CITATION: Okafor et al. v. Wilson, 2026 ONSC 716
COURT FILE NO.: CV-19-2599-0000
DATE: 2026-02-05

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
OKAFOR, June OKAFOR, Anthony	)	A. Jayatilake, for the Plaintiff
	)	
Plaintiff	)	
	)	
- and -	)	
	)	
WILSON, Michael	)	M. Harper and A. Naples, for the Defendant
	)	
Defendant	)	
	)	
	)	**HEARD:** February 2 and 3, 2026, by video conference

RULING RE DEFENCE MOTION TO STRIKE THE CLAIM FOR NON-PECUNIARY GENERAL DAMAGES AND DAMAGES FOR HEALTH CARE EXPENSES FOR FAILURE TO LEAD EVIDENCE REQUIRED BY S. 4.3(1) TO (5) OF O/REG. 461/96

[1] The Defence brings this motion, before the commencement of the Trial with a Jury, to strike the plaintiffs claim for non-pecuniary general damages and health care expenses on the basis that the plaintiff has not produced the required evidence set out in s. 4.3(1) to (5) of O/Reg. 461/96.

A Digression Regarding Evidence

[2] The Plaintiff uploaded to Case Centre its Brief of Documents, containing all the Plaintiff's medical documents, on 2 February 2026, the morning of the first day of trial. It contains 12,720 pages. The index was not hyperlinked to the contents. Accordingly, I was unable to locate reports and medical documents referred to in its index.

[3] The Plaintiff uploaded its Responding Motion Record and Factum to this motion to on the morning of 3 February 2026, when he was halfway through his submissions. The factum contains no hyperlinks. While the index to the Responding Record is hyperlinked to the tabs in the Record, there are no hyperlinks in the Affidavit with respect to the evidence referred to. Accordingly, I was unable to locate the exhibits referred to in the Affidavit.

[4] We finished the day on 2 February 2026 because Mr. Okafor's counsel could not find documents in Case Centre because she was working from a PDF copy of her Document Brief located on her computer's hard drive which did not have Case Centre page numbers. We adjourned with my request that when we reconvened on 3 February, Mr. Okafor's counsel would provide a list of documents that supported Mr. Okafor's position, along with Case Centre page references. On 3 February, Mr. Okafor's counsel arrived with a stack of photocopies which did not have Case Center reference numbers. I declined to accept them. Mr. Okafor's

counsel spent her 3 hours on 3 February locating the document on her PDF copy and then trying to find the corresponding reference in Case Centre.

[5] Because of the state of the Plaintiff's filing, the motion, which ought to have taken 1 hour, took 4 hours. I heard the motion notwithstanding.

[6] I digress from the motion to address the deficient filings as a warning to counsel in this trial and beyond that the Court will no longer tolerate counsel's continued failure to comply with the requirements for electronic filing as contained in the Province Wide and Central West Region Practice directions let alone the principles of good advocacy (see: *Lepp v. The Regional Municipality of York*, 2022 ONSC 6978, *Seelal v Seelal et al.*, 2024 ONSC 4176).

[7] We have had mandatory use of Case Centre (and its predecessor, Caselines) in CW Region since April 2022. The time for failing to do what is mandatory, let alone what good advocacy demands, and for the excuses for not doing so, is gone. Counsel should expect that a failure to do what is mandatory regarding electronic filing will result in a range of outcomes from an adjournment with an order for costs thrown away to a refusal to consider the material not properly filed. Counsel should also expect that where costs thrown away are ordered, they may be ordered payable by the solicitor, not to be flowed through to the client, if the Court is convinced that failing to meet the requirements for

electronic filing is the fault solely of the solicitor, and has nothing to do with the client.

Applicable Legal Principles

[8] Section 4.3 of Ontario Regulation 461/96 says:

> (1) A person shall, in addition to any other evidence, adduce the evidence set out in this section to support the person's claim that he or she has sustained permanent serious impairment of an important physical, mental or psychological function for the purposes of section 267.5 of the Act. O. Reg. 381/03, s. 1.
>
> (2) The person shall adduce evidence of one or more physicians, in accordance with this section, that explains,
>
> (a) the nature of the impairment;
>
> (b) the permanence of the impairment;
>
> (c) the specific function that is impaired; and
>
> (d) the importance of the specific function to the person. O. Reg. 381/03, s. 1.
>
> (3) The evidence of the physician,
>
> (a) shall be adduced by a physician who is trained for and experienced in the assessment or treatment of the type of impairment that is alleged; and
>
> (b) shall be based on medical evidence, in accordance with generally accepted guidelines or standards of the practice of medicine. O. Reg. 381/03, s. 1.
>
> (4) The evidence of the physician shall include a conclusion that the impairment is directly or indirectly sustained as the result of the use or operation of an automobile. O. Reg. 381/03, s. 1.
>
> (5) In addition to the evidence of the physician, the person shall adduce evidence that corroborates the change in the function that is alleged to be a permanent serious impairment of an important physical, mental or psychological function. O. Reg. 381/03, s. 1.

[9] In *Khan v. Sinclair*, 2014 ONSC 1355 (SCJ), Morgan, J. held that s. 4.3(1) and (2) of the Regulation requires that a Plaintiff in an action to recover damages arising from an automobile accident to provide evidence from a physician with

respect to questions or issues raised in s. 4.3(2), (3), and (4). Section 4.3(3)(a) says that the medical evidence must be provided by a specialist in the actual field implicated by the Plaintiff's alleged impairment.

[10] In reviewing the Regulations, Morgan, J. said:

> [11] The strict evidentiary requirements of section 4.3 of the Regulation for establishing the criteria for liability under section 267.5(5) of the Act may produce severe consequences for claimants in motor vehicle cases. Those consequences, however, appear to lie at the very heart of the policy embodied by the legislative provisions. In *Page v Primeau,* [2005] OJ No 4693, the court had occasion to analyze the intent and impact of the Regulation on persons claiming for injuries incurred in automobile collisions. At para 34, the court observed that, "the legislative purpose and intent of section 267.5(5) is to 'reduce substantially the number of personal injury claims coming before the courts as a result of motor vehicle accidents'".
>
> [12] This policy goal is truly unfortunate for the Plaintiff. I have great sympathy for him and his family. However, it is not legally cognizable for a plaintiff to complain that the Act and the Regulation thereunder have the effect of eliminating his claim. That was the legislation's very purpose. Claims not supported by a physician's evidence do not meet the statutory threshold and cannot succeed.
>
> [13] This conclusion is further supported by the Divisional Court's judgment in *Gyorffy v Drury*, 2013 ONSC 1929. There, the court had to consider the nature of the corroborating evidence required by section 4.3(5) of the Regulation. The court accepted that the evidence of a plaintiff himself could corroborate the physician's evidence of permanent serious impairment, but it was clear that first and foremost the evidence of a physician is required.
>
> [14] The evidence of lay persons such as the Plaintiff and his family members can only be adduced as further support for a physician's medical evidence, not in place of it. As the Divisional Court put it at para 18 of *Gyorffy*, "s. 4.3, read as a whole, is concerned primarily with the evidence of physicians and the requirements their evidence must satisfy. It requires that there be such evidence 'in addition to any other evidence'".
>
> [15] Ms. Nguyen correctly points out that section 4.3 of the Regulation contains no relieving provision. The failure to adduce a physician's evidence cannot be taken as a mere procedural oversight; rather, it is a failure to fulfill a key evidentiary requirement, specifically set out in the governing legislative instrument.
>
> [16] Having failed to adduce any medical evidence from a physician, the Plaintiff has failed to support the claim that he suffered permanent serious impairment of an important physical, mental or psychological function. Accordingly, the Defendants cannot be held liable for the Plaintiff's non-pecuniary losses.

See also: *Tous v Tabatabai*, 2023 ONSC 433, at para. s. 18 and 19 and *Gero v Silcox*, Ottawa Ct. File No.: 14-61892, Unreported26 November 2018.

Positions of the Parties

The Defence

[11] The Defence argues that following Petersen, J.'s decision in December 2025 denying the Plaintiff leave to file late expert reports, the Plaintiff has no evidence required to meet his obligation to lead the specific evidence required by s. 4.3 of the regulation. Therefore, Mr. Okafor cannot maintain his claim for non-pecuniary damages and for healthcare expenses.

Mr. Okafor

[12] Mr. Okafor concedes that there is no single report that meets the requirements of s. 4.3. The totality of the medical and expert evidence, when taken together, does meet the regulatory requirements. Further, any determination of whether Mr. Okafor has sustained a permanent serious impairment of an important psychological or physical function must wait until after trial.

Result

[13] For the reasons set out herein, the motion is allowed and the claims for non-pecuniary general damages and healthcare expenses advanced in this action are dismissed.

Analysis

[14] I allow the motion for a couple of reasons.

[15] First, I do not accept the Plaintiffs position that he can meet his evidentiary onus by looking at the medical evidence, in its totality, and have the Court conclude that that evidence, in its totality, addresses the requirements of s. 4.3(2) and gives the opinion required in s. 4.3(4) and (5) that the Plaintiff has sustained an impairment that is, directly or indirectly, caused by the use or operation of an automobile. This is not a reasonable reading of s. 4.3.

[16] A reasonable reading of the regulation requires that the Plaintiff lead evidence from one or more physicians, each of which is and expert qualified as required by s. 4.3(3) to give an opinion within his/her specialty as to the specific items listed in s 4.3(2), and give an opinion as required by s. 4.3 (4) and (5) on whether the Plaintiff, by virtue of the automobile accident, suffered a permanent, serious, impairment of an important physical, mental, or psychological function.

[17] Any individual expert who does not qualify under s. 4.3(3) cannot give an opinion that satisfies s. 4.3. An expert's report that does address each item listed in s 4.3 (2), (4), and (5) does not satisfy the requirements of s. 4.3.

[18] Assuming that the Court can consider all of the medical evidence in determining whether the requirements of s. 4.3 are met, I find that those requirements are not met.

[19] Below, I review the documents the Plaintiff says, taken together, meet the requirements of s. 4.3:

> Case Centre A8302 et seq: This is a consultation report from the Cambridge Memorial Hospital, dated 12 September 2018, by Dr. Amir Ilyas, to the plaintiff's family doctor arising from the plaintiff's complaints of dizziness and pain. This note does not comply with s. 4.3. It deals with the complaint of dizziness and pain suffered since Mr. Okafor's accident in 2013 which are exacerbated by his 3 April 2018 accident (at issue in this lawsuit). The doctor comments on Mr. Okafor's claim that he suffered dizziness, pain and other possible sequelae from the accidents. He makes no diagnosis of causation, or of seriousness, permanence or importance of any impairment.
>
> a. Case Centre A9987 et seq: Dr. Shakman, Orthopaedic Surgeon's 4 August 2020 Letter to the family doctor providing a pre-operative history prior to a knee replacement, explaining risks and enclosing a pre-operation questionnaire. He does not address the issues raised in s. 4.3.
>
> b. Case Centre A9195 et seq: Clinical Note of the Plaintiff's family doctor that deals with the Plaintiff's cancelling knee surgery because of the April 2018 MVA. She does not address the issues raised in s. 4.3.
>
> c. Case Centre A9111 et seq: Clinical note of Orthopaedic Surgeon, Dr. Ghokal, reporting on the Plaintiff's knee replacement. He does not address any of the issues raised in s. 4.3
>
> d. Case Centre A 8443 et seq: Letter from Orthodontist Dr. Cho, operative note, and Xray dealing with the Plaintiff's loss of a tooth and replacement implant. These documents indicate that the Plaintiff was missing a tooth, but not why.
>
> e. Case Centre A7691et seq: Neuropsychological Report dated 30 Nov 2022 in which the neuropsychologist was asked to opine on neuropsychological impairment for the purposes of a categorization as "catastrophic" under the AB regime. The diagnosis was that he suffered a mild traumatic brain injury as a result of the April 2018 MVA

superimposed on preexisting limitations, and that the total impairment is catastrophic for first party benefits purposes. It does not comment on serious or permanence of the impairment, or the effects of the impairment on other than the Plaintiff's ability to travel and hence his need for transportation services.

f. Case Center A9931 et seq: 28 August 2023 Orthopaedic Surgeon's report. Irrelevant as it addresses broken bones in the Plaintiff's left foot arising from a recent fall down the stairs.

g. Case Centre A9790 et seq: 17 October 2018 Note from an RN at the Diabetic Clinic to the GP advising of the A1C levels of the Plaintiff. Irrelevant to the action.

[20] The Plaintiff goes further. He argues I can accept what he says about his injuries in determining whether he has met the requirements of 4.3. *Khan, supra*, says I cannot do so. It is not qualified medical opinion

[21] The Defendant argued that certain of the records referred to above were by those not qualified under the regulations to give opinions as they were not physicians. Given my findings above I do not need to address this.

What damages are precluded by this ruling?

[22] The Defence argues, and I agree, that the prohibition against pursuing a claim for non-pecuniary general damages where the requirements of s. 4.3 are not met includes within its ambit claims for things such as damages a) for housekeeping that the Plaintiff leaves undone because of the injury and b) for housekeeping the Plaintiff does albeit with greater pain and less efficiency, as these are properly part of general damages (see: in *McIntyre v. Docherty*, 2009

ONCA 448 at para. 59-79; and *Rodrigues v. Purtill,* 2018 ONSC 3102 at para.s 83-87, upheld on other grounds, *Rodrigues v. Purtill,* 2019 ONCA 740).

Is the Motion Premature?

[23] Mr. Okafor argues that this motion should wait until the evidence is complete.

[24] I disagree. This submission conflates two concepts: a) whether the Plaintiff has met the verbal threshold because he as suffered a permanent serious impairment of an important psychological or physical function, and b) whether he has adduced the proper type of evidence. The former, in most cases, requires all of the evidence to be heard as the determination of whether a Plaintiff has met the verbal threshold requires a weighing of competing expert opinions. The latter, however, as in this motion, is a more mechanical issue. Has the Plaintiff proffered the appropriate opinions and have those opinions addressed certain questions. It does not require an evaluation or acceptance of those opinions. Accordingly, in many cases, the question of whether the medical evidence complies with s. 4.3 of the regulation can be addressed as a preliminary motion.

Costs

[25] I shall address the costs of the motion as part of the costs of the action.

Trimble, J.

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