

CITATION: Micon Group Ltd. v. Maple Reinders Constructors Ltd.,
2026 ONSC 3883
COURT FILE NO.: CV-20-01096
DATE: 20260703

ONTARIO

SUPERIOR COURT OF JUSTICE

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

B E T W E E N:

Micon Group Ltd.

Plaintiff

- and -

Maple Reinders Constructors Ltd.

Defendant

) S. Fattah, for the Plaintiff

) A.Speigel, for the Defendant

) **HEARD:** June 26, 2026

ENDORSEMENT

Associate Justice J. Kriwetz

Overview and Nature of the Motion

[1] Micon Group Ltd. (“**Micon**”) commenced two construction lien actions against Maple Reinders Constructors Ltd. (“**Maple**”). Both claims are in respect of the same project. Micon’s claim in the first action is for \$4,043,918.30 and its claim in the second action is for \$49,798.86. Maple has defended the actions and counterclaimed in both.

[2] I have read the materials filed by the parties, including the pleadings, and I have heard their submissions.

[3] By way of summary, Maple was the general contractor on a project which involved the construction of a large warehouse facility located in Ajax, Ontario (the “**Project**”). In 2018, Maple entered a subcontract with Micon, whereby Micon was to, among other things, prepare and supply electrical design drawings for the Project. The subcontract contemplated that the parties would negotiate a change order for the electrical construction work for the Project, which the parties later entered into in March 2019 for the price of \$4,064,908.00.

[4] In its claims, Micon alleges, among other things, that the start date of the construction was delayed and various other delays caused it to incur additional costs for extra labour, acceleration of its work, materials and services.

[5] In its responses to the undertakings, as described in further detail below, Micon clarified that its claims are not delay claims but “acceleration” claims. A delay claim being generally described as one based on increased costs incurred because of delays in the project, while an acceleration claim is generally described as one based on increased costs incurred because the delays on the project shortened the period that party has to complete its work. For the purpose of deciding this motion, the characterisation of Micon’s claim is not necessary. In either case, it is based on alleged delays on the Project.

[6] By way of endorsement dated February 8, 2023, Justice Healey issued a consent order that the parties comply with the discovery plan (“**Justice Healey’s Order**”).

[7] On April 4 and 5, 2024, Jay Barlow, a representative of Micon, was examined for discovery, during which time he gave several undertakings and took various questions under advisement.

[8] The parties attended a pre-trial conference on March 3, 2025, at which time they were ordered to answer all undertakings and provide their positions on questions refused and taken under advisement, in writing, by May 15, 2025.

[9] Micon provided its answers to the undertakings on May 15, 2025 (“**Micon’s First Response**”).

[10] Maple then brought this motion wherein it seeks, among other things, an order requiring Micon to answer undertakings it asserts were not properly answered and to answer questions taken under advisement, which it asserts should be answered.

[11] On August 29, 2025, after being served with Maple’s motion, Micon provided a second response (“**Micon’s Second Response**”) in which it answered 25 of the questions sought by Maple and produced several additional documents.

[12] There remain 17 questions in issue on this motion. They are set out in Schedule “C”, “D” and “E” to Maple’s factum, which is uploaded to Case Centre Master Bundle, pages B-1-620 to B-1-662.

[13] Although Micon takes issue with the fact that the affidavits sworn in support of Maple’s motion are from a law clerk and not from someone from Maple, and that those affidavits neglected to confirm that Micon had delivered extensive

productions, that Micon's representative attended two days of examinations for discovery, and that Micon provided answers and back-up documentation for the undertakings and many of the questions taken under advisement and refused, during submissions, counsel for Micon conceded that the questions in issue on this motion are accurately set out in the said Schedules "C", "D", and "E", as are Micon's First Response and Micon's Second Response.

[14] The said Schedules "C", "D", and "E" were referred to in submissions by both parties. Therefore, I will address the questions in issue by referring to them as they are referenced in the said schedules.

[15] In general terms, Maple submits that, with respect to the questions in issue on this motion, the answers to the undertakings provided by Micon are not responsive to the undertakings given. It also submits that questions taken under advisement, and now considered refusals, are relevant and proper questions that must be answered. It further submits that the questions all relate to eliciting information from Micon as to what exactly it is claiming in the actions

[16] Also, in general terms, Micon submits that it has answered the undertakings properly, that in some cases there is no further information to provide, that in some cases providing further information would be disproportionate, and

that, with respect to the questions in issue which were taken under advisement, the questions are irrelevant and/or are improper.

Leave to Bring this Motion

[17] Micon raised the preliminary issue of whether Maple requires leave to bring this motion, and if so, whether leave should be granted.

[18] These proceedings are governed by the former *Construction Lien Act*, which, at section 67(2), states:

“Interlocutory steps, other than those provided for under Act, shall not be taken without the consent of the court upon proof that the steps are necessary or would expedite the resolution of the issues in dispute.”

[19] Micon noted that Maple did not, in its notice of motion, seek leave. Although Maple subsequently amended its notice of motion to do so, Micon, nevertheless, submits that leave should not be granted.

[20] Maple submits that further leave is not required because the discovery plan, which was approved by Justice Healey’s Order, already contemplated that there would be refusals motions, and therefore, leave has been explicitly granted. I agree with this submission.

[21] Furthermore, such leave was also implicitly granted from the fact that leave to conduct examinations for discovery had also been granted. This motion is, therefore, a natural part flowing from such leave: *Gowing Contractors Ltd. v. Walsh Construction Company of Canada*, 2023 ONSC 4407, at para. 20.

[22] Even if I am incorrect on this point, and leave is still required, I am of the view that, for the reasons set out below, it should be granted because this motion is necessary or would expedite the resolution of the issues in dispute.

The Undertaking and Advisements/Refusals

The Applicable Law

[23] Before addressing the specific questions in issue, I will set out the applicable law.

[24] Rule 31.06 (1) of the *Rules of Civil Procedure* states, in part, that,

“A person examined for discovery shall answer, to the best of his or her knowledge, information and belief, any proper question relevant to any matter in issue in the action...”

[25] Rule 31.01(1) states,

“A party, or a person examined for discovery on behalf of or in place of a party, fails to answer a question if,

- (a) *the party or other person refuses to answer the question, whether on the grounds of privilege or otherwise;*
- (b) *the party or other person indicates that the question will be considered or taken under advisement, but no answer is provided within 60 days after the response; or*
- (c) *the party or other person undertakes to answer the question, but no answer is provided within 60 days after the response.”*

[26] Rule 31.07(4) states,

“For greater certainty, nothing in these rules relieves a party or other person who undertakes to answer a question from the obligation to honour the undertaking.”

[27] Rule 31 is subject to the proportionality rule set out in Rule 29.2, where subrule 29.2.03 states,

“(1) In making a determination as to whether a party or other person must answer a question or produce a document, the court shall 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.*

(2) *In addition to the considerations listed in subrule (1), in determining whether to order a party or other person to produce one or more documents, the court shall consider whether such an order would result in an excessive volume of documents required to be produced by the party or other person.*”

[28] The case law has developed principles regarding the scope of an examination for discovery, a summary of which is set out in *Ontario v. Rothmans Inc.*, 2011 ONSC 2504, at paragraph 129 as follows,

- “• The scope of the discovery is defined by the pleadings; discovery questions must be relevant to the issues as defined by the pleadings: *Playfair v. Cormack* (1913), 1913 CanLII 599 (ON SCHCD), 4 O.W.N. 817 (H.C.J.).
- The examining party may not go beyond the pleadings in an effort to find a claim or defence that has not been pleaded. Overbroad or speculative discovery is known colloquially as a “fishing expedition” and it is not permitted. See *Cominco Ltd. v. Westinghouse Can. Ltd.* (1979), 1979 CanLII 489 (BC CA), 11 B.C.L.R. 142 (C.A.); *Allarco Broadcasting Ltd. v. Duke* (1981), 1981 CanLII 723 (BC SC), 26 C.P.C. 13 (B.C.S.C.).
- Under the former case law, where the rules provided for questions “relating to any matter in issue,” the scope of discovery was defined with wide latitude and a question would be proper if there is a semblance of relevancy: *Kay v. Posluns* (1989), 1989 CanLII 4297 (ON HCJ), 71 O.R. (2d) 238 (H.C.J.); *Air Canada v. McConnell Douglas Corp.* (1995), 1995 CanLII 7147 (ON CTGD), 22 O.R. (3d) 140 (Master), *aff’d* (1995), 1995 CanLII 7189 (ON CTGD), 23 O.R. (3d) 156 (Gen. Div.). The recently amended rule changes “relating to any matter in issue” to “relevant to any matter in issue,” which suggests a modest narrowing of the scope of examinations for discovery.
- The extent of discovery is not unlimited, and in controlling its process and to avoid discovery from being oppressive and

uncontrollable, the court may keep discovery within reasonable and efficient bounds: *Graydon v. Graydon* (1921), 1921 CanLII 444 (ON SCHCD), 67 D.L.R. 116 (Ont. S.C.) at pp. 118 and 119 per Justice Middleton (“Discovery is intended to be an engine to be prudently used for the extraction of truth, but it must not be made an instrument of torture ...”); *Kay v. Posluns* (1989), 1989 CanLII 4297 (ON HCJ), 71 O.R. (2d) 238 (H.C.J.) at p. 246; *Ontario (Attorney General) v. Ballard Estate* (1995), 1995 CanLII 3509 (ON CA), 26 O.R. (3d) 39 (C.A.) at p. 48 (“The discovery process must also be kept within reasonable bounds.”); 671122 *Ontario Ltd. v. Canadian Tire Corp.*, [1996] O.J. No. 2539 (Gen. Div.) at paras. 8-9; *Caputo v. Imperial Tobacco Ltd.*, [2003] O.J. No. 2269 (S.C.J.). The court has the power to restrict an examination for discovery that is onerous or abusive: *Andersen v. St. Jude Medical Inc.*, [2007] O.J. No. 5383 (Master).

- The witness on an examination for discovery may be questioned for hearsay evidence because an examination for discovery requires the witness to give not only his or her knowledge but his or her information and belief about the matters in issue: *Van Horn v. Verrall* (1911), 3 O.W.N. 439 (H.C.J.); *Rubinoff v. Newton*, 1966 CanLII 198 (ON HCJ), [1967] 1 O.R. 402 (H.C.J.); *Kay v. Posluns* (1989), 1989 CanLII 4297 (ON HCJ), 71 O.R. (2d) 238 (H.C.J.).
- The witness on an examination for discovery may be questioned about the party’s position on questions of law: *Six Nations of the Grand River Indian Band v. Canada (Attorney General)* (2000), 2000 CanLII 26988 (ON SCDC), 48 O.R. (3d) 377 (S.C.J.).

[29] The courts, however, will enforce undertakings given by the parties. As stated in *Fyffe (Fyffe Loggin) v. Ontrac Equipment Services Inc.*, 2008 CanLII 48133 (ONSC):

“Undertakings are not subject to negotiation. They are a promise that the court enforces. Once they are given, they must be honoured. It makes no difference that the party who gave them considers them burdensome, irrelevant or overly broad after the fact.”

This principle has been subsequently reiterated in *Dalcourt-Wilkins v. Gupta*, 2021 ONSC 3160, at para. 16.

[30] With these principles in mind, I now turn to the questions in issue.

Schedule C

Undertaking #1 – Question 406

[31] The undertaking given was *“To make inquiries of Mr. Zeitler and advise whether it is Micon’s position that the number of Change Orders issued on the Project contributed to Micon’s loss of productivity and, if so, how many additional hours Micon is claiming on that basis.”*

[32] Neither Micon’s First Response nor Micon’s Second Response have answered this undertaking. During submissions, Micon stated that it does not have that information. That was not the answer Micon had previously given.

[33] I find that Micon has not properly answered this undertaking, and it must do so.

Undertaking #2 – Question 897

[34] Micon undertook *“To advise of the events giving rise to a claim that occurred in January and February of 2019 and the alleged labour loss arising from each of those claims.”*

[35] Neither Micon’s First Response nor Micon’s Second Response have answered this undertaking. During submissions, Micon stated that it does not have the precise information sought. That was not the answer Micon had previously given.

[36] I find that Micon has not properly answered this undertaking, and it must do so.

Undertaking #3 – Questions 1620 and 1963

[37] Micon’s undertaking was *“To provide a list of all claims that DD Mac is advancing, the additional hours allegedly arising from each claim, and to ensure that the change to the switchgear – and additional hours claimed in connection with it – is separately itemized on that list.”*

[38] Neither Micon’s First Response nor Micon’s Second Response have answered this undertaking. During submissions, Micon, once again, stated that it does not have the precise information sought. That was not the answer Micon had previously given.

[39] I find that Micon has not properly answered this undertaking, and it must do so.

Under Advisement #1 – Question 454

[40] The question taken under advisement was *“To advise which aspects of DDMac’s work were allegedly compressed by comparing the number of days ultimately allocated to DDMac to perform the work as compared with the number of days DDMac claims it have been given to perform the task based on its asserted baseline schedule.”*

[41] This is a proper and relevant question that relates to an issue pleaded in the actions. Micon’s First Response was that the question was ambiguous and required clarification. It purported to provide an answer in Micon’s Second Response, but it was not responsive. During submissions, Micon stated that such information does not exist. That was not the answer that Micon had previously given.

[42] Therefore, Micon must provide a clear and proper answer to this question.

Under Advisement #2 – Questions 391, 1456, and 897

[43] The question taken under advisement was *“To produce a detailed list of the specific claims being advanced that are alleged to have caused a problem on the project. For each claim, provide the facts underpinning the claim (including the relevant dates), why the facts allegedly gave rise to the problem, and the number of extra man hours the event allegedly gave rise to.”*

[44] This is a proper and relevant question that relates to an issue pleaded in the actions. Micon’s First Response was that the question was ambiguous and required clarification. It purported to provide an answer in Micon’s Second Response, but it was not responsive. During submissions, Micon stated that such information does not exist. That was not the answer Micon had previously given.

[45] Therefore, Micon must provide a clear and proper answer to this question.

Schedule D

Undertaking #1 – Question 486

[46] Micon undertook, *“With respect to MIC00000487, to identify when the document was created, who created the document, where the numbers in the document came from and how they were calculated.”*

[47] In its responses, Micon answered the first two parts of the undertaking but not the last two parts. In Micon’s Second Response, Micon stated that it does not

intend to rely on the document at trial. That, however, does not excuse it from fully answering the undertaking.

[48] During submissions, Micon stated that it cannot determine where the numbers came from and how they were calculated. That was not the answer Micon had previously given.

[49] Therefore, Micon must provide a full and complete answer to the entire undertaking.

Undertaking # 2 – Questions 1341-1345 and 1678-1679

[50] The undertaking was *“To advise when the cable tray was delivered to the Project, when the cable tray work was commenced, what sections could not be installed consecutively and when each section was installed.”*

[51] The last two parts of this undertaking have not been answered. During submissions, Micon stated that the outstanding information cannot be provided. That was not the answer Micon had previously given.

[52] Therefore, Micon must provide a full and complete answer to the remain parts of this undertaking.

Undertaking #3 – Questions 1809, 1339, 1679

[53] The undertaking given was, *“With respect to each Project schedule, to advise if DD Mac is alleging that the schedule was problematic and, if so, to explain why it was problematic.”*

[54] Neither Micon’s First Response, nor Micon’s Second Response have answered this undertaking. Micon submits that it would be a monumental task for it to do so. Nevertheless, Micon did not object to the question during discoveries and gave the undertaking to answer provide an answer, and it must do so.

Undertaking #4 – Question 1986

[55] The undertaking was *“Paragraph 14 of Micon’s statement of claim state that Micon’s work was delayed due to the City of Ajax being slow in approving the building permit. To advise what effect that had on Micon’s performance of its work, whether it had any impact on Micon’s productivity, and when notice of that claim was provided.”*

[56] Once again, neither Micon’s First Response, nor Micon’s Second Response provide a clear answer to this undertaking. During submissions, Micon stated that was the best answer it could provide. This is not an acceptable response. It must provide a clear answer to this undertaking.

Undertaking #5 – Questions 1022-1026

[57] Micon undertook *“To show how Micon’s construction plan was feasible and how it was going to fit within the February 6, 2019 schedule.”*

[58] Micon did not provide a response at all to this undertaking. It submits that the question goes beyond what a witness on examinations for discovery is required to answer.

[59] Micon could have objected to the question at the discovery, but it did not. Instead, it gave an undertaking to answer the question and, therefore, it must do so.

Undertaking #6 – Questions 1133-1140

[60] This was a multi-part undertaking relating to a meeting which occurred after March 5, 2019. I will only set out part of the undertaking and have underlined the portion, which is in issue, namely, *“To produce or identify any documents to support the assertion that a meeting occurred or the information was provided. If answers were given orally, to advise what information DD Mac gave in response to each request.”*

[61] The part in issue has not been answered and, in submissions, Micon advised that it may have been inadvertently overlooked.

[62] In any case, the remainder of this undertaking must be answered.

Undertaking #7 – Questions 1141-1142

[63] The undertaking was *“To produce or identify in the productions, any documents in which Micon provided a timeline following March 5, 2019, for the underground conduit installation and identify the timeline proposed. If this information was provided orally, to advise when the information was provided, and the timeline was communicated to Maple Reinders, and to produce any documents in respect thereof.”* It is the underlined portion which is in issue.

[64] Micon submits that this was answered in response to other undertakings but the answers it previously provided to this specific undertaking does not say that.

[65] Therefore, Micon must provide a clear and proper answer to this undertaking.

Under Advisement #1 – Question 85

[66] The question taken under advisement was *“To advise whether Micon will be challenging the authenticity of any documents produced by Maple Reinders in the within litigation.”*

[67] I agree with Micon’s submissions that this is not a proper discovery question, and it need not be answered. Maple can ascertain Micon’s position on this by serving a request to admit, if it wishes.

Under Advisement #2 – Questions 1478 – 1481 and Under Advisement #5 – Questions 1460 - 1464

[68] These two questions taken under advisement are related to one another. The first one was *“To advise if DD Mac’s billings were based on the percentage of work completed based on labour hours.”* The second one was *“To produce, or identify in the productions, all documents which Micon relied upon when determining the value of work performed and billed in its draws.”*

[69] Maple’s position is that Micon alleges that Maple’s conduct adversely affected its productivity on the Project resulting in it spending nearly double the originally estimated number of hours to complete the work and to perform extra work. It submits that Micon’s claim seems inconsistent with the amounts it billed

prior to issuing the claim. Maple further submits that it is entitled to understand how it billed for the work it performed and how it assessed the value of the work it completed. In its view, the information sought is relevant as it goes to the heart of the claim.

[70] Micon's position is that the information is not relevant because there was a payment certifier on the Project who reviewed and approved all its work and Maple received payment from the owner for such work. Micon further submits that such information is not within the knowledge, information and belief of the witness, and that Micon is not obligated to help Maple prove its case.

[71] In my view, these questions are relevant to the issues in these actions and Micon is required to answer them.

**Under Advisement #3– Questions 1913-1916 and Under Advisement
#4 – Questions 1964-1967**

[72] There are two related questions which were taken under advisement. The first was *"To advise which statements in Cody McWatter's September 5, 2019 report, produced at D0000008094 that Micon disagrees with, why Micon disagreed and what work could have been done."* The second was *"To advise which*

statements in the Cody Watters October 8, 2019 report, produced at D0000003533, that Micon disagreed with and why.

[73] Micon submits that the questions are improper as it would require it to review the report prepared by Maple's consultant and opine as to why it believes the report is incorrect.

[74] Maple submits that the report is not a litigation report but was prepared during the course of the Project and provided to Micon. It sets out which work it believes could have been done earlier in the course of the Project and supports an argument that Micon's conduct can be attributed to the losses for which it is claiming. Therefore, Maple wants to know whether Micon disputes any of the facts set out in that report.

[75] I accept Micon's submissions with respect to these two questions and it need not answer them.

Further Orders

[76] Micon shall provide the answers to the outstanding undertakings and the additional questions ordered to be answered, as set out above, within 45 days of the date of the release of this endorsement.

[77] Following the delivery of the answers to the undertakings and the questions ordered to be answered, Jay Barlow shall re-attend further examinations on questions arising from the said answer, if Maple requires him to do so.

Costs

[78] The parties uploaded their respective Costs Outline to Case Centre. If the parties are unable to agree upon the costs of this motion, they may forward their costs submissions, not exceeding 3 pages in length, to my attention, within 10 days of the date of the release of this endorsement. The submission should be sent to the attention of the Trial Coordinator at the Hamilton Sopinka Courthouse.

Associate Justice J. Kriwetz

Released: July 3, 2026

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