CITATION: Marincic v. Starvoy Technologies Inc., 2026 ONSC 759
COURT FILE NO.: CV-23-92659
DATE: 2026 01 09

ONTARIO SUPERIOR COURT OF JUSTICE

RE: IGOR MARINCIC, Plaintiff

AND:

STARVOY TECHNOLOGIES INC., Defendant

BEFORE: C. MacLeod RSJ

COUNSEL: Melynda Layton, for the Plaintiff (Moving Party)

Jeff Saikaley and Genevieve Therrien, for the Defendant (Responding Party)

HEARD: December 8, 2026 & December 12, 2025

ENDORSEMENT

[1] This is a motion for production, for an order to answer questions refused on discovery and for an order adjourning the trial. The moving party argues that he does not require leave to bring this motion and if leave is required, it should be granted. The responding party argues that the motion should be dismissed, and the trial proceed as planned.

[2] As set out in my endorsement of December 12, 2026 the fact that this motion was brought in December, that it was not argued efficiently in the time allotted and the disproportionate amount of material filed, as well as the manner in which that material was organized left no practical alternative but to reserve on the motion and to adjourn the trial.[1] I moved the trial from January to May.

[3] A great deal of time was spent on the question of leave. As I will discuss, I find that leave was required but, regardless of whether it was or was not a technical requirement, there is no justification for bringing this motion on the eve of trial. The court is not obliged to adjourn a fixed date trial to permit a last minute motion for answers or productions of little consequence.[2]

[4] A party bringing such a motion must demonstrate that it would be unjust to proceed to trial without the information that the motion seeks to uncover. In other words, the information should

---

[1] Amongst other things, the motion record consisted of hundreds of pages in a single pdf document which was neither bookmarked nor hyperlinked in an accessible manner. The factum was buried inside the motion record, there was no separate refusals and undertakings chart, Plaintiff's counsel did not refer to case center page numbers and did not use the presentation tools.

[2] *Fulop v. Corrigan*, 2020 ONSC 1648

be of critical importance to a fair trial. In addition, the moving party should explain why the motion was brought so late and demonstrate that the relief could not reasonably have been sought earlier. If those tests are met, even if leave is required, it will probably be granted and if it is not the case, the motion is inappropriate and should not be granted. This is particularly the case in a Rule 76 trial.

[5] For the reasons that follow, the motion is dismissed, and the trial is to proceed as scheduled.

Background

[6] This is a wrongful dismissal action in which the Plaintiff has abandoned any claim for common law damages. The dispute centres on whether the Plaintiff was wrongfully terminated. The Defendant takes the position he either abandoned his employment or was dismissed for cause when he failed to return from working remotely in Serbia and refused to attend meetings with his superiors. According to the Plaintiff's factum, the claim is now only for unpaid commissions and for notice and severance under the *Employment Standards Act* ("ESA").[3]

[7] It is common ground that a central preoccupation during the trial will be whether the Defendant has a payroll of over $2.5 million. This is because pursuant to s. 64 of the ESA, only employers of that size are liable to pay statutory severance. While the Defendant corporation itself does not have such a payroll, the Plaintiff argues that the Defendant is part of a related group of companies with a combined payroll over the limit and it is therefore liable to pay.[4] S. 4 of the ESA deems associated or related activities or businesses to be one employer for purposes of the statute and the obligations it imposes.

[8] The Plaintiff alleges that the Defendant is related to Motion Micro Solutions (which is admitted) and to J Squared, Mazin Properties and Mazin Investments (which is denied). The test under the legislation can be satisfied if it can be shown that in reality this is a single business carried out through various legal entities.[5] There is no one factor that is determinative in reaching that conclusion and imposing liability. The courts and the relevant tribunals have considered common management or directing mind, common financial control, common visual identity, common ownership, movement of employees between business entities, use of the same premises or assets, and whether there are common customers and markets as markers which may lead to a

[3] *Employment Standards Act, 2000*, S.O. 2000, c. 4, as amended. The statutory test may not be synonymous with the common law doctrine of "common employer" – see O'*Reilly v. ClearMRI Solutions Ltd.*, 2021 ONCA 385
[4] The Defendant denies that the companies are related or associated within the meaning of s. 4 of the ESA but in argument agreed to stipulate that if such a finding is made, the combined payroll would exceed the statutory amount.
[5] *550551 Ontario Ltd. v. Framingham* 1991 CanLII 7388 (Div.Ct.) – decided under the predecessor legislation.

finding that businesses are related enterprises.[6] There is no longer a need to show that the business arrangements were made with the specific intention of avoiding the application of the ESA.[7]

[9] It is not for the court to determine the s. 4 question on this motion although the Plaintiff urged me to treat the question as either proven or admitted.[8] It is an issue for trial. The relevant consideration for purposes of the motion is simply that there is an unproven and contested allegation the Defendant is related to other corporations.

[10] The factors above are relevant to that determination. It is important to stress, however, that these other corporations have not been sued and they are not Defendants or otherwise parties to the litigation. Nor is this a motion under Rule 30.10 or Rule 31.10. This is a motion against the Defendant and not against the non party corporations.

[11] The action was commenced on July 11, 2023 under Rule 76 of the *Rules of Civil Procedure.*[9] Rule 76 has been amended at various times since it was first enacted but it has always been a rule designed to facilitate streamlined litigation of relatively small amounts. Currently that includes actions for less than $200,000.00.

Rule 76 Actions and Setting the Action Down for Trial

[12] Rule 76 provides for early disclosure, limited discovery, procedural collaboration and a trial of no more than five days in which the evidence in chief is to be introduced by affidavit. Rule 76 actions are supposed to proceed expeditiously. For the rule to function as intended, parties and counsel should be narrowing the issues for adjudication, attempting to settle, making admissions where appropriate and agreeing to dispense with expensive and complex evidentiary requirements whenever possible.[10]

[13] Ordinary rules of civil procedure and evidence apply to Rule 76 matters except as modified by the Rule, agreed to by the parties or ordered by a judge. Nevertheless, there is an expectation that the parties and their counsel will work jointly to permit the completion of all steps in the litigation in a timely fashion. Parties should be making robust use of admissions, and stipulations and where those are not practical, should have recourse to Rule 51. There is a mutual interest in keeping costs down because the Rule imposes limits on cost recovery. As described above, the entire purpose of the rule is to provide a framework for cost effective streamlined litigation.

---

[6] *Lian v. Crew Group Inc*., 2001 CanLII 28063, 54 OR (3d) 239 (SCJ) – also under the previous legislation. See *United Food and Commercial Workers Canada, Local 1006A v Ryding Regency Meat Packers Ltd*., 2024 CanLII 2047 (ON LRB) – under the current legislation.
[7] Former s. 4 (1) (b) repealed by 2017, c. 22, Sched. 1, s. 4 (1)
[8] The Plaintiff's factum stated the Defendant admitted the corporations were associated businesses but that is not the case. Certain facts have been admitted that could lead to such a conclusion depending on other facts that may or may not be found at trial.
[9] R.R.O. 1990, Reg. 194, as amended
[10] See *Balpinar (Estate) v. Economical Mutual Insurance Company et. al.*, 2024 ONSC 7239 (SCJ) @ para. 37 - 45

[14] One of the requirements is for the Plaintiff to set the action down for trial within 180 days of receiving a defence (Rule 76.09 (1)). Although this deadline remains in the rule, there is no longer a provision for automatic dismissal by the Registrar so there is no automatic consequence.[11] If the Plaintiff fails to set the matter down, the Defendant may do so. (Rule 76.09 (2)) The deadline could otherwise be enforced by motion. The deadline would also be relevant if there is a motion to dismiss for delay under Rule 24 or if the Registrar dismisses the action after five years pursuant to Rule 48.14. The expectation remains that a Plaintiff in a Rule 76 action should be ready to proceed to trial within six months of receiving a defence.

[15] Although Rule 76.09 provides a simple process for setting the action down by way of a Notice of Readiness (rather than filing a trial record), nothing in the Rule suggests that the party setting the matter down for trial is authorized to file a misleading notice certifying that the party is ready for trial when in fact they are not. If necessary, an extension of time could be obtained pursuant to Rule 3.02 and Rule 2.03. The parties could also negotiate a deadline for motions as part of a timetable or a discovery plan.

[16] The form (76C) contains the following language: "The (identify party) is ready for a pre-trial conference and is setting this action down for trial. A pre-trial conference in the action will proceed as scheduled and the trial will proceed when the action is reached on the trial list, unless the court orders otherwise" (emphasis added).

[17] There is nothing in Rule 76, to suggest that Rule 48.04 should not apply to Rule 76 actions and nothing to suggest that certifying the action is ready to proceed should not be taken seriously. Nothing in Rule 76 modifies the requirements of Rule 53.03 regarding service of expert reports prior to the pre-trial. To the extent that modification of any of these rules or relief from the rule is required, this can be addressed by motion or ought to be raised at the pre-trial and an order obtained. If a party does not seek such an order, it is reasonable to hold the party to the consequences of certifying that the action is ready to proceed to trial.

[18] I conclude that the action was set down for trial by the Plaintiff on October 13, 2023 by means of filing Form 76C.

Scheduling of Discoveries

[19] Despite the action having been set down for trial, the Defendant did not take a strict approach to the matter. The parties proceeded to conduct discoveries on May 22, 2024. Certain undertakings were given, and a number of questions were refused. Evidently, it would have been unreasonable to proceed with discoveries after the 76C was filed and then to argue that discovery motions were precluded. What should have happened is an agreement that any such motion be brought within a fixed period of time but no such agreement is in evidence.

---

[11] Former Rule 76.06 revoked by O.Reg 4388/08 s. 55

[20] It is not unusual for the parties to schedule discoveries after the filing of the 76C but before the pre-trial. Recall, however, that originally the rule did not permit discoveries. Now, unless otherwise ordered or agreed, discoveries are limited to three hours.[12] Discovery is intended to be focused, proportionate and efficient. It is not intended to be open ended.

[21] The conduct of discovery is governed by Rules 31 and 35. Rule 31.07 imposes a consequence on a party that fails to answer a question posed to them. Refusal in this context includes taking a question under advisement but then failing to provide an answer, or undertaking to answer and failing to do so.[13] So advisements and undertakings become refusals if they are not answered.

[22] There are several consequences for not answering a proper question. Firstly, the party refusing or failing to answer, "may not introduce at the trial the information that was not provided, except with leave of the trial judge". This is the consequence provided by Rule 31.07 (2) and is automatic. Secondly, if a party refuses to answer a clearly relevant question and thus appears to be suppressing evidence that becomes relevant at trial, it is possible the court will draw a negative inference. Thirdly, the examining party may seek sanctions under Rule 34.15 or may adjourn the discovery to obtain directions from the court pursuant to Rule 34.14.

[23] Sanctions under Rule 34 include an order to answer the question and reasonable follow up questions, in extreme cases an order striking the defence or dismissing the claim, costs or such other order as the court considers just under the circumstances. The most common of these is an order under Rule 34.15 (1) (a) requiring "the person being examined to reattend at his or her own expense and answer the question, in which case the person shall also answer any proper questions arising from the answer". Such an order requires a motion and should be brought promptly after efforts to resolve the discovery dispute have been exhausted. Prior to arguing the motion, the parties are required to exchange refusals and undertakings charts, to justify the question or explain the refusal and to try to resolve the motion.[14]

[24] All discovery motions are requests for court intervention or supervision. In every case, the court has the discretion to order relief or to refuse it. Generally, an order will be made if the motion is brought in a timely fashion, the question was a proper one, the refusal was unjustified, and the requested information appears necessary to a fair trial. The court will also consider if the request is proportionate or disproportionate to the importance of the issue it is intended to address.

[25] There are two decisions of this court which hold that leave is not required to bring a refusals motion after setting the action down for trial.[15] The weight of authority, however, says otherwise.[16] I prefer the analysis of Justice Perrel and Master Graham which I adopt. In any event, the cases

---

[12] Rule 76.04 (2)
[13] Rule 31.07
[14] Rule 37.10 (10)
[15] See *Blagrove v. Whittington, I2010 ONSC 3748* and *Heathcote v. RBC Life Insurance Company,* 2024 ONSC 1539.
[16] See *Ginkel v. East Asia Minerals Corporation,* 2010 ONSC 905 and cases cited therein. See also *Jetport Inc. v. Jones Brown Inc.,* 2013 ONSC 2740 (Master) which carefully analyses the case law and the purpose of the rule.

which have allowed such a motion without leave are distinguishable because in neither case was the motion brought so late in the day that it would require adjourning a trial.

[26] Even if leave is not required to bring the motion, relief under Rules 34.14 or 34.15 is discretionary and must be evaluated in accordance with Rule 1.04 and the purposes of Rule 76. Timing militates against granting an order compelling answers and permitting further discovery unless the information is truly critical.

Additional Steps

[27] In addition to setting the action down for trial and completing discovery, further important steps took place in this action. On September 11, 2024 a timetable was set by Associate Justice Fortier. That included a deadline for answering undertakings (October 11, 2024) and a deadline for serving any motion arising from discoveries. If leave was required, then it was implicit in that order that leave was granted providing the deadline was respected. If leave was not required, then discovery motions were nevertheless made subject to a timetable.

[28] On October 10, 2024, the parties obtained a date for trial and the trial date was fixed for a five day summary trial to begin on January 12, 2024. Fixing a date for trial is an important step and a party intending to bring a motion which might affect that date has an obligation either to ask for a later date or to bring the motion expeditiously.

[29] A notice of motion was served on March 27, 2025 but no date was set for the hearing until August 22, 2025. That motion was adjourned *sine die* because the date had not been cleared with opposing counsel.

[30] On November 19, 2025 there was a Trial Management Conference with Justice M. Smith. The issue of the motion was raised at that time. Justice Smith did not have the motion materials before him and therefore directed that the motion be heard urgently. He directed that the Plaintiff's motion materials be delivered no later than November 25th, 2025 although they were not served until November 27th, 2025. He also endorsed that the motion should only require an hour. He did not purport to rule on whether leave was required or to grant such leave.

[31] It is the position of the Defendant that all undertakings have been answered and based on the evidence I accept that is so. I note that in some of the documents, the Plaintiff had erroneously listed certain refusals as undertakings. There was, for example, never an undertaking to produce records from other corporations or to determine how many employees they each had.[17] The Defendant has always taken the position he does not have access to those records. The Plaintiff's motion is therefore to compel answers to refusals and specifically to require the Defendant to produce certain documents.

[32] I conclude that in the face of a fixed trial date, repeated delays and breaches of timetables provide an additional barrier to the Plaintiff's motion. If leave is not required under Rule 48, leave

[17] Q. 30 – 34 & Q. 37 – Examination of Eric Pinto

is required to bring a motion after the deadline set in a timetable. In addition, while Rule 48.04 deals with consequences of setting an action down, Rule 48.07 deals with the consequences of placing a matter on a trial list. That rule recites that upon the court setting a trial date, "all parties shall be deemed to be ready for trial" and "the trial shall proceed when the action is reached on the trial list unless a judge orders otherwise".[18]

The nature of the motion

[33] The Plaintiff seeks payroll records and other documents to show that J-Squared, Mazin Investments and Mazin Properties are related corporations to the Defendant within the meaning of the ESA. At discovery, it was admitted that Mr. Gibson who is the principal shareholder of the latter corporations is also a shareholder though not the controlling shareholder of the Defendant.

[34] It was also conceded that Mazin Properties is the landlord and one of the Mazin entities provides payroll services to the Defendant. The Defendant corporation works closely with J-Squared and with Mazin but denies that they are associated employers or members of a single group of companies. The Plaintiff has provided his evidence about how closely the corporations operate and his view that his work was often for the benefit of more than one of them. He has not provided any evidence that he was paid or received a T4 from any entity other than the Defendant.

[35] The documents requested include payroll records of J-Squared, the two Mazin entities and Motion Micro Systems. The Defendant has answered that it does not control the payroll records of J-Squared or Maxin and, while conceding that Motion Micro is related to the Defendant, has testified that Motion Micro has no employees and no payroll.

[36] In light of these answers, it is not reasonable to seek an order that the Defendant produce documents that do not exist or documents that are the property of separate corporations not controlled by the Defendant.

[37] The additional demands are for production of Starvoy's "payroll records", and additional documents relating to sales for each of Mr. Marincic's clients and customers as well as an accounting for client accounts and commissions earned by the Plaintiff.

[38] I agree with the Defendant that drilling down into the details of its payroll records is not relevant. It has produced tax records showing the total payroll for Starvoy and has produced documents relevant to the calculation of commissions.

[39] The final category is for production of reports from Motion Micro or Starvoy showing all orders placed by customers during the period in question. This is relevant to the Plaintiff's claim for commissions. The Defendant has produced customer shipment reports which it says are the only documents that were ever used to calculate entitlement to commission. Commissions were

[18] Rule 48.07

never paid, according to their evidence, on orders placed but subsequently cancelled but only on orders that were fulfilled.

[40] If this motion had been brought in a timely manner, it is possible the court might have been persuaded to order production of records to show what orders were placed from customers, even if some of those orders were never delivered (due to COVID or other factors) or were cancelled. This is because the records are in the possession, power or control of the Defendant and might have some relevance to the issues. On the other hand, even if the motion was timely, it is possible that such production could have been found to be disproportionate.

[41] I do not consider these records to be essential for the purposes of trial. This is for two reasons. Firstly, the documents that have been produced demonstrate commission to which the Plaintiff would be entitled if he is entitled to severance. Secondly, in the event the trial judge is persuaded by the evidence at trial that the Plaintiff is entitled to severance and is also persuaded that the Defendant may be concealing evidence necessary to properly calculate such commission, the judge has a range of remedial orders that could be made. Alternatively, as discussed earlier, the judge could draw a negative inference. I am not persuaded on the evidence that the additional records are of sufficient relevance or importance that further production should be ordered at this time.

Summary and Conclusion

[42] In conclusion, I am of the view that leave was required to bring this motion. This is either because Rule 48.04 applies or because, having agreed to a trial date and having failed to comply with timetables, leave is required to bring a motion out of time.

[43] I am also of the view that even if leave is not required, the court may refuse relief on a production or discovery motion brought on the eve of trial. Orders pursuant to Rule 34.14 are discretionary in nature and where relief is sought that would require adjournment of a trial, the court should be reluctant to make an order unless the information sought is critical and the motion could not reasonably have been brought earlier.

[44] Finally, even if I am wrong concerning the need for leave or the discretion of the court to withhold relief for a motion brought on the eve of trial, I do not consider that the motion brought by the Plaintiff should be granted.

[45] Taking into account the summary nature of the trial and the narrow questions to be answered, I consider the additional evidence sought by the Plaintiff to be disproportionate and unnecessary.

[46] The relief is therefore refused, and the motion is dismissed.

Costs

[47] I will entertain succinct written submissions on costs – no more than 5 pages each within the next 30 days. If counsel prefer, I will hear oral submissions providing a request to do so is

made within 15 days. Alternatively, the parties may agree on costs or may agree to defer the issue to be dealt with by the trial judge after the conclusion of the trial.

Justice C. MacLeod

Date: February 9, 2026