**CITATION:** The Roman Catholic Episcopal Corporation v. Aviva Insurance Company, 2025 ONSC 5755
**COURT FILE NO.:** CV-19-00080242-0000
**MOTION HEARD:** 20251009



**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF OTTAWA
Plaintiff

- And -

AVIVA INSURANCE COMPANY OF CANADA INC.
Defendant

**BEFORE:** Associate Justice Kamal

**COUNSEL:** Julie Mouris and Joseph Rucci, for the Plaintiff
Alex Reyes, for the Defendant

## REASONS FOR DECISION

1. This is the Defendant's motion to quash a summons to witness and/or strike the Plaintiff's request to examine, Branislav Djukic, an employee of the Defendant, pursuant to Rule 39.03 of the *Rules of Civil Procedure*.
2. The summons was issued in relation to the Defendant's motion to compel answers to the Plaintiff's refusals and to deliver a further and better Affidavit of Documents (the "underlying motion"), scheduled to be heard before me on December 10, 2025.
3. The examinations are scheduled to occur on October 14, 2025.
4. For the reasons that follow, Aviva's motion to quash is dismissed.

## Background

5. The plaintiff was a corporation sole that controlled the temporal goods and/or assets of the Archdiocese of Ottawa. Through a special act of Parliament, The RCECO and the Roman Catholic Episcopal Corporation for the Diocese of Alexandria were amalgamated

to form The Roman Catholic Episcopal Corporation of Ottawa-Cornwall in 2024. The amalgamated corporation sole is the successor in interest to The RCECO and controls the temporal goods and/or assets of the new amalgamated diocese. I will refer to the Plaintiff as The RCECO.

6. The defendant is an insurance company that is the successor in interest to Canadian General Insurance Company of Canada and Fidelity Insurance Company of Canada, later continued as USF&G Insurance Company of Canada. I will refer to the Defendant as Aviva.
7. This motion arises in the context of a coverage dispute regarding historic liability policies issued by the predecessors of the Defendant, Aviva, to The RCECO. The claim for coverage by The RCECO from Aviva is in relation to 14 underlying sexual abuse actions/claims against the RCECO for abuse allegedly occurring from the 1960s to the 1980s.
8. The RCECO has also commenced seven (7) additional actions or applications against Aviva seeking coverage.
9. Aviva has denied its duty to defend and indemnify The RCECO against claims alleging historical sexual abuse by priests of the former Ottawa diocese.
10. In the action, The RCECO seeks declarations that Aviva has a duty to defend and indemnify The RCECO for fourteen underlying tort claims pursuant to liability policies issued by Aviva's predecessors. The RCECO pleads that Canadian General issued it a liability policy in place from 1969-1972, and that Fidelity and USF&G issued it liability policies that were in place from 1980-1988.
11. Aviva has defended this action on the basis that it cannot confirm the wording of the policies, and because The RCECO allegedly had knowledge of sexual abuse at the material times, its insurance policies are voidable for fraudulent misrepresentation.

**The Underlying Motion**

12. The parties held examinations for discovery on November 24-25, 2021. The RCECO served a trial record on October 15, 2024.

13. Aviva then brought a motion for service of a further and better affidavit of documents, and answers to questions it says were improperly refused at the RCECO's examination for discovery. That is the underlying motion in the context to which the present motion is brought.
14. As part of this motion, Aviva seeks productions of a wide range of documents spanning forty years, including:
    a. discovery transcripts of every representative of The RCECO who has ever testified in a tort action alleging sexual abuse between the 1950s and the 1980s;
    b. internal documents and lists of all litigation The RCECO has faced with respect to sexual abuse allegations;
    c. documents relating to The RCECO's handling of sexual abuse allegations, pursuant to a 1962 instruction from the Vatican entitled "*Crimen Sollicitationis*";
    d. "files or documents from the 1970s that haven't been produced"; and
    e. all medical records of any priests who were treated for the period of the 1960s to 1980s, including "anything like that we'd like produced" relating to priests at issue in the underlying tort claims.
15. In support of the underlying motion, Aviva has tendered an Affidavit from Maia Abbas, counsel for the Defendant, who is set to be cross-examined by the Plaintiff on or about October 14, 2025. Additionally, the Plaintiff previously conducted an Examination for Discovery of Mr. Djukic in the within action on November 25, 2021.
16. While The RCECO takes the position that Ms. Abbas' affidavit contains inadmissible evidence, there is no request before me to strike any portion of Ms. Abbas' affidavit on the underlying motion.

**Positions of the Parties on this Motion**

***The RCECO's position***

17. The RCECO takes the position that Ms. Abbas, by virtue of her role as Aviva's counsel, is not able to provide the necessary evidence for Aviva's production motion because she

is not an Aviva employee or an insurance adjuster. In her affidavit, Ms. Abbas did not provide an explanation or particulars of any relevant insurance underwriting guidelines in place during the policy periods of 1969-1972 and 1980-1988 that would justify the relevance and proportionality of Aviva's request for production of documents over a forty-year period. Moreover, she did not provide evidence of documents that Aviva already has in its possession.

18. The RCECO, therefore, takes the position that it should examine Mr. Djukic pursuant to Rule 39.03 of the *Rules of Civil Procedure*.
19. The basis of The RCECO's position is that Mr. Djukic swore an affidavit of documents in this proceeding on March 21, 2021, wherein he deposed that he conducted a diligent search of Aviva's records. He was examined for discovery on November 24, 2021, and made various admissions. The RCECO submits that, based on evidence obtained in the examination, Mr. Djukic has information that is relevant to the underlying motion, which would assist this Court in determining whether Aviva's production requests are relevant or proportionate.

***Aviva's Position***

20. Aviva submits that the summons should be quashed for five reasons:
    a. The evidence sought to be obtained from Mr. Djukic is irrelevant;
    b. The evidence sought to be obtained from Mr. Djukic is unnecessary for a fair determination of the motion;
    c. Examining Mr. Djukic would be duplicative because the Plaintiff has already conducted an examination of Mr. Djukic in the within action, and they are set to cross-examine Ms. Abbas on her Affidavit on or about October 14, 2025;
    d. A Rule 39.03 motion in this context is not proportionate for a refusals motion; and
    e. The RCECO's request to examine Mr. Djukic in the course of the refusals motion is for an improper purpose and an abuse of process because the RCECO did not have a basis for their refusal, and they should not need to examine Mr. Djukic to

support their refusal after the fact. Aviva submits that the entire request is a backdoor to a second discovery.



**Analysis**

***General Principles***

21. Rule 39.03 provides that a person may be examined as a witness for the hearing of a pending motion for the purpose of having a transcript of his or her evidence available for use at the hearing.
22. Rule 39.03(3) specifically states that this right to examine shall be exercised with reasonable diligence, and the court may refuse an adjournment of a motion for the purpose of an examination where the party seeking the adjournment has failed to act with reasonable diligence.
23. The case law establishes that where a party serves a summons to examine a witness for a pending motion, an opposing party may move to quash the summons for the examination of the witness on the ground that the evidence sought is not relevant to the motion or that the examination or the underlying proceeding would amount to an abuse of process: *Canada Metal Co. v. Heap* (1975), 1975 CanLII 675 (ON CA), 7 O.R. (2d) 185 (C.A.); *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1995), 1995 CanLII 7258 (ON SC), 27 O.R. (3d) 291 (Gen. Div.); *Schreiber v. Mulroney* (2007), 2007 CanLII 82797 (ON SC), 87O.R. (3d) 643 ( S.C.J.).
24. If the summons to the witness is challenged, the party seeking the examination should be prepared to show that the evidence is relevant to the pending motion and that the party to be examined is in a position to provide the evidence: *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1995), 1995 CanLII 7258 (ON SC), 27 O.R. (3d) 291 (Gen. Div.); *Heslin v. Verbeeten*, [2001] O.J. No. 1602 (S.C.J.); *Siegel v. Mulvihill Capital*, [2009] O.J. No. 265 (S.C.J.).
25. If the party seeking the examination cannot satisfy the relevancy and evidentiary screening, then the summons is regarded as a fishing expedition and an abuse of

process: *Canada Metal Co. v. Heap* (1975), 1975 CanLII 675 (ON CA), 7 O.R. (2d) 185 (C.A.); *Schreiber v. Mulroney* (2007), 2007 CanLII 82797 (ON SC), 87 O.R. (3d) 643 (S.C.J.); *René v. Carling Export Brewing & Malting Co*. (1927), 1927 CanLII 382 (ON SC), 61 O.L.R. 495 ( S.C.); *Agnew v. Ontario Assn. of Architects* (1988), 1987 CanLII 4030 (ON SC), 64 O.R. (2d) 8 (Div. Ct.); *Bettes v. Boeing Canada/DeHavilland Division* (1992), 1992 CanLII 7789 (ON SC), 10 O.R. (3d) 768 (Gen. Div.); *Beck v. Bradstock* (1976), 1976 CanLII 874 (ON SC), 14 O.R. (2d) 333 (H.C.J.); *Lauzon v. Axa Insurance (Canada)* 2012 ONSC 6730 (S.C.J.) at paras. 27-28. Similarly, if the examination is being used for an ulterior or improper purpose, or if the process is itself an abuse, it will be set aside on that ground: *Beck v. Bradstock* (1976), 14 O.R. (2d) 333 (H.C.J.).

26. In considering whether to strike a summons to a witness, the court will consider the nature and grounds for the motion to determine what are the issues for which the examination is in aid: *Ontario Federation of Anglers & Hunters v. Ontario (Ministry of Natural Resources)*, 2002 CanLII 41606 (ON CA), [2002] O.J. No. 1445, (C.A.), leave to appeal refused [2002] S.C.C.A. No. 252 (S.C.C.); *Ashley v. Marlow Group Private Portfolio Management Inc.*, [2005] O.J. No. 4941 ( S.C.J.); *Alpha Forest Products Inc. v. Hanna*, [2006] O.J. No. 3212 (S.C.J.); *Teranet Inc. v. Canarab Marketing Corp.*, [2007] O.J. No. 745 (S.C.J.).

27. Once the party seeking to conduct the examination shows that the proposed examination is about an issue relevant to the pending motion and that the party to be examined is in a position to offer possibly relevant evidence, it is not necessary for the party to go further and show that the proposed examination will provide evidence helpful to that party's cause: *Manulife Securities International Ltd. v. Société Générale* (2008), 2008 CanLII 13367 (ON SC), 90 O.R. (3d) 376 (S.C.J.), leave to appeal to Ont. Div. Ct. refused [2008] O.J. No. 1698 (Div. Ct.); *Heslin v. Verbeeten*, [2001] O.J. No. 1602 ( S.C.J.); *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1995), 1995 CanLII 7258 (ON SC), 27 O.R. (3d) 291 (Gen. Div.).

28. If the evidence would be possibly relevant to the issues, the burden is on the party challenging the summons to show that the examination or the underlying motion is an abuse of process: *Manulife Securities International Ltd. v. Société Générale* (2008), 2008 CanLII 13367 (ON SC), 90 O.R. (3d) 376 (S.C.J.), leave to appeal to Div. Ct. refused [2008] O.J. No. 1698 (Div. Ct.); *Heslin v. Verbeeten*, [2001] O.J. No. 1602 ( S.C.J.).
29. In considering whether to quash a summons, the court may consider the merits of the underlying proceeding: *Ontario Federation of Anglers & Hunters v. Ontario (Ministry of Natural Resources)*, 2002 CanLII 41606 (ON CA), [2002] O.J. No. 1445 (C.A.), leave to appeal refused [2002] S.C.C.A. No. 252 (S.C.C.).

***Relevance***

30. In *Ontario Federation of Anglers & Hunters v Ontario (Ministry of Natural Resources)*, [2002] OJ No 1445, at para. 30, the Court of Appeal stated:

> *[A]n examination under rule 39.03 is appropriate when the evidence sought is relevant to any issue raised on the main application. The onus is on the party seeking to conduct the examination to show on a reasonable evidentiary basis that the examination would be conducted on issues relevant to the pending application and that the proposed witness was in a position to offer relevant evidence*.

31. Aviva relied on *Clarke v Madill*, [2001] OJ No 3256, which states that it is not sufficient to say that the questions to be asked would provide relevant evidence in the action or that the questions to be asked would provide evidence of the very facts that the party on discovery undertook or refused to answer. Rather, the elicitation of such evidence on a Rule 39.03 examination would be most improper, since the determination of the relevancy of the question refused at discovery is the very matter to be determined by the court on the main motion.
32. The RCECO agreed that the purpose of the examination must be relevant to the issues on the motion.

33. I am considering the relevance of the proposed examination as it relates to Aviva's motion for service of a further and better affidavit of documents and answers to questions it says were improperly refused at the RCECO's examination for discovery.
34. In considering the test to be met on a production motion, the requesting party should only get what it actually needs to defend the action on a productions motion. See *Warman v National Post Company,* 2010 ONSC 3670 at para 56.
35. Furthermore, the jurisprudence is clear that the motion must be based on more than speculation, intuition or guesswork, and for an order requiring a better affidavit, the moving party must demonstrate some basis for concluding that his or her opponent has overlooked or withheld documents: *Richardson Technologies Inc. v. Gowling Lafleur Henderson LLP*,[2003] O.J. No.1298 (Master); *RCP Inc. v. Wilding*, [2002] O.J. No. 2752 (Master); *Bow Helicopters v. Textron Canada Ltd.*, [1981] O.J. No. 2265 (Master); *Nelma Information Inc. v. Holt*, [1985] O.J. No. 373 (H.C.J.).
36. In my view, The RCECO has established that it has a *prima facie* right to examine Mr. Djukic. Based on his discovery evidence, Mr. Djukic has relevant and direct evidence regarding the following matters at issue in this motion:
    a. which records are Aviva asking for but already have access to;
    b. what additional documents does Mr. Djukic require as an adjuster to assess The RCECO's claim for coverage;
    c. whether any applicable insurance guidelines have subsequently been discovered since the discoveries in 2021; and
    d. whether Aviva's production requests are based on speculation.
37. Mr. Djukic's evidence of whether the information or documents requested are readily available to Aviva, such as the evidence of the insurance policies already disclosed, is directly relevant to the underlying motion.
38. In my view, it is also relevant and appropriate for the RCECO to test Aviva's evidence to determine the proportionality and basis of their production request, which is also directly the issue on the underlying motion.

***Necessity***

39. In *Ramos and Kharbar v. The Independent Police Review Director*, 2012 ONSC 7347 described the test as follows:

> *A summons may be quashed when (a) the proposed witness has no relevant or admissible evidence; (b) the proposed evidence is not necessary, or is extrinsic to the main evidence; or (c) the summons is an abuse of process, such as for an ulterior or improper or tactical purpose.*

40. Aviva also submits that Mr. Djukic's evidence is not necessary for a fair determination of the motion.
41. The RCECO submits that "necessity" is not a requirement, but only a factor.
42. Whether necessity is a requirement or a factor, in my view, necessity must be considered. See para. *Derenzis v. Scoburgh*, 2021 ONSC 3286 at paras 47-59.
43. Master Haberman in *Coburn v. Barber*, 2010 ONSC 3342, at para. 97 said the wording of the test under rule 39.03 "was intended to ensure that examinations of this kind are reserved only for those cases where they will likely have the effect of enhancing the record that comes before the court when the underlying motion is heard."
44. In *Lauzon v. Axa Insurance (Canada)*, 2012 ONSC 6730, Justice Glithero concluded that the examination was "unlikely to produce evidence relevant to the main motion, and that it is unnecessary." He said, "The evidentiary base must demonstrate that the examination is likely to produce evidence which enhances the record to be considered on the return of the motion." He went on to hold at para. 35 that the evidence of the proposed witness was "unnecessary as the plaintiff can get that information from its own appraiser." The Court of Appeal upheld Justice Glithero, although the decision to quash the summons was not appealed: *Lauzon v. AXA Insurance (Canada)* 2013 ONCA 664.
45. When determining whether a Rule 39.03 summons should be quashed, the "nature and grounds" of the underlying motion or application in the broadest sense are a significant factor to be taken into account. Although there may be varying degrees of relevance, the problem is resolved when the evidence is deemed irrelevant. The summons will be quashed if the examination is unnecessary, ineffective, or will not improve the record in

the underlying motion while taking the issues in the underlying motion into consideration.

46. The evidence before me outlines a number of admissions and statements made by Mr. Djukic during his discovery. Some of those admissions are inconsistent with Ms. Abbas' affidavit evidence for the underlying motion. For example, Mr. Djukic has directly contradicted Ms. Abbas's statement that Aviva is unable to confirm the wording of the applicable insurance policies.
47. Further, Ms. Abbas's evidence is that Aviva requires additional documents relevant to its defences. However, Mr. Djukic's evidence was that some of those very defences are speculative and unsubstantiated. The RCECO is entitled to test Aviva's direct evidence on this point.
48. Therefore, in my view, it is necessary for Mr. Djukic to be examined pursuant to Rule. 39.03 to ensure a fair adjudication of the underlying motion.

***Proportionate, Duplicative, and Abuse of Process***

49. While Aviva made submissions that the proposed examination of Mr. Djukic is not proportionate and it is duplicative, they did not provide satisfactory evidence in this regard. A party's subjective apprehension of an improper examination does not meet the onus of establishing that a summons is an abuse of process. *Elmaati v. Canada (Attorney General)*, 2013 ONSC 3176 at para. 71. There is no evidence of The RCECO's request being an abuse of process.
50. In my view, the evidence suggests the contrary. There are inconsistencies between Ms. Abbas's affidavit evidence and Mr. Djukic's discovery evidence that need to be clarified to make a determination on the underlying motion. Mr. Djukic's direct evidence as an experienced insurance adjuster will only serve to enhance the record in the underlying motion.
51. The examination of Mr. Djukic is not duplicative of the examination of Ms. Abbas. Mr. Djukic's direct evidence as an experienced insurance adjuster will serve to enhance the record in the underlying motion.

52. Therefore, in my view, the Rule 39.03 proposed examination is proportionate, is not duplicative, and it is not an abuse of process.

**Conclusion**

53. Applying the above law to the circumstances of the immediate case, in my view, The RCECO has met the onus of showing that the evidence of Mr. Djukic would be relevant to the pending motion, and Aviva has not met the onus of showing that the summons is an abuse of process or that Mr. Djukic's evidence is irrelevant or unnecessary.
54. For the reasons outlined above, the motion is dismissed.
55. Counsel are encouraged to agree to costs.
56. If the parties are not able to agree on costs, the Plaintiff may file costs submissions of no more than 3 pages plus a costs outline and any offers to settle within 10 days of the release of this decision, and the Defendant may file responding costs submissions on the same terms within a further 10 days. The Plaintiff's Reply, if any, is limited to one page, to be filed within a further 5 days.

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Associate Justice Kamal

**DATE:** October 10, 2025