

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**ANN TOUSSAINT, APPOINTED REPRESENTATIVE OF THE ESTATE OF
NELL TOUSSAINT, DECEASED, FOR THE PURPOSES OF THIS
PROCEEDING**

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA

Defendant

**FACTUM OF THE PROPOSED INTERVENORS
AMNESTY INTERNATIONAL CANADA AND INTERNATIONAL
NETWORK FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

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MOVING PARTIES' FACTUM

PART I - INTRODUCTION

1. The moving parties are two prospective interveners—Amnesty International, Canadian Section (English Speaking) (“**Amnesty International Canada**”) and the International Network for Economic, Social and Cultural Rights (“**ESCR-Net**”)—who have special expertise in the international human rights law issues raised in this action. This Court has already identified this expertise when it granted leave for Amnesty International Canada and ESCR-Net to jointly intervene in the defendant’s motion to strike.

2. In order to continue to share their expertise with the Court in this proceeding, Amnesty International Canada and ESCR-Net are jointly seeking leave to intervene in this action.

3. As a component of their intervention motion, Amnesty International Canada and ESCR-Net seek to observe the discovery process. They are committed to doing so in the least disruptive and most expeditious manner. They seek only to observe—not participate in—the discovery

process. They will not request production of documents, ask or object to any questions, or request any undertakings. They will be bound by the deemed undertaking rule.

4. The defendant consents to Amnesty International Canada and ESCR-Net's request for intervention status as friends of the court under rule 13.02. However, the defendant objects to the request to observe discoveries. The defendant says that this runs afoul of the deemed undertaking rule and the appropriate role of interveners.

5. There are three reasons why Amnesty International Canada and ESCR-Net should be permitted to observe the discovery process. Each reason offers an independent basis to dismiss the defendant's objections and grant the relief sought:

- (a) ***The deemed undertaking rule does not apply.*** The deemed undertaking rule does not prohibit providing discovery information to non-parties. It only prevents use of the discovery information for reasons that are collateral or ulterior to the action. Amnesty International Canada and ESCR-Net seek to use the discovery information for reasons exclusively relating to this action. There is therefore no breach of the deemed undertaking rule if discovery information is shared with Amnesty International Canada and ESCR-Net.
- (b) ***This Court can modify the deemed undertaking rule.*** To whatever extent the deemed undertaking rule applies, rule 30.1.01(8) empowers this Court to modify the deemed undertaking rule if the Court is satisfied "that the interest of justice outweighs any prejudice that would result to a party who disclosed evidence." There is no prejudice to Canada. In contrast, the interests of justice favour giving

expert interveners an opportunity to strengthen the Court's appreciation of the complex factual and legal issues raised by this action.

(c) ***The ability to observe discoveries can be a term of the intervention order.***

Intervention under rule 13.02 leaves room for judicial discretion to include additional terms that will enable the interveners to be of assistance to the Court.

Providing access to the discovery information will accomplish this.

6. There is no reason to depart from the general rule that interveners are neither liable for nor entitled to costs. Amnesty International Canada and ESCR-Net's ability to observe the discovery process will not lengthen or complicate the proceeding.

7. The moving parties' proposed order also envisions granting status for any pre-trial motions that dispose of all or some of the issues in this action. The defendant objects to this. However, the objection is misplaced. The purpose of this order is simply to avoid the increased cost and complexity of bringing a fresh motion for intervention status in the event that the parties bring pre-trial motions, like a summary judgment motion, that propose to resolve the issues that Amnesty International Canada and ESCR-Net seek to address at trial.

PART II - SUMMARY OF FACTS

8. This action concerns Canada's obligations under international human rights law. The plaintiff has pleaded, among other things, that Canada is in violation of articles 6 and 26 of the

International Covenant on Civil and Political Rights and that Canada has a duty to ensure that there is an effective remedy for its violations.¹ The defendant has denied these allegations.²

9. The parties have, therefore, joined issue on legal questions resting within Amnesty International Canada and ESCR-Net's well-recognized experience and trusted expertise.³ Collectively, Amnesty International Canada and ESCR-Net participate in dozens of judicial proceedings in Canada and across the world, make submissions to and consult with legislative bodies and international organizations, shape and advocate for new international instruments, generate reports, publications and databases for public learning, and maintain large, international membership bases.⁴

10. Amnesty International Canada and ESCR-Net have closely monitored and participated in this case already. They each submitted legal opinions to the United Nations Human Rights Committee in relation to its consideration of this case.⁵ They then intervened in the defendant's motion to strike the claim before this Court.⁶ In granting leave to intervene in the motion to strike, this Court explained that Amnesty International Canada and ESCR-Net "can usefully assist the court with the nuanced constitutional and international human rights issues that arise",

¹ Fresh as Amended Statement of Claim, paras 35-38, 41-42.

² Statement of Defence, paras 18, 97-102.

³ Affidavit of Ketty Nivyabandi affirmed July 25, 2024, para 17 (noting the dozens of Canadian court decisions citing Amnesty International's reports) ("Nivyabandi Affidavit"); Affidavit of Fernando Ribeiro Delgado affirmed July 29, 2024, paras 10-16 ("Delgado Affidavit").

⁴ Nivyabandi Affidavit, paras 16-29; Delgado Affidavit, paras 7-20.

⁵ Exhibit E to Nivyabandi Affidavit; Exhibit E to Delgado Affidavit.

⁶ Nivyabandi Affidavit, para 19; Delgado Affidavit, para 22.

and that “all judges would benefit from the analyses that these particular interveners can provide.”⁷

11. Amnesty International Canada and ESCR-Net propose to make the same submissions at trial as they made at the motion to strike. Specifically, they intend to provide submissions on the correct interpretation of the *International Covenant on Civil and Political Rights* and the appropriate remedial responses to breaches of the *Covenant* determined in a proceeding under the *Optional Protocol to the International Covenant on Civil and Political Rights*, including the availability of systemic remedies.⁸

12. To assist with their presentation of these arguments, Amnesty International Canada and ESCR-Net seek to make their expertise available to the parties during the discovery phase. This will assist the parties—and, in turn, the Court—with surfacing and understanding the facts relevant to the international human rights law issues in this action. By offering their assistance in this manner, Amnesty International Canada and ESCR-Net seek to facilitate and enrich the Court’s consideration of the complex international human rights law issues raised in this case.⁹

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

13. Several issues in this motion are not in dispute. The parties to this action agree that:

- (a) Amnesty International Canada and ESCR-Net should be granted leave to intervene in this action as a friend of the court under rule 13.02.

⁷ Exhibit A to Nivybandi Affidavit.

⁸ Nivybandi Affidavit, para 35; Delgado Affidavit, para 30; See also Co-Intervenors’ Motion to Strike Factum, Exhibit D to Delgado Affidavit.

⁹ Nivybandi Affidavit, paras 37-38; Delgado Affidavit, paras 32-33.

- (b) Amnesty International Canada and ESCR-Net should be afforded the right to make written and oral submissions at trial. The length of these oral and written submission shall be determined by the trial judge.
- (c) To the extent their role is limited to (a) and (b), that Amnesty International Canada and ESCR-Net shall not seek costs or have costs ordered against them.

14. There are two issues on which the parties do not agree: (a) whether Amnesty International Canada and ESCR-Net can observe the discovery process and, if so, the appropriate order; and (b) whether Amnesty International Canada and ESCR-Net should be afforded intervention status for any pre-trial motions. This factum focuses on these two issues.

15. With respect to the first issue, Amnesty International Canada and ESCR-Net submit that it is appropriate for them to observe the discovery process. There are three ways to reach this conclusion. Each provides an independent path to resolve this motion in their favour:

- (a) This Court can confirm that the deemed undertaking rule does not apply.
- (b) To the extent the deemed undertaking rule applies, the Court can modify it to permit Amnesty International Canada and ESCR-Net to observe the discoveries.
- (c) The ability to observe discoveries can be a term of the intervention order.

16. These submissions add that there is no reason in this case to disturb the general rule that interveners are neither liable for nor entitled to costs.

17. With respect to the second issue, given the parties' agreement that Amnesty International Canada and ESCR-Net should be afforded status under rule 13.02, it would be inefficient to

require Amnesty International Canada and ESCR-Net to make fresh motions for intervener status each time there is a pre-trial motion that proposes to resolve issues that Amnesty International Canada and ESCR-Net would otherwise address at trial.

A. The deemed undertaking rule does not apply

18. The deemed undertaking rule prohibits parties and their lawyers from using information obtained through discovery “for any purposes other than those of the proceeding in which the evidence was obtained.”¹⁰ Discovery information cannot be used for reasons “collateral or ulterior” to the proceeding that it was obtained in.¹¹

19. However, the deemed undertaking rule “does not operate to prevent disclosure to non-parties.”¹² Parties often share information obtained through discovery with experts, potential witnesses, consultants, litigation funders, regulators and “others whose advice is relevant to the carriage of the litigation.”¹³ These are all legitimate actions because they are not “collateral or ulterior” to the proceeding.

¹⁰ *Rules of Civil Procedure*, RRO 1990, Reg 194, r 30.1.01(3).

¹¹ *Juman v Doucette*, [2008 SCC 8](#) at para 26, (emphasis added).

¹² *Seedling Life Science Ventures LLC v Pfizer Canada Inc*, [2017 FC 826](#) at para 32.

¹³ *Seedling Life Science Ventures LLC v Pfizer Canada Inc*, [2017 FC 826](#) at para 32. See, e.g., *Winkler v Lehndorff Management Ltd*, [1998 CarswellOnt 4160](#) at paras 15-18; *Lithwick (In Trust) v Hakim Optical Laboratory Ltd*, [2007 CarswellOnt 7907](#) at para 20; *Abou-Elmaati v Canada (Attorney General)*, [2014 ONSC 6301](#) at paras 1-4, 25-27; *Power v Parsons*, [2018 NLCA 30](#) at paras 17-18; *Sovani v Gray et al*; *Jampolsky v Shattler et al*, [2007 BCSC 403](#) at paras 43-50.

20. Providing this information to non-parties does not undermine the purpose and integrity of the deemed undertaking: when a non-party receives information obtained through discovery, the non-party is automatically bound by the deemed undertaking rule.¹⁴

21. Here, Amnesty International Canada and ESCR-Net seek access to discovery information for reasons exclusively relating to this proceeding. There is no collateral or ulterior purpose. Amnesty International Canada and ESCR-Net will be using the information with the goal of promoting the creation of a robust factual record that will enable them to assist the Court's understanding of this action.¹⁵ They will be bound by the deemed undertaking rule.¹⁶ Information produced in this proceeding will stay in this proceeding. The deemed undertaking rule, therefore, does not apply to prevent their access to the discovery information.

B. This Court should modify the application of the deemed undertaking rule pursuant to rule 30.1.01(8)

22. To whatever extent the deemed undertaking rule applies, rule 30.1.01(8) preserves the Court's discretion to modify its application when the Court is satisfied "that the interest of justice outweighs any prejudice that would result to a party who disclosed evidence."¹⁷ When the Court makes such order, it may also "impose such terms and give such directions as are just."¹⁸

¹⁴ *Canadian National Railway Company v Holmes*, [2014 ONSC 593](#) at paras 26-33, 37; *Winkler v Lehdorff Management Ltd*, [1998 CarswellOnt 4160](#) at paras 15-18; *Live Face on Web, LLC v Soldan Fence and Metals (2009) Ltd*, [2017 FC 858](#) at para 14

¹⁵ Nivyabandi Affidavit, paras 37-38; Delgado Affidavit, para 30.

¹⁶ Nivyabandi Affidavit, para 37; Delgado Affidavit, para 32.

¹⁷ *Rules of Civil Procedure*, RRO 1990, Reg 194, r 30.1.01(8).

¹⁸ *Rules of Civil Procedure*, RRO 1990, Reg 194, r 30.1.01(8).

23. When exercising its discretion under rule 30.1.01(8), the public interest at stake must be weighed against the values protected by the deemed undertaking rule, namely privacy and the efficient conduct of civil litigation.¹⁹

24. Allowing Amnesty International Canada and ESCR-Net to access evidence and information obtained in discovery serves the public interest. The plaintiff's action against Canada has significant legal and policy implications that extend beyond the plaintiff. It builds upon the United Nations Human Rights Committee's conclusion that Canada violated its obligations under the *International Covenant on Civil and Political Rights* by not providing immigrants with irregular status access to essential healthcare, and by drawing a distinction between migrants with regular and irregular status.²⁰ This engages an area within the core expertise of Amnesty International Canada and ESCR-Net: the interpretation of Canadian law as it intersects with international human rights law.²¹

25. Permitting Amnesty International Canada and ESCR-Net to observe the discovery phase and make their expertise available to the parties will allow the Court to continue to tap into this deep expertise as the Court navigates the complex international law issues raised by this action. It will promote the Court's receipt of a robust factual record and enable Amnesty International Canada and ESCR-Net to provide comprehensive legal analysis based on that record. Equipping

¹⁹ *Juman v Doucette*, [2008 SCC 8](#) at para 32.

²⁰ United Nations Human Rights Committee, [Views adopted by the Committee under article 5 \(4\) of the Optional Protocol, concerning communication No. 2348/2014](#), para 12.

²¹ Nivyabandi Affidavit, para 30-35; Delgado Affidavit, paras 21-27.

this Court with a deep factual record and considered legal analysis from expert interveners is in the public interest.

26. By comparison, there will be no prejudice to the parties.

27. The deemed undertaking rule is designed primarily to protect privacy interests. But there is no meaningful privacy interest at stake here. Ordinarily, orders under rule 30.1.01(8) are sought when a party seeks to use information obtained during discoveries for another proceeding or matter. In those cases, the information disclosed is used for purposes collateral to the proceeding and risks becoming more public than the party producing it may ever have intended. Here, Amnesty International Canada and ESCR-Net will be using the information exclusively within the context of the proceeding in which the evidence was obtained. (Indeed, as explained above, it is for this very reason that the deemed undertaking rule does not apply in the first place.)

28. In addition, Amnesty International Canada and ESCR-Net are not seeking to access evidence and information that they would otherwise be prohibited from accessing: (a) the plaintiff has consented to Amnesty International Canada and ESCR-Net's proposed order; and (b) relevant and producible records in Canada's possession are likely accessible by the public under federal access to information legislation.²²

29. Nor will Amnesty International Canada and ESCR-Net's involvement as an observer in the discovery process interfere with the efficiency of this action. Amnesty International Canada

²² *Access to Information Act*, [RSC 1985, c A-1](#)

and ESCR-Net do not propose to ask any questions, raise any objections, or seek any undertakings. They seek only to observe.²³ Amnesty International Canada and ESCR-Net's involvement will, therefore, not increase the length or complexity of the discovery process.

30. In its earlier case conference brief, Canada sought to identify the prejudice or inconvenience flowing from Amnesty International Canada and ESCR-Net's request to observe the discovery process.²⁴ There is no merit to any of these arguments:

- (a) Canada says that the requested order would "create issues with respect to the deemed undertaking." As discussed above, non-parties who receive information produced through the discovery process are bound by the deemed undertaking rule.²⁵ Amnesty International Canada and ESCR-Net have each confirmed that they will honour that undertaking.²⁶
- (b) Canada says that it would "complicate finalizing of the Discovery Plan." This is an unclear and unparticularized concern. Amnesty International Canada and ESCR-Net are not seeking to insert themselves into the discovery plan process. They are not requesting documents.²⁷
- (c) Canada says that it would "create issues with respect to scheduling, leading to delay." Like they did for the motion to strike, Amnesty International Canada and ESCR-Net have committed to "abide by any schedule set out by this Court, or

²³ Nivyabandi Affidavit, para 37; Delgado Affidavit, para 32.

²⁴ Defendant's Case Conference Brief, May 22, 2024, para 23.

²⁵ See paragraph 20 above.

²⁶ Nivyabandi Affidavit, para 37; Delgado Affidavit, para 32.

²⁷ Nivyabandi Affidavit, para 37; Delgado Affidavit, para 32.

agreed to by the parties”—including examinations for discovery—and work together “in the most expeditious and least expensive manner possible.”²⁸

- (d) Canada says that it would “create issues with respect to possible objections and refusals during discovery.” Amnesty International Canada and ESCR-Net have emphasized that they will not request documents, ask or object to questions, or request any undertakings.²⁹

31. Canada has relied on *Livent Inc. v. Drabinsky* to suggest that it is rare for non-parties to obtain relief under rule 30.1.01(8).³⁰

32. This case is inapplicable. In *Drabinsky*, the non-party sought to use discovery information for extraneous purposes in a separate, threatened proceeding in the United States.³¹ Here, in contrast, the discovered documents are being used solely within the four corners of the proceeding in which they were obtained. In addition, Amnesty International Canada and ESCR-Net are not true non-parties—or “strangers”³²—to the litigation: the plaintiff and defendant have agreed that Amnesty International Canada and ESCR-Net should have court-approved status in the proceeding. *Drabinsky* is about preventing non-party strangers swooping into a proceeding, extracting discovery information, and deploying it elsewhere for ulterior purposes. That is not the case here.

²⁸ Nivyabandi Affidavit, para 40; Delgado Affidavit, para 35.

²⁹ Nivyabandi Affidavit, para 37; Delgado Affidavit, para 32.

³⁰ *Livent Inc v Drabinsky* (2001), [53 OR \(3d\) 126](#) (Sup Ct J).

³¹ *Livent Inc v Drabinsky* (2001), [53 OR \(3d\) 126](#) at para 8 (Sup Ct J).

³² *Livent Inc v Drabinsky* (2001), [53 OR \(3d\) 126](#) at para 14 (Sup Ct J), citing John B. Laskin, “The Implied Undertaking in Ontario” (1990) 11 *Advocates Q.* 298 at p. 315.

C. The ability to observe discoveries as a term of the intervention order

33. Putting aside the deemed undertaking rule, this Court has the discretion to order, as term of its intervention order, that Amnesty International Canada and ESCR-Net can observe discoveries. When granting intervention status as a friend of the court under rule 13.02, the Court “can impose terms and enhance the rights of the intervenor beyond simply offering argument.”³³

34. Rule 13.02 envisions intervention “for the purpose of rendering assistance by way of argument.” Providing additional rights—namely, the ability to observe discoveries—will support and enhance the proposed interveners’ ability to render assistance by way of argument for the reasons discussed above.

D. A no costs order is appropriate

35. The “general rule” is that an intervenor is neither liable for nor entitled to costs. This rule applies to all intervenors, including those who intervene as parties, as friends of the court and regardless of whether it is a private or public interest context.³⁴ The general rule will “usually” apply when the intervention is in the public interest.³⁵

³³ Paul M. Perell and John W. Morden, *The Law of Civil Procedure in Ontario*, (5th ed, 2024) at ¶4.443.

³⁴ *Canadian Union of Postal Workers v Her Majesty in Right of Canada*, [2017 ONSC 6503](#) at para 8; *Ogichidaakwe (Grand Chief), et al v Ontario Minister of Energy, et al*, [2015 ONSC 7582](#) at para 8. See also *Keewatin v Ontario (Natural Resources)*, [2012 ONCA 891](#) at para 3

³⁵ *Canadian Union of Postal Workers v Her Majesty in Right of Canada*, [2017 ONSC 6503](#) at para 43. See *Metropolitan Stores (MTS) Ltd v Manitoba Food and Commercial Workers, Local 832 and Labour Board (Man)* (1990), [70 Man R \(2d\) 59](#) at para 11 (QB)

36. There is no reason to disturb the general rule in this case. Amnesty International Canada and ESCR-Net are public interest interveners seeking to assist the Court in unpacking a complex area of law.

37. Amnesty International Canada and ESCR-Net's ability to observe discoveries will not increase the time or expense of the proceeding.³⁶ The parties have exclusive control over what documents to request and what questions to ask.

E. The intervention order should include pre-trial motions

38. The proposed order includes a term granting Amnesty International Canada and ESCR-Net status under rule 13.02 for trial and "any pre-trial motions that are dispositive of some or all of the issues in this action."

39. In a case conference brief filed with the Court, the plaintiff has alluded to the possibility of moving for summary judgment at some point in the action. In anticipation of this, Amnesty International Canada and ESCR-Net seek an order that would give them status at these types of dispositive motions. If the parties agree that Amnesty International Canada and ESCR-Net should be able to make submissions at trial about certain international law rules and principles, it makes little sense to require them to re-apply for intervention status for a summary judgment motion that seeks to make final determinations with respect to those rules and principles.

40. The proposed order preserves the Court's ability to set limits on the oral and written submissions. The scope of the proposed interveners' participation in any pre-trial motion, if any,

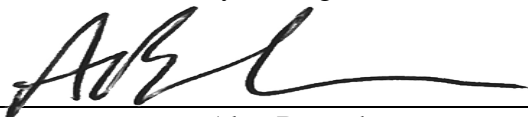
³⁶ *Canadian Union of Postal Workers v Her Majesty in Right of Canada*, [2017 ONSC 6503](#) at para 64.

can be dealt with in summary fashion at a case management conference—avoiding the need for another fresh intervention application. This is the most efficient and practical way of proceeding.

PART IV - ORDER REQUESTED

41. Amnesty International Canada and ESCR-Net request an order:
- (a) granting the moving parties leave to intervene as friends of the Court under rule 13.02 in this action and for any pre-trial motions that are dispositive of some or all of the issues in this action.
 - (b) permitting the moving parties to file a factum at a length to be determined at the discretion of the motions judge or trial judge.
 - (c) permitting the moving parties to present oral argument at a length to be determined at the discretion of the motions judge or trial judge.
 - (d) permitting the moving parties to access documentary discovery produced by the parties and to observe examinations for discovery.
 - (e) not be granted costs, nor costs be ordered against it and
 - (f) such further and other Relief as to this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of August, 2024.



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Amnesty International Canada and International
Network for Economic, Social and Cultural Rights

SCHEDULE “A”

LIST OF AUTHORITIES

Case Law	Pinpoints
1 <i>Abou-Elmaati v Canada (Attorney General)</i> , 2014 ONSC 6301	1-4, 25-27
2 <i>Canadian National Railway Company v Holmes</i> , 2014 ONSC 593	26-33, 37
3 <i>Canadian Union of Postal Workers v Her Majesty in Right of Canada</i> , 2017 ONSC 6503	8, 43, 64
4 <i>Juman v Doucette</i> , 2008 SCC 8	26, 32
5 <i>Keewatin v Ontario (Natural Resources)</i> , 2012 ONCA 891	3
6 <i>Lithwick (In Trust) v Hakim Optical Laboratory Ltd</i> , 2007 CarswellOnt 7907	20
7 <i>Live Face on Web, LLC v Soldan Fence and Metals (2009) Ltd</i> , 2017 FC 858	14
8 <i>Livent Inc v Drabinsky</i> (2001), 53 OR (3d) 126 (Sup Ct J)	8, 14
9 <i>Metropolitan Stores (MTS) Ltd v Manitoba Food and Commercial Workers, Local 832 and Labour Board (Man)</i> (1990), 70 Man R (2d) 59 (QB)	11
10 <i>Ogichidaakwe (Grand Chief), et al v Ontario Minister of Energy, et al</i> , 2015 ONSC 7582	8
11 <i>Power v Parsons</i> , 2018 NLCA 30	17-18
12 <i>Seedling Life Science Ventures LLC v Pfizer Canada Inc</i> , 2017 FC 826	32
13 <i>Sovani v Gray et al; Jampolsky v Shattler et al</i> , 2007 BCSC 403	43-50
14 <i>Winkler v Lehndorff Management Ltd</i> , 1998 CarswellOnt 4160	15-18
Secondary Sources	
15 Paul M. Perell and John W. Morden, The Law of Civil Procedure in Ontario , (5 th ed., 2024) at ¶4.443.	
International Jurisprudence	
16 United Nations Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2348/2014 , (2018) at para 12.	

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

[Rules of Civil Procedure](#), RRO 1990, Reg 194, r 30.1.01(8)

30.1.01 (1) This Rule applies to,

(a) evidence obtained under,

(i) Rule 30 (documentary discovery),

(ii) Rule 31 (examination for discovery),

(iii) Rule 32 (inspection of property),

(iv) Rule 33 (medical examination),

(v) Rule 35 (examination for discovery by written questions); and

(b) information obtained from evidence referred to in clause (a). O. Reg. 61/96, s. 2; O. Reg. 627/98, s. 3.

(2) This Rule does not apply to evidence or information obtained otherwise than under the rules referred to in subrule (1). O. Reg. 61/96, s. 2.

Deemed Undertaking

(3) All parties and their lawyers are deemed to undertake not to use evidence or information to which this Rule applies for any purposes other than those of the proceeding in which the evidence was obtained. O. Reg. 61/96, s. 2; O. Reg. 575/07, s. 4.

Exceptions

(4) Subrule (3) does not prohibit a use to which the person who disclosed the evidence consents. O. Reg. 61/96, s. 2.

(5) Subrule (3) does not prohibit the use, for any purpose, of,

(a) evidence that is filed with the court;

(b) evidence that is given or referred to during a hearing;

(c) information obtained from evidence referred to in clause (a) or (b). O. Reg. 61/96, s. 2.

(6) Subrule (3) does not prohibit the use of evidence obtained in one proceeding, or information obtained from such evidence, to impeach the testimony of a witness in another proceeding. O. Reg. 61/96, s. 2.

(7) Subrule (3) does not prohibit the use of evidence or information in accordance with [subrule 31.11 \(8\)](#) (subsequent action). O. Reg. 61/96, s. 2.

Order that Undertaking does not Apply

(8) If satisfied that the interest of justice outweighs any prejudice that would result to a party who disclosed evidence, the court may order that subrule (3) does not apply to the evidence or to information obtained from it, and may impose such terms and give such directions as are just. O. Reg. 61/96, s. 2; O. Reg. 263/03, s. 3.

TOUSSAINT (ESTATE)
Plaintiff

v. ATTORNEY GENERAL OF CANADA
Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

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