

Serving OTLA members and advocating for access to justice for all Ontarians.



CASE SUMMARIES

August 18, 2014

***Ruse v. Heathcote*, 2014 ONSC 4621**

This is a Plaintiffs' motion seeking leave to amend their statement of claim to add two additional defendant physicians and to substitute a further five physicians for the named defendants Dr. Jane Doe and Dr. Thomas Doe on the basis of misnomer. Five of the seven proposed defendants opposed. This medical negligence action arose out of the care and treatment of Mr. Ruse over the course of two separate admissions to the Toronto Western Hospital in 2008. He was seen and treated by more than a dozen different physicians during his stay. The Plaintiffs retained counsel in June 2009 and provided counsel with a copy of his medical records from Toronto Western Hospital. A statement of claim was prepared and issued on June 11, 2010, naming a few physicians and identifying others using pseudonyms. Plaintiffs' counsel gave evidence that those records were incomplete and that it was also very difficult for the Plaintiffs and their lawyers, as non-physicians, to determine which doctors were responsible for Mr. Ruse's care and treatment. The Plaintiffs' evidence is that they only discovered the other physicians after the existing defendants' defences were delivered and examinations for discovery were conducted in 2013. Master Muir noted that the Plaintiffs did nothing to remedy the situation: a complete version of the hospital records was not requested until September 2011; no efforts were made to issue and serve the statement of claim on an expedited basis and demand defences; and the Plaintiffs did not consult with independent experts to interpret the records. Master Muir

IN THIS ISSUE

CASE SUMMARIES

- *Ruse v. Heathcote*
- *Yetman v. Marzec*

2014 OTLA AWARDS

NEW OTLA MEMBERS

UPCOMING EVENTS

OTLA Webinar

Technology: Taking Your Paperless File from the First Interview to Trial

Thurs., August 28, 2014

Presenter:

Charles Gluckstein

[Register today!](#)

OTLA Webinar

Personal Injury and Bankruptcy: What to do When a Party is Bankrupt

Tues., September 9, 2014

Presenters:

Jeffrey Shinehoft

Sanjeev Mitra

accepted that the threshold on the motion is a low one, but found that a Plaintiff must put forward at least some evidence of the attempts made to obtain information in order to substantiate the assertion that he or she was reasonably diligent. As a result, Master Muir did not grant leave to add the two defendant physicians. Master Muir also concluded that only two of the five defendant physicians to be substituted were proper misnomers given the allegations plead in the statement of claim.

[Read more on CanLII](#)

Yetman v. Marzec, 2014 ONSC 4624

This is a cost decision at the end of a jury trial where the Plaintiff was awarded judgment totalling \$1,031,000. The participants in the trial were the Plaintiff and State Farm, the Statutory Third Party who took an off-coverage position. The Plaintiffs claimed fees of \$421,879.95, disbursements of \$113,050.56, and travel costs for mediation totalling \$5,539.72. Eberhard J. noted the following interesting factors: 1) State Farm asserted insurance limits in the context of a denial of coverage which has not yet been adjudicated; 2) the Plaintiff settled with another party for a \$25,000 contribution towards costs; and 3) there are offers by both parties which were far exceeded the jury award. There were two claimants for the \$200,000 limits and State Farm settled with the other one for half, leaving only \$100,000 for the Plaintiff to access. State Farm offered \$100,000 with costs to be thereafter determined. The Plaintiff subsequently offered \$200,000 plus interest and costs. The last offer to settle before the trial proceeding was made by the Plaintiff at \$101,000 plus interest and costs. Eberhard J. found that the effect of State Farm's failure to accept the low offers of the Plaintiff was that trial was necessary to prove both liability and damages. Eberhard J. held that it would be unjust to allow the Statutory Third Party full litigation rights under the Insurance Act that generated the need for a trial while also excusing them from cost exposure for that trial. Given the circumstances, and State Farm's conduct of trial with respect to liability, the Plaintiff was awarded \$350,000 in fees and \$100,000 in disbursements and travel costs.

[Read more on CanLII](#)

*Summaries provided by **Nga Dang, J.D.**, a lawyer practising with Singer Kwinter Personal Injury Lawyers in Toronto, Ontario.*

Kaitlyn MacDonell

[Register today!](#)

OTLA Webinar

Can the "Business" of Law and Access to Justice Co-exist?

Thurs., Sept. 11, 2014

Presenters:

Steven Kenney

Kathy Chittley-Young

Allen Wynperle

[Register today!](#)

OTLA Fall Conference

Building Blocks of Practice Excellence: A New Look Through Old Windows

Mon., October 20 &

Tues., October 21, 2014

Chairs:

Bill Elkin, Ron Bohm,

Claire Wilkinson, Maia

Bent

Location:

Metro Toronto

Convention Centre

North Building, Level 100

255 Front Street West

Toronto

[Register today!](#)

A Celebration of the Personal Injury Bar Dinner

Honouring Timothy P. Boland and Sheldon A. Gilbert, Q.C.

Fri., November 14, 2014,

6:00 p.m.

Location:

The Ritz-Carlton Hotel

181 Wellington St. West,

Toronto

[Download the registration form.](#)

[More events >](#)

Know of a case that should be included here? Please submit it along with a link to the decision to:
Will Campbell, OTLA Digital Media Coordinator
WCampbell@otla.com.

2014 OTLA Awards: Call for Nominations

Nominations are now open for the 2014 OTLA Awards, which will be presented at the Fall Conference, to be held October 20 & 21, 2014, at the Metro Toronto Convention Centre. Nominations are due by **12 noon Friday, September 12, 2014** for the following awards:

- H. Bruce T. Hillyer Award
- John A. McLeish Award
- Dean Edgell Award
- Distinguished Service Award
- Outstanding Young Lawyer Award
- Women's Caucus Award

[Nominate an OTLA Lawyer member for an award today!](#)

You can also nominate an OTLA Law Clerk member for the Outstanding Law Clerk award.

[Nominate an OTLA Law Clerk member for the Outstanding Law Clerk award today!](#)

If you have any questions about the awards or the nomination process, please contact Sarah Sinasac at ssinasac@otla.com or 905-639-6852.

Welcome to our New Members!

Welcome to the newest OTLA members!

Elizabeth Abraham, *Hamilton*
Kamila Podbielski, *Toronto*
Megan Self, *Toronto*



McKellar STRUCTURED
SETTLEMENTS

The Ontario Trial Lawyers Update weekly e-newsletter is brought to you by [McKellar Structured Settlements](#).

You are receiving this e-newsletter as a service of your membership with Ontario Trial Lawyers Association or because you have subscribed to this service. [Read our Privacy Policy](#). You are encouraged to [send us your comments](#) about this e-newsletter. Past editions of the Ontario Trial Lawyers Update e-newsletter are [archived on the OTLA website](#) (members only).

Published by Ontario Trial Lawyers Association

The Ontario Trial Lawyers Association (OTLA) is an association of lawyers acting for plaintiffs, with 1,500 members across the province and the country. OTLA is comprised of lawyers, law clerks, articling students and law students from Ontario. Together, we work in our local communities to ensure equal access to justice, full and fair protection of the rights of those who have suffered injury, and the safety of all. Learn more at www.otla.com.