

CITATION: McPeake v. Houston, 2026 ONSC 1146
COURT FILE NO.: CV-19-00081456-0000
DATE: 2026-02-24

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
BARRY McPEAKE)
) Yan D. Payne, for the Plaintiff
Plaintiff)
)
– and –)
)
)
)
ROBERT HOUSTON and JENNIFER A.)
BLISHEN, IN HER CAPACITY AS OF)
ADMINISTRATOR OF THE ESTATE) Stephen Cavanagh, for the Defendants
OF THOMAS C. BARBER and THE)
ESTATE OF THOMAS C. BARBER,)
DECEASED and BURKE-ROBERTSON)
LLP and GOWLING WLG (CANADA))
LLP)
)
Defendants)
)
)
) **HEARD:** May 22, 2025

2026 ONSC 1146 (CanLII)

DECISION ON MOTIONS

CULLIN J.

Overview of the Motions

[1] This proceeding appears before me in the context of a summary judgment motion, brought by the defendants, Robert Houston, Thomas Barber (deceased, by his estate administrator, Jennifer Blishen), Burke-Robertson LLP, and Gowling WLG (Canada) LLP (“the defendants”). The plaintiff, Barry McPeake (“the plaintiff”) opposes the motion.

[2] Each of the parties have brought motions seeking to strike all or part of the evidence filed by the other. The plaintiff also asks the Court to strike the motion in its entirety, arguing that it is not an appropriate matter for summary judgment.

Factual Background

[3] This proceeding arises in the context of long-standing disputes arising from the plaintiff's sale of a computer software research and development company ("the company") that he co-owned with two other individuals.

[4] In 1999, the company was sold to Microsoft. In advance of the sale, the plaintiff and his business associates had structured their affairs to minimize their taxable capital gains. That structure took the form of family trusts to which they conveyed their shares in the company.

[5] Sale proceeds were remitted to the McPeake Family Trust ("the MFT"). Proceeds were then paid to the MFT's beneficiaries and capital gains were reported on the beneficiaries' respective tax returns.

[6] In 2004, the plaintiff was audited. The Canada Revenue Agency ("CRA"), relying on s. 75(2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), attributed the gains in the MFT solely to the plaintiff. After the reassessment, the plaintiff was found to be liable for significant additional taxes, interest, and penalties.

[7] The plaintiff retained tax counsel Andre Rachert ("Rachert"). Rachert obtained orders rectifying the MFT in an effort to address the issues raised by the CRA. The plaintiff's tax liability was eventually substantially reduced pursuant to an agreement with CRA, after the Federal Court of Appeal found in an unrelated case that CRA's interpretation of s.75(2) was incorrect: *Canada v. Sommerer*, 2012 FCA 207.

Litigation Background

The Cadesky-Seltzer Action

[8] In 2006, following the audit, the plaintiff commenced legal proceedings against an accounting firm, Cadesky & Associates ("Cadesky"), and against a lawyer, Barry Seltzer ("Seltzer"), for negligence in providing services to him to structure and implement the MFT ("the Cadesky-Seltzer action"). Cadesky crossclaimed against Seltzer. Both Cadesky and Seltzer issued third party claims against another lawyer, George Jones ("Jones"), who had provided services to the plaintiff.

[9] The Cadesky-Seltzer action was fully disposed of in a motion for summary judgment: *McPeake v. Cadesky & Associates*, 2017 ONSC 5705. That decision was upheld by the Ontario Court of Appeal: *McPeake v. Cadesky & Associates*, 2018 ONCA 554. The plaintiff's current counsel acted for him on the appeal.

[10] The Cadesky-Seltzer action sought damages for the plaintiff's tax liability, for legal fees incurred for the rectification proceedings and negotiations with CRA, for damages for loss of economic and business opportunities, and for unspecified special damages.

[11] The summary judgment motion in the Cadesky-Seltzer action proceeded before Justice Ryan Bell in June and July of 2017. In that motion, the Court was asked to determine whether there was a genuine issue for trial with respect to the following issues:

- a. Was Seltzer retained regarding the formation of the MFT or the preparation of the MFT deed? If so, was he negligent?
- b. Was Cadesky retained regarding the formation of the MFT or the preparation of the MFT deed? If so, were they negligent?
- c. Was Cadesky negligent in failing to advise the plaintiff of the alleged deficiencies and potential remedies in relation to the MFT deed?
- d. What is the effect, if any, of the backdating of the MFT deed?
- e. Was Jones' retainer limited?
- f. Are the third party claims against Jones legally untenable on the basis that any negligence on the part of Jones is the legal responsibility of the plaintiff?
- g. Were the third party claims against Jones commenced out of time?

[12] Justice Ryan Bell found that there was no genuine issue for trial regarding Seltzer's liability. She found that the evidentiary record did not support a finding that Seltzer was retained by the plaintiff regarding the formation of the MFT or the preparation of the MFT deed. In light of that finding, she declined to make a finding regarding the need for or absence of expert evidence regarding the standard of care owed by Seltzer in the context of the negligence claim.

[13] Justice Ryan Bell found that there was a genuine issue for trial regarding Cadesky's retainer regarding the formation of the MFT and the preparation of the MFT deed. She found that the issue was capable of being determined using the fact-finding powers established in Rules 20.04(2.1) and (2.2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[14] Regarding Cadesky's retainer, Justice Ryan Bell made the following findings:

- a. That Cadesky was not retained and provided no advice or other service regarding the formation of the MFT or the preparation of the MFT deed.
- b. That Cadesky was only retained after the MFT was established.

[15] The plaintiff also argued that Cadesky was retained on an ongoing basis to provide accounting and tax advice to him and to the MFT following its formation and that they were negligent in failing to advise regarding deficiencies in the structure of the MFT. Justice Ryan Bell found that it was not obvious that Cadesky's conduct prior to the release of *Sommerer* was a breach of the standard care, absent expert evidence. As the plaintiff had not tendered such evidence, he failed to meet his burden of proof.

[16] The plaintiff's claim against Cadesky was therefore also dismissed.

[17] Given her findings regarding Seltzer and Cadesky, Justice Ryan Bell found that it was not necessary to determine the issue regarding the backdating of the MFT deed or the issues regarding Jones.

The Barber-Houston Action

[18] In 2019, following the disposition of the appeal in the Cadesky-Seltzer action, the plaintiff commenced the present action ("the Barber-Houston action") against the defendants for their alleged roles in the Cadesky-Seltzer action.

[19] The plaintiff was represented in the Cadesky-Seltzer action by Thomas Barber ("Barber") and also by his law partner Robert Houston ("Houston") both prior to and following Barber's death in June 2016. At the time the Cadesky-Seltzer action was commenced, Barber and Houston practiced at the law firm Burke-Robertson LLP. Houston later moved his practice to the law firm Gowling WLG (Canada) LLP.

[20] The Barber-Houston action seeks damages for negligence, breach of contract, and unjust enrichment in pursuing the Cadesky-Seltzer action. The plaintiff alleges that Barber and Houston were negligent due to the following:

- a. They failed to advise him of the need to file expert evidence on the summary judgment motion regarding the standard of care of Seltzer and Cadesky.
- b. They failed to advise him of a potential claim against Jones.
- c. They failed to advise him of a potential claim against the company's former accountant, Kenneth Finkelstein ("Finkelstein").

[21] The plaintiff claims damages for legal fees and disbursements, adverse costs awards, and personal expenses incurred by him in the Cadesky-Seltzer action and subsequent appeal, for the loss of the use of funds paid in pursuing the Cadesky-Seltzer action and subsequent appeal, for the costs incurred for the rectification proceedings and the CRA dispute, and for the loss of the opportunity to claim damages or a settlement against Cadesky, Seltzer, Jones, and/or Finkelstein.

Summary Judgment Motion – Proposed Scope

Issues to be Determined in the Action

[22] To assess the evidentiary record on this motion, it is important to first identify the issues that are before the Court in this action. This exercise involves a review of the pleadings, as well as Justice Ryan Bell's reasons for decision.

[23] The statement of claim addresses two aspects of the legal services provided to the plaintiff by the defendants: their conduct of the summary judgment motion in the Cadesky-Seltzer action; and, their advice regarding the necessary parties to the Cadesky-Seltzer action.

[24] In submissions on this motion, the plaintiff's counsel explicitly stated that the plaintiff was not seeking to relitigate the findings of Justice Ryan Bell.

1. The Conduct of the Summary Judgment Motion

[25] With respect to the conduct of the summary judgment motion, the statement of claim focuses on the absence of expert evidence. The statement of claim does not allege that the defendants failed to call fact witnesses or to admit relevant documentary evidence to establish facts. This is an important distinction, given the findings of Justice Ryan Bell.

[26] Justice Ryan Bell found as a fact, based on the evidentiary record, that neither Seltzer nor Cadesky were retained regarding the formation of the MFT or the preparation of the MFT deed. Neither of these findings relied on expert evidence. To the contrary, Justice Ryan Bell explicitly stated that it was not necessary for her to consider the absence of expert evidence given these factual findings. In her view, there could be no negligence where there was no retainer.

[27] The issue of expert evidence only arose regarding the services provided by Cadesky to the plaintiff and to the MFT after 1997, once the MFT had already been established. Cadesky acknowledged that they were retained to provide services to the plaintiff and to the MFT after 1997. As previously noted, the issue to be decided by Justice Ryan Bell was whether Cadesky was negligent in failing to advise the plaintiff of the alleged deficiencies and potential remedies in relation to the MFT deed. She found that the absence of expert evidence was fatal to the plaintiff's position on this issue.

[28] In this action, then, the Court must determine the following as it pertains to Barber and Houston's conduct of the summary judgment motion in the Cadesky-Seltzer action:

- a. *What was the standard of care owed by Barber and Houston to the plaintiff in advising the plaintiff about the need for expert evidence on the summary judgment motion.*
- b. *Did Barber and Houston breach the standard of care by failing to advise the plaintiff on the summary judgment motion of the need to file expert evidence regarding the standard of care of Cadesky for the services they provided to the plaintiff and the MFT after 1997, once the MFT had already been established.*
- c. *If so, did their breach of the standard of care cause the plaintiff to suffer losses.*
- d. *If so, what damages, if any, are recoverable by the plaintiff.*

2. The Identification of Necessary Parties

[29] The plaintiff did not pursue claims against either Jones or Finkelstein in the Cadesky-Seltzer action. He alleges that the defendants were negligent for failing to warn him that he may have claims against them and that the defendants knew or ought to have known that Jones and Finkelstein were "directly involved" in setting up the MFT.

[30] Justice Ryan Bell declined to make findings regarding the liability of Jones in the Cadesky-Seltzer action given Jones' status as a third party defendant and her dismissal of the claims against Cadesky and Seltzer in the main action. With respect to Jones' retainer, it was undisputed that he was retained to provide services regarding the MFT but the scope of his retainer was disputed. Justice Ryan Bell did not make findings regarding the scope of Jones' retainer, noting that it was not necessary for her to do so; she did, however, make observations regarding the involvement of Jones in the preparation of the MFT deed.

[31] Finkelstein was not a party to the Cadesky-Seltzer action, although he did provide evidence which was referenced in Justice Ryan Bell's decision. Justice Ryan Bell made no findings regarding the liability of Finkelstein or regarding his retainer, if any. In her summary of the facts, she found that, at the relevant time, Finkelstein was a retired chartered accountant, that he had suggested the potential use of family trusts, and that he had directed the plaintiff and his business associates to Cadesky.

[32] In this action, then, the Court must determine the following as it pertains Barber's and Houston's advice to the plaintiff regarding the necessary parties to the Cadesky-Seltzer action:

- a. *What was the standard of care owed by Barber and Houston to the plaintiff in advising the plaintiff about necessary parties to the Cadesky-Seltzer action.*
- b. *Did Barber and Houston breach the standard of care by failing to advise the plaintiff that Jones and/or Finkelstein ought to be included as parties to the Cadesky-Seltzer action.*
- c. *If so, did their breach of the standard of care cause the plaintiff to suffer losses.*
- d. *If so, what damages, if any, are recoverable by the plaintiff.*

3. Ancillary Issues

[33] This action also raises the following ancillary issues which will have to be determined by the Court:

- a. *Are Burke-Robertson LLP and Gowling WLG (Canada) LLP liable for the actions of Barber and Houston in the Cadesky-Seltzer action.*

[34] I would note that the plaintiff's evidence on this summary judgment motion addresses an administrative dismissal which was subsequently set aside, for which he alleges he incurred legal fees. This claim is not plead in the statement of claim.

Motion as Framed by the Defendants

[35] The defendants have brought a motion for summary judgment, arguing that there is no genuine issue for trial in the Barber-Houston action.

[36] Specifically, the defendants argue:

- a. There is no basis upon which Gowling WLG (Canada) LLP can be found liable, as Houston began to practice with that firm in October 2017, after the decision was rendered in the Cadesky-Seltzer action.
- b. There is no basis upon which Seltzer or Cadesky can be found liable regarding the MFT or the MFT deed, given Justice Ryan Bell's findings that they were not retained, the plaintiff's failure to challenge the finding regarding Seltzer's retainer on appeal, and the appeal findings regarding Cadesky's retainer. Expert evidence would not have altered this outcome.
- c. The plaintiff's claims arising from the dismissal of the Seltzer-Cadesky action are barred by the principles of *res judicata*, issue estoppel, and abuse of process.
- d. The plaintiff has failed to particularize a basis on which Jones and/or Finkelstein would have been found liable to him in the Cadesky-Seltzer action, or what damages would have arisen from their liability, had they been named as defendants. The plaintiff will have to reconcile the following evidence:
 - i. By the time the MFT was created, Finkelstein was retired. His sole involvement was to forward a precedent trust deed, which would not have resulted in legal liability.
 - ii. The plaintiff has previously provided evidence that Jones' involvement was limited to the preparation of documents from templates.
 - iii. The plaintiff has previously provided evidence that that it was not part of Jones' retainer to provide an opinion regarding the structure, adequacy, or effectiveness of the MFT.
 - iv. The plaintiff has admitted in the statement of claim that the MFT was structured the way that it was on the advice of Cadesky.
- e. The plaintiff has delivered no expert evidence supporting his position that Jones and/or Finkelstein fell below the standard of care.
- f. The plaintiff has delivered no expert evidence supporting his position that the defendants fell below the standard of care.
- g. With respect to damages:
 - i. The plaintiff sustained no compensable losses in the Cadesky-Seltzer action and, as a result, there are no compensable losses to be claimed in the Barber-Houston action.
 - ii. There is no basis for the defendants to be liable for the contingency fee payable to Rachert and, if there is, the plaintiff has failed to particularize that contingency fee.

- iii. There is no basis for the defendants to be liable for the plaintiff's agreed-upon tax liability to the CRA.
- iv. The plaintiff has delivered no evidence supporting his claims for fees paid to professional advisors.
- v. The plaintiff has not pleaded or particularized a claim for a loss of use of funds related to a company called "IT3".

[37] As framed, the proposed summary judgment motion engages issues of standard of care, causation, and damages.

Suitability of Matter for Summary Judgment

Relief Sought

[38] The plaintiff's motion requests that the Court strike the defendants' motion for summary judgment in its entirety. The plaintiff argues that a summary judgment motion is inappropriate in this matter as it is not the just, most expeditious, and least expensive process to determine the proceeding on its merits.

The Law

[39] The case management of a summary judgment motion following discoveries was discussed by the Court in *George Weston Limited v. Domtar Inc.*, 2012 ONSC 5001, at paras. 53-60. In that case, the Court noted that the focus of the case management analysis should be: whether the proposed summary judgment motion will assist in the efficient resolution of the proceeding; and, whether the issues raised in the motion are suitable for disposition by way of a summary judgment motion. It identified factors for consideration, including the following:

- a. The anticipated length of the motion;
- b. The issues to be determined on the motion;
- c. The anticipated affidavit evidence and the need for cross-examinations;
- d. The anticipated documentary evidence and whether it will be admitted on consent;
- e. The anticipated expert evidence, including the issues to be addressed by experts;
- f. The anticipated transcript evidence, including the identities of the witnesses and the length of the transcripts;
- g. The anticipated legal arguments, including the anticipated length of oral and written submissions;
- h. The anticipated length of trial, including a consideration of the anticipated witnesses, documentary evidence, and in-trial motions.

Analysis

[40] In my view, the most challenging issue to litigate in this action, and the one most likely to require a trial, will be that of factual causation.

[41] The issue of standard of care as framed by the defendants is neither factually nor legally complex. While expert evidence will be necessary to identify the requisite standard of care owed by the defendants, the contentious issue will be the application of that expert evidence to the facts to determine whether the standard was breached by the defendants. This factual determination can potentially be made through the exercise of the court's powers pursuant to Rule 20.04.

[42] The issue of damages as framed by the defendants is likewise neither factually nor legally complex and can potentially be determined through the exercise of the court's powers pursuant to Rule 20.04.

[43] The issue of causation will require the Court to grapple with likely outcomes. In this proceeding, where the advice given to the plaintiff is at issue, the Court will be asked to answer the following questions:

- a. Had the advice been given, is it more likely than not that the plaintiff would have acted on it;
- b. If so, is it more likely than not that acting on the advice would have changed the plaintiff's outcome in the Cadesky-Seltzer action; and,
- c. If so, how is it likely to have changed the plaintiff's outcome in the Cadesky-Seltzer action.

[44] Assuming the Court finds that the plaintiff would have acted on advice if given, the analysis of causation as it pertains to the conduct of the summary judgment motion will focus on the impact of adding expert evidence to the existing record that was before Justice Ryan Bell: *Di Martino v. Delisio*, 2008 CanLII 36157 (ON SC) at para. 118. The experts may identify additional fact evidence that they would require to render an opinion, which the party calling the expert would be expected to tender, but absent this there is little place for additional evidence from the parties regarding the issue of Cadesky's liability. Absent a compelling reason, such evidence opens the door to re-litigation and should be avoided.

[45] In my view, the issue of causation as it pertains to the defendants' conduct of the summary judgment motion primarily engages a paper review of the record below (similar to an appeal) and focused expert evidence regarding a narrow issue of negligence involving Cadesky, which is capable of being tendered by affidavit. I find that this issue is capable of determination by a summary judgment motion in this proceeding.

[46] The issue of causation as it pertains to the identification of necessary parties is different. As Jones and Finkelstein were not named as parties by the plaintiff in the Cadesky-Seltzer action, the plaintiff did not have an opportunity to create an evidentiary record regarding their liability. To litigate causation in this proceeding, he would be required to do so, and the Court would be

required to conduct a “trial within a trial”: *Jarbeau v. McLean*, 2017 ONCA 115. In my view, with the exception of one question, a determination of this issue of causation will require the parties to create a substantial evidentiary record and the court to engage with that evidentiary record in a manner not suited to summary judgment.

[47] In the context of the identification of necessary parties, the one question of causation that is capable of being determined on a summary judgment motion is the question of whether the plaintiff would have acted on advice to add Jones and Finkelstein as parties had that advice been given. That factual determination can potentially be made through the exercise of the court’s powers pursuant to Rule 20.04 and in my view is suitable for summary judgment.

[48] In my view, the summary judgment process offers an opportunity to resolve the issues outlined above, which may be determinative of this action, in a just, expeditious, and cost-effective manner. While it is possible that a determination of these issues will not resolve the action in its entirety, at minimum, it offers an opportunity to narrow the issues for trial and, potentially, to create a pathway for resolution.

[49] The plaintiff’s motion to strike the defendants’ summary judgment motion in its entirety is therefore denied. The scope of the motion will, however, be narrowed as noted above.

[50] Therefore, on this summary judgment motion, the Court will determine whether there is a genuine issue for trial with respect to the following:

- a. *What was the standard of care owed by Barber and Houston to the plaintiff in advising the plaintiff about the need for expert evidence on the summary judgment motion.*
- b. *Did Barber and Houston breach the standard of care by failing to advise the plaintiff of the need to file expert evidence on the summary judgment motion in the Cadesky-Seltzer action regarding the standard of care of Cadesky for the services they provided to the plaintiff and the MFT after 1997, once the MFT had already been established.*
- c. *If so, did the breach of the standard of care in (b) cause the plaintiff to suffer losses, and specifically:*
 - i. *Had the advice been given, is it more likely than not that the plaintiff would have acted on it;*
 - ii. *If so, is it more likely than not that acting on the advice would have changed the plaintiff’s outcome in the Cadesky-Seltzer action; and,*
 - iii. *If so, how is it likely to have changed the plaintiff’s outcome in the Cadesky-Seltzer action.*
- d. *What was the standard of care owed by Barber and Houston to the plaintiff in advising the plaintiff about necessary parties to the Cadesky-Seltzer action.*

- e. *Did Barber and Houston breach the standard of care by failing to advise the plaintiff that Jones ought to be included as a party to the Cadesky-Seltzer action.*
- f. *If so, is it more likely than not that the plaintiff would have acted on advice to add Jones as a party to the Cadesky-Seltzer action.*
- g. *Did Barber and Houston breach the standard of care by failing to advise the plaintiff that Finkelstein ought to be included as a party to the Cadesky-Seltzer action.*
- h. *If so, is it more likely than not that the plaintiff would have acted on advice to add Finkelstein as a party to the Cadesky-Seltzer action.*
- i. *Were the damages claimed by the plaintiff, in fact, incurred.*
- j. *Are any of the damages claimed by the plaintiff in this action too remote to be recoverable.*
- k. *Is Gowling WLG (Canada) LLP liable for the actions of Houston in the Cadesky-Seltzer action.*
- l. *Are any of the plaintiff's claims barred by the principles of res judicata, issue estoppel, and/or abuse of process.*

[51] Depending upon the evidentiary record, there may be an issue regarding the availability of reverse summary judgment with respect to one or more of the issues listed above.

The Evidentiary Record

Relief Sought

[52] The plaintiff has brought a motion to strike the affidavit of Robert E. Houston, sworn October 26, 2022 (“the Houston affidavit”), in its entirety or, alternatively, to strike specified paragraphs and exhibits from the Houston affidavit.

[53] The defendants have brought a motion to strike the affidavit of the plaintiff, sworn September 13, 2024 (“the McPeake affidavit”), and the affidavit of Andre Rachert, sworn September 16, 2024 (“the Rachert affidavit”), in their entirety. They also seek to strike the “Will Say Statements” of Barry Seltzer, Ken Finkelstein, Michael Cadesky, Grace Chow, Howard Berglas, Howard Wasserman, Linda Jones, and their attached schedules, in their entirety.

The Law

[54] The moving party on a summary judgment motion bears the initial burden of establishing, through evidence, that there is no genuine issue of material fact requiring a trial. If they discharge this burden, the onus shifts to the responding party to identify disputed material facts and to

demonstrate the merits of their case: *Hercules Managements Ltd. v. Ernst & Young*, 1997 CanLII 345 (SCC), [1997] 2 SCR 165 at para. 3.

[55] An evidentiary record must contain admissible, relevant evidence. Affidavit evidence should be coherent and provide an organized set of facts which demonstrates there is a genuine issue to be tried: *Greymac Trust Co. v. Reid*, [1988] OJ No 2812 at para. 3.

[56] Pursuant to Rule 25.11, a court may strike all or part of a pleading or other document if it is satisfied that it: may prejudice or delay a fair trial; is scandalous, frivolous, or vexatious; or is an abuse of the court's process. Affidavits fall within the category of "other documents" to which the rule applies: *Allianz Global v. Attorney General of Canada*, 2016 ONSC 29 at para. 10.

[57] As a general rule, the discretion to strike an affidavit in advance of a motion should be exercised sparingly: *Neighbourhoods of Windfields Limited Partnership v. Death*, [2007] OJ No 3042 at para. 33. When an affidavit contains material which is "clearly inappropriate" and that would put the opposing party to, "unreasonable effort or cost" or require the filing of "voluminous material" to respond, such relief may be warranted: *Neighbourhoods* at para. 37; *Metzler Investment GMBH v. Gildan Activewear Inc.*, 2009 CanLII 43106 (ON SC).

[58] In reviewing the evidentiary record of the parties, additional admissibility issues to be considered by the court include the following:

- a. Absent an explanation for the inclusion of affidavits from other proceedings as exhibits rather than in the first instance, such evidence is inadmissible: *Carter v. Canada (Attorney General)*, 2011 BCSC 1371 at paras. 25-28.
- b. Section 5(2) of the *Evidence Act*, R.S.O. 1990, c.E.23 speaks to the authenticity of transcript evidence, but does not overcome the issue of hearsay inadmissibility: *R. v. Caesar*, 2016 ONCA 599 at paras. 45-50.
- c. Appending documents as exhibits to an affidavit with no evidentiary foundation to establish their authenticity or admissibility is, at minimum, problematic: *Toronto-Dominion Bank v. P.M.J. Holdings Limited et al.*, 2019 ONSC 7297 at paras. 15-25; *The Owners, Strata Plan VR29 v. Kranz and others*, 2020 BCSC 2171 at paras. 31-64.

Analysis Approach

[59] In making determinations regarding the evidentiary record, I have not addressed every admissibility issue in the evidentiary record presently before the Court. The evidentiary issues that I have decided to address in this motion are those which, in my view, would create unfairness in the preparation for and argument of the summary judgment motion because they are clearly inappropriate, would put an opposing party to unreasonable effort or cost, or would require the filing of voluminous material to respond. The evidentiary record that remains may still be the subject of admissibility arguments by counsel upon the hearing of the summary judgment motion.

[60] The fact that I have elected not to strike evidence is also not determinative of the weight that will be assigned to it on the hearing of the summary judgment motion.

[61] With one exception, I have not considered relevance in making my determinations, as it is my view that it would be premature to do so absent arguments on the final evidentiary record. That exception is evidence containing factual assertions solely about the involvement of Cadesky and Seltzer in the formation of the MFT and the preparation MFT deed. I find that evidence serves no purpose other than to relitigate factual findings of Justice Ryan Bell and is not relevant to any issue in this litigation.

[62] Some evidence regarding Seltzer's and Cadesky's involvement in the formation of the MFT and the preparation MFT deed that also addresses the involvement of Finkelstein or Jones has been permitted to remain but will only be considered as it pertains to Finkelstein and Jones.

[63] Evidence regarding the Bahl litigation has been permitted to remain as both the plaintiff and the defendants have alleged that the conduct of the Bahl litigation was considered by the other in making decisions regarding the Cadesky-Seltzer action.

[64] There are numerous paragraphs in the McPeake affidavit and the Rachert affidavit, included with the apparent intention of establishing contentious facts, which do not comply with Rule 39.01(4). This evidence is inadmissible for the truth of its contents however, some of it may serve the dual purpose of establishing information that is alleged to have been communicated to the defendants by the plaintiff or documents that are alleged to have been in the possession of the defendants during the course of their retainer. For this purpose, it would be admissible for its relevance to the issue of standard of care. I have decided to admit this evidence, subject to the following parameters, which will be applicable to the materials of all parties to ensure fairness:

- a. Hearsay evidence that is not in compliance with Rule 39.01(4) or documents included without foundation shall not be admitted for the truth of their contents. They shall be admitted for the limited purpose of establishing information that is alleged to have been within the knowledge of the parties or documents that are alleged to have been in the possession of the parties, during the course of the defendants' retainer.
- b. If a party wishes to rely upon evidence for the truth of its contents, they shall either present it in the form required by Rule 39.01(4), or they shall be required to present an argument that it should be admitted because it is not hearsay or is an exception to the hearsay rule. Arguments regarding hearsay exceptions shall be received at the time the motion for summary judgment is argued and shall be decided with the motion and not in advance.
- c. Third party hearsay shall not be considered for the truth of its contents, regardless of the form in which it is presented.
- d. This determination is made without prejudice to any party's ability to challenge that information was within their knowledge or having received any documents.

- e. This determination is not a ruling on the relevance of evidence, which shall be decided with the motion and not in advance.
- f. This determination is not a ruling about whether an adverse inference shall be drawn pursuant to Rule 20.02(1) with respect to any evidence tendered on information and belief by either party, which shall be decided with the motion and not in advance.

[65] I have provided my analysis of the evidentiary record of the defendants first, as they are the moving party on the summary judgment motion, and their record informed decisions that I made in my analysis of the plaintiff's evidentiary record.

Analysis – Evidentiary Record of the Defendants

[66] The defendants have filed one affidavit, the Houston affidavit. The Houston affidavit consists of 31 pages, 103 paragraphs, and 23 exhibits. The exhibits consist of a further 178 pages.

[67] The plaintiffs request first that I strike the Houston affidavit in its entirety. I am not prepared to strike the Houston affidavit in its entirety. I find that, on the whole, the Houston affidavit contains relevant, admissible evidence in the context of the issues to be determined in this summary judgment motion.

[68] Alternatively, the plaintiff requests that the following be struck from the Houston affidavit:

- a. Paragraphs 5, 12, 16, 22, 23, 24, 25, 27, 28, 29, 31, 47, 48, 49, 50, 51, 65, 66, 67, and 75; and,
- b. Exhibits 3, 4, 5, 6, 13, 14, 18, 19, and 20.

[69] The plaintiff argues that the subject paragraphs and exhibits rely on hearsay evidence, lack evidentiary foundation, rely on affidavits from the underlying action and other proceedings including the affidavits of non-parties, attest to Mr. Houston's current beliefs, and do not identify provenance or identify any exception to the hearsay rule on which they rely.

[70] Having reviewed the referenced paragraphs and exhibits, I am prepared to strike paragraph 75 of the Houston affidavit and its included exhibit 20. Although not specifically listed by the plaintiff, I am also going to strike paragraphs 59, 60, and 70.

[71] Paragraph 75 and its included exhibit 20 contain hearsay evidence regarding Finkelstein's retirement date, in the form of an affidavit from Finkelstein filed in a proceeding other than this action or the Cadesky-Seltzer action. In my view, this evidence is intended to prove the truth of the facts asserted. In its present form, this evidence is inadmissible.

[72] As I have previously noted, Justice Ryan Bell found as a fact that Finkelstein had retired prior to the creation of the MFT: *McPeake* (2017) at para. 16. The plaintiff will be given 30 days from the date of this decision to confirm whether he is prepared to admit that fact in this

proceeding. If the plaintiff is not prepared to admit it, the defendants will be given an opportunity to file further evidence to establish the fact.

[73] With respect to paragraphs 59, 60, and 70, these paragraphs contain excerpts from *McPeake* (2017) and *McPeake* (2018) and counsel's interpretation of those decisions. This is argument, not evidence. As I have struck similar paragraphs from the plaintiff's evidence, it is only reasonable that I do the same with the Houston affidavit.

[74] With respect to the remaining disputed paragraphs and exhibits, I am not prepared to strike them at this time for the following reasons:

- a. Paragraphs 5, 16, 22, 24, 47 and the included exhibit 13 report Houston's activities in the plaintiff's legal file, his personal knowledge of Barber's activities in the plaintiff's legal file, and his review of the plaintiff's legal file and are not obviously inadmissible.
- b. Paragraphs 12, 65, 66 and 67 and the included exhibit 18 report information regarding the plaintiff's interactions with Barber, either as they were related to Houston or based upon Houston's review of the plaintiff's legal file. I have considered the fact that Barber died on June 12, 2016, and that there is no other avenue by which the defendants can tender this evidence.
- c. Paragraphs 23, 25, 27, 28, and 29 and the included exhibits 3, 4, and 5 address non-contentious facts regarding the plaintiff's settlement of his re-assessment with CRA.
- d. Paragraph 31 is a summary of the Bahl statement of claim and the included exhibit 6 is a copy of that statement of claim. I find that this is related to the evidence in paragraph 30, which the plaintiff does not seek to strike, that the plaintiff provided the Bahl statement of claim to the defendants to assist in their preparation of the statement of claim in the Cadesky-Seltzer action.
- e. Paragraphs 48, 49, 50 and 51, and the included exhibit 14 report information provided to the defendants by Rachert that they relied upon in providing advice to the plaintiff and will be admitted on this basis.
- f. Exhibit 19 is an affidavit prepared by the defendants for the plaintiff and sworn by him in the Cadesky-Seltzer action. This affidavit reports information provided to the defendants by the plaintiff that they relied upon in providing advice to the plaintiff and will be admitted on this basis.

Analysis – Evidentiary Record of the Plaintiff

[75] The plaintiff has filed three affidavits, the McPeake affidavit, the Rachert affidavit, and an affidavit from Chuck Berkett, sworn September 16, 2024 ("the Berkett affidavit"). The plaintiff has also filed seven "Will State" statements from Barry Seltzer, Ken Finkelstein, Michael Cadesky,

Grace Chow, Howard Berglas, Howard Wasserman, and Linda Jones, with attached schedules. The entire record consists of 2012 pages.

[76] There are three issues which can be addressed summarily in an analysis of the plaintiff's evidentiary record.

[77] First is the Berkett affidavit. The defendants have taken no issue regarding the Berkett affidavit and, as a result, it is unnecessary for me to consider it further in this motion.

[78] Second are the "Will State" statements and their attached schedules. I appreciate that the purpose of them was to demonstrate the complexity of the record and the evidence that the plaintiff intends to marshal at trial. I have considered them in the context of assessing the suitability of this action for summary judgment. The defendants submit, and I agree, that none of these statements are admissible as evidence on the summary judgment motion. They will therefore be struck.

[79] Third, the plaintiff's counsel acknowledged in argument that the plaintiff's handwritten notes in the exhibits attached to the McPeake affidavit were included in error. The plaintiff consents to the redaction of these notes, and it will be ordered.

[80] This is now the second time that the Court has been asked to strike extensive portions of the plaintiff's affidavit materials. Given the findings that I will make below, I will be ordering that, with the exception of expert evidence, the plaintiff is required to obtain leave to file further evidence on this summary judgment motion.

[81] This then leaves the McPeake affidavit and the Rachert affidavit. I will provide an overview of the defendants' arguments regarding these affidavits, and I will then deal with each in turn.

[82] The defendants argue that the affidavits amount to a relitigation of the Cadesky-Seltzer action. They also raise several objections by category, namely: that evidence and exhibits have been included which have no foundation; that the affidavits contain argument, conclusory statements, and opinions; and, that the Rachert affidavit contains improper expert opinion. The affidavits and their exhibits have been reviewed having regard to these arguments.

1. The McPeake Affidavit

[83] The McPeake affidavit consists of 38 pages, 156 paragraphs and 67 exhibits. The exhibits consist of a further 1,331 pages.

[84] I agree with the defendants that there are many issues with the McPeake affidavit, not the least of which is its reliance on hearsay and argument. Notwithstanding this, I am not prepared to strike the McPeake affidavit in its entirety.

[85] I agree with the defendants that some of the contents of the McPeake affidavit amount to an attempt to relitigate issues determined in the Cadesky-Seltzer action. I am mindful that there is an issue of factual causation which requires the court to view the evidence through the lens of what the outcome of one issue in the Cadesky-Seltzer action may have been had expert evidence been

tendered. I am also mindful of the fact that the defendants' motion as originally contemplated would have addressed all issues of factual causation.

[86] In deciding to strike materials from the McPeake affidavit, I have applied the following approach:

- a. All paragraphs which are clearly argument, conclusory, personal opinion, or refer to expert opinion not in evidence are struck. They are as follows: 7, 9, 28, 34, 35, 36, 38, 39, 40, 93, 94, 112, 113, 114, 126, 127, 128, 130, 131, 132, and 133. Also struck is included exhibit 10.
- b. The following sentences, which are clearly argument, conclusory, personal opinion, or refer to expert opinion not in evidence, are struck:
 - i. Paragraph 52: "and owed me a duty of care with respect to such review and with respect to the trust strategy they were spearheading."
 - ii. Paragraph 59: "No explanation has been provided by Seltzer or Berglas for failing to warn me or failing to communicate Greenblatt's concerns. This was yet another opportunity for Cadesky to identify issues in the structure and during the period of time when they acknowledged being retained by me and my family trust".
 - iii. Paragraph 69: "I believe this amounted to an admission by Cadesky that the structure was flawed from the outset."
 - iv. Paragraph 90: "essentially overturning CRA's interpretation of section 75(2) of the ITA."
 - v. Paragraph 95: "I believe that this discovery was a key element in Dawe's motion to add Jones as a third party to the action."
 - vi. Paragraph 107: "did not pursue relevant facts and arguments."
 - vii. Paragraph 121: "A key finding of the Court of Appeal was that a plaintiff is required to lead expert evidence establishing a breach of the standard of care to support a claim of professional negligence."
 - viii. Paragraph 125: "I should have been provided with advice on the options, risks, and benefits of an expert opinion."
- c. The following paragraphs are struck because they contain evidence or factual assertions solely about the involvement of Cadesky and Seltzer with the formation of the MFT and the preparation of the MFT deed: 13, 16, 17, 24, and 25. Also struck are included exhibits 4, 5, and 6.

- d. The following sentences, which contain evidence or factual assertions solely about the involvement of Cadesky and Seltzer with the formation of the MFT and the preparation of the MFT deed, are struck:
- i. Paragraph 11: “By the end of 1996, both Michael Cadesky and Berglas had discussed the file, had written memos, and had billed several hours of work as reflected in trust records.”
 - ii. Paragraph 12: “By November 1996, I was assured that Michael Cadesky had spent time considering and speaking with Howard Berglas about the tax plan.”
 - iii. Paragraph 134: “The Cadesky Record of Transactions and related documentation provides a record of the work that Cadesky, and specifically Berglas, carried out with respect to defining and structuring the Barry McPeake Family Trust.”
 - iv. Paragraph 135: “from November 1996”.

2. The Rachert Affidavit

[87] The Rachert affidavit consists of 24 pages, 133 paragraphs and 33 exhibits. The exhibits consist of a further 245 pages.

[88] I agree with the defendants that there are issues with the evidence presented in the Rachert affidavit, not the least of which is the extensive opinion evidence. Notwithstanding this, I am not prepared to strike the Rachert affidavit in its entirety.

[89] I acknowledge the plaintiff’s submission that some of the opinion evidence was information that was provided to the defendants and would have been available to them in providing advice to the plaintiff in the Cadesky-Seltzer action. I agree with the plaintiff that, in that context, the evidence may be relevant to the issue of standard of care.

[90] I am permitting the affidavit of Jones, attached as exhibit 12, to remain for the same reason that I permitted the defendants to file documents prepared by Barber. Jones is deceased, and there is no other avenue by which the plaintiff can tender this evidence.

[91] I am also permitting the opinion evidence at paragraphs 31, 33, and 34 because it reflects evidence which is also included in the Houston affidavit.

[92] In deciding what to strike from the Rachert affidavit, I have applied the following approach:

- a. All paragraphs which are clearly argument, conclusory, personal opinion, or improper expert opinion are struck. They are as follows: 29, 30, 32, 54, 118, 119, 121, 122, 123, 124, 125, and 126. Also struck are included exhibits 5 and 29.

- b. The following sentences, which are clearly argument, conclusory, personal opinion, or improper expert opinion are struck:
- i. Paragraph 27: “I verily believe that Robert Houston relied on my knowledge and experience in formulating his response to the summary judgment motion brought by the Defendants in the underlying action.”
 - ii. Paragraph 28: “An inter vivos trust is a personal trust created during the lifetime of the settlor. A valid inter vivos trust can be created either orally or by written document. Attached as Exhibit “4” is an excerpt from page 62 of Taxation of Trusts and Estates. Practitioner's Guide (2013) by Frostiak, Poyser and Chow, describing the methods for creating a trust.” The included exhibit 4 is also struck.
 - iii. Paragraph 52: “The McPeake Trust contained an obvious error that any estate or corporate lawyer or accountant would question.”
 - iv. Paragraph 55: “unorthodox” and, “and take responsibility for the error”.
 - v. Paragraph 61(a): “that would put them offside subsection 75(2) of the ITA.”
 - vi. Paragraph 61(b): “I doubted that the firm would make such a fundamental error.”
 - vii. Paragraph 73: “The Court agreed that the McPeake trust appeared to be drafted incorrectly.”
 - viii. Paragraph 78: “The Court had already determined that the Trust Deed was not drafted in accordance with Mr. McPeake's intentions. Therefore, other errors identified by the CRA should be subject to rectification if they were not in accordance with Mr. McPeake's intentions.”
 - ix. Paragraph 90: “In fact, everyone was aware of the CRA’s interpretation during the relevant period.”
 - x. Paragraph 98: “In other words, both the Bahl Trust and the McPeake Trust had the same fatal errors identified by the CRA.”
 - xi. Paragraph 99: “Mr. McPeake was similarly surprised that Jones would have used a different template.”
 - xii. Paragraph 108: “Presumably, subsection 75(2) of the ITA would apply to the trusts because the shareholders were trustees and beneficiaries of the trusts.”

Disposition

[93] For the reasons given, the motions are disposed of as follows:

1. The plaintiff's motion to strike the defendants' motion for summary judgment in its entirety is dismissed.
2. The defendants' motion for summary judgment shall proceed with respect to the following issues:
 - a. What was the standard of care owed by Barber and Houston to the plaintiff in advising the plaintiff about the need for expert evidence on the summary judgment motion.
 - b. Did Barber and Houston breach the standard of care by failing to advise the plaintiff of the need to file expert evidence on the summary judgment motion in the Cadesky-Seltzer action regarding the standard of care of Cadesky for the services they provided to the plaintiff and the MFT after 1997, once the MFT had already been established.
 - c. If so, did the breach of the standard of care in (b) cause the plaintiff to suffer losses, and specifically:
 - i. Had the advice been given, is it more likely than not that the plaintiff would have acted on it;
 - ii. If so, is it more likely than not that acting on the advice would have changed the plaintiff's outcome in the Cadesky-Seltzer action; and,
 - iii. If so, how is it likely to have changed the plaintiff's outcome in the Cadesky-Seltzer action.
 - d. What was the standard of care owed by Barber and Houston to the plaintiff in advising the plaintiff about necessary parties to the Cadesky-Seltzer action.
 - e. Did Barber and Houston breach the standard of care by failing to advise the plaintiff that Jones ought to be included as a party to the Cadesky-Seltzer action.
 - f. If so, is it more likely than not that the plaintiff would have acted on advice to add Jones as a party to the Cadesky-Seltzer action.
 - g. Did Barber and Houston breach the standard of care by failing to advise the plaintiff that Finkelstein ought to be included as a party to the Cadesky-Seltzer action.
 - h. If so, is it more likely than not that the plaintiff would have acted on advice to add Finkelstein as a party to the Cadesky-Seltzer action.

- i. Were the damages claimed by the plaintiff, in fact, incurred.
 - j. Are any of the damages claimed by the plaintiff in this action too remote to be recoverable.
 - k. Is Gowling WLG (Canada) LLP liable for the actions of Houston in the Cadesky-Seltzer action.
 - l. Are any of the plaintiff's claims barred by the principles of *res judicata*, issue estoppel, and/or abuse of process.
3. Hearsay evidence which does not comply with Rule 39.01(4), shall be admitted subject to the following parameters:
- a. Hearsay evidence that is not in compliance with Rule 39.01(4) or documents included without foundation shall not be admitted for the truth of their contents. They shall be admitted for the limited purpose of establishing information that is alleged to have been within the knowledge of the parties or documents that are alleged to have been in the possession of the parties, during the course of the defendants' retainer.
 - b. If a party wishes to rely upon evidence for the truth of its contents, they shall either present it in the form required by Rule 39.01(4), or they shall be required to present an argument that it should be admitted because it is not hearsay or is an exception to the hearsay rule. Arguments regarding hearsay exceptions shall be received at the time the motion for summary judgment is argued and shall be decided with the motion and not in advance.
 - c. Third party hearsay shall not be considered for the truth of its contents, regardless of the form in which it is presented.
 - d. This determination is made without prejudice to any party's ability to challenge that information was within their knowledge or that they received any documents.
 - e. This determination is not a ruling on the relevance of evidence, which shall be decided with the motion and not in advance.
 - f. This determination is not a ruling about whether an adverse inference shall be drawn pursuant to Rule 20.02(1) with respect to any evidence tendered on information and belief by either party, which shall be decided with the motion and not in advance.
4. The plaintiff's motion to strike the affidavit of Robert E. Houston in its entirety or alternatively to strike paragraphs 5, 12, 16, 22, 23, 24, 25, 27, 28, 29, 31, 47, 48, 49, 50, 51, 65, 66 and 67 and exhibits 3, 4, 5, 6, 13, 14, 18 and 19 from the affidavit of Robert E. Houston is dismissed.

5. The following shall be struck from the affidavit of Robert E. Houston, sworn October 26, 2022:
 - a. Paragraphs 59, 60, 70, and 75.
 - b. Exhibit 20.
6. The plaintiff shall, within 30 days of the date of this order, confirm in writing to the defendants whether he will admit that Ken Finkelstein was retired at the time of the events in issue.
7. The defendants' motion to strike the "Will State" statements of Barry Seltzer, Ken Finkelstein, Michael Cadesky, Grace Chow, Howard Berglas, Howard Wasserman, and Linda Jones, and their attached schedules, from the plaintiff's motion record is granted.
8. On consent, the plaintiff's handwritten notes in the exhibits attached to the affidavit of Barry McPeake, sworn September 13, 2024, shall be redacted.
9. The following shall be struck from the affidavit of Barry McPeake, sworn September 13, 2024:
 - a. Paragraphs 7, 9, 13, 16, 17, 24, 25, 28, 34, 35, 36, 38, 39, 40, 93, 94, 112, 113, 114, 126, 127, 128, 130, 131, 132, and 133.
 - b. Exhibits 4, 5, 6, and 10.
 - c. The following sentences:
 - i. Paragraph 11: "By the end of 1996, both Michael Cadesky and Berglas had discussed the file, had written memos, and had billed several hours of work as reflected in trust records."
 - ii. Paragraph 12: "By November 1996, I was assured that Michael Cadesky had spent time considering and speaking with Howard Berglas about the tax plan."
 - iii. Paragraph 52: "and owed me a duty of care with respect to such review and with respect to the trust strategy they were spearheading."
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 - v. Paragraph 69: "I believe this amounted to an admission by Cadesky that the structure was flawed from the outset."

- vi. Paragraph 90: “essentially overturning CRA’s interpretation of section 75(2) of the ITA.”
 - vii. Paragraph 95: “I believe that this discovery was a key element in Dawe’s motion to add Jones as a third party to the action.”
 - viii. Paragraph 107: “did not pursue relevant facts and arguments.”
 - ix. Paragraph 121: “A key finding of the Court of Appeal was that a plaintiff is required to lead expert evidence establishing a breach of the standard of care to support a claim of professional negligence.”
 - x. Paragraph 125: “I should have been provided with advice on the options, risks, and benefits of an expert opinion.”
 - xi. Paragraph 134: “The Cadesky Record of Transactions and related documentation provides a record of the work that Cadesky, and specifically Berglas, carried out with respect to defining and structuring the Barry McPeake Family Trust.”
 - xii. Paragraph 135: “from November 1996”.
10. The following shall be struck from the affidavit of Andre Rachert, sworn September 16, 2024:
- a. Paragraphs 29, 30, 32, 54, 118, 119, 121, 122, 123, 124, 125, and 126.
 - b. Exhibits 5 and 29.
 - c. The following sentences:
 - i. Paragraph 27: “I verily believe that Robert Houston relied on my knowledge and experience in formulating his response to the summary judgment motion brought by the Defendants in the underlying action.”
 - ii. Paragraph 28: “An inter vivos trust is a personal trust created during the lifetime of the settlor. A valid inter vivos trust can be created either orally or by written document. Attached as Exhibit “4” is an excerpt from page 62 of Taxation of Trusts and Estates. Practitioner's Guide (2013) by Frostiak, Poyser and Chow, describing the methods for creating a trust.” The included exhibit 4 is also struck.
 - iii. Paragraph 52: “The McPeake Trust contained an obvious error that any estate or corporate lawyer or accountant would question.”
 - iv. Paragraph 55: “unorthodox” and, “and take responsibility for the error”.
 - v. Paragraph 61(a): “that would put them offside subsection 75(2) of the ITA.”

- vi. Paragraph 61(b): “I doubted that the firm would make such a fundamental error.”
 - vii. Paragraph 73: “The Court agreed that the McPeake trust appeared to be drafted incorrectly.”
 - viii. Paragraph 78: “The Court had already determined that the Trust Deed was not drafted in accordance with Mr. McPeake's intentions. Therefore, other errors identified by the CRA should be subject to rectification if they were not in accordance with Mr. McPeake's intentions.”
 - ix. Paragraph 90: “In fact, everyone was aware of the CRA’s interpretation during the relevant period.”
 - x. Paragraph 98: “In other words, both the Bahl Trust and the McPeake Trust had the same fatal errors identified by the CRA.”
 - xi. Paragraph 99: “Mr. McPeake was similarly surprised that Jones would have used a different template.”
 - xii. Paragraph 108: “Presumably, subsection 75(2) of the ITA would apply to the trusts because the shareholders were trustees and beneficiaries of the trusts.”
11. The plaintiff shall obtain leave prior to filing further evidence on this summary judgment motion, with the exception of his expert evidence.
12. A case management conference shall be scheduled in this matter during the week of March 30, 2026, when I am scheduled to sit in Ottawa. If necessary, the case management conference may be scheduled at 9am, during the lunch hour, or after 4pm to accommodate the existing court schedule. If that week is not available to one or both counsel, it shall be scheduled on such other date as may be organized by the trial co-ordinator.
13. The costs of these motions shall be reserved to the hearing of the summary judgment motion.

Cullin J.

CITATION: McPeake v. Houston, 2026 ONSC 1146

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

BARRY McPEAKE

Plaintiff

– and –

**ROBERT HOUSTON and JENNIFER A.
BLISHEN, IN HER CAPACITY AS OF
ADMINISTRATOR OF THE ESTATE OF
THOMAS C. BARBER and THE ESTATE OF
THOMAS C. BARBER, DECEASED and BURKE-
ROBERTSON LLP and GOWLING WLG
(CANADA) LLP**

Defendants

DECISION ON MOTIONS

Cullin J.

Released: February 24, 2026