COURT OF APPEAL FOR ONTARIO

CITATION: Derenzis v. Ontario, 2026 ONCA 344
DATE: 20260514
DOCKET: COA-25-CV-0668

Roberts, Coroza and Rahman JJ.A.

BETWEEN

Lucia Derenzis and Joshua Da Silva

Plaintiffs (Respondents)

and

His Majesty the King in Right of Ontario, Gore Mutual Insurance Company, Heidi Sevcik, Joseph Ferrito, Sarah Beecraft, Jennifer Bethune, Ken Jones by his Litigation Administrator Christopher Raymond Jones, Whitehall Bureau of Canada Ltd., Michael Wright, David Mascarenhas, Ambleside Investigation Management Inc., Rapid Interactive Disability Management Ltd., Ranu Heeraman Singh (a.k.a. Ranu Heeraman), Peel Regional Police Services Board, Andrea Perons and Carl Mullings

Defendants (Respondents)

and

Safety, Licensing Appeal and Standards Tribunals Ontario aka SLASTO or Tribunals Ontario

Non-Party (Appellant)

Susan Keenan and Valerie Crystal, for the appellant

Joseph Campisi and Ashu Ismail, for the respondents Lucia Derenzis and Joshua Da Silva

Sean Kissick and Padraic Ryan, for the respondent His Majesty the King in Right of Ontario

Arthur Robert Camporese, for the respondents Gore Mutual Insurance Company, Heidi Sevcik, Joseph Ferrito, Sarah Beecraft, Jennifer Bethune and Ken Jones by his Litigation Administrator Christopher Raymond Jones

No one appearing for the respondents Whitehall Bureau of Canada Ltd., Michael Wright, David Mascarenhas, Ambleside Investigation Management Inc., Rapid Interactive Disability Management Ltd., Ranu Heeraman Singh (a.k.a. Ranu Heeraman), Peel Regional Police Services Board, Andra Perone and Carl Mullings

Heard: January 22, 2026

On appeal from the order of Justice Renu J. Mandhane of the Superior Court of Justice, dated May 5, 2025, with reasons reported at 2025 ONSC 2761.

Rahman J.A.:

BACKGROUND

[1] This is an appeal from the motion judge's order under r. 30.10 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "*Rules*"), requiring the non-party appellant, Tribunals Ontario, to produce to the respondent plaintiffs, Lucia Derenzis and Joshua Da Silva (the "plaintiffs"), hundreds of internal records (the "records") belonging to the Licence Appeal Tribunal (the "LAT"). The appellant submits that the motion judge erred in her interpretation and application of r. 30.10 by ordering the large-scale production of documents that were not relevant, material, or necessary for a fair hearing, and which were protected by solicitor-client privilege and deliberative secrecy.

[2] The underlying action in this case is part of several pieces of litigation brought by the plaintiffs. By way of background, Ms Derenzis suffered injuries from a motor vehicle collision on November 24, 2015. She sought statutory accident

benefits from her insurer, Gore Mutual Insurance Company ("Gore"). A dispute arose regarding the extent of Ms Derenzis' entitlement. To resolve this dispute, Ms Derenzis brought two applications against Gore before the LAT. Both were decided against her. The LAT's decisions on these applications were upheld by the Divisional Court: *Derenzis v. Gore Mutual Insurance Co*., 2025 ONSC 2732 (Div. Ct.), leave to appeal to Ont. C.A. refused, COA-25-OM-018 (October 2, 2025) (the "Divisional Court Decision").

[3] Separately, in the underlying action, the plaintiffs seek to sue Gore and the other defendants in the Superior Court of Justice. They are prevented from doing so by ss. 267.5 and 280(3) of the *Insurance Act*, R.S.O. 1990, c. I.8. Section 280(3) gives the LAT exclusive jurisdiction over the administration of Ontario's no-fault statutory accident benefits regime. Section 267.5 caps the amount of post-accident damages recoverable in a Superior Court action for lost income and earning capacity.

[4] In their statement of claim, the plaintiffs plead that s. 280(3) violates s. 96 of the *Constitution Act, 1867* because the LAT is a "lawless" tribunal that has unlawfully usurped the Superior Court's jurisdiction. They partially base their s. 96 claim on an allegation that the LAT lacks adjudicative independence and is systemically biased against the plaintiffs and their law firm. They also claim that the LAT's lack of adjudicative independence disproportionately impacts persons with disabilities, contrary to ss. 7 and 15 of the *Canadian Charter of Rights and*

Freedoms. Finally, the plaintiffs claim that the cap in s. 267.5 discriminates on the basis of disability, thereby violating ss. 7 and 15 of the *Charter*.

[5] In support of their claim of institutional bias, the plaintiffs sought production from the appellant of some 400 records relating to Ms Derenzis' applications. These records include draft decisions and email correspondence between staff, counsel, and LAT adjudicators. The appellant argues that the records are not relevant to the constitutional challenge, nor are they required for the plaintiffs to have a fair hearing. The appellant also asserts that many of the records are protected from disclosure by deliberative secrecy and/or solicitor-client privilege.

[6] For the reasons that follow, I agree with the appellant that the motion judge erred in interpreting and applying the rules and governing principles concerning non-party production under r. 30.10 of the *Rules*. Accordingly, I would allow the appeal.

PRINCIPLES ON R. 30.10 MOTIONS AND DECISION BELOW

1. General principles

[7] Rule 30.10 of the *Rules* governs the production of non-party records. The relevant part of the rule reads as follows:

> **30.10 (1)** The court may, on motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged where the court is satisfied that,

> (a) the document is relevant to a material issue in the action; and
>
> (b) it would be unfair to require the moving party to proceed to trial without having discovery of the document.

[8] The structure of r. 30.10 requires the court to consider three conditions: relevance, fairness, and privilege.

[9] First, the relevance of a document under r. 30.10(1)(a) is assessed with respect to a material issue in the action. A material issue is one, which "if determined in favour of a party, would influence a court towards finding in favour of [that party]": *Ontario (Attorney General) v. Ballard Estate*, [1995] O.J. No. 1854 (Gen. Div.), at para. 11 ("*Stavro Gen. Div.*"), rev'd on other grounds, *Ontario (Attorney General) v. Stavro* (1995), 26 O.R. (3d) 39 (C.A.) ("*Stavro ONCA*"). A document will be relevant to a material issue if there is a reasonable possibility that it is "logically probative" of that issue: *Vachon v. Titley*, 2013 ONSC 5227, at para. 9, citing *R. v. O'Connor*, [1995] 4 S.C.R. 411, at para. 22; see also *Frenette v. Metropolitan Life Insurance Co.,* [1992] 1 S.C.R. 647, at p. 691.

[10] Second, the inquiry under r. 30.10(1)(b) asks whether pre-trial production of the document is necessary for a fair hearing of the proceeding at issue: *Stavro ONCA*, at p. 48. In *Stavro ONCA*, at pp. 48-49, this court enumerated a number of factors for assessing fairness. The most relevant factors for our purposes are: 1) the importance of the documents at issue, and 2) the relationship between the non-party from whom production is sought and the parties to the litigation: *Stavro*

ONCA, at pp. 48-49. On the first factor, the more important the document is to the issues in the litigation, the more likely its production will be necessary for a fair hearing, though fairness does not require the document to be "crucial": *Stavro ONCA*, at p. 47. On the second factor, "Non-parties who have an interest in the subject-matter of the litigation and whose interests are allied with the party opposing production should be more susceptible to a production order than a true 'stranger' to the litigation": *Stavro ONCA,* at p. 49.

[11] Third, even if the document is relevant and necessary for a fair hearing, the text of r. 30.10(1) bars production if it is privileged. This requires the court to decide if there is a privilege and, if so, whether it has been waived or should be displaced.

[12] This court has made clear that orders for non-party production "should not be made as a matter of course but only in exceptional cases": *Actava TV, Inc. v. Matvil Corp.,* 2021 ONCA 105, 457 D.L.R. (4th) 138, at para. 95, citing *Morse Shoe (Canada) Ltd. v. Zellers Inc*. (1997), 100 O.A.C. 116 (C.A.), at para. 19. Nor should an order for large-scale production of documents be routinely made against a non-party: *Reichmann v. Vered*, [1998] O.J. No. 3751 (C.A.), at para. 5. Rule 30.10 should be "interpreted and applied in a way that reduces complexity and expense": *Lowe v. Motolanez* (1996), 30 O.R. (3d) 408 (C.A.), at p. 412. At the fairness stage, this means balancing the moving party's need to prove their case at trial with the non-party's exposure to inconvenience, expense, or liability: *Lowe*, at p. 413; *Stavro ONCA*, at p. 48. Indeed, as this court observed in *Stavro ONCA*, at p. 48,

by its terms, r. 30.10 assumes that "requiring a party to go to trial without the forced production of relevant documents in the hands of non-parties is not per se unfair." See also *Philip Services Corp. v Deloitte & Touche*, 2015 ONCA 60, at para. 12.

2. Decision under appeal

[13] The motion judge concluded that all of the records were relevant and necessary to the fair hearing of the constitutional challenge. The motion judge identified the key factual dispute as being "whether the LAT lacks adjudicative independence." She concluded that the records were relevant because they were directly related to the adjudicative and administrative processing of Ms Derenzis' claims. The motion judge concluded that "while the records may not be especially probative or even admissible at trial, that does not matter on a Rule 30.10 motion where the only question is relevance."

[14] Regarding necessity to a fair hearing, the motion judge found that production of the records was necessary because "*Charter* challenges cannot proceed in a factual vacuum and must be proven through evidence rather than speculation and conjecture." She also observed that the plaintiffs could not obtain the records from any other source, and that the LAT is not a typical non-party because its interests are aligned with Ontario's and its actions "lay at the heart of the constitutional challenge."

[15] Having found the records were relevant and necessary, the motion judge turned to the question of privilege. The motion judge began her analysis by observing that deliberative secrecy is "interpreted more narrowly" in the administrative context and "only attach[es] to matters that lie at the heart of the exercise of judgment or the deliberative process." Using this approach, the motion judge divided the emails contained in the records into three categories, finding that only one category — emails that might reveal deliberations or substantive decision-making processes — was subject to deliberative secrecy. She also found that deliberative secrecy applied to most of the internal notes and draft decisions contained in the records. However, the motion judge concluded that deliberative secrecy should be displaced for all of these records because the plaintiffs had "demonstrated concerns about a breach of natural justice." Finally, respecting solicitor-client privilege, the motion judge found that the majority of the emails were communications that were unrelated to the request for or provision of legal advice, and were therefore not privileged. The motion judge declined to order production of 31 documents that she did conclude were subject to solicitor-client privilege.

ANALYSIS

1. The motion judge erred in granting the r. 30.10 motion

[16] The motion judge's decision to order non-party production is a discretionary one: *Philip Services Corp.*, at para. 10. It is entitled to substantial deference,

absent a legal error in principle or a palpable and overriding error of fact: *Medcap Real Estate Holdings Inc. (Re)*, 2022 ONCA 318, 468 D.L.R. (4th) 253, at para. 10.

[17] Despite this high standard for appellate intervention, I conclude that the motion judge erred in her application of r. 30.10. In particular, she erred in law by failing to apply the correct legal tests for relevance, materiality, and fairness, and by failing to consider the exceptionality of the order sought in her interpretation and application of the rule: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 27, 36. I begin with the error on the first condition: relevance to a material issue.

a. Errors on relevance/materiality

[18] The motion judge defined the material issue in the plaintiffs' underlying action as whether the LAT lacks adjudicative independence. In finding that the records were relevant to this issue, the motion judge concluded that, "[w]hile the records may not be especially probative or even admissible at trial, that does not matter on a Rule 30.10 motion where the only question is relevance" (emphasis added).

[19] It is unclear what the motion judge meant when she said, "the only question is relevance."

[20] The term relevance is often used interchangeably to mean either probative value or materiality. As noted above, r. 30.10(1)(a) uses the term "relevant" to

mean probative (i.e. logically probative of a material issue). The motion judge's statement appears to say that the records' probative value is not the question. To the extent that the motion judge's conclusion was that the records' lack of probative value did not matter because materiality was the only issue, she erred in applying the rule.

[21] Alternatively, if the reasons are read as concluding that the records did not have probative value, but should nevertheless be produced, that would also disclose an error. Again, under r. 30.10(1)(a), a court must consider whether there is a reasonable possibility that the records sought are logically probative of a material issue in the action. Probative value is very much one of the questions to be answered. If the motion judge determined that the records were not probative, she should have dismissed the motion.

[22] The reasons also do not address how internal LAT documents relating to Ms Derenzis' particular applications would tend to show that the LAT, as a tribunal, lacks adjudicative independence generally. Contrary to the motion judge's reasoning, the mere fact that the records related to the "adjudicative and administrative processing of the claim" did not mean that they were probative of the LAT's alleged general lack of adjudicative independence.

[23] The motion judge's reasons also further mischaracterized the LAT's alleged lack of adjudicative independence as a material issue in the plaintiffs' constitutional

challenge to the *Insurance Act*. She described it as the "key factual issue in dispute". However, not every issue, or factual dispute, is a material issue. In this regard, r. 30.10 differs in scope from r. 30.02. The latter concerns documentary discovery of a party to the litigation. Under r. 30.02, parties are required to produce every document "relevant to any matter in issue in an action" (emphasis added). The more restrictive r. 30.10 only requires production of documents relating to a "material" issue. As noted above, a material issue in an action is "an issue which, if determined in favour of a party, would influence a court towards finding in favour of [that party]": *Stavro Gen. Div.*, at para. 11.

[24] Here, proving the LAT's lack of adjudicative independence would have no effect on the plaintiffs' constitutional claims. The fact that the pleadings allege that the LAT's lack of independence in Ms Derenzis' applications support the plaintiffs' constitutional claims did not relieve the motion judge of her obligation to determine if this issue was in fact a material one. Materiality is not determined by the pleadings alone, but by a consideration of the pleadings together with the substantive and procedural law: *Stavro Gen. Div.*, at para. 6; *R. v. Candir*, 2009 ONCA 915, 250 C.C.C. (3d) 139, at para. 49. The motion judge did not turn her mind to how the plaintiffs' allegation would make out their constitutional claims. If this allegation were made out, it would do nothing to advance the plaintiffs' s. 96 claim because adjudicative independence is not a jurisdictional issue relevant to s. 96. The presence or absence of tribunal independence in a particular case plays

no role in the applicable tests for what subject matter can be permissibly assigned to administrative tribunals by the legislature: see e.g., *Reference re Code of Civil Procedure (Que.), art. 35*, 2021 SCC 27, [2021] 2 S.C.R. 291; *Re Residential Tenancies Act, 1979,* [1981] 1 S.C.R. 714, at pp. 734-36. Nor does it say anything about the core jurisdiction of the Superior Courts: see e.g., *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43, [2013] 3 S.C.R. 3, at paras. 17-26.

[25] The LAT's alleged lack of adjudicative independence would also have no bearing on the plaintiffs' *Charter* claims. Section 7 of the *Charter* does not engage property or economic rights like the plaintiffs' monetary claims for insurance benefits: see e.g., *Siemens v. Manitoba (Attorney General)*, 2003 SCC 3, [2003] 1 S.C.R. 6, at para. 45. Similarly, with respect to s. 15, even taken at its highest, the plaintiffs' allegation that the LAT is systemically biased against them and their law firm is not a pleading that the LAT created a discriminatory distinction based on disability: see e.g., *R. v. Sharma*, 2022 SCC 39, [2022] 3 S.C.R. 147, at paras. 37-65.

b. Errors on fairness/necessity

[26] I turn next to the second pre-condition under r. 30.10: fairness/necessity. First, regarding the importance of the records to the constitutional challenge, I conclude that the motion judge erred by finding that the records were necessary for a fair hearing of the action. The motion judge concluded that the records were necessary for a fair hearing because "*Charter* challenges cannot proceed in a

factual vacuum and must be proven through evidence rather than conjecture or speculation." I agree with the appellant and the respondent Ontario that the motion judge's framing of the fairness/necessity issue would mean that any assertion of a *Charter* claim would meet the threshold under r. 30.10(1)(b). It is also difficult to reconcile the motion judge's finding that the records were necessary for a fair hearing with her conclusion that the records were not especially probative or even admissible. As with the issue of materiality, the motion judge did not consider how production of the records would advance the *Charter* claims. As noted above, the plaintiffs' constitutional claims require them to do more than demonstrate that the LAT is biased against them or their law firm. The records were therefore not necessary for a fair hearing.

[27] Further, the motion judge's treatment of the fairness/necessity issue did not account for the exceptional nature of a r. 30.10 order. Nor did the motion judge consider the appellant's exposure to inconvenience, expense, or liability. The motion judge did not turn her mind to the restrictive nature of the rule in her analysis of fairness/necessity. And her overly broad framing of the fairness/necessity issue runs contrary to the principle that non-party production is exceptional. The exceptional nature of the order must inform and ground the inquiry under r. 30.10(1)(b). The motion judge's reasons run counter to this interpretive constraint.

[28] As for the relationship between the appellant and the parties to the action, I disagree with the motion judge's conclusion that the appellant is not a typical non-party because its interests are allegedly aligned with Ontario's. This conclusion fails to recognize that the appellant and Ontario are separate entities. The appellant operates independently and at arms-length from the government. Its accountability under its governing legislation to the Attorney General does not translate into its interests being aligned with Ontario's.

[29] Moreover, the appellant is not a necessary party to these proceedings. The underlying action seeks damages from Gore and other defendants. Ontario is a party principally because the plaintiffs have impugned the constitutionality of the LAT's governing legislation. The appellant was only brought into this litigation as a non-party because the plaintiffs sought records from it. The parties to the underlying action are capable of litigating the constitutional issues: see *Ontario (Energy Board) v. Ontario Power Generation*, 2015 SCC 44, [2015] 3 S.C.R. 147, at paras. 54, 59. As such, the appellant has no interest in this litigation.

2. Remedy: the motion should be dismissed

[30] Given the errors described above, the motion judge's decision is not entitled to deference and this court can review the matter afresh. I would dismiss the r. 30.10 motion because the documents being sought are not probative of a material issue. Again, this motion concerns documents related to two proceedings before the LAT. As noted above, I do not agree with the plaintiffs that such records

could have any bearing on their constitutional claims, given the relevant jurisprudence. Moreover, although it is not strictly necessary, having reviewed the documents themselves, it is apparent that they are not probative of the plaintiffs' allegations of lawlessness or the LAT's lack of independence against them or anyone else. I agree with the appellant's characterization of the documents as "overwhelmingly consist[ing] of correspondence supporting the daily deliberative work of the Tribunal's adjudicators as well as the administrative work supporting those deliberations."

[31] Finally, even if the records met the relevance condition, they are not necessary for a fair hearing. Once again, it is important to bear in mind that orders under r. 30.10 are exceptional. The plaintiffs are seeking hundreds of documents from an administrative tribunal which is presumptively independent: see e.g., *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4, [2001] 1 S.C.R. 221, at paras. 33, 52-55. As already mentioned, I see no connection between the nature of the records in question and the plaintiffs' constitutional arguments. Consequently, I would dismiss the plaintiffs' r. 30.10 motion.

3. Deliberative secrecy

[32] Having found that the motion should be dismissed, it is not strictly necessary to decide whether deliberative secrecy or solicitor-client privilege would operate to prevent the records' production. However, I will address the motion judge's statement that deliberative secrecy applies more narrowly in the administrative

context, attaching only to matters “that lie at the heart of the exercise of judgment or the deliberative process”. I agree with the appellant that this statement is not consistent with the authorities.

[33] The *scope* of deliberative secrecy for administrative tribunals is the same as it is for courts. The case law makes clear that “secrecy remains the rule” in the administrative context: *Tremblay v. Quebec (Commission des affaires sociales)*, [1992] 1 S.C.R. 952, at p. 966. It is also clear that “[d]eliberative secrecy extends to internal communications and the administrative aspects of the decision-making process”, to the extent these aspects bear on adjudication: *Bokhari v. Top Medical Transportation Services*, 2025 ONSC 1208 (Div. Ct.), at para. 39; see also *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General),* 2007 NSCA 37, 282 D.L.R. (4th) 538, at para. 15, leave to appeal refused, [2007] S.C.C.A. No. 278, citing *MacKeigan v. Hickman*, [1989] 2 S.C.R. 796, at pp. 831-33, *per* McLachlin J. (as she then was). The motion judge’s treatment of deliberative secrecy unduly narrowed the scope of this protection.

4. The fresh evidence motion should be dismissed

[34] Finally, I will address the appellant’s fresh evidence motion, which I would dismiss. The appellant seeks to rely on the Divisional Court Decision, released a day after that of the motion judge, as evidence that the motion judge should not have lifted deliberative secrecy over portions of the records. Contrary to the motion judge’s finding that the plaintiffs raised legitimate concerns regarding the LAT’s

process, the Divisional Court made no findings that the LAT breached the rules of natural justice when that court concluded that an affidavit from a former LAT adjudicator was subject to deliberative secrecy. The appellant relies on *I.K.K. v. M.P.*, 2018 ONSC 2473, 8 R.F.L. (8th) 367, at paras. 20-32, for the proposition that a decision in a related case, and particularly the findings made therein, may be admitted as evidence as opposed to simply being used as an authority: see also *British Columbia (Attorney General) v. Malik*, 2011 SCC 18, [2011] 1 S.C.R. 657.

[35] I do not see any basis to consider the Divisional Court Decision as a form of evidence. The plaintiffs did not oppose the court reviewing the decision as an authority, just as it would with any other public court decision. In any event, it is not necessary to consider the Divisional Court Decision to resolve the issues in this appeal. I would therefore dismiss the appellant's fresh evidence motion.

DISPOSITION

[36] I would allow the appeal and set aside the motion judge's order requiring the appellant to produce the records. I would substitute an order dismissing the r. 30.10 motion.

[37] I would order that the plaintiffs pay costs of the appeal to the appellant in the agreed-upon amount of $5,000, all inclusive. The parties did not address costs of the motion below. If they cannot agree on costs, I would allow the parties to file

brief costs submissions of no more than two pages, plus a costs outline, within 10 days of the release of these reasons.

[38] Finally, I would order that the documents that were the subject of the motion, and which were provided to the court, remain under seal as previously ordered.

Released: May 14, 2026 “L.B.R.”

“M. Rahman J.A.”
“I agree. L.B. Roberts J.A.”
“I agree. Coroza J.A.”