

in the Toronto Action to Catherine Dittmar. The Toronto Action has been dormant for nearly 20 years.

- [5] The defendants seek orders with respect to the following on this motion:
- A: The defendants seek to have the Lawyer Negligence Action heard at the same time – this is with the consent of all parties, including defendant Thoms.
 - B: While the defendants no longer seek to have the Toronto Action heard at the same time, they submit that it should be and leave it to the court to exercise its discretion.
 - C: To amend the pleadings to include damages related to assaults and other wrongful conduct of Brian Dittmar. This includes adding a new cause of action in the counterclaim as it relates to historic sexual assaults, as well as using those allegations as a defence in the main action. The “other wrongful conduct” relates back to allegations of misrepresentation that would rely on the Toronto Action.
- [6] As noted, the plaintiffs agree with the consolidation of the Lawyer Negligence Action and the Parry Sound Action. They oppose all other requested orders on this motion.

THE LAW

Amending Pleadings

- [7] The timing and form of amendments are governed by r. 26 of the *Rules*. As noted above, at this stage in the proceedings, the defendants require leave of the court to amend their pleadings.
- [8] Rule 26.01 states:
- On a motion at any stage of an action, the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.
- [9] The Court of Appeal interpreted r. 26.01 in its decision, *Iroquois Falls Power Corp. v. Jacobs Canada Inc.*, 2009 ONCA 517. The Court affirmed that r. 26.01 dictates that the court must grant an amendment to pleadings unless the opposing party establishes (1) non-compensable prejudice that (2) results from the amendment. That is, the prejudice must flow from the amendments, not from some other source: *Iroquois Falls Power Corp.*, at paras. 16 and 20-21.
- [10] The purpose of the *Rules* respecting amendments is “to bring all parties to disputes relating to one subject matter before the court at the same time so that disputes might be determined without the delay, inconvenience and expense of separate actions”: *Spar Roofing & Metal Supplies Limited v. Glynn*, 2016 ONCA 296, at para. 36.

- [11] “Although the general rule is that amendments are presumptively approved, there is no absolute right to amend pleadings”: *Marks v. Ottawa (City)*, 2011 ONCA 248, at para. 19.
- [12] “Legal soundness” is required. “In other words, amendments, like any other pleading, are subject to the normal rules as to form, relevance and basis in law. Therefore, it is not only proper, but in the interests of sound judicial process that leave to amend under rule 26.01 not be granted unless the amendment sought is tenable in law”: *Daniele v. Johnson*, 1999 CanLII 19921 (Ont. Div. Ct.), at para. 12.¹
- [13] At some point, the delay in seeking the amendment will result in a presumption of prejudice. The onus to rebut the presumption lies with the moving party, while the onus in establishing actual prejudice then lies with the responding party.
- [14] In *Ontario Securities Commission v. McLaughlin*, [2009] O.J. No. 1993, at para. 6, the Divisional Court elaborated on the concept of presumed prejudice. To rebut the presumption of prejudice, a moving party needs to provide “some explanation of the delay in seeking the amendments and the presence or absence of prejudice to the opposite party and the need to show a nexus between the proposed amendments and the facts or evidence said to be recently discovered.”

Consolidation of Matters

- [15] Joinder of claims and parties is governed by r. 5. This will apply to the defendant’s request to add each of the two actions noted above.
- [16] Rule 5.02(2) states:

Multiple Defendants or Respondents – Two or more persons may be joined as defendants or respondents where,

- (a) there are asserted against them, whether jointly, severally or in the alternative, any claims to relief arising out of the same transaction or occurrence, or series of transactions or occurrences;
- (b) a common question of the law or fact may arise in the proceeding;
- (c) there is doubt as to the person or persons from whom the plaintiff or applicant is entitled to relief;
- (d) damage or loss has been caused to the same plaintiff or applicant by more than one person, whether or not there is any factual connection between the several claims apart from the involvement of the plaintiff or applicant, and there is doubt as to the person or persons from whom the plaintiff or applicant is entitled to relief or the respective amounts for which each may be liable; or
- (e) it appears that their being joined in the same proceeding may promote the convenient administration of justice.

¹ Citing *Keneber Inc. v. Midland (Town)*, 1994 CanLII 7221 (Ont. S.C.), at p. 758.

[17] Rule 6.01(1) states:

Where two or more proceedings are pending in the court and it appears to the court that,

- (a) they have a question of law or fact in common;
- (b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences; or
- (c) for any other reason an order ought to be made under this rule, the court may order that,
 - (d) the proceedings be consolidated, or heard at the same time or one immediately after the other; or
 - (e) any of the proceedings be,
 - (i) stayed until after the determination of any other of them, or
 - (ii) asserted by way of a counterclaim in any other of them.

[18] The Court of Appeal in *Windrift Adventures Inc. v. Ontario (Animal Case Review Board)*, 2023 ONCA 690 at 10² sets out the two-fold test for consolidation:

- a. The Court must determine whether the moving party has established that any of the criterial under r. 6.01(1) have been met, and
- b. If any criteria have been met, the court must consider whether the balance of convenience favours a consolidation order.

[19] When considering the second step of the test, factors to be considered in assessing the balance of convenience of consolidating proceedings are set out in *1014864 Ontario Ltd. v. 1721789 Ontario Inc.*, 2010 ONSC 3306. I will not repeat the factors here, but will refer to them as necessary below.

Overarching Objective of Civil Proceedings

[20] Rules 1.04 and 2.03 apply more generally to interpreting or dispensing with compliance with the rules to secure the most just and expeditious outcome on the merits of a matter, in the interest of justice.

[21] The Court of Appeal in *Khimji v. Dhanani*, 2004 CanLII 12037 (C.A.), discusses the overall objective of civil proceedings: a just determination of the real matters in dispute. While the facts of that case are not analogous, a reminder of the flexibility in that r. 2.01(1)(a) builds into decisions on procedure is a good one. Courts should not be too quick to deprive litigants of a decision on the merits – a decision based on the real matters in dispute: *Khimji*, at para. 18.

² Citing *Li v. Bank of Nova Scotia*, 2023 ONSC 4235, at para. 62.

- [22] Section 138 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, states that, as far as possible, multiplicity of legal proceedings shall be avoided.

APPLICATION OF THE LAW

A: The Lawyer Negligence Action

- [23] All parties, including the defendant in that action, Mr. Thoms, agree that this matter (CV-22-00000046, “the Parry Sound Action”) and the Lawyer Negligence Action should be heard at the same time or one after the other on the scheduled trial sitting. The parties submit that this would not significantly lengthen the estimated trial time as the Lawyer Negligence Action involves the same transaction.
- [24] The plaintiffs have never opposed having this matter heard together with the Lawyer Negligence Action and advise that a timetable has been ordered in that matter to ensure that it is ready to proceed on the March 3, 2026 trial sittings.
- [25] I agree that these matters ought to be heard together. Rule 6.01 is satisfied because the matters involve the same transaction and share questions of law or fact. In assessing the balance of convenience factors, I find that the balance favours consolidation, including that:
- a. the matters are significantly interwoven as they deal with the same, single transaction;
 - b. there is significant overlap in witnesses;
 - c. there is a significant risk of inconsistent findings if the matters are heard separately;
 - d. both matters are timetabled in a way that both can proceed in the same trial sitting;
 - e. consolidation will reduce costs and court time required; and
 - f. all parties consent to the matters being heard at the same time or one after the other.

B: The Toronto Action

- [26] The defendants’ position is that the Toronto Action has been dormant for nearly 20 years. They do not have a question of law or fact in common, nor does the relief claimed arise out of the same transaction or occurrence.
- [27] The defendants rely on juristic reason to permit the facts and/or pleadings in the Toronto Action to attach to the Parry Sound Action.
- [28] The defendants state that Veronica Dittmar’s claims in the Toronto Action, which have been assigned to Catherine Dittmar, are a juristic reason for Catherine to retain any benefit she may have realized from any deprivation Brian may have suffered, resulting from Catherine and Mark retaining ownership of the Property.

- [29] That is, they wish to rely on the fact that Veronica Dittmar assigned any benefit she might be entitled to under the Toronto Action to Catherine Dittmar as the basis for a valid legal justification for Catherine to retain the benefit or enrichment in the property at Brian's expense, should the court find that Catherine and Mark have been unjustly enriched by Brian and Florence.
- [30] In submissions, the defendants resiled from seeking to consolidate or hear the Toronto Action together with the Parry Sound Action, but continued to seek leave to amend pleadings to include information/facts/allegations ("information") in relation to the Toronto Action in the Parry Sound Action.
- [31] I find that the Toronto Action fails to meet any threshold for consolidation with the Parry Sound Action.
- [32] In terms of the remaining motion for leave to amend the pleadings to permit information from the Toronto Action into the Parry Sound Action, I find that any connection is tenuous at best. There is a significant risk in relitigating an action that has lain dormant for nearly 20 years, and/or of inconsistent findings should the Toronto Action litigation continue.
- [33] Should Catherine be entitled to any award from the Toronto Action that might offset the possible unjust enrichment claim of Brian and Florence Dittmar, it is to be realized properly as a part of that litigation.

C: Leave to Amend Pleadings for Assaults or other Damages

- [34] Several things happened on April 20, 2025: Veronica Dittmar transferred her interest in the Toronto Action to Catherine Dittmar, Catherine made a statement to police alleging historical sexual assaults, and the defendants gave notice that they would seek to amend the pleadings to include the alleged assaults and other damages.
- [35] As set out in the defendants' reply factum, I agree that Ontario has, through legislation and caselaw, recognized the long-lasting and deep emotional trauma associated with sexual assault and that victims may take years to come forward. While I am mindful of the care taken when dealing with the timing of disclosure around sexual assault, that care does not result in automatic orders and does not supersede all other considerations in a matter.
- [36] On this pleadings motion, it is not for me to decide whether the historical sexual assault occurred: it is presumed true. Nor will my decision on this motion bar Catherine Dittmar from bringing a separate action against Brian Dittmar for damages relating to her claim of sexual assault.
- [37] The amendments requested also relate to allegations that Brian Dittmar misappropriated funds, as alleged in the Toronto Action.
- [38] I must consider whether, under r. 26.01, pleadings are to be amended. As a part of that assessment, I must consider the following:

- a. whether it will cause prejudice to the plaintiffs that is non-compensatory;
- b. whether, when raised as a defence to this action, it is *prima facie* legally tenable; and
- c. whether, as a separate cause of action as a counterclaim, the amendment would achieve the overarching objectives of the rules of civil proceedings.

Non-compensatory Prejudice

- [39] This motion is brought as an eleventh-hour request to amend the pleadings, which would require further discovery, expert witnesses, and significantly more trial time. Combined, these things would result in an adjournment of a trial that is otherwise ready to proceed as scheduled in seven weeks.
- [40] At the time of the motion, the trial was 2.5 months away, including the December/January holiday season. Despite the defendants' submissions that the matter could be ready to proceed on March 3, 2026, I agree with the plaintiffs that this is impossible.
- [41] The defendants have not yet produced their expert report(s). The only way this matter could proceed to a just and fair trial with the amendments sought by the defendants would be after a substantial adjournment. The plaintiffs suggest that this might be in the range of 12-18 months or longer.
- [42] The plaintiffs raise their advanced age as a factor to be considered in assessing delay and non-compensatory prejudice. Brian Dittmar is now 93, and Florence Dittmar is now 83. I accept that their age, combined with the age and current state of the matter, which is ready to proceed to trial in seven weeks, are factors to be considered.
- [43] The delay caused by amending the pleadings in these circumstances amounts to real prejudice to the plaintiffs that cannot be compensated by costs.
- [44] The requested amendments to include sexual assaults and allegations related to the Toronto Action would be collateral issues that would take the trial down a different path than it has been proceeding since 2022, when the action commenced.
- [45] While the defendants point out that the sexual assault does not have a limitation period, nor can we place expectations on a victim about when they are willing and able to come forward, they make no reference to the Toronto Action in this regard. The allegations relating to the Toronto Action are not new. Given the risk of inconsistent findings as discussed above, together with the prejudice, delay, and additional costs, the Toronto Action pleading amendments shall not be permitted.

Are the historic sexual assault allegations, as a defence to unjust enrichment, legally tenable?

- [46] Although my r. 26.01 assessment above results in the dismissal of the motion to amend the pleadings, both counsel made submissions about the application of the Court's decision in

Kerr v. Baranow, 2011 SCC 10, [2011] 1 S.C.R. 269, in reference to whether the historic sexual assault allegations would provide for a juristic reason to deny recovery if the plaintiffs are successful on their unjust enrichment claim against the defendants.

- [47] In *Kerr*, the Supreme Court of Canada addresses two cases involving claims of unjust enrichment between spouses and includes a lengthy discussion of juristic grounds for denying recovery on an otherwise successful claim of unjust enrichment.
- [48] In this case, the defendants rely on *Kerr* for the principle that the sexual assault against Catherine would be relevant as a juristic reason for Brian not to receive the benefit of any unjust enrichment that may have been found. The plaintiffs submit that *Kerr* refers to policy-based reasons that disclose no separate cause of action, and that Catherine's allegations do, in fact, amount to a separate cause of action.
- [49] *Kerr* refers back to *Pettkus v. Becker*, [1980] 2 S.C.R. 834, which sets out the three steps for recovery in an unjust enrichment claim: first, whether there has been enrichment or benefit to the defendant, second, whether that enrichment or benefit corresponds to a deprivation to the plaintiff, and finally, the absence of a juristic reason for the enrichment: *Kerr*, at para. 32.³ At paras. 33-34, the Court acknowledges that there is no separate line of authority for family cases: "The legal principles remain constant across all areas but must be applied in the particular factual and social context out of which the claim arises."
- [50] The first and second steps are straightforward economics. The third step, the juristic reasons step, engages other considerations, including moral and policy questions: *Kerr*, at para. 37.
- [51] Juristic reasons to deny recovery may be one of the established categories, such as a contract or a finding that the intention was to provide a gift, but in this, the defendant would be seeking to bar recovery through rebutting the presumption that there is no juristic reason. In that case, the court would be obligated to consider all the circumstances of the transaction to determine whether there is a reason to deny recovery based on the parties' reasonable expectations and public policy: *Kerr*, at para. 43.
- [52] It is this reasonable expectation of the parties at the time of the transaction that the defendants would try to attach the historic sexual assault allegations to establish a juristic reason to deny the recovery, and it is here that I find the defendants' argument not legally tenable. Even if we take the allegations as true as I must on this motion, on my review, the argument cannot succeed.

Do the overarching principles of civil proceedings favour amendment?

- [53] Catherine Dittmar may well have a separate action against Brian Dittmar as a result of historical sexual assault(s) that may well result in an award if successfully litigated. Sexual

³ *Peel (Regional Municipality) v. Canada*, [1992] 3 S.C.R. 762, at p. 784.

assault claims are not subject to a limitation period: s. 16(1)(h) of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B.

- [54] This is not the only consideration in accounting for the overarching principles governing civil proceedings. Rule 1.04(1) imposes an obligation to construe the rules liberally to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.
- [55] In addition to the reasons set out above for dismissing the motion, I have considered r. 1.04 insofar as permitting the requested amendments to the pleadings would add a layer of complexity that does not relate to the transaction. Simply having two parties in common is not sufficient. If permitted, it would significantly lengthen the trial to address collateral issues and an entirely new cause of action. This would unduly increase time and costs for this matter, but significantly, also for the Lawyer Negligence Action, which has no connection whatsoever to the requested amendments.
- [56] Although delay, complexity, significantly lengthening trial, and the age of the plaintiffs are, in and of themselves, not sufficient, to refuse the amendments, when taken together not only do they amount to real, non-compensable prejudice against the plaintiffs, and collaterally, Mr. Thoms, it would also not result in the most just, expeditious and least expensive determination of this matter.
- [57] The most just, expeditious and least expensive determination of this action is for the matter to proceed as pleaded and scheduled for trial on March 3, 2026, and so it shall.

ORDERS

- [58] The Lawyer Negligence Action shall be heard at the same time as, or immediately after, the Parry Sound Action and shall be added to the trial list beginning March 3, 2026, pursuant to r. 6.01.
- [59] This matter, and the Lawyer Negligence Action shall be added to the Assignment Court list on January 26, 2026, at 9:00 a.m. to confirm with all parties that the matters are to proceed together, commencing on the running list beginning March 3, 2026. Should the parties wish to file a joint letter or document acknowledging that the two actions shall proceed together, commencing March 3, 2026, the trial coordinator may vacate the January 26, 2026, appearance.
- [60] The Toronto Action, and any information related to it, shall not be permitted as a part of any amended pleadings in the Parry Sound Action – either as a part of the claim or counterclaim. Leave to amend the pleadings is denied and the motion is dismissed.

Cost Submissions

- [61] The plaintiffs are entitled to costs on this motion. To that end, should the parties not agree on costs, the plaintiffs may provide cost submissions to a maximum of two pages (excluding attachments) within 15 days of today's date, and the defendants may provide reply

submissions to a maximum of two pages (excluding attachments) within 15 days of receiving the plaintiffs' materials. No submissions will be considered beyond these deadlines.

Bellows, J.

Released: January 14, 2026

CITATION: Dittmar et al. v. Dittmar et al. 2026 ONSC 268
FILE NO.: CV-22-00000046

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

BRIAN WALTER DITTMAR and FLORENCE
DITTMAR

Plaintiffs/
Defendants to the Counterclaim

– and –

CATHERINE ELIZABETH DITTMAR and MARK
RICHARD McCALLUM

DECISION ON MOTION

BELLOWS, J.

Released: January 14, 2026