CITATION: Sharma v. Kaur, 2026 ONSC 724
COURT FILE NO.: CV-22-00001655-0000
DATE: 2026 02 05

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
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SHARMA, Mohit	)	Adam Kuciej, for the Plaintiff
	)	
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Plaintiff	)	
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- and -	)	
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KAUR, Sukhdeep	)	Kim McCartney, for the Defendant
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Defendant	)	
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	)	**HEARD:** In writing. Written submissions completed October 2nd, 2025.

REASONS FOR JUDGMENT

LEMAY J

[1] In September of 2025, a case conference was held before me in this matter. The matter had already been placed on the blitz list for May of 2026, and

the Plaintiff had passed a trial record. At the case conference hearing, counsel for the Plaintiff sought leave to bring two motions, both of which flow out of the same facts. Specifically, the Defence medical specialist, Dr. Mark Korman (an Ear, Nose and Throat ("ENT") specialist, works out of the same office as Dr. Belchetz, the ENT who is treating the Plaintiff. Further, Dr. Korman may have briefly seen the Plaintiff in an examining room to discharge him while the Plaintiff was being treated by Dr. Belchetz.

[2] On the basis of these facts, which all arose prior to the Plaintiff agreeing to attend an IME assessment with Dr. Belchetz, the Plaintiff seeks leave to bring a motion to have Dr. Korman disqualified as an expert on the basis of a conflict of interest and leave to bring a motion to remove the Defendant's lawyer, R. Kim McCartney, from the record on the basis that he improperly received . Leave is necessary because the Plaintiff passed the trial record and is barred from bringing further motions without leave.

[3] For the reasons that follow, leave to bring both motions is denied. I note that the Plaintiff's Notice of Motion and Amended Notice of Motion seek other relief, for which I do not believe leave is required. However, the factum and legal argument that the Plaintiff has provided only addresses these two questions and I am only going to answer these two questions. I understand that there may be a further long motion date later this month to address these issues, and I leave them for that motion. I am not seized of that motion.

Background Facts

a) The Parties and the Action

[4] The underlying action in this case is a motor vehicle accident. On November 29th, 2021, the Plaintiff was allegedly rear-ended by the Defendant's vehicle.

[5] The Plaintiff commenced a claim, and the litigation has been pursued. The Plaintiff also has a claim for Statutory Accident Benefits that I understand is ongoing.

[6] As part of the litigation, the Plaintiff's counsel requested the complete medical records from Dr. Belchetz on November 22nd, 2022. The responding letter from Dr. Belchetz clearly shows, on the top of it, that the other doctor practicing with Dr. Belchetz was Dr. Korman.

b) The Procedural History

[7] The claim in this case was served on or about June 13th, 2022. The Plaintiff's counsel then set the matter down for trial on March 10th, 2023. The parties appeared at Assignment Court on October 23rd, 2023. At that time, pre-trial dates for April of 2025 were sought. However, given the Court schedule, the dates were moved back to January of 2025.

[8] The Plaintiff then served his expert reports in January of 2024. In response, the Defendant sought to have the Plaintiff attend at two Independent Medical Examinations ("IME's"), one with Dr. Duhamel and one with Dr. Korman. The Plaintiff's counsel agreed to permit the Plaintiff to attend at these assessments.

[9] The Plaintiff attended an assessment with Dr. Korman on April 22nd, 2024, and a report was prepared. No issue about the independence or impartiality of Dr. Korman was raised until after the assessment had been completed and the report prepared in May of 2024.

[10] Dr. Korman's report was served on January 28th, 2025. There was no explanation for the delay in serving this report, given that it had been prepared some months previously.

[11] A pre-trial was scheduled for February 24th, 2025. At the direction of RSJ Tzimas, it was converted into a case conference. During the course of the case conference, I imposed a timetable on the parties to address the issues that they had raised. This timetable was not adhered to because Plaintiff's counsel raised two additional issues in the motion materials that they filed, being whether it was proper for Dr. Korman to prepare an expert report and whether Mr. McCartney should be removed as counsel of record.

[12] At the September appearance, after discussion with the parties, I determined that the leave issues were amenable to determination by way of written argument. I advised the parties both in Court and in my endorsement that the parties were to serve, file and upload the materials for leave to CaseLines. They were also to provide a copy of the materials directly to me. The purpose of providing those materials to me as well as filing them on CaseLines was to ensure that I was aware that the parties were proceeding with this motion.

[13] The parties did not provide the materials to me, so I had assumed that the matter had resolved. However, on January 21st, 2026, counsel for the Plaintiffs wrote to my judicial assistant, attaching the materials, and advising that they had failed to provide the materials earlier as a result of an oversight. The email also makes it clear that the parties have a long motion next week, which necessitates a prompt decision on my part. That has been difficult to do as I am in the middle of a criminal jury trial and, as a result, these reasons are of a more summary nature than I would prefer. Before leaving this point, I would also note that this is the second time in this case that counsel have not followed the Court's directions.

The Test for Leave

[14] The test for granting leave after a trial record has been served is set out in *Ginkel v. East Asia*, 2010 ONSC 905. In that decision, Perell J. reviews a number of the leading cases on this point and distilled the following principles (at para. 17):

[17] Having reviewed that case law about these several rules, I extract the following principles:

▪ Because of rule 48.04 (1), if a party sets an action for trial, he or she may not without leave bring a motion for: a further or better affidavit of documents; to challenge a claim for privilege; to compel answers to any questions refused at the examination for discovery; or for further discovery: *White v. Winfair Management Ltd.*, [2005] O.J. No. 1542 (Master); *Fraser v. Georgetown Terminal Warehouse*, [2004] O.J. No. 2131 (Master); *Gawronski v. All State Insurance Co.,* [1998] O.J. No. 4640 (Master); *Machado v. Pratt & Whitney Canada Inc.* (1993), 1993 CanLII 5492 (ON SC), 16 O.R. (3d) 250 [1993] O.J. No. 2741 (Gen. Div.).

▪ The authorities are not uniform as to whether a party can move without leave to compel further discovery or the production of documents if the unanswered question is an unanswered undertaking. The predominant line of authorities, however, requires that after the action is set down for trial, leave be obtained to compel answers to undertakings: *Benedetto v. Giannoulias*, [2009] O.J. No. 3218 (S.C.J.); *Fraser v. Georgetown Terminal Warehouses Ltd.*, [2005] O.J. No. 573 (S.C.J.). There, however, is authority that indicates that leave is not required where a party is not honouring his or her undertakings: *Region Plaza Inc. v. Hamilton-Wentworth (Regional Municipality*), [1996] O.J. No. 4809 (Gen. Div.).

▪ A party who has set an action down for trial is not precluded from taking interlocutory steps or from making motions to respond to a motion or interlocutory step taken by the opposing party: *1086471 Ont. Ltd. v. 2077060 Ont. Inc.*, [2008] O.J. No. 5175 (Master); *Trotter v. Cattan* (1997), 1977 CanLII 1225 (ON SC), 15 O.R. (2d) 800 (Master). Thus, for example, a party who sets an action down for trial but who is confronted with his or her opponent's motion for a summary judgment may cross-examine the moving party's deponents and compel answers to refused questions; see: *1086471 Ont. Ltd. v. 2077060 Ont. Inc.*, [2008] O.J. No. 5175 (Master).

▪ If before setting an action down for trial, a party obtains an order compelling his or her adverse party to answer undertakings or any unanswered or refused questions from the examination for discovery, the party may set the action down for trial and he or she will not require leave to bring a motion to compel compliance with the court's existing order requiring answers: *CBL Investments Inc. v. Menkes Corp* (1994) 1994 CanLII 7225 (ON SC), 17 O.R. (3d) 147 (Gen. Div.); *Chiefs of Ontario v. Ontario*, [2007] O.J. No. 2569 (Master); *1086471 Ont. Ltd. v. 2077060 Ont. Inc.*, [2008] O.J. No. 5175 (Master). In these circumstances, the motion is, in effect, a motion to enforce a court order and not a motion to initiate or continue discovery within the meaning of rule 48.04 (1).

▪ Once a party has set an action down for trial, it is a matter of discretion in the particular circumstances of the case whether the court will grant leave to initiate or continue a motion or form of discovery. However, the setting down for trial is not a mere technicality and the test for granting leave to permit further discovery or other interlocutory proceedings, is that there must be a substantial or unexpected change in circumstances such that a refusal to grant leave would be manifestly unjust or the interlocutory step must be necessary in the interests of

> justice. *Hill v. Ortho Pharmaceutical (Canada) Ltd.*, [1992] O.J. No. 1740 (Gen. Div.) at para. 3; *Machado v. Pratt & Whitney Canada Inc.* (1993), 1993 CanLII 5492 (ON SC), 16 O.R. (3d) 250 [1993] O.J. No. 2741 (Gen. Div.); *White v. Winfair Management Ltd.*, [2005] O.J. No. 1542 (Master) at paras. 15-16; *Benedetto v. Giannoulias*, [2009] O.J. No. 3218 (S.C.J.).

[15] For the purposes of this motion, the key holding is that the Plaintiff must demonstrate a substantial and unexpected change in circumstances such that a refusal of leave would be manifestly unjust, or the interlocutory step must be necessary in the interests of justice. See also: *Hill v. Ortho Pharmaceutical (Canada) Ltd.*, [1992] O.J. No. 1740, 11 C.P.C. (3d) 236 (Gen. Div.).

[16] In considering the test for leave in respect of both issues, one of the key facts is that the Plaintiff **consented to** the examination with Dr. Korman **after** the alleged conflict had arisen. There is no reasonable explanation in the materials as to why the Plaintiff did not raise this potential conflict prior to agreeing to Dr. Korman.

[17] Counsel for the Plaintiff notes that Dr. Korman did not charge OHIP for this visit and argues that the Plaintiff would therefore not have known that Dr. Korman treated him. The problem with this argument is that the Plaintiff was present when Dr. Korman allegedly treated him. As a result, the Plaintiff knew who had treated him. He should not need the OHIP summary to know who his treating physicians are.

[18] I also note that the Plaintiff's counsel should have had the clinical notes and records and, therefore, should have known that the Plaintiff had had a brief interaction with Dr. Korman. It is far less likely that Dr. Korman would have remembered this interaction, given the number of patients that he would have seen and the fact that he had no billing record of it.

[19] With those observations in mind, I now turn to the question of whether I should permit the motion to disqualify Dr. Korman to proceed.

The Motion to Disqualify Dr. Korman

[20] The Plaintiff has provided an Affidavit as part of the materials that I have reviewed in determining this leave motion. In that Affidavit, the Plaintiff advises that he was actually seen by Dr. Korman in September of 2023. On that occasion, Dr. Belchetz was performing a debridement on the Plaintiff's left ear. During the course of the procedure, the Plaintiff became dizzy. Dr. Belchetz asked him to lie down in another room before he went home. Dr. Korman then came in and asked how the dizziness was. Dr. Korman then briefly looked at the Plaintiff's left ear, and discharged him. For the purposes of this motion, I accept that this actually happened.

[21] The Plaintiff's argument on why Dr. Korman should be disqualified rests on two grounds. First, that Dr. Korman might have had access to the files in his clinical record as a result of practicing with Dr. Belchetz. Second, Dr. Korman actually treated the Plaintiff. The Plaintiff has described the grounds at paragraph 17 of his submissions as follows:

> 17. The plaintiff submits he could not have known prior to setting this action down for trial that the defendants would have retained Dr. Korman to provide a defence medical report, and the conflict of interest was never disclosed to the Catastrophically Impaired plaintiff.

[22] The problem with this argument is twofold. First, while the Plaintiff is correct that Dr. Korman was not retained until after the trial record was passed, this statement omits two important points. First, the Plaintiff consented to Dr. Korman. Second, the Plaintiff should have had knowledge of any potential conflict before he was examined by Dr. Korman. On his evidence, he knew he had been treated by Dr. Korman previously. In my view, this is not an unexpected change in circumstances.

[23] This brings me to the second concern with this argument. The Defendant is not obliged to know about unbilled medical treatment that the Plaintiff might have received from its' potential expert before it retains that expert. It was the Plaintiff's responsibility to know whether a conflict existed. I also note that, in the absence of evidence that the Plaintiff has cognitive impairments, any catastrophic impairment does not shift the responsibility for identifying unbilled treatment that the Plaintiff received to the Defendants.

[24] I then turn to the Plaintiff's second argument, which is that Dr. Korman breached patient confidentiality by agreeing to be the Defendant's expert and by conducting an examination on the Plaintiff. Given this breach, the Plaintiff argues that leave should be granted to have this motion heard as it is in the interests of justice. A significant portion of the Plaintiff's arguments on this point are in their reply submissions. Specifically, the Plaintiff directs my attention to the decision in *Burgess (Litigation Guardian of) v. Wu*, (2003) 68 O.R. (3d) 710, 2003 CanLII 6385 (ON SC).

[25] *Burgess* concerned a situation where the Plaintiffs were claiming that the Defendant, Dr. Wu, had been negligent in his treatment of Mr. Burgess and had therefore contributed to Mr. Burgess committing suicide. In the course of treating Mr. Burgess, Dr. Wu asked Dr. MacDonald, also a psychiatrist, for a consultation. This request was made by way of a letter that set out a significant amount of detail about Mr. Burgess's health. Dr. MacDonald duly conducted the consultation, but did not prepare a written report. Dr. MacDonald prepared a verbal report, which was recorded in the hospital's records. Dr. MacDonald was subsequently retained by the Defendants to provide an expert report. There were also issues in terms of how Dr. MacDonald was contacted and whether he breached confidentiality. The Court ruled that Dr. MacDonald should not be permitted to provide expert evidence.

[26] The case before me is substantially different for two reasons. First, in *Burgess*, significant medical records were provided to Dr. MacDonald for the purposes of his consultation. However, in this case, the "consultation" appears to have been limited to seeing whether the Plaintiff could go home after an episode of dizziness. It is not at all clear to me that Dr. Korman would have any confidential medical information to disclose from that interaction.

[27] Medical confidentiality is vital. However, in this case, all of Dr. Belchetz's records were produced at the request of the Plaintiff. It is difficult to know what confidential information there would be that had not already been disclosed. On these facts, I am not persuaded that there is sufficient harm from any potential breach of confidentiality to permit the Plaintiff to bring a motion after the matter had been set down for trial.

[28] The second reason that *Burgess* is different form the case before me is dispositive of the request for leave. The Plaintiff knew or ought to have known he had seen Dr. Korman briefly once before, and still proceeded to attend his office for an examination. Counsel for the Plaintiffs argues that Dr. Korman has not disclosed his signed consent. However, the appointment with Dr. Korman was made by advising counsel of the appointment. Had the Plaintiff wished to object prior to the examination, he merely had to have his counsel write and advise of the conflict. He did not raise any alleged conflict in a timely way and should not be permitted to do so now.

[29] This brings me to the final observation about this issue. In their original submissions, Plaintiff's counsel argues that one of the reasons it would be in the interests of justice to grant this motion for leave is that "the exclusion of Dr. Korman's evidence would substantially shorten trial preparation and the trial itself." It is true that excluding one side's expert would shorten the trial. However, it would

also be manifestly unfair to the side whose expert was excluded. I cannot see how this would be in the interests of justice.

[30] For these reasons, the Plaintiff's request for leave to bring a motion to have Dr. Korman's evidence excluded is denied. I note, however, that the trial judge has an ultimate gatekeeping responsibility over expert evidence, and this decision is not intended to usurp that function.

The Motion to Remove Mr. McCartney

[31] The test to remove counsel from the record is very high. Raikes J. set out the test in *Smith et. al. v. Muir*, 2019 ONSC 2431 as follows (at paras. 24 and 25):

> [24] The test for removal of counsel is whether a fair-minded and reasonably informed member of the public would conclude that counsel's removal is necessary for the proper administration of justice: *Kaiser (Re)*, [2011] O.J. No. 6223 (ON CA) at para. 21; *Best v. Cox*, [2013] O.J. No. 6664 (ON CA) at para. 8; *Milicevic v. Smith Engineering Inc.*, 2016 ONSC 2166 at para. 31.
>
> [25] Canadian courts exercise the highest level of restraint before interfering in a party's choice of counsel: *Kaiser,* para. 21. A court will only grant a removal motion in the rarest of cases: *Cox*, para. 8. The court must balance a party's right to select counsel of choice with the public's interest in the administration of justice and basic principles of fundamental fairness. A removal order will not be made absent compelling reasons: *Milicevic*, paras. 32 and 78.

[32] The Plaintiff argues that even "a whisper" of improper disclosure should result in the removal of counsel from the record. Given the high test for removal, I disagree.

[33] The Plaintiff's argument, in essence, is that although the Defendant would have had no way of knowing that Dr. Korman had ever met the Plaintiff, Defendant's counsel should be removed from the record because there has been improper disclosure of medical records to the Defendant.

[34] Over and above my conclusions in respect of the lack of confidential disclosure, there are two problems with the Plaintiff's argument. First, as I have

noted, the Plaintiff bears the responsibility for identifying the conflict, and not the Defendant. Second, unlike *Muir*, there is no deliberate conduct in this case. In *Muir*, counsel for the Defendant subpoenaed a doctor, sent a letter to the doctor purporting to require production of the doctor's full file prior to trial, and then the Defendant's counsel's law clerk had a half hour discussion with the doctor about his recollection of the patient (see also *Smith et. al. v. Muir*, 2020 ONSC 1118). In this case all we have is a request for an IME from someone that Defendant's counsel did not know, and would have had no way of knowing, had ever met the Plaintiff.

[35] In short, a fair minded and reasonably informed member of the public would not expect this Court to remove Mr. McCartney from the record.

[36] For these reasons, leave to bring a motion to remove Mr. McCartney is also denied.

Conclusion

[37] For the foregoing reasons, leave to bring further motions to disqualify Dr. Korman's report and to remove Mr. McCartney from the record are denied.

[38] There are two further matters that should be addressed. First, given both the procedural history in this matter, and the failure of the parties to comply with the timetable I set in February of 2025, the judge hearing the motion is at liberty to schedule a further case conference before me once they make their decision on the other issues to ensure that this matter remains on track for trial.

[39] Second, there is the subject of costs for this motion. The parties are strongly encouraged to agree on the costs of this matter. Failing agreement, the following timetable is set out for costs:

a) Any party that is seeking costs shall have seven (7) calendar days from the date of the release of these reasons to serve, file and upload their costs submissions of no more than two (2) single-spaced pages, exclusive of bills of costs, offers to settle and case-law.

b) Any party that receives a claim of costs pursuant to paragraph (a) shall have a further seven (7) calendar days to serve, file and upload their costs submissions of no more than two (2) single-spaced pages, exclusive of bills of costs, offers to settle and case-law.

c) These costs submissions **must** also be sent to my attention through the email address: SCJ.CSJ.General.Brampton@ontario.ca. The email should be addressed to my attention and contain the name and file number of the case.

d) There are to be no extensions to the deadline for costs submissions, even on consent, without my leave.

[40] I would also remind counsel that, in assessing costs, I will need to consider the procedural history of this motion. That procedural history includes the fact that the Plaintiff knew or ought to have known about the issues with Dr. Korman before agreeing to have him perform the assessment, the fact that the Plaintiff addressed these issues very late in the day, and the Defendant's late service of Dr. Korman's report.

LEMAY J

Released: February 5, 2025

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