

SUPERIOR COURT OF JUSTICE - ONTARIO

Proceeding under the *Class Proceedings Act, 1992*

RE: JUDITH LOGAN v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AS REPRESENTED BY THE MINISTER OF HEALTH, THE ATTORNEY
GENERAL FOR CANADA, REGULATORY INSTITUTION 1,
REGULATORY INSTITUTION 2, JOHN DOE and JANE ROE

BEFORE: MASTER MACLEOD, by motion in writing

COUNSEL: Christopher A. Amerasinghe, for the Defendants, moving parties

John Legge, for the Plaintiff, Responding Party

James Newland, for the Ontario Health Insurance Plan

ENDORSEMENT

[1] This is a proposed class proceeding which is being case managed by Winkler J. There are a number of motions pending including a certification motion and a motion to amend the pleadings and add a plaintiff. In the context of cross examinations relating to the "amend pleadings, add plaintiff" motion, a number of refusals arose and by direction of the case management judge, the refusals motion was to proceed in writing.

[2] The motion has been adjourned before me by the case management judge. On or about July 9th, 2001 I attempted to convene a telephone conference with all counsel to discuss the matter but this proved impractical as both Mr. Legge and Mr. Newland were on vacation. In any event, Mr. Amerasinghe advised my Registrar that it was the request of Her Majesty that any conference take place by attendance in the presence of a reporter. Accordingly, I have proceeded to dispose of the matter solely on the basis of the written submissions filed with Winkler, J. and for contextual purposes, review of the materials filed on the main motions.

Background

[3] The plaintiff moves to add Wendy Bulloch-MacIntosh as a representative co-plaintiff. The defendants oppose this motion as improper and abusive. They contend that material previously filed discloses a breach of the deemed undertaking rule and joinder of Ms. Bulloch-MacIntosh as a plaintiff would be simply an improper mechanism to circumvent the rule.

[4] The proposed class action arises as a result of damages allegedly suffered by various persons as a result of implantation of temporomandibular joint ("TMJ") medical devices. The cause of action arises by virtue of alleged breach of the duty to ensure the safety of all medical devices used in Canada and for certain alleged breaches of the Canadian Charter of Rights and Freedoms.

[5] The class action was originally constituted with Judith Logan as the proposed representative plaintiff. Ms. Logan received a TMJ implant in Hamilton, Ontario in March of 1984. The plaintiff now wishes to add Wendy Bulloch-MacIntosh as a representative co-plaintiff. Ms. Bulloch-MacIntosh received a TMJ implant in Montreal, Quebec in August of 1997. Both women reside in Ontario.

[6] There was a previous class proceeding arising out of the use of the TMJ implants against *Lu Corporation Instrumentarium Inc.* That class proceeding was settled. There have also been numerous individual actions launched. These include individual actions launched by both of these plaintiffs as well as by other members of the proposed class. Although the defendants are not identical, it is my understanding that the individual actions would be stayed in respect of the named plaintiffs if certification is granted. Other members of the class would have the option of having their rights determined by the class action or opting out of the class as provided in the *Class Proceedings Act, 1992*.

[7] The significant fact is that Her Majesty is a third party in the Logan and Bulloch-MacIntosh individual actions as described in paragraph 1 of the affidavit of Grace Tsang. Legge & Legge are counsel for the plaintiffs in those individual actions as well as in the proposed class action. In the Logan individual action, which was commenced in 1994, and the Bulloch-MacIntosh individual action, which was commenced in 1996, discoveries have taken place. Her Majesty has only been examined in the Bulloch-MacIntosh individual action.

[8] It appears that evidence from the discoveries in the Bulloch-MacIntosh individual action will be required for use in the proposed class action. Relief from the deemed undertaking rule is accordingly sought by the plaintiff in the certification motion. The first motion, however, will be that in which the plaintiff seeks to add Ms. Bulloch-MacIntosh as a representative co-plaintiff.

[9] It is the position of Her Majesty that the deemed undertaking rule has already been breached. It is argued that information from the discovery has already been communicated to Ms. Logan for the purposes of the class action and that evidence from the discoveries improperly forms part of the material used on the motion for certification.

[10] The situation is complicated by an agreement apparently reached whereby Her Majesty has agreed that productions from the Bulloch-MacIntosh individual action will be produced in the proposed class action. It is apparently contended by counsel for the plaintiff that Her Majesty also agreed the affidavits and discovery transcripts could be used. I gather that any such agreement is denied and it is this misunderstanding about the nature of the agreement which has caused Her Majesty to insist that all communication between counsel be "on the record".

[11] Mr. Legge now purports to withdraw the original certification motion record of some 17 volumes. He relies on a more succinct amended record which, it is argued, contains no

- j) Counsel for Her Majesty brought a motion on June 4, 2001 to stay this action. That motion relies *inter alia* upon the affidavits and transcripts of cross examination which are before me on this motion.

The refusals motion

[13] The purpose of the affidavits at the time of the cross examinations was for use in the "add plaintiff, amend pleadings" motion. It is in that context that I must examine the refusals. I am not dealing with relevance on the stay proceedings motion or the certification motion.

[14] I wish to be clear that it does not fall to me on this motion to determine whether or not there has been a breach of the deemed undertaking rule. Nor am I asked to determine whether there has been an agreement which waives the deemed undertaking rule, whether, as contended by the plaintiff, most of the material has been introduced in evidence thus avoiding the rule, or whether this is an appropriate action for certification and relief from the rule. Nor am I concerned with the motion to stay. My task at present is to rule only on the propriety of the questions which were refused. While this does not require a ruling on the merits of the motion, it does require understanding of the issues to be argued. Only in that way can I rule on what will be relevant when the "add plaintiff / amend pleadings" motion is argued.

[15] The motion before me arises from refusals on four cross examinations. The examinations were of the plaintiff, the proposed co-plaintiff, Grace Tsang and Cameron Pallett. Ms. Tsang, who a solicitor in Mr. Legge's office, swore the affidavit in support of the amended certification motion. As is the case with this affidavit, others of the affidavits were originally sworn in support of different motions but will be used on the "amend pleadings / add plaintiff" motion. Ms. Tsang also swore the affidavit in support of the "amend pleadings / add plaintiff" motion.

[16] The test of relevance on cross examination for use on a motion is the same as on discovery, "semblance of relevance". The measure of relevance, however, is what is relevant on the motion and not in the action as a whole. Relevance is further defined by the affidavit material. If a fact is deposed in an affidavit rendered for use on the motion, the deponent may be cross examined on that fact. The affidavit, however, does not limit the scope of relevance. A deponent may be examined on facts relevant to the motion in his or her knowledge even if they are not in his or her affidavit. On the other hand, just because a fact is deposed in one party's affidavit does not permit that party to cross examine the other on the fact if it is not otherwise relevant. Questions may also be asked to test the credibility of the facts deposed or the answers given although questions otherwise irrelevant which are directed solely at credibility are improper. See *BASF Canada Inc. v. Max Auto Supply (1986) Inc.* [1998] O.J. No. 3676; (1998) 75 O.T.C. 58 (Master).

[17] A simplified version of these rules is as follows:

- If you put it in, you admit its relevance and can be cross examined on it - at least within the four corners of the affidavit;
- You can't avoid cross examination on a relevant issue by leaving it out;

- You can't get the right to cross examine on an irrelevant issue by putting it in your own affidavit; and,
- You can be cross examined on the truth of facts deposed or answers given but not on irrelevant issues directed solely at credibility.

[18] Many of the contested refusals turn on the question of whether or not the plaintiff's motive in seeking to be added as a representative plaintiff is relevant. This in turn hinges on whether or not the question of breach of the deemed undertaking rule is relevant. Her Majesty takes the position that it is indeed relevant because it is clear the rule was breached. Specifically, it is said, when Logan and her counsel sought to introduce the "protected evidence from the Bullock-MacIntosh action, they had breached the rule because they had clothed Judith Logan with knowledge of that protected evidence unlawfully and were using that evidence and information in another action unlawfully". In the submission of counsel for Her Majesty, the motion to add a co-plaintiff should be denied because it is an attempt to "cure" this breach and find a way around the rule after the fact.

[19] Mr. Legge contends that the motives of the plaintiff in bringing the "add plaintiff / amend pleadings" motion are not relevant. He also argues that as he has withdrawn the original affidavits on the certification motion, the question of breach of Rule 30.1 or relief from Rule 30.1 is not relevant on the "add plaintiff / amend pleadings" motion. There is now Her Majesty's motion to stay the action and there is the plaintiff's motion for certification and relief from Rule 30.1. It is contended that when those motions are argued will be the proper forum to determine if and to what degree the deemed undertaking was breached and for the court to determine if justice requires that the breach should be either forgiven or punished

[20] Answering that question may require reconciliation between the the policy reasons underlying the deemed undertaking rule as enunciated in *Goodman v. Rossi* (1995) 24 O.R. (3d) 359 (C.A.) and the policy to facilitate class actions in appropriate cases as contained in the *Class Proceedings Act, 1992*. It is far from clear that the rule should operate to prevent two individual plaintiffs represented by the same counsel from comparing notes in order to determine if a class action is a more efficient method of proceeding. I note that the Rules are a lower order of legislation than the statute and in any event Rule 30.1.01 (8) specifically empowers the court to relieve from the deemed undertaking rule to effect justice. In so doing the court may also impose terms and give directions.

[21] It is possible that Mr. Legge will be successful in arguing that Her Majesty's arguments are extreme and should not win the day. The evil which the deemed undertaking rule seeks to address is improper use of information and evidence which the party which owns the information was forced to disclose; information which would not have seen the light of day but for the action in which it was produced. The rule is not designed to create procedural complications to suppress the truth and prevent justice from being done. In saying this I do not downplay for one moment the serious obligation imposed on clients and counsel by the deemed undertaking rule. *Goodman v. Rossi* makes it clear that even in the absence of the specific rule enacted later, there is a common law obligation to use production and discovery only for their proper purpose. The companion decision, *Orfus Realty v. D.G. Jewellery of Canada Ltd.* (1995) 24 O.R. (3d) 379

(CA) is even more specific in finding the use of discovery evidence for a collateral or ulterior purpose to constitute contempt of court.¹

[22] Whatever the ultimate fate of the arguments, the conclusion that this question is in issue on this motion is inescapable. Rule 5.04 (2), which deals with addition of a party, uses discretionary language while the similar language of Rule 26.01, which deals with amendments to pleadings, is mandatory. Under either rule, the court may refuse amendments if the defendant will be prejudiced in a manner which can not be compensated in costs. Under either rule, it is open to a party to argue that the amendment is an abuse of process and should be refused. This is the road down which Her Majesty appears eager to travel and accordingly the questions going to motive and breach of the deemed undertaking rule are relevant.

[23] Relevance is only one part of the test. The second is whether or not the question is a proper one. A question may also be objected to on the basis of solicitor client privilege or litigation privilege.

[24] There is authority that privilege may not stand as a mechanism to screen improper conduct from the court. Thus communication between a lawyer and a client which is itself a criminal or quasi-criminal act can not be protected by privilege. See *Descoteaux et. al. v. Mierzwinski et. al.* (1982) 141 D.L.R. (3d) 590 (SCC). Contempt of court is criminal in nature and accordingly communication breaching the deemed undertaking rule which constitutes evidence of contempt may lose its privileged character. This is far, however, from saying that every communication in connection with the deemed undertaking is exposed to scrutiny.² Indeed, both *Descoteaux* and the more recent decision of the full court in *R. v. McClure* (2001) 195 D.L.R. (4th) 513 (SCC) which deals with exculpatory evidence, make clear that solicitor-client privilege should only yield if there is no other way to obtain the information.

[25] Rule 30.1 must, in any event, be read closely as there are exceptions in subrules (2), (4), (5), (6) and (7). As an example, one of those exceptions is to impeach a witness in another proceeding. Accordingly, it can not be improper to communicate information to co-operating counsel provided he or she also undertakes to be bound by the deemed undertaking. In this regard see *Holmstead & Watson, Ontario Civil Procedure* at p.30.1-6 "it can be argued that lawyer A may reveal the information to lawyer B on obtaining an undertaking that he or she will only use the information for the purpose of impeachment". I cite this simply to demonstrate that there are legitimate purposes for disclosure of discovery evidence or information. For the purpose of this motion, therefore, solicitor client privilege may be penetrated if the question is

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¹ I do not read the case law to suggest that contempt is automatic or that the court may impose contempt consequences without a formal finding. The court may impose consequences for breach of the rule or restrain breaches of the rule, however, without finding a party in contempt.

² I observe there is also the question of the effect of Section 11 (c) of *The Charter of Rights* and of s 9 (2) of the *Ontario Evidence Act* which may conceivably be engaged if a contempt proceeding is contemplated. In that regard, it should be noted that Her Majesty asserts the alleged breach of the deemed undertaking rule is contempt of court but has not specifically sought a finding of contempt or a punitive remedy.

the only way to determine whether or not the rule was breached in relation to Ms. Logan but privilege is not swept away altogether.

[26] I recognize that litigation privilege is different in nature than solicitor client privilege as it is specific to the litigation for which the material was prepared. *General Accident Assurance Co. v. Chrusz* 45 O.R. (3d) 321 (CA) deals in detail with the distinction and clarifies the application of the "dominant purpose" test as the appropriate test for this species of privilege in Ontario. What is clearly protected by litigation privilege, however, is material prepared for the dominant purpose of this litigation which would tend to reveal the litigation strategy of the plaintiff and her counsel. The policy rationale for this privilege, which is seen by the Court of Appeal as a limited exception to full disclosure, is to protect the proper functioning of the adversary system. It follows that questions directed to litigation strategy are generally improper because, if not covered by the ambit of solicitor client privilege, they are either irrelevant to the merits of the motion, are protected by litigation privilege or should not be ordered answered in the exercise of the court's discretion for the policy reasons underlying litigation privilege. Again, the rationale in *Descoteaux* would suggest that litigation privilege can not be used to shield an illegal act and must yield if there is no other way to get at the crucial evidence.

[27] In deciding this motion, it must be recalled what Her Majesty alleges. It is contended the deemed undertaking rule has been breached and the amendments are sought for an improper purpose. In that context, direct questions about whether or not the solicitor explained the deemed undertaking rule, what information the client was provided concerning the discovery evidence of the proposed co-plaintiff, and whether or not the addition of the proposed co-plaintiff is a means to cure a breach of the deemed undertaking must be regarded as relevant and proper. Once the questions stray away from these core issues, privilege should be jealously guarded.

[28] Care must also be exercised because it is not necessarily improper merely to communicate information obtained on discovery. What is prohibited is use of that information or evidence for an improper purpose. Questions about communication of discovery information to other counsel in other actions might have to be answered in the context of a contempt proceeding if it is alleged that improper use was made of that information but such communication does not appear relevant on this motion. It is not alleged on the "add plaintiff, amend pleadings motion" that the amendment should be denied because Mr. Legge has discussed the proposed class action with other counsel in other provinces.

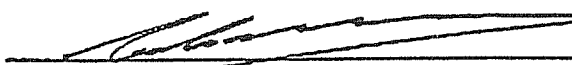
The specific questions

[29] Applying the tests as set out above and reviewing the Schedules submitted by counsel for Her Majesty, my specific rulings on the questions in dispute are set out in schedules to these reasons. I order the questions answered as set out in the charts attached subject to the caveat set out below.

[30] I note that the objection to certain of the questions was that the question was previously asked and answered. If that is the case and the answer can be located in the transcript, it need not be answered a second time.

Costs of this motion

[31] Because of the overlapping materials for the various motions, it is difficult to deal with the question of costs of this motion in isolation. Success has been somewhat divided. It appears appropriate to reserve the costs of this motion in writing to the judge hearing the "add plaintiff / amend pleadings motion" and it is so ordered.


Case Management Master Calum MacLeod

DATE: July 25, 2001

Schedule 1 - Refusals of Judith Logan		
Question numbers:	Reasons	Result
43 - 45	These questions seek the plaintiff's view whether or not the device implanted in her jaw was illegal. The plaintiff's view on that point may be relevant in the action but the merits of Ms. Logan's claim do not appear relevant to the issues to be decided on the "amend pleadings / add plaintiff" motion. It is true that by virtue of the affidavit originally sworn for the certification motion, there are facts relating to the merits of the claim in the material before the court but these questions appear to go beyond the four corners of the affidavit	Need not be answered
56	This question asks why Ms. Logan commenced the class action. Ms. Logan's motives in commencing the action in the first instance are not in issue. If the question underlying this is whether or not she was motivated by information arising from Ms. Bulloch-MacIntosh's discovery, that question would only be proper if put directly.	Need not be answered
75	This question asks Ms. Logan to confirm that the only parties left to discover in her individual action are a hospital and HMQ. There is at least a semblance of relevance to the fact that HMQ has not yet been examined in that action. The interrelationship between the individual and class actions appears to be in issue.	To be answered
76	This question asks whether or not it was Mr. Legge's idea to commence the class action. This goes directly to the legal advice given to the plaintiff and is privileged.	Need not be answered
79	This question asks why the plaintiff would want to have two lawsuits going - one against HMQ and one against other defendants ? The question of why the plaintiff chose to proceed with separate actions is not relevant. See question 56.	Need not be answered
84	This question asks if the plaintiff is relying on a particular affidavit on this motion. The responding party is entitled to know what evidence is being relied upon.	To be answered
85-87	The plaintiff is asked when she instructed Mr. Legge to bring this action? The theory of HMQ is that the class	To be answered

	action was only contemplated in response to information and evidence obtained on the discovery of HMQ in the Bulloch-MacIntosh individual action. There is a semblance of relevance to the timing.	
88	The question as to whether counsel suggested this motion be brought is clearly privileged as it asks for legal advice given to the plaintiff. In any event, there is a case conference transcript which appears to indicate the genesis of the motion and it is not necessary to pierce privilege to get this information.	Need not be answered
89	The plaintiff is asked if Mr. Legge suggested this motion in or about December 2000. The nature of the advice is privileged, the timing is not.	To be answered.
90	The decisions taken by the client and counsel about whether or not to do fresh affidavits have no semblance of relevance and are clearly privileged	Need not be answered
91	The question was to confirm that it was not Ms. Logan's idea to add the proposed co-plaintiff to the action. There is a semblance of relevance to this question. One of the objections to the question was that it had already been answered. If this is the case and the answer can be found in the transcript, it need not be answered a second time.	To be answered
94-97	This is a direct question whether or not the plaintiff has ever discussed with Mr. Legge or his staff the productions and materials produced by HMQ in the individual action.	To be answered
113	This question asks if Mr. Legge had the plaintiff's instructions to bring this action. Rule 15.02 provides a mechanism for this information to be obtained. There is no reason to ask this of the client on cross examination.	Need not be answered
121	This question asks for the identity of a person named Kathy in Alberta. Since this fact is contained in her affidavit, it is a proper question.	To be answered
128	This asks for Robin Gardner's address. There is no requirement to provide the address of witnesses who are not relevant to the motion	Need not be answered
152	This question is really a challenge as to whether or not the plaintiff is qualified to comment on the cause of an adverse	Need not be answered

	reaction. This may be relevant on the certification motion but is not for the purpose of this motion.	
154, 155, 159, 160, 176 and 177	These questions are really cross examination on the merits of the proceeding. Although the basis for the claim is set out in one of the affidavits, it is not argued as a basis for resisting the amendments that there is no merit to the claim. In the circumstances of these affidavits, questions may be asked about the witnesses' knowledge of allegations in the affidavit but not about knowledge outside of those facts which may only be relevant to a defence.	Need not be answered
184	This asks what Ms. Logan knows about the productions and discoveries of the proposed co-plaintiff's individual action.	To be answered
187 & 189	Q. 187 asks if Ms. Logan instructed counsel concerning paragraph 18 (a) of her affidavit. It is clear from the transcript that the question is directing at determining if the plaintiff instructed Mr. Legge to collaborate with counsel in other provinces in establishing a national class. The instructions given by the plaintiff are privileged and have no relevance to the pleading motion. The same question is asked directly at 189	Need not be answered
188	Whether or not Ms. Logan instructed Mr. Legge to use the impugned productions in this action is relevant.	To be answered
191, 192, 193, 194, 195 and 196	These are all questions directed at the instructions and strategy to be pursued in the class action as it relates to counsel in other jurisdictions. This information is both privileged and irrelevant to this motion.	Need not be answered
197, 198	These questions ask if the plaintiff told Mr. Legge to discuss the two individual actions with counsel in other jurisdictions. Whether or not these instructions were given is not relevant.	Need not be answered
200 -201	Whether or not the plaintiff knows that Mr. Legge withdrew certain materials from the certification affidavit is not in issue.	Need not be answered
203, 204 - 205	Why the plaintiff seeks leave to use the affidavit of documents in her individual action in the class action has a semblance of relevance although it will be more relevant when the question of relief from the rule is argued. Whether or not the sole rationale for the addition of a	To be answered

	plaintiff and the pleading amendments is to use information and evidence from the individual actions is relevant	
206, 208	These ask when she instructed counsel to bring this motion and whether she instructed her counsel to bring a motion for relief from Rule 30.1. These questions are unfair as they presuppose specific instructions for each step in the proceeding and for the timing of each step. The timing of the respective motions is apparent from the chronology. The case conferences also have dealt with contemplated motions.	Need not be answered
214	This questions ask why the plaintiff wishes to start a class action when there is an individual action. This is an improper question and is not relevant.	Need not be answered
215	The question why she wants to complicate the class action by adding a co-plaintiff is relevant to the assertion that the only reason for bringing the motion is to get around Rule 30.1.	To be answered

Schedule 2 - Refusals of Wendy Bulloch-MacIntosh		
Question numbers:	Reasons	Result
36	The question whether or not the silastic implants removed by Dr. Piper were intact goes to the merits of the action. No argument is advanced that the proposed co-plaintiff and amendments do not make out a tenable plea.	Need not be answered
38, 39, 40, 44 and 46	These are all questions about mediation in Ms. Bulloch-MacIntosh's individual action. There is no relevance to the mediation and in any event mediation and settlement offers are cloaked with their own privilege.	Need not be answered
78 - 79, 94	Whether or not the proposed co-plaintiff wished to join the class action if certified and advised her solicitor of this appears to have a semblance of relevance to this motion.	To be answered
103, 109, 165	Whether this witness authorized use of the productions and affidavits of documents in the individual action in this action is relevant to whether or not the deemed undertaking rule was breached.	To be answered
110	Discussions concerning the significance of productions in the individual action are privileged.	Need not be answered
135, 137	These questions ask the proposed plaintiff to justify why she prefers to abandon the individual action in favour of the class action. This question is not a proper one.	Need not be answered.

Schedule 2 - Refusals of Wendy Bulloch-MacIntosh		
Question numbers:	Reasons	Result
36	The question whether or not the silastic implants removed by Dr. Piper were intact goes to the merits of the action. No argument is advanced that the proposed co-plaintiff and amendments do not make out a tenable plea.	Need not be answered
38, 39, 40, 44 and 46	These are all questions about mediation in Ms. Bulloch-MacIntosh's individual action. There is no relevance to the mediation and in any event mediation and settlement offers are cloaked with their own privilege.	Need not be answered
78 - 79, 94	Whether or not the proposed co-plaintiff wished to join the class action if certified and advised her solicitor of this appears to have a semblance of relevance to this motion.	To be answered
103, 109, 165	Whether this witness authorized use of the productions and affidavits of documents in the individual action in this action is relevant to whether or not the deemed undertaking rule was breached.	To be answered
110	Discussions concerning the significance of productions in the individual action are privileged.	Need not be answered
135, 137	These questions ask the proposed plaintiff to justify why she prefers to abandon the individual action in favour of the class action. This question is not a proper one.	Need not be answered.

Schedule 3 - Refusals of Grace Tsang		
Question numbers:	Reasons	Result
29-33, 86-87, 88-93, 94, 95, 96, 97	These questions seek information from Ms. Tang as to how she was instructed by Mr. Legge, discussions she had with Mr. Legge, and her knowledge as to the litigation strategy in connection with the proposed class action.	Need not be answered
110, 112, 113	There may be a semblance of relevance to the timing of the decision to commence a class action.	To be answered
121, 122-123	These are background questions as to whether or not Ms. Tsang is familiar with the facts behind the development of the three actions. Whether or not she has this knowledge may be answered without disclosing the knowledge itself.	To be answered
130, 131, 132, 133, 134 and 135	These are questions central to the contention that the deemed undertaking has been breached and that curing the breach is the motivation behind this motion. Since Ms. Tsang is the affiant, these questions must be answered.	To be answered
137, 138, 139, 140, 141, 142 (part 1)	These questions all relate to the extent to which Mr. Legge is collaborating with counsel in other jurisdictions. Two of the questions ask whether information from the individual actions or production from those actions was shared with those counsel. I do not consider that suggestion to be one in issue on this motion. The other questions in this category are irrelevant to the motion and privileged in any event.	Need not be answered
142 (Part 2), 143	This question asks if information from the individual action has been shared with Mr. Newland, counsel for OHIP in the proposed class action. There is a semblance of relevance to this question	To be answered
145, 146, 151, 194, 1197, 246, 248 and 249	These questions are central to establishing if there are ongoing breaches of the deemed undertaking rule.	To be answered
195, 198, 227, 244-245, 247, 250, 251, 251, 253 & 255	These questions deal mostly with litigation strategy and decisions made by counsel or with communications between counsel. They are privileged and most are irrelevant. There is no justification for ordering these questions answered.	Need not be answered.

Schedule 4 - Refusals of Cameron Pallett		
Question numbers:	Reasons	Result
13-14, 21	These questions are not relevant	Need not be answered
23	This question deems the same questions to be asked and refused as were asked to Ms. Tsang. Accordingly the same rulings would apply.	To be answered in accordance with Schedule 3
71-72, 73, 75, 76, 77, 78, 79, 80, 81	These questions relate to the medical expertise and background of Mr. Pallett and who is doing what in the class action. The questions are not relevant to the motion.	Need not be answered
103	Whether or not Mr. Pallett was a party to a discussion between Mr. Legge and Mr. Newland about joining the proposed co-plaintiff to the class action before the original statement of claim was issued may be relevant to timing and bona fides of the motion.	To be answered
106, 107, 119, 120, 121, 122, 123, 124 & 125	These are questions asking about meetings with counsel in other jurisdictions and information from the individual actions conveyed to them. This is not relevant to this motion as constituted.	Need not be answered
115, 113	These are questions going to the merits of Ms. Logan's claim which may be relevant to the certification motion but not to this motion.	Need not be answered