

**CITATION:** Toronto Transit Commission v. Spaeth et al., 2023 ONSC 3694  
**COURT FILE NO.:** CV-17-569281  
CV-16-546770

**DATE:** 20230619

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** TORONTO TRANSIT COMMISSION, Plaintiff (Appellant)

AND:

RONALD HOWARD SPAETH, SPECBILT ENTERPRISES INC. and  
MICHAEL HICKEY

**AND RE:** MICHAEL HICKEY, Plaintiff (Respondent)

AND:

TORONTO TRANSIT COMMISSION, Defendant (Appellant)

**BEFORE:** Cavanagh J.

**COUNSEL:** *Giuseppe Agostino* for Toronto Transit Commission

*Marc Lemieux* for Michael Hickey

*Jeffrey R. Robles* for Ronald Howard Spaeth and Specbilt Enterprises Inc.

**HEARD:** March 20, 2023

**ENDORSEMENT**

- [1] The Toronto Transit Commission (“TTC”) is the plaintiff in an action commenced against the defendants Ronald Howard Spaeth, Specbilt Enterprises Inc. and Michael Hickey.
- [2] The TTC is a defendant in an action commenced by Mr. Hickey as the plaintiff.
- [3] Mr. Hickey was formerly employed by the TTC. Mr. Hickey was responsible for the maintenance of TTC’s bus fleet. Mr. Hickey’s employment was terminated following an investigation by the TTC.
- [4] TTC alleges that Mr. Hickey participated in a scheme to manipulate TTC’s materials and procurement process with Specbilt Enterprises Inc. (“Specbilt”) and its principal, Ronald Howard Spaeth. The TTC alleges that Mr. Hickey had an interest in Specbilt and Prostuff Group (who were both represented by Mr. Spaeth) which compromised Mr. Hickey’s ability to act in TTC’s best interest. TTC alleges that notwithstanding this conflict of

interest, Mr. Hickey recommended Specbilt, and Prostuff Group, as vendors of automotive parts and related supplies to TTC and failed to declare a conflict of interest.

- [5] In the action commenced by TTC as plaintiff, TTC alleges conspiracy, knowing assistance of breach of trust and/or fiduciary duty, breach of fiduciary duty, breach of contract, breach of duty of honest contract performance, negligent misrepresentation, bribery and/or unjust enrichment against Mr. Hickey, Mr. Spaeth and Specbilt. TTC seeks damages related to the purchase of approximately \$2 million of automotive parts and associated supplies sold to it by Specbilt and Prostuff Group based on Mr. Hickey's recommendations, which, it alleges, (i) were not required for the maintenance of its bus fleet, and/or (ii) for which TTC was overcharged. Each defendant has defended this action.
- [6] In the action commenced by Mr. Hickey as plaintiff, he alleges that he was wrongfully dismissed and seeks relief in respect of his dismissal. TTC has defended this action.
- [7] The parties conducted examinations for discovery and brought motions to compel answers to questions that were refused. TTC's refusals motions in both actions were heard together on January 12, 2022. The defendants in TTC's action refusals motions were heard on June 8, 2022 and July 25, 2022. Associate Justice Jolly released one decision for all of the motions.
- [8] TTC appeals the decision of the Associate Justice with respect to certain questions.
- [9] Counsel for TTC confirmed at the hearing of this appeal that it is not pursuing the appeal with respect to questions asked of Mr. Hickey on his examination for discovery.

### ***Standard of Review***

- [10] The decision of an Associate Justice should not be interfered with unless the Associate Justice made an error of law, exercised his or her discretion on the wrong principles or misapprehended the evidence such that there was a palpable or overriding error. Where there is an error of law, the standard of review is correctness, whether the order is final or interlocutory. Where there is an error in the exercise of discretion, it must be established that the discretion was based on a wrong principle or that there was a palpable or overriding error in the assessment. A decision of an Associate Justice concerning relevance is a question of law. See *The Northwest Company LP v. Classic Furs Company Ltd.*, 2020 ONSC 1548, at para. 11.

### **Analysis**

- [11] In response to this appeal, Mr. Spaeth and Specbilt submit, generally, that the Associate Justice gave clear reasons for her decision and that she did not make her decision on wrong principles, misapprehend the evidence, or make any palpable or overriding error. These parties submit that the Associate Justice made no error that would entitle TTC to the relief it seeks on this appeal.
- [12] TTC has organized the questions that are the subject of this appeal into three groups.

***Category 1 – Request for production of a broad range of financial records from the Spaeth defendants***

[13] Within the first group, TTC seeks answers to several questions that the Associate Justice did not order the Spaeth defendants to answer that relate to requests for production of financial records.

[14] The first group of questions that are the subject of TTC's appeal are in relation to question taken under advisement no. 15 (question 664, subparagraphs (ii), (iii), (vi), (vii), (viii) and (xii)) on Mr. Spaeth's examination.

[15] These questions are requests for production of the following documents:

- a. The complete accounting ledgers, whether in print or electronic form, for Prostuff and Specbilt indicating all purchases, sales, invoices, amounts paid, bad debts and other financial transactions.

With respect to this question, the Associate Justice gave the following reasons:

The request for complete accounting records for Prostuff and Specbilt is not limited to the relevant period or to records related to Prostuff and Specbilt's dealings with TTC business. The request is overly broad and therefore dismissed.

- b. Copies of income tax filings of Mr. Hickey, Mr. Spaeth, Prostuff and Specbilt and, if available, audited financial statements (or unaudited if not) of Prostuff and Specbilt.

With respect to this question, the Associate Justice gave the following reasons as the question relates to the Spaeth defendants:

As against the other defendants, the request is not limited in time to the allegations of impropriety with TTC and is overly broad. Its broad net catches more irrelevant information than potentially relevant information and is, therefore, also disproportionate and dismissed.

- c. Copies of any purchase orders, invoices, cancelled cheques, or any other correspondence relating to the purchase of supplies and/or material by Prostuff or Specbilt.

With respect to this question, the Associate Justice gave the following reasons:

The requested not limited in time nor is it limited to records related to Prostuff and Specbilt's dealings with TTC business, is overly broad and dismissed.

- d. Copies of all sales orders, invoices or other documents relating to the sale of supplies and/or material by Prostuff or Specbilt, with copies of any payment records, including checks or E transfers.

With respect to this question, the Associate Justice gave the following reasons:

The request is not limited in time nor is it limited to records related to Prostuff and Specbilt's dealings with TTC business, is overly broad and dismissed.

- e. Any other invoices issued by Prostuff or Specbilt to any party whatsoever, together with any cheques or payments relating to such invoices.

With respect to this question, the Associate Justice gave the following reasons:

This request is not limited in time nor is it limited to records related to Prostuff and Specbilt's dealings with TTC business, is overly broad and dismissed.

- f. Copies of any and all communications, whether letters, emails or text messages or otherwise between any of Hickey, Spaeth, Prostuff or Specbilt to any other employee and/or representative of any of Hickey, Spaeth, Prostuff or Specbilt, and/or to any client, customer or supplier of any of Hickey, Spaeth, Prostuff or Specbilt.

With respect to this question, the Associate Justice gave the following reasons as the question relates to the Spaeth defendants:

As for the other defendants, the request is not limited in time nor is it limited to records related to Prostuff and Specbilt's dealings with TTC, is overly broad and dismissed.

[16] TTC submits that all of these questions ask for relevant documents that relate to sales and profits earned by Prostuff Group and Specbilt and expenses incurred by these companies. TTC seeks to determine the expenses incurred by Specbilt and Prostuff so that it can determine the amount of the improper gains allegedly earned by them in relation to transactions with TTC.

[17] TTC relies on *Ruiter Engineering & Construction Ltd. v. 430216 Ontario Ltd.*, 1989 CarswellOnt 121 for the proposition that a court will not award damages to a plaintiff on a

claim that the defendant received an unlawful gain from its conduct in the absence of evidence of the amount of the improper gain. TTC relies on *Enbridge Gas v. Michael Marinaccio et al.*, 2011 ONSC 2313; affirmed, 2012 ONCA 650, for the proposition that determinations of gross margins earned by defendants are relevant to claims based on allegations of unlawful collusion between third party service providers acting with employees of employers.

- [18] TTC submits that the Associate Justice erred as a matter of law when she held that the requested documents included those that are relevant but dismissed the request for production documents because the request was (i) not limited to the relevant period of time, and (ii) not limited to Prostuff and Specbilt's dealings with TTC. TTC submits that the Associate Justice should have ordered production of documents for the relevant period of time (August 2008 to January 31, 2016) and limited to documents related to Prostuff and Specbilt's dealings with TTC instead of denying the request altogether on the basis that it is overly broad. TTC points out that this approach was followed by the Associate Justice in respect of other questions and that the Associate Justice does not explain why she did not follow the same approach in respect of these questions.
- [19] In support of its submissions, TTC relies on *Sirotec v. O'Dea*, 2022 ONSC 1529. In *Sirotec*, the claim was for a broad range of remedies in relation to an investment allegedly made based on misrepresentations. The motion judge observed that in circumstances such as those on the case before him, the scope of production and discovery is often problematic. The motion judge noted that relevance is the touchstone for discovery obligations and relevance is defined by the pleadings. The motion judge also noted that just because something is relevant and could be the subject of discovery or production does not mean that it is necessary or commercially reasonable to pursue it. The motion judge held that where broad remedies such as those on the case before him are sought (which included an accounting) a balance must be struck that takes relevance and proportionality into account. TTC submits that the Associate Justice erred by failing to undertake this balancing exercise.
- [20] The Spaeth defendants submit that the Associate Justice properly applied the legal principles with respect to proportionality and did not err. They submit that where a question is made that is overly broad, the Court should not rephrase the question or order answers to different questions that could have been asked but were not asked. In support of this submission, the Spaeth defendants rely on *Xie v. Gross*, 2022 ONSC 5359 and *Murphy v. Toronto and Region Conservation Authority*, 2020 ONSC 1189.
- [21] In *Xie*, the examining party requested production of all due diligence and disclosure received from sellers of the properties in question. The question was refused. The Associate Justice who heard the refusal motion observed that when a question is refused and a clear position on relevance has been given, examining counsel has the option to rephrase or narrow the question, and had the plaintiffs sought a narrower scope of production, or asked questions to establish relevance of a portion of the due diligence materials, he would have been more inclined to grant some relief. The Associate Justice who heard the motion expressed his view, at para. 25, that it is not for the court to rephrase questions and order

answers to different questions that could have been asked but were not asked. The Associate Justice, at para. 27, held that it was neither necessary nor proportionate to order voluminous production of what appears to be largely irrelevant documents simply because there could possibly be something relevant within the requested production.

- [22] In my view, the circumstances in *Xie* are materially different than those on the appeal before me. In *Xie*, it had not been determined on the motion which documents among that voluminous productions that were requested were relevant, so production of possibly relevant documents could only be done by ordering production of a large quantity of irrelevant documents. The examining counsel had failed to limit the scope of the request for documents by asking follow-up questions. On the appeal before me, in contrast, the scope of relevance was made by the Associate Justice who determined, at p. 42 of her reasons, that the relevant period of time is August 2008 to January 31, 2016. The Associate Justice concluded that only documents relating to transactions between the defendants and TTC are relevant.
- [23] In *Murphy*, there was a refusals motion in respect of a number of questions, including one that was refused as being overly broad because no timeframe was specified. At the hearing of the motion, counsel for the examining party argued that a specified pre-accident time frame is reasonable. The court ruled that upon the refusal, it was open to examining counsel to make a request for information based on the specified period, but he did not. The court held that it is not appropriate for the court to require answers to questions that are not asked, and held that the refusal was proper.
- [24] At the examination of Mr. Spaeth, the reason given for the refusal for production of the financial records was that the request was not proportionate and overly broad because Prostuff is not a party to the litigation and because TTC did not have evidence of any kickback payments to Mr. Hickey or that products were unfit for the purposes for which they were intended. The refusal was not based on the questions being overly broad because the time periods were not limited or because the questions were not limited to transactions involving the TTC. In these circumstances, the examining counsel cannot reasonably be criticized because he did not ask follow-up questions to limit the scope of the requested documentary production.
- [25] In my view, in the circumstances of this case, having determined the relevant period of time and the relevant scope of transactions, the Associate Judge, exercising her discretion according to proper principles, erred by not ordering the Spaeth defendants to produce relevant documents that are within the confines she identified as not being overly broad. I note that in her decision with respect to a request for production of emails among the defendants, at p. 44, the Associate Justice followed this approach and ordered the defendants to produce emails only during the relevant period of time and only as they relate to the allegations in the two actions.
- [26] By denying the request for production of relevant documents altogether, the effect is to deny TTC production of relevant documents to which it is entitled to production. I conclude

that the Associate Justice exercised her discretion on improper principles by declining to order production of these relevant documents.

- [27] I allow TTC's appeal in relation to these questions and order that the Spaeth defendants produce the requested documents (No. 15 (question 664) subparagraphs (ii), (iii), (vi), (vii), (viii) and (xii)) provided that they are limited to those within the relevant period of time, August 2008 to January 31, 2016, and limited to such documents that relate to transactions involving the TTC.
- [28] Within this group of questions, TTC also appeals the decision of the Associate Justice who declined to order production of payroll records for any and all employees that it may have or have had in the past.
- [29] With respect to this question, the Associate Justice gave the following reasons:

TTC argues that the question aims to discover whether Specbilt is a bona fide business or whether it was set up solely to manipulate TTC (in its view). I find the answer to this question will not have bearing on the main issue, being whether Specbilt is liable to TTC in unjust enrichment, conspiracy, knowing assistance of breach of trust and fiduciary duty, reach of duty of honest contract for performance and bribery. Specbilt could be a bona fide business that was used to manipulate TTC, so the answer, in my view, does not advance the issues between the parties. Further, in its statement of defence, Specbilt addresses its sales to TTC but not its sales generally and does not put its general business standing in issue in its pleading, as suggested by TTC.

The question, as well as U/As 2, 3 and 5, is properly refused.

- [30] TTC submits that the Associate Justice erred in declining to order production of the requested payroll records because the records are relevant to determination of expenses incurred by Specbilt which would assist TTC to determine the gross margin earned by Specbilt on sales of products to TTC which, in turn, is relevant to determining whether Specbilt overcharged TTC. TTC submits that the requested payroll documents are in the same category of documents as other financial documents that the Associate Justice held were relevant but where the request was overly broad.
- [31] I disagree that the requested payroll documents should be treated in the same way as the other documents. The issue with respect to the payroll documents was whether Specbilt was a bona fide business. There is no suggestion in the reasons of the Associate Justice that the question of the overall payroll of Specbilt was directed to the direct labour costs attributable to TTC products. I do not see how the requested payroll documents for the company as a whole would show direct costs for transactions involving the TTC. The Associate Justice addressed the issue before her with respect to this question, and I

conclude that she did not err in law, exercise her discretion on wrong principles, or make any palpable or overriding error.

- [32] TTC also seeks production of documents in relation to the following question taken under advisement no. 6 on the examination of Mr. Spaeth (question 246):

To produce any and all documents associated with the purchase of these trailers by [Mr. Spaeth] from Zaindar Brothers ... and that would include bill of sales, invoices, method of payment, source of payment - source of the funds from which the payments came, anything. Any email communications between your client and Zaindar Brothers about the purchase of the trailers.

- [33] The Associate Justice gave the following reasons for her decision with respect to this question:

TTC seeks broad documentary disclosure of the documents between Specbilt and Zaindar, the company that sold the trailers to Specbilt and that Prostuff then sold to TTC. I am not satisfied that whether Specbilt or Spaeth paid for the trailers initially or how much they paid for the trailers will advance the issues in the litigation. The allegation is that Specbilt/Prostuff overcharged TTC for the trailers. Their allegation of overcharging will not be advanced further if Zaindar overcharged or undercharged Specbilt for the purchase. To the extent that an unjust enrichment award may deal with the net gain rather than a sale price, it will be for the defendants to demonstrate that they were enriched by an amount less than the sale price of the trailers to TTC.

The question is properly refused.

- [34] The Associate Justice concluded that the requested documents are not relevant because the onus would be on the defendants to demonstrate that they were enriched by less than the sale price of the trailers. TTC submits that the amount of the improper gain, if any, of the Spaeth defendants depends on the extent to which the sale price was improperly inflated because of overcharges. The amounts that Specbilt paid to its supplier for the trailers is relevant to whether TTC was overcharged. I conclude that the Associate Justice erred in principle by deciding that the requested documents related to the purchase of trailers from Zaindar Brothers are not relevant. I allow the appeal in respect of this question.

- [35] TTC also appeals in respect of the decision in respect of question taken under advisement No. 11 on Mr. Spaeth's examination (question 327): a request to produce the dealer agreement with FS-2500. This is a product manufactured by a company called Filtration Solutions.

- [36] In respect of this question, the Associate Justice gave the following reasons:

The agreement is relevant insofar as the date that Specbilt entered into it but that is already known to TTC - 24 April 2009. There is no evidence that production of the agreement will assist in showing that Spaeth/Specbilt used inside TTC information from Hickey. I am not satisfied that the dealer agreement is otherwise relevant. Refusal upheld.

- [37] TTC submits that the Associate Justice erred by limiting the relevance of this agreement to the date thereof. TTC submits that TTC is entitled to production of the agreement to verify the date it was made and that, given the allegations that Mr. Hickey improperly passed on product measurements he obtained from Filtration Solutions on behalf of TTC to Mr. Spaeth in order to secure a dealer agreement with Filtration Solutions, the dealer agreement, itself, is relevant to show the improper advantage gained by the co-defendants.
- [38] Given the allegations by TTC, I conclude that the dealer agreement in question is relevant both to allow TTC to verify that date it was made and to allow TTC to determine whether the agreement supports its assertion that Mr. Hickey passed on product measurements he obtained from Filtration Solutions. I conclude that the Associate Justice erred by deciding that this agreement is not relevant. I allow the appeal in respect of this question.
- [39] TTC also appeals in respect of the decision with respect to question taken under advisement no. 13 on the examination of Mr. Spaeth (question 467):

Request for production of the documents associated with the transactions that Mr. Spaeth engaged in to get these tow hooks from these suppliers in the US and to sell them to TTC.

- [40] In respect of this question, the Associate Justice gave the following reasons:

Refusal upheld as overly broad. TTC can advance both its allegations of constructive trust and of unjust enrichment without production of the documents between Specbilt/Spaeth and the underlying transaction.

- [41] The documents associated with transactions that Mr. Spaeth engaged in to get tow hooks from suppliers are in the same category as documents related to trailers sold to Specbilt from a supplier. These documents are relevant to determination of TTC's claim for unjust enrichment based on alleged overcharging by Specbilt. I conclude that the Associate Justice erred in principle in concluding that these documents should not be produced because the request is overbroad and the TTC can advance its claims without production of relevant documents. I allow the appeal in respect of this question.

***Category 2 – Request from Mr. Spaeth and Specbilt for production of bank records, records of payments to shareholders of Specbilt or Prostuff, and records of payments made between any of Mr. Hickey, Mr. Spaeth, Prostuff or Specbilt***

[42] The second category of questions involves questions taken under advisement on the examination of Mr. Spaeth No. 15 (question 664, sub-paragraphs (i) and (iv) – (v)).

[43] The request for production under question 664, sub-paragraph (i) is for:

Copies of all bank records of any and all accounts owned or controlled by Michael Hickey (“Hickey”), Ronald Howard Spaeth (“Spaeth”), Prostuff Group (“Prostuff”) and Specbilt Enterprises Inc. (“Specbilt”) showing all deposits and withdrawals, together with copies of any and all cheques issued or cashed.

[44] The Associate Justice gave the following reasons for her decision with respect to this request:

As for the co-defendants’ banking records, TTC now has Hickey’s bank records. If it determines that there are any deposits in those records that might involve the co-defendants (ex. the www transfers), it may request banking information from the co-defendants about those transfers or payments to Hickey for the correlative period of time.

Otherwise, the request is not limited in time to the allegations of impropriety with TTC nor is it limited to deposits or withdrawals related to TTC business or between the co-defendants. It is overly broad and dismissed.

[45] The request for production under subparagraph (iv) is for:

Copies of any T3 Slips or any other records of any payments to any shareholder of Prostuff or Specbilt;

[46] The Associate Justice gave the following reasons for decision with respect to this request:

T3s to Spaeth from these two entities from 2013 to 2015 are relevant and are to be produced. There is no allegation made concerning the other alleged Prostuff or Specbilt shareholders so T3s issue to them would not be relevant and need not be produced.

[47] The request for production under subparagraph (v) is for:

Copies of any cheques, T3 slips, direct deposit records, or any other record of any payment made between any of Hickey, Spaeth, Prostuff or Specbilt;

- [48] The Associate Justice gave the following reasons for her decision with respect to this request:

As for the other defendants, per 1) above, TTC may request payment information concerning the www transfers to Hickey from the codefendants for the correlative period of time if evidence on the source of those deposits is not available from Hickey. It may also obtain any T3 slps [sic] from Specbilt or Prostuff to Spaeth for 2013 to 2015. Otherwise, the request is dismissed.

The remaining defendants, while not admitting relevance, advised on the motion that they do not have any such records. They are to confirm this in writing so that TTC may rely on it at trial.

- [49] TTC appeals the decision of the Associate Justice in respect of these questions and seeks production of the records referred to therein in the power, possession and control of Mr. Spaeth (including such documents of Prostuff in their possession) and Specbilt.
- [50] TTC submits that the Associate Justice erred by (a) limiting production to 2013 to 2015 and, in respect of sub-paragraphs (i) and (v), only to Mr. Hickey's bank records, and, in sub-paragraphs (iv) and (v), to T3 slips for Mr. Spaeth only.
- [51] TTC submits that the Associate Justice erred in principle by focusing on production of bank records by Mr. Hickey and addressing the request for production of bank records by Mr. Spaeth and Prostuff by reference to deposits from these defendants in Mr. Hickey's records. TTC seeks records from Mr. Spaeth and Prostuff in respect of payments they received from dealings with TTC that were not transferred to Mr. Hickey. TTC contends that such payments are relevant to the issue of whether these parties received an improper gain from the exploitation of Mr. Hickey's relationship, separate from any amounts received by Mr. Hickey.
- [52] In support of this submission, TTC cites *Ruiter Engineering & Construction Ltd. v. 441734 Ont. Ltd.*, 1989 CarswellOnt 121 where the Court of Appeal held, at para. 21, that a third party who participates in a breach of duty by a fiduciary may be liable in unjust enrichment whether or not the plaintiff has suffered a loss based on "a broad principle of preventing a conflict of opposing interests in the minds of fiduciaries, whose duty it is to act solely for the benefit of their beneficiaries".
- [53] In my view, bank records in the possession of Mr. Spaeth and Specbilt (that relate to transactions involving the TTC) that do not involve deposits to Mr. Hickey's bank accounts are relevant and the Associate Justice erred by limiting production of such bank records as she did.

- [54] The Associate Justice held that the relevant period of time for both actions is August 2008 to January 31, 2016. Nevertheless, the Associate Justice limited her order for production of relevant records requested in these questions to 2013 to 2015. Although Mr. Hickey's position is that he has access to bank records only for this period of time, Mr. Spaeth and Specbilt have not provided evidence of time limitations on their access to the requested records. I find that the Associate Justice erred in principle by limiting the order for production of the requested records to 2013 to 2015.
- [55] The appeal is allowed in respect of these questions, provided that the answers are limited to the relevant period of time, August 2008 to January 31, 2016, and to such documents that relate to transactions involving the TTC.

***Category 3 – Request for production of documents relevant to the relationship between Mr. Spaeth and the Prostuff Group***

- [56] The third category relates to the following questions:

Question taken Under Advisement on the examination of Mr. Spaeth No. 7 (Question 250): “An undertaking to provide any and all documents associated with the relationship to Mr. Spaeth and Prostuff Group. If Prostuff Group is owned or operated by Mr. Spaeth, we want all documents relating to its creation as a company, whether it is a sole proprietorship, partnership, corporation, all shareholders’ agreements that may be associated with the company.”;

Question taken Under Advisement on the Examination of Mr. Spaeth No. 10 (Question 258): “An undertaking for your client to provide us with a description of his relationship to Prostuff Group, the years with which he was associated with Prostuff Group, and any documents, including contracts, outlining the nature of their relationship, was that an employment relationship, was Mr. Spaeth a shareholder of Prostuff Group, was he the owner.”

- [57] The Associate Justice gave the following reasons in her decision with respect to question No. 250 (Under Advisement No. 7):

Spaeth shall answer whether he owns Prostuff, whether as a corporation or a tradename/business or sole proprietorship or whether he operates Prostuff as answers to those questions are relevant to the trust claim against Spaeth. Otherwise, the refusal is upheld as overly broad. Production of Prostuff's corporate structure and governance documents will not advance the allegation that Prostuff overcharged TTC and is overbroad in respect of the allegations of trusteeship.

[58] The Associate Justice gave the following reasons in her decision with respect to question No. 258:

See decision on UA 7 in the Appendix as to what Spaeth is required to provide in answer to this question.

[59] TTC appeals the decision of the Associate Justice with respect to these questions insofar as production of records identified in the two questions were not ordered to be produced. TTC submits that the Associate Justice erred in principle in declining to order production of the requested records, given that she held that questions relating to the nature of the relationship between Mr. Spaeth and Prostuff are relevant. TTC submits that it is entitled to production of the requested records which would allow it to test the accuracy of answers given.

[60] The Associate Justice required Mr. Spaeth to answer whether he owns or operates Prostuff, whether it operates as a corporation or a business or sole proprietorship. Having made this decision, in my view, the Associate Justice erred in not requiring production of relevant documents that show the relationship between Mr. Spaeth and the Prostuff Group. The appeal is allowed in respect of these questions and limited to answers that are relevant to showing the relationship between Mr. Spaeth and the Prostuff Group for the relevant period of time.

[61] The Spaeth defendants are not required to produce documents, generally, in respect to the corporate structure or governance of the Prostuff Group that are not relevant to the relationship between Mr. Spaeth and the Prostuff Group.

### **Disposition**

[62] For these reasons, this appeal is allowed, in part.

[63] I ask counsel to confer and provide me with an approved form of order that conforms with this endorsement.

[64] I encourage counsel to resolve the issue of costs. If they are unable to do so, the TTC may make written submissions (not longer than 3 pages excluding costs outline) within 10 days. The respondents may make responding submissions within 10 days thereafter (also limited to 3 pages). If so advised, the TTC may make brief reply submissions (one page) within 5 days thereafter.

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Cavanagh J.

**Date: June 19, 2023**