forthwith.

Shore J.

Released: August 8, 2025

CITATION: Wang v. Banton, 2025 ONSC 4565
DIVISIONAL COURT FILE NO.: DC-24-00000244-0000
DATE: 20250808

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Plaintiff (Appellant)

- and -

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