

CITATION: Ebube v. Hendricks et al., 2026 ONSC 3108
COURT FILE NO.: CV-24-4398-0000
DATE: 2026 05 27

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Gregory Ebube, Plaintiff

AND:

Lee Hendricks and Lauren Hendricks, Defendants

BEFORE: Associate Justice Glick

COUNSEL: Jono Schneider, for the Plaintiff

Julia Raposo (Articling Student), for the Defendants

HEARD: May 14, 2026

ENDORSEMENT

OVERVIEW

[1] This is a motion by the defendants Lee Hendricks and Lauren Hendricks (the “Defendants”) for the production of records from the Plaintiff as well as from third parties to the action. The Defendants seek the Plaintiff’s personal and company income tax returns. The Defendants seek medical records from the Plaintiff’s physician Dr. Akinsete. They also seek the production of the Plaintiff’s employment file at CENTURY 21 Leading Edge Realty Inc (“CENTURY 21”). The defendants also initially sought the production of a TD Insurance Property Damage file, but that portion of the motion did not proceed. Dr. Akinsete did not attend the motion. Neither did anyone attend on behalf of CENTURY 21 though properly served.

[2] This is a personal injury action arising from a motor vehicle accident that occurred on July 31, 2023 in Oakville. Causation and damages are both disputed. Pleadings have closed, but examinations for discovery have not taken place. The Defendants take the position that they require further productions to proceed to discovery, including the employment file, tax records and

medical records. They have two years of medical records but argue that a third year of records ought to be produced.

[3] The Plaintiff consents to the production of personal and company income tax records. The Plaintiff takes no position with respect to the Employment file, which they have also requested from CENTURY 21. They oppose the request for the production of further medical records. The Plaintiff says that the Defendants have failed to demonstrate the relevance of the requested additional year of medicals.

[4] For the reasons that follow, I grant the Defendants' motion with respect to the third year of pre-accident medical records vis-à-vis the Plaintiff. I also grant the Defendants' motion with respect to the Employment file vis-à-vis CENTURY 21. Finally, I make an Order on consent requiring the Plaintiff to produce the requested tax records.

BACKGROUND

[5] The action was commenced on November 4, 2024. The Plaintiff is seeking a total of \$950,000 in damages. The action relates to an accident which occurred on July 31, 2023. The Plaintiff alleges he was rear-ended by Mr. Hendricks who was driving the Defendants' vehicle. The Plaintiff alleges that Mr. Hendricks was negligent in operating his vehicle and responsible for the accident. Ms. Hendricks is sued as the owner of the vehicle.

[6] The Plaintiff alleges serious injuries as a result of the accident. He says he suffered tearing and straining of the muscles of his lumbar spine, thoracic spine, sacral spine and cervical spine. He also alleges tearing and straining of the muscles of his shoulders, arms, knees, buttocks and legs. He alleges pain in his hands and feet, headaches, dizziness, depression, anxiety, stress, frustration, insomnia and a number of cognitive deficiencies. The Plaintiff alleges he has been forced to significantly limit his activities of daily living and that he cannot work as a result of his injuries.

[7] The Defendants admit that the accident occurred, but deny that they are liable for the accident. They allege that the Plaintiff was negligent in the operation of his vehicle and that he

either caused or contributed to the accident. The Defendants deny the Plaintiff sustained the losses alleged. They state that the injuries as alleged have their origins in other accidents, incidents or occurrences both preceding and subsequent to the accident, and/or in endogenous causes.

[8] The Statement of Defence was filed on April 21, 2025. Discoveries have not taken place. It appears from the record that they were originally scheduled for October 24, 2025 but that the Defendants cancelled them due to their view that they required further productions in advance of examinations.

LAW

Rule 30.02

[9] Pursuant to subrule 30.02(1) of the *Rules of Civil Procedure*, RRO 1990, Reg 194, a party must disclose every document relevant to any matter in issue that is in their power, possession or control as provided in rules 30.03 to 30.10. Pursuant to subrule 30.03(1), each party must serve an affidavit of documents “disclosing to the full extent of the party’s knowledge, information and belief all documents relevant to any matter in issue in the action that are or have been in the party’s possession, control or power.”

[10] As Associate Justice Robinson stated at paragraph 5 of *Aidoo v. Durbejai*, 2026 ONSC 1951, “it is now trite law that relevance is determined by reference to the pleadings, which set out the issues in dispute. Documents relevant to those issues must be produced. The documents that the parties are entitled to have produced is a matter of law. It is not a matter for the exercise of discretion: *Denault v Alplay*, 2016 ONSC 1618 at paras. 11-13.”

[11] Rule 29.2.03 applies to a determination by the court as to whether a party must answer a question or produce a document. Rule 29.2.03 requires a court to consider whether:

- a. The time required for the party or other person to answer the question or produce the document would be unreasonable;

- b. The expense associated with answering the question or producing the document would be unjustified;
- c. Requiring the party or other person to answer the question or produce the document would cause him or her undue prejudice;
- d. Requiring the party or other person to answer the question or produce the document would unduly interfere with the orderly progress of the action; and
- e. The information or the document is readily available to the party requesting it from another source.

[12] In addition to those considerations, the court is also, pursuant to Rule 29.2.03(2) to consider whether an order to produce documents would result in an excessive volume of documents required to be produced.

Rule 30.10 – Production from Non-Party

[13] 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.

[14] The Court of Appeal recently articulated the test on a Rule 30.10 motion in the case of *Derenzis v. Ontario*, ONCA 344. A summary of the law is found at paragraphs 9-12 of that decision. The Court of Appeal found that relevance is assessed with respect to a material issue in the action. “A document will be relevant to a material issue if there is a reasonable possibility that it is “logically probative” of that issue. The Court of Appeal also stated that the inquiry under Rule

30.10(1)(b) asks “whether pre-trial production of the document is necessary for a fair hearing of the proceeding at issue”. Relying on its previous decision in *Ontario (Attorney General) v. Stavro* (1995), 1995 CanLII 3509 (ON CA), 26 O.R. (3d) 39 (C.A.), the Court of Appeal set out two factors for assessing fairness including the importance of the documents at issue and the relationship between the non-party and the parties to the litigation. The more important the documents, the more fairness requires their production. Non-parties with more of an interest in the matter should be more susceptible to production orders than non-parties who are true strangers to the matter.

[15] The Court of Appeal noted that it has “made clear that orders for non-party production “should not be made as a matter of course but only in exceptional cases.” This engages a fairness analysis between the need for the document at trial and the non-party’s exposure to “inconvenience, expense or liability.” Relying on *Starvo*, the Court of Appeal found that Rule 30.10 by its terms 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.”

ANALYSIS

Medical Records

[16] The Defendants assert that the production of three years of medical records is relevant and routine. In making this submission they rely on the decision of Justice Chown in the case of *Memelli v. Bhandal*, 2021 ONSC 802. In that decision Justice Chown states at paragraph 18 that:

Common Practice

[18] In personal injury cases, counsel will commonly agree to obtain medical records dating back three to five years before the accident, and if those records or other evidence reveals overlapping injuries, to obtain the records which cover the previous injuries. The relevance of records relating a prior accident arises frequently.

[17] The Defendants also rely on the decision of Justice Sloan in the case of *Trumble v. Soomal*, 2020 ONSC 8097. Justice Sloan, at paragraph 20 of that decision, states:

As in all personal injury litigation, a plaintiff's pre-accident history is automatically called into question. Their lawyers know that before the litigation starts. In fact, it would seem unusual unless a limitation period was approaching, that the plaintiff's lawyer would not routinely get approximately three years of prior records before definitively accepting the retainer and drafting the Statement of Claim.

[18] The issue before Justice Sloan was whether the plaintiff or the defendant was obligated to pay for the medical records and reports in a personal injury action. Justice Sloan at paragraph 1 of that decision stated, "there is no issue that the medical record of the plaintiff three years prior to the accident may be relevant and that the defendant is entitled to review them."

[19] The Plaintiff, in response, argues that in *Memelli* the court had evidence by which to determine that what had been requested was relevant and what had been provided was insufficient. He points out that Justice Chown, at paragraph 21 of the decision, stated that the defendant still had the onus of establishing that the requested records are relevant.¹ The Plaintiff says that in *Trumble*, the issue wasn't the relevance of the documents, but who should pay for their production. In this case, the Plaintiff argues that the Defendants have not established that the third year of medical records is relevant or that producing them is proportionate.

[20] The Plaintiff argues that the Defendants' request is based on generic assertions that could be made in any personal injury action. He points to the FSCO standard of one year to refute the three-year standard that the Defendants rely on. He says that there is nothing in the two years of medicals which have been produced which suggests that there is any basis for the production of a third year. The Defendants, he says, had the two years of records before they brought this motion, and have not connected their request to anything in those materials. The only pre-accident visit disclosed in those records is for an unrelated issue.

¹ I note that Justice Chown's statement here related to the further production being sought and not to the three years of records.

[21] I find that the case law establishes a general three-year rule for the disclosure of pre-accident medical records in Ontario. This does not mean that three years will suffice in every case, but instead that three years of medical records is the baseline. The decisions in *Memelli* and *Trumble* support this finding, as does Justice Morgan's decision in *Saleh v Ambalavanar and Sambasivam*, 2018 ONSC 3358. At paragraph 7 of that decision Justice Morgan specifically refers to it as a rule and states that the rule arises out of the court's analysis of relevance in the context of the factors set out in Rule 29.2.03.

[22] Put another way, the plaintiff's pre-accident history will always be relevant to determining whether their claimed damages were caused by the accident. The three-year rule which has developed in the case law and in common practice arises out of a proportionality exercise. Courts, in considering the issue of how many years of medical records will be proportional, have determined that three years of records are reasonable as a starting point.

[23] The Plaintiff ultimately agrees that his medical records are relevant. The Plaintiff though, conducting his own proportionality exercise, takes the position that two years of records is sufficient. The Plaintiff states "medical records are private. A plaintiff who advances a personal injury claim puts relevant medical issues in play, but does not thereby waive privacy over all historical medical information for whatever time period the defence typically prefers." While this is true, I find that there is no principled basis for the Plaintiff's decision to limit disclosure to two years of medicals. The same argument could be made for only producing one year of medicals instead of two, if that one year did not show any medical issues. This however does not accord with the case law by which I am bound, or the common practice.

[24] In the alternative, if the case law does not establish a three-year rule by which I am bound, I find that three years of medical information is, in this case, both relevant and proportional. The Plaintiff agrees that medical records are relevant. The case law establishes that pre-accident medicals are relevant. The issue is the number of years of records which ought to be produced. Having regard to the factors in Rule 29.2.03, and to the common practice, I find that three years of records is reasonable, justified and does not cause undue prejudice. I find that requiring the production of an additional year of records does not interfere with the orderly progress of the action

and that the information is readily available to the Plaintiff. I find that the extra year of documents would not lead to the excessive production of documents.

[25] There is no evidence as to whether the additional medical records do or do not disclose any conditions or issues affecting the Plaintiff. They are relevant either way, in that the presence or absence of any pre-existing condition is relevant to the damages being claimed. In this regard, I note the court's statement in *Saleh v. Ambalavanar and Sambasivam*, 2018 ONSC 3358 at paragraph 9 that "while there must be something to make the records relevant in order to justify their production, the Defendant does not have to provide its case at this stage; it cannot do so before it sees the file that it seeks."

[26] On the basis of the foregoing, I order the Plaintiff to produce to the Defendants the third year of pre-accident medicals. Having made this order, there is no need for an Order as against Dr. Akinsete.

CENTURY 21 Records

[27] CENTURY 21 did not attend on the motion though properly served. The records that the Defendants seek are records relating to the Plaintiff's employment record. The Plaintiff has also requested those records from CENTURY 21. That request was made on three occasions – May 27, 2025, December 5, 2025 and January 9, 2026.

[28] I find that the materials being sought are relevant to the Plaintiff's claim for damages which is a material issue in the action. I find that pre-trial production of these records is necessary for a fair hearing. I find that while CENTURY 21 does not have a clear interest in this proceeding, the necessity of the documents weighs in favour of production. I also find that an order for production avoids the need to call a witness from CENTURY 21 to trial, thereby reducing complexity and expense.

[29] Having regard to the foregoing, I order that CENTURY 21 is to produce to the Defendant the Plaintiff's employment file within thirty days of this order. The Defendant is to pay the reasonable cost of producing the employment file.

Tax Returns

[30] The Plaintiff has consented to produce the requested personal and company income tax records from 2023-2024. An order for the production of these records is to go on consent.

CONCLUSION

[31] As above, I make the following Orders:

- a. The Plaintiff is to produce to the Defendant the third year of pre-accident medicals;
- b. The Plaintiff is to produce to the Defendant his personal and company income tax records from 2023-2024;
- c. CENTURY 21 is to produce to the Defendant the Plaintiff's employment file. The Defendant is to pay the reasonable costs associated with the production of that file.
- d. The production set out above is to be made within thirty days from the date of this Order.

[32] I encourage the parties to settle the costs of this motion. If they cannot do so, costs submissions can be made in writing through the administration office. Submissions are to be limited to three pages. The plaintiff is to serve their submissions within seven days of this decision. The defendants are to serve their submissions seven days later. There will be no reply.

Date: May 27, 2026

Associate Justice Glick

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AJ Glick

Released: May 27, 2026