

**CITATION:** Plante (Litigation Guardian) v. Dynamic Functional Solutions Inc. et al, 2026  
ONSC 4502

**COURT FILE NO.:** CV-25-000101776-00

**DATE:** August 5, 2026

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Shannon Plante, by her Litigation Guardian, Jaden Bailey, Plaintiff

**AND:**

Dynamic Functional Solutions Inc., Janelle Mackinnon, Meggin Fitzpatrick, and  
Laura Florentino-Radzio, Defendants

**AND:**

Dr. Kehinde Adekunle Aladetoyinbo, Defendant

**BEFORE:** Muszynski J.

**COUNSEL:** Joseph Obagi and Adam J. Aldersley, for the Plaintiff

Kim Duong and Szymon Rodomar, for the Defendants, Dynamic Functional  
Solutions Inc., Janelle Mackinnon, Meggin Fitzpatrick, and Laura Florentino-  
Radzio,

Aofie Quinn and Alexandra Tuccillo, for the Defendant, Dr. Kehinde Adekunle  
Aladetoyinbo

**HEARD:** May 5, 2026

**REASONS FOR DECISION**  
**(MOTION TO STRIKE STATEMENT OF CLAIM)**

**Overview**

[1] Over the past several decades an unregulated industry has emerged around the coordination of medical examinations in the context of insurance claims. Central to that industry are medical assessment firms which function as “one-stop-shops” for parties by arranging examinations across multiple disciplines and coordinating the preparation and delivery of the resulting reports. This case involves serious allegations against a medical assessment firm and assessors retained by them to perform these examinations.

[2] The lawsuit was commenced by Shannon Plante, a person under a disability through a litigation guardian. Ms. Plante was involved in a motor vehicle collision on May 30, 2019. She

applied to her automobile insurer, Economical Insurance, to receive benefits under the *Statutory Accident Benefits Schedule (SABS)*.<sup>1</sup> Pursuant to s. 44 of the *SABS*, Economical sent Ms. Plante for a variety of medical examinations to determine her entitlement to benefits.

[3] Economical hired a medical assessment firm, Dynamic Functional Solutions Inc. (DFS), to arrange the medical examinations. Meggin Fitzpatrick and Laura Florentino-Radzio were employees at DFS at the material time. Janelle Mackinnon, an occupational therapist, and Dr. Aladetoyinbo, a psychiatrist, were hired by DFS to examine Ms. Plante and provide reports containing opinions with respect to her care needs and the extent of her accident-related impairments.

[4] Ms. Plante's entitlement to receive benefits from Economical is not at issue in this litigation. Economical is not a named defendant.

[5] The Statement of Claim alleges serious impropriety against the defendants related to the s. 44 examinations Ms. Plante underwent and the resulting reports. Specifically, it is alleged that the defendants "negligently and/or fraudulently engaged in a concerted effort to conceal the magnitude of Shannon's injuries and symptoms, as well as to conceal the link between those injuries and symptoms and the mechanism of injury, being the collision of May 20, 2019."

[6] The defendants jointly bring this motion to strike the statement of claim, without leave to amend, under Rules 21.01(1), 21.01(3) and 25.11<sup>2</sup> on the basis that it: (i) is *ultra vires* the jurisdiction of this court; (ii) discloses no reasonable cause of action; and / or (iii) it is an abuse of process.

### **Background**

[7] Ms. Plante has cerebral palsy, bi-polar affective disorder, depression and mental delay. She was born disabled and required assistance with her activities of daily living even prior to the accident. It is alleged that Ms. Plante's needs increased because of the injuries she sustained in the May 30, 2019 accident.

[8] In 2020, Ms. Plante applied to Economical for attendant care benefits. Economical retained DFS to coordinate various s. 44 examinations to determine Ms. Plante's entitlement to these and other benefits.

[9] An occupational therapist, Janelle Mackinnon, was hired by DFS to assess Ms. Plante's attendant care needs. The statement of claim alleges that Ms. Mackinnon authored her first draft report dated October 16, 2020, which concluded that Ms. Plante had a "greater level of dependency" post-accident. In the same report, Ms. Mackinnon concluded that Ms. Plante required 700 minutes of attendant care per week, costing \$818.59.

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<sup>1</sup> *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10.

<sup>2</sup> *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the Rules).

[10] The statement of claim goes on to allege that Ms. Mackinnon was pressured on multiple occasions by DFS to change her opinion. In the final version of Ms. Mackinnon's report, the conclusion that Ms. Plante required a "greater level of dependency" was replaced with the conclusion that she required "the same level of dependency" post-accident. It is further alleged that DFS edited Ms. Mackinnon's earlier draft report to indicate that Ms. Plante did not require any attendant care, thereby reducing the costing to \$0. It is alleged that Economical denied Ms. Plante's application for attendant care benefits because of the conclusions in the altered report.

[11] Ms. Plante later submitted a claim to Economical for a determination that she sustained a catastrophic impairment, which would allow her to access an increased level of benefits. Economical again retained DFS to coordinate medical examinations for Ms. Plante, including with Dr. Aladetoyinbo.

[12] It is alleged that the earliest version of Dr. Aladetoyinbo's report contained numerous errors, inconsistencies, and failed to include a finding with respect to Ms. Plante's Global Assessment of Functioning (GAF) score – which, by legislation, must be considered. The statement of claim alleges that DFS made substantial changes to the report, including inserting a GAF score without any accompanying analysis. It is alleged that had Dr. Aladetoyinbo completed a proper assessment, and had DFS not interfered, Economical would not have disputed Ms. Plante's entitlement to a catastrophic impairment designation.

[13] Ms. Plante alleges that both Ms. Mackinnon's report and Dr. Aladetoyinbo's report, "contain false representations and/or material omissions that [DFS] knowingly, recklessly and/or fraudulently made to Economical".

[14] It is further alleged that DFS attempted to conceal its involvement in redrafting the reports by refusing to produce their file to counsel for Ms. Plante. It was only after an appeal to Divisional Court that DFS ultimately produced the contents of their file relating to Ms. Plante and the extent to which the reports were altered was revealed.

[15] With respect to damages, Ms. Plante claims the costs thrown away associated with her applications to the Licence Appeal Tribunal (LAT) and general damages for pain and suffering. But as conceded by her counsel, the main objective in this litigation is an award of punitive damages for the defendants' egregious conduct in manipulating or reversing the substantive opinions of assessors to be more favourable to the insurer.

### **Issues**

[16] Should the statement of claim be struck because it: (i) is *ultra vires* the jurisdiction of the court; (ii) discloses no reasonable cause of action; and/or (iii) is an abuse of process?

### **Analysis**

(i) Is the claim within the jurisdiction of this court?

[17] The moving parties take the position that the claim should be struck pursuant to r. 21.01(3) on the basis that the Superior Court of Justice lacks jurisdiction to hear the dispute. According to

the moving parties, s. 280 of the *Insurance Act*<sup>3</sup> confers exclusive jurisdiction to the LAT for disputes arising from entitlement to SABS.

[18] The relevant sections of s. 280 provides as follows:

- (1) This section applies with respect to the resolution of disputes in respect of an insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled.
- (3) No person may bring a proceeding in any court with respect to a dispute described in subsection (1), other than an appeal from a decision of the Licence Appeal Tribunal or an application for judicial review.

[19] In advancing this position, the moving parties rely primarily on two decisions from the Court of Appeal for Ontario: *Stegenga v. Economical Mutual Insurance Company*,<sup>4</sup> and *Yang v. Co-operators General Insurance Company*.<sup>5</sup>

[20] In *Stegenga*, an insured sued her automobile insurer alleging bad faith in the administration of her SABS claim. The allegations in *Stegenga* included that the insurer: failed to inform the insured about the availability of certain benefits; wrongfully denied benefits; sent the insured misleading and confusing correspondence; and failed to follow reasonable standards in the handling of the claim. Writing for the court, Zarnett J.A. upheld the decision of the motion judge to strike the claim on the basis that the LAT held exclusive jurisdiction to resolve the dispute, notwithstanding the fact that different remedies might be available in court.

[21] In *Yang*, an insured brought a civil claim against her automobile insurer and the medical assessment firm retained by the insurer to arrange for medical examinations of the insured. It was alleged that the insurer coerced the medical assessment firm, and various assessors hired by the firm, into preparing false reports with a goal to circumvent the insurer's obligations under the SABS. The plaintiff ultimately settled the claim vis-à-vis the insurer but intended to pursue the action against the medical assessment firm.

[22] The Court of Appeal in *Yang* upheld the decision of the motion judge dismissing the residual claim for lack of jurisdiction. In doing so, it was noted that "[t]he appellant's claims concern the way in which she was assessed for statutory accident benefits under s. 44 of the *Schedule*. That is squarely within the Licence Appeal Tribunal's mandate. The only damage pleaded attributable to the remaining defendants is that the appellant may have received fewer benefits than she was owed".<sup>6</sup>

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<sup>3</sup> R.S.O. 1990, c. I.8.

<sup>4</sup> 2019 ONCA 615, 147 O.R. (3d) 65.

<sup>5</sup> 2022 ONCA 178.

<sup>6</sup> At para 9.

[23] In my view, the decisions of *Stegenga* and *Yang* are distinguishable.

[24] The claim in *Stegenga* was against the insurer alone, seeking bad faith damages for how it handled the *SABS* claim. In dismissing the appeal, Zarnett J.A. referenced the LAT's jurisdiction to order that an insurer pay a lump sum over and above the benefits and interest for unreasonably withholding or delaying payments to an insured.

[25] In *Yang*, although the insurer and the medical assessment firm were both named defendants, it is important to note that the allegations involved a conspiracy between all the defendants to deprive the plaintiff of access to benefits. The crux of the claim was that the insurer coerced and conspired with the medical assessment firm and assessors to fabricate outcomes that would minimize the insurer's financial obligation to the insured. The Court of Appeal found that the substance of the claim was that the plaintiff did not receive the benefits to which she was entitled.

[26] Ms. Plante's case is different. She does not allege any wrongdoing by Economical. She does not seek a determination of her entitlement to benefits. She does not seek payment of those benefits from Economical nor any of the defendants. Rather it is alleged that DFS, and the other defendants, were financially motivated to fabricate results favourable to Economical to safeguard a valuable source of workflow in a competitive market and that Ms. Plante is entitled to damages in relation to this wrongdoing.

[27] The moving parties submit that the LAT provides a compulsory and comprehensive scheme for adjudicating disputes arising out of *SABS*, and that all disputes connected to the entitlement to, or payment of, *SABS* must be resolved there.

[28] DFS was a responding party in the case of *Grewal v. Dynamic Functional Solutions Inc. et al.*,<sup>7</sup> where, in the context of a *SABS* dispute, the insured made allegations against non-insurer parties, including DFS and other health professionals and service providers. The insured sought to advance tort claims against these parties within the LAT proceeding. The LAT determined that it did not have jurisdiction to adjudicate general damages claims against non-insurer parties.

[29] The insured attempted to appeal the decision to the Divisional Court. The respondents (including DFS) requested that the Divisional Court invoke the process under r. 2.1 to dismiss the appeal. Specifically, they noted that "the applicant/appellant is wrongly attempting to use the *Insurance Act* *SABS* process to address civil tort claims".<sup>8</sup> Matheson J. dismissed the appeal as frivolous, vexatious and an abuse of process. In doing so, she confirmed that the LAT does not have the jurisdiction to grant the remedies sought against the non-parties, including general damages.

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<sup>7</sup> 2025 ONSC 4391 (Div. Ct.).

<sup>8</sup> At para 5.

[30] It is not disputed that the LAT has exclusive jurisdiction to resolve disputes between an insured and an insurer about entitlement to SABS. The question is whether a non-insurer tortfeasor can escape all consequence for wrongdoing simply because the wrong arose in the SABS context.

[31] There must be a mechanism for pursuing relief against non-insurers tortfeasors regardless of whether the wrong arises in the SABS context. Accordingly, subject to my comments in relation to abuse of process below, I find that this court has jurisdiction to adjudicate this claim.

(ii) Does the statement of claim disclose a reasonable cause of action?

[32] The *Rules* provide that a party may move before a judge to strike a pleading that discloses no reasonable cause of action or defence.<sup>9</sup> No evidence is permitted on such a motion.

[33] The threshold to strike a pleading for failing to disclose a reasonable cause of action or abuse of process is extremely high. Considerations include the following:

1. Is it plain and obvious that there is no reasonable cause of action, assuming the facts as pleaded are true?<sup>10</sup>
2. Is there no reasonable prospect of success?<sup>11</sup>
3. Do the pleadings define the issues sufficiently to allow the opposing party to understand the case they have to meet?<sup>12</sup>

[34] Ms. Plante's allegations fall into four causes of action:

1. Civil fraud / fraudulent misrepresentation/tort of deceit;
2. Negligence / negligent misrepresentation;
3. Tort of unlawful means / intentional interference in economic relations; and
4. Inducing breach of contract.

[35] The moving parties submit that the statement of claim does not disclose any reasonable cause of action, it is otherwise an abuse of process, and there is no prospect of success.

***Civil fraud / fraudulent misrepresentation / tort of deceit***

[36] The four elements required to establish claims for civil fraud, fraudulent misrepresentation, and the tort of deceit include: a false representation made by a defendant; some

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<sup>9</sup> Rule 21.01(1)(b).

<sup>10</sup> *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 17.

<sup>11</sup> *Imperial Tobacco*, at para. 17; *Grand River Enterprises Six Nations Ltd. v. Canada (Attorney General)*, 2017 ONCA 526, at para. 15.

<sup>12</sup> *Li v. Barber*, 2023 ONSC 1679, at para 27.

level of knowledge of the falsehood on the part of the defendant; the false representation caused the plaintiff to act; and the plaintiff's actions resulted in a loss.<sup>13</sup>

[37] The statement of claim alleges that the Mackinnon and Aladetoyinbo reports contain knowingly false representations that resulted in Economical's denial of Ms. Plante's claim for benefits and damages associated with the same, including for legal costs of attending at the LAT and general damages at large, including damages for mental distress.

[38] The moving parties submit that since the alleged false representations were neither made to, or relied upon by, Ms. Plante, there is no viable cause of action in civil fraud, fraudulent misrepresentation or the tort of deceit.

[39] I agree. A viable cause of action might exist against Economical, but the relationship between the defendants and Ms. Plante is too remote to ground a direct cause of action in fraudulent misrepresentation.

### ***Negligent misrepresentation***

[40] A claim in negligent misrepresentation requires: a special relationship between the person making a statement and the person hearing it; it being reasonable for the person hearing the statement to rely upon it; the statement being untrue; the person making the untrue statement was careless in making the statement; and damages were suffered by the person reasonably relying on the false statement.<sup>14</sup>

[41] The alleged negligent representations contained in the Mackinnon and Aladetoyinbo reports were made to Economical. There is no suggestion that Ms. Plante, as opposed to Economical, relied on any representations by the defendants. For the same reason as above, I accept the moving parties' submission that the relationship between Ms. Plante and the defendants is too remote to ground a direct cause of action in negligent misrepresentation.

### ***Tort of unlawful means / intentional interference in economic relations***

[42] The tort of unlawful means is also commonly referred to as intentional interference in economic relations or unlawful interference in economic relations. In the Supreme Court of Canada decision of *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*,<sup>15</sup> Cromwell J. provided a thorough review of the tort of unlawful means. As explained, the tort of unlawful means expands the "range of persons who may sue for harm intentionally caused by existing actionable wrongs to a third party."<sup>16</sup>

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<sup>13</sup> *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, [2014] 1 S.C.R. 126, at para. 21.

<sup>14</sup> *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87.

<sup>15</sup> 2014 SCC 12, [2014] 1 S.C.R. 17 [*Bram*].

<sup>16</sup> *Bram*, at para. 45.

[43] The statement of claim alleges that the objective in falsifying the reports to Economical was to bolster the defendants' respective financial positions which correspondingly had a detrimental, unfair, impact on Ms. Plante.

[44] While I have determined that Ms. Plante cannot pursue a claim of fraudulent or negligent misrepresentation against the defendants directly, I find that the allegations do make out a claim grounded in the tort of unlawful means. Specifically, the false / negligent misrepresentations by the defendants to Economical caused damages to Ms. Plante, a third party.

***Inducing breach of contract***

[45] To establish the tort of inducing breach of contract, a plaintiff must prove: they had a valid, enforceable contract; the defendants were aware of the contract and its terms; the defendants intended, and did in fact, induce a breach; and the plaintiff suffered damages as a result.<sup>17</sup>

[46] The essence of Ms. Plante's claim that the defendants induced a breach of contract is that the fraudulent / negligent misrepresentations in the Mackinnon and Aladetoyinbo reports caused Economical to breach its contract of insurance with Ms. Plante.

[47] Ms. Plante pleads: there was a valid contract of insurance with Economical; the defendants were hired by Economical to determine Ms. Plante's entitlement to benefits under the contract, and were therefore aware of the contract and its terms; that the intentional actions of the defendants, individually or collectively, caused Economical to improperly deny Ms. Plante's claim for benefits and therefore breach its contract with Ms. Plante; and that Ms. Plante suffered damages as a result of the breach.

[48] Accepting the alleged facts as true, I would not strike the claim for inducing breach of contract as not disclosing a reasonable cause of action.

***Negligence / expert witness immunity***

[49] Ms. Plante alleges that the defendants are liable in negligence as they breached their duty of care to cause her no harm and that she suffered damages as a result. The moving parties take the position that there is insufficient proximity between Ms. Plante and the defendants to create a duty of care and rely on the doctrine of expert witness immunity to support the submission that there is no reasonable cause of action in negligence.

[50] The law is clear that experts retained during litigation, including in quasi-judicial proceedings, are immune from civil suit by a party with whom his or her only relationship derives from the judicial proceeding.<sup>18</sup>

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<sup>17</sup> *Correia v. Canac Kitchens*, 2008 ONCA 506, 91 O.R. (3d) 353, at para. 99.

<sup>18</sup> *Sheehan v. Snell*, 2016 ONSC 6340, 135 O.R. (3d) 147, at para 43; *Varghese v. Landau* (2004), 3 R.F.L. (6th) 204 (Ont. S.C.), at para. 48; *Carnahan v. Coates* (1990), 71 D.L.R. (4th) 464 (B.C.S.C.), at p. 474; *Howatt v. Klassen* (2005), 31 C.C.L.T. (3d) 54 (Ont. S.C.), at paras. 11 and 15, citing *Fabian v. Margulies* (1985), 53 O.R. (2d) 380 (C.A.).

[51] There is ambiguity, however, as it relates to individuals retained to determine entitlement to benefits under the SABS. Specifically, a decision from the Divisional Court, *Worthman v. Assessmed Inc.*,<sup>19</sup> leaves the door open to claims being advanced against assessment firms and assessors hired to determine a claimant's entitlement to benefits under the SABS. In *Worthman*, in dismissing a motion for summary judgment brought by the defendants, Powers J. (writing for the majority) noted: "the trial judge, as aforesaid, after hearing all of the relevant evidence, might very well determine that, for public policy reasons, it would be inappropriate to find that a privilege or immunity exists in favour of the defendants."<sup>20</sup>

[52] Counsel could not point to any decision post-*Worthman* that addressed this issue squarely.

[53] In my view, whether there is a viable claim in negligence against the defendants, or whether the doctrine of expert witness immunity applies in this context should be determined at trial with the benefit of an evidentiary record. As noted in *Worthman*: "[i]t will be particularly important for the trial judge in this case to examine the closeness, or proximity, of the relationship between the parties and, if there is a close proximity, to determine whether there are any considerations which ought to negate or limit the scope of the duty of care, the class of persons to whom it is owed, or the damages caused by the breach of duty."<sup>21</sup>

[54] I am not prepared to strike the claims in negligence.

### ***Actions against individual defendants***

[55] The moving parties take the position that there is no basis to claim against specific employees of DFS (Meggin Fitzpatrick and Laura Florentino-Radzio). I disagree. The statement of claim makes specific allegations against the DFS defendants, which include Ms. Fitzpatrick and Ms. Florentino-Radzio as well as John Doe defendants. At this time, pre-discovery, the plaintiff does not have a clear understanding of the respective roles of the DFS employees and where liability (if any) should lie.

[56] There was some suggestion that since there are no allegations that individual employees acted outside of the scope of their employment, the claims against them cannot succeed. As noted by the Court of Appeal for Ontario in *Satur v. Starbucks Coffee Canada Inc.*,<sup>22</sup> this is inaccurate.

[57] Dr. Aladetoyinbo takes the position that the allegations against him are discrete and, when viewed in isolation, do not ground a viable cause of action. Once again, I disagree. The crux of the claim against Dr. Aladetoyinbo is that he allowed his report to be altered by DFS to include material misrepresentations and then permitted the report to be passed off as his alone.

[58] The claim makes further allegations that Dr. Aladetoyinbo violated his duty of impartiality and committed professional misconduct. Ms. Plante pleads reliance on various statutes

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<sup>19</sup> (2006), 80 O.R. (3d) 249 (Div. Ct.).

<sup>20</sup> At para. 29.

<sup>21</sup> At para. 29.

<sup>22</sup> 2017 ONCA 1017, 140 O.R. (3d) 307.

and regulations, without referencing any particular sections, including: the *Regulated Health Professions Act*, the *Health Professions Procedural Code*, the *Medicine Act*; and the *Professional Conduct Regulation*.<sup>23</sup>

[59] Dr. Aladetoyinbo submits that there is no independent tort for statutory breach and that the appropriate forum to raise concerns about professional misconduct is before a disciplinary panel, not the Court. Ms. Plante is not advancing an independent tort for statutory breach. Rather, I understand her pleadings to include material facts to support her claim in negligence. It would be preferable, however, to know the precise sections of the statutes and / or regulations on which Ms. Plante purports to rely. When the pleadings are amended, Ms. Plante shall provide this specificity so that the defendants understand how to defend the claim.

(iii) The statement of claim is frivolous, vexatious, and an abuse of court process

[60] Rule 21.01(3)(d) provides that a judge may dismiss an action or strike pleadings on the grounds that they are frivolous, vexatious, or otherwise an abuse of court process.

[61] The moving parties allege that the statement of claim must be struck as it is an abuse of process insofar as it is a collateral attack or re-litigation of issues have been decided or are pending before the LAT. It is also alleged that since Ms. Plante already put the integrity of Ms. Mackinnon's report at issue by seeking reconsideration and judicial review on this basis, she is now improperly seeking to "roll forward" a previously adjudicated issue.

[62] With respect to Ms. Mackinnon's report, there is a difference between challenging the admissibility and weight to be afforded to a piece of evidence in the context of a LAT dispute and a lawsuit wherein damages are claimed for alleged tortious acts. While the facts might overlap, the issues requiring determination are distinct.

[63] There are two live disputes before the LAT: i) Ms. Plante's entitlement to certain benefits, including attendant care; and ii) Ms. Plante's application for catastrophic impairment designation.

[64] The benefits dispute proceeded in first instance and on reconsideration before Vice Chair Tyler Moore at the LAT, who upheld Economical's decision to deny Ms. Plante's entitlement to certain benefits. Ms. Plante sought judicial review. The Divisional Court found a lack of procedural fairness. Specifically, in upholding Economical's decision, VC Moore relied heavily on the findings in the edited Mackinnon report but refused to allow cross-examination of Ms. Mackinnon on the earlier drafts or why changes were made. The judicial review was granted and a new hearing before a different adjudicator was ordered. The re-hearing has not yet occurred.

[65] The catastrophic impairment dispute proceeded at the LAT in the fall of 2025. The reconsideration decision was released in early 2026. The insurer's decision to deny Ms. Plante's application for catastrophic impairment designation was upheld. Ms. Plante has sought judicial

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<sup>23</sup> 1991, S.O., 1991, c 18; O. Reg. 262/18; S.O. 1991, c 30; and O. Reg 856/93, respectively.

review of the decisions to the Divisional Court. The judicial review is scheduled for November of 2026.

[66] I accept that it would be an abuse of process (and a jurisdictional intrusion) to re-litigate / litigate Ms. Plante's entitlement to benefits in this court. However, that is not what this claim is about. Counsel for Ms. Plante repeatedly confirmed that Ms. Plante was not seeking benefits nor damages equal to the benefits that would have been available to Ms. Plante but for the misrepresentations. Rather, the claim is for general and punitive damages at large, and the costs associated with proceeding before the LAT unnecessarily.

[67] Nonetheless, Ms. Plante's ultimate entitlements as determined by the LAT will have bearing on this lawsuit. For example, it could impact the viability of Ms. Plante's claim for inducing breach of contract and the extent of her claim for damages. For this reason, I find that Ms. Plante must obtain final determinations regarding her entitlements under the SABS process before the trial of the subject action.

[68] I would not, however, stay this action pending the outcome of the LAT re-hearings / Divisional Court judicial review. This action should proceed in the normal course, aside from the deferral of the trial until such time as Ms. Plante's final entitlements under the SABS have been determined in the appropriate forum.

### **Conclusion**

[69] The moving parties face a very high bar on a motion to strike a claim for failing to disclose a reasonable cause of action, or for abuse of process.

[70] The allegations raised in the statement of claim are serious - they go far beyond a challenge to the neutrality of an expert witness. They describe a concerted effort to manipulate findings of medical examinations for financial gain, to the detriment of a vulnerable individual. I see no good public policy reason to cloak this type of conduct in immunity or to leave a party injured by it without recourse because of a jurisdictional gap.

[71] I find that this court has jurisdiction over the issues raised in the statement of claim.

[72] The direct claims against the defendants in fraudulent or negligent misrepresentation are struck, with leave to amend to address the application of the tort of unlawful means.

[73] Further, the amended statement of claim shall reference the relevant provisions of legislation relied upon.

[74] The remainder of the motion is dismissed.

### **Costs**

[75] The parties are encouraged to reach an agreement with respect to costs of this motion. If they are unable to do so, I will receive costs submissions (which shall not exceed 3 pages) in accordance with the following schedule: Ms. Plante shall serve and file cost submissions on or

before August 21, 2026; and the moving parties shall serve and file responding cost submissions on or before September 4, 2026.

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Muszynski J.

**Date:** August 5, 2026