

Robert M. Hall
Justice

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

Citation: *Szeto v. Field* 2009NLTD8

Date: 20090123

Docket: 200701T1603

BETWEEN: **POH GIN SZETO** FIRST PLAINTIFF
AND: **CHRISTOPHER SZETO** SECOND PLAINTIFF
AND: **GERALD DWYER** FIRST DEFENDANT
AND: **MAUREEN DWYER** SECOND DEFENDANT
AND: **WINNIFRED FIELD** THIRD DEFENDANT

Before: The Honourable Mr. Justice Robert M. Hall

Place of hearing: St. John's, Newfoundland and Labrador

Heard: December 10, 2008

Appearances:

Chesley F. Crosbie, Q.C. Counsel for
First and Second Plaintiffs/Respondents

Rebekah J. Slein Counsel for Third Defendant/Applicant



relevant provisions of Rule 31 of the Rules relating to interrogatories are as follows:

Interrogatories to parties or persons

31.01. (1) A party may serve upon an adverse party written interrogatories in Form 31.01A to be answered by the adverse party, or if the adverse party is a body corporate, partnership or association, by an officer or agent thereof, and subject to rule 31.03, the adverse party, officer or agent shall answer each interrogatory to the best of his or her personal knowledge or from information available to him or her through any person.

(2) A party may serve upon any person who is not a party, interrogatories to be answered by that person, or if that person is a body corporate, partnership or association, by an officer or agent thereof, and subject to rule 31.03, the person shall answer each interrogatory to the best of his or her personal knowledge and, if necessary, by adding any explanatory information, provided the party shall serve a copy of the interrogatories and answers upon any adverse party forthwith upon receipt of the same.

Form, number, etc. of interrogatories

31.02. (1) Interrogatories shall relate to the same matters as may be dealt with by an examination for discovery under rule 30.08.

(2) Unless the Court otherwise orders to protect a party or person interrogated from annoyance, expense, embarrassment or oppression, the number of interrogatories or sets of interrogatories to be served is not limited.

(3) ...

(4) ...

Answer to interrogatories

31.03. (1) ...

(2) An objection to answering any interrogatory may only be taken on the ground of privilege or that it is not relevant to the subject matter involved in the proceeding, but not that it is outside of the scope of the pleadings, and the objection shall be made in the affidavit in answer.



[2] It is to be noted that paragraph 31.02.(1) provides that interrogatories shall “relate” to the same matters as may be dealt with by an examination for discovery under Rule 30.08. Rule 30.08, being one of the rules dealing with examination for discovery, states as follows:

Scope of Examination

30.08. (1) Unless it is otherwise ordered, a person, being examined upon an examination for discovery, shall answer any question within that person's knowledge or means of knowledge regarding any matter, not privileged, that is relevant to the subject matter of the proceeding, even though it is not within the scope of the pleadings.

(2) In order to comply with rule 30.08(1), the person being examined may be required to inform himself or herself and the examination may be adjourned for that purpose.

(3) When any person examined for discovery omits to answer or answers insufficiently, the Court may grant an order requiring that person to answer or to answer further and give such other directions as are just.

RESPONDENTS' OBJECTION TO ANSWERING INTERROGATORIES

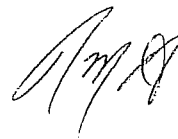
[3] The Respondents request that the order sought be refused on the grounds of relevance and oppression. As part of the oppression submission, the Respondents submit that the Rules of the Supreme Court posit a hierarchy of scope for document discovery, oral discovery and interrogatories, and that the broadest in scope is the document discovery rule and the least broad is the rule relating to written interrogatories. In support of this argument, the Respondents indicate that Rule 30.01.(1) of the oral discovery rules provides for oral examination “regarding any matter, not privileged, that is relevant to the subject matter of the proceeding.” The Respondents further point out that Rule 30.08.(1) provides that the person being examined shall answer any question “within that person’s knowledge or means of knowledge regarding any matter, not privileged, that is relevant to the subject matter of the proceeding, even though it is not within the scope of the pleadings.”



[4] By contrast, the Respondents point out that Rule 31.01.(1) of the Rules relating to interrogatories states that an adverse party upon whom an interrogatory is served “shall answer each interrogatory to the best of his or her personal knowledge or from information available to him or her through any person.” The Respondents further indicate Rule 31.03.(2) provides that relevance to the subject matter is the test of validity of objections, along with privilege.

[5] Counsel for the Respondents indicates that the interrogatories rule in section 31.02.(2) gives the Court power to protect a party or person interrogated from annoyance, expense, embarrassment or oppression but that, unless so ordered, the number of interrogatories or sets of interrogatories is not to be limited. Counsel argues that the principles applicable to whether interrogatories come within these limiting provisions include:

- a) That answering interrogatories is time-consuming and expensive (see *Kelly v. Burns Estate*, [1999] Carswell NS 138 para. 8);
- b) That interrogatories are not a substitute for oral discovery;
- c) That interrogatories are not to take the place of investigations;
- d) That if the question would not be put to a witness on oral discovery or trial, it is likely not appropriate for interrogatories (see *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2008 Carswell NS 90 para. 5); and
- e) That there is a presumption of irrelevance which applies to documents relating to pre-motor vehicle accident discovery and that there is a similar presumption of irrelevance for interrogatories which seek pre-accident information. Counsel submits that if the submission is accepted, that interrogatories are the least broad of the three modes of discovery (the other two being documented and oral discovery), then the presumption of irrelevance is even stronger. He cites in support of this *Kulpinski v. Toronto Transit Commission*, 2000 CarswellOnt 194 at paragraph 34 where the Court stated:



The cumulative effect of these decisions is that in respect of documentary discovery in a personal injury claim a plaintiff is obliged, subject to any claims of privilege, not only to produce the medical documentation in his possession having a semblance of relevance to the physical condition put in issue in the action but also to authorize and request his doctors to produce his post-injury treatment notes and records. In respect of pre-accident treatment notes and records, the onus is on the defendants to show relevancy, again subject to any claims of privilege, and if shown the plaintiffs obligation would again be to authorize and request the pre-accident treatment notes and records.

[6] I can see nothing in the wording of Rules 30, 31 or 32 which indicates the hierarchy of scope postulated by the Respondents. Rule 31.02.(1) provides that the interrogatories posed "... shall relate to the same matters as may be dealt with by an examination for discovery under rule 30.08."

The *Concise Oxford Dictionary, Seventh Edition*, Oxford University Press, 1987 defines "relate" as "bring into relation (to, with) allied, connected, have reference to, stand in some relation to ...".

The same work defines "relation" as including "what one ... thing has to do with another" or "way in which one stands or is related to another...".

Rule 30.08.(1) dealing with oral discovery requires that one may be examined on anything "... relevant to the subject matter of the proceeding".

The Oxford Dictionary defines "relevant" as "bearing on or pertinent to the matter on hand".

I must therefore conclude that an interrogatory under Rule 31 must "relate" (i.e., be allied with, connected to, have reference to, etc.) those things described in Rule



30.08.(1), i.e., anything "... relevant to the subject of the proceeding" (i.e., anything "bearing on or pertinent to" the subject matter of the proceeding).

There is nothing in the plain language of these two rules to indicate a difference of scope of permitted examination nor any guide as to which should be used first or at all, if the other is used.

[7] In a paper prepared for the 2007 Bar Admission Course of the Law Society of Newfoundland and Labrador entitled "Rules of Court, Annotated" (Selected Pre-trial and Post-trial Procedures) prepared by the Honourable Chief Justice J. Derek Green of this Court and Christopher P. Curran, Q.C., the Registrar of this Court, Rules 30, 31 and 32 dealing with oral discovery, interrogatories and document discovery respectively are considered at quite some length. In the section thereof entitled "Purpose and Scope" dealing with interrogatories, the authors state:

The delivery of interrogatories is a procedure that falls within the general group of rules of court designed to facilitate disclosure of an opposing party's case so as to prevent surprise at trial. "Discovery ... [by interrogatories] ... of relevant information in advance of trial assists in the fair disposition [of the trial]" (per Goodridge J. in *Attorney General of Newfoundland v. Churchill Falls (Labrador) Corporation Ltd.* (1982), 34 Nfld. & P.E.I.R. 507 at 517 (TD)).

As such, Rule 31 should be interpreted with this general objective in mind and in a manner that recognizes its interrelationship with other discovery and disclosure rules.

[8] In the portion of the paper prepared by the Chief Justice Green and Registrar Curran dealing with the relationship of Rule 30 (Examination for Discovery, pp. 30-8 to 30-9) to Rule 31 dealing with relationship to other discovery and disclosure, the authors state:

Rule 30 (Examination for Discovery); Rule 31 (Interrogatories); Rule 32 (Discovery and Inspection of Documents) ... are specific manifestations of one of the fundamental principles of the rules of court: litigation should be conducted with openness and without surprise so that each party knows the case he or she

has to meet. This is accomplished by the operation of a general principle of pre-trial disclosure of evidence. The Rules must be interpreted with this underlying principle in mind. As Hickman C.J. stated in *Bradbury v. Cabot Insurance Co.* (1988), 70 Nfld. & P.E.I.R. 310 at 314: “when dealing with applications for discovery of persons in production of documents, ... the relevant rules [must] be interpreted liberally to effect full disclosure.”

The disclosure rules are designed to accomplish at the evidentiary level, what the rules of pleading and the furnishing of particulars (R. 14) foster at the pleading level.

In addition to preventing surprise, and hence trial ill-preparedness, the disclosure rules also assist parties in making realistic appraisals, prior to trial, of the strengths of their and their opponents' cases and may indirectly promote settlement short of trial, thereby fostering another underlying principle of the rules: to provide resolution of disputes in the most effective, timely and efficient manner.

[9] In this treatise dealing with Rule 31 (Interrogatories) under the paragraph “Distinguishing from Former Rule”, Order 27, Rules 1-11, the authors state:


The adoption of Rule 31 has broadened the potential scope of interrogatories considerably: ...

3. inasmuch as the scope of their subject matter is now co-extensive with the broad scope of examination for discovery under Rule 30.08, questions as to facts and evidence, including names of witnesses, supporting the opposing party's case may be asked, as well as questions concerning matters not technically within the pleadings or matters relating solely to collateral credibility issues.

(emphasis added)

[10] Later, under this topic and dealing with the “Scope of Questions”, at page 31-7 to 31-8, the authors state:

The scope of the questions that may be asked by way of interrogatories is co-extensive with the scope of examination for discovery (R. 31.02(1)). Thus, although Rule 31.03(2) allows a person to object to answering a particular interrogatory on the ground that “it is not relevant to the subject-matter in the




proceeding,” the broad interpretation of the phrase “relevant to the subject-matter of the proceeding” in Rule 30 applies under Rule 31 as well. ... Relevant for this purpose is not defined by the pleadings (R. 31.03(2)). The suggestion to the contrary in *Coaker v. Robinson Co.* decided under the former rules, is no longer good law. Questions may be asked outside the scope of the pleadings provide it can be said that they in some manner touch or concern the parties or events that are the subject matter of the litigation (R 31.03(2)).

CONCLUSION RE SCOPE OF INTERROGATORIES

[11] Counsel for the Respondents has argued that the scope of what can be questioned under interrogatories is less than that available in oral discovery. I find no support for that contention in the plain wording of the Rules as drafted. In my view, the dissertation of Chief Justice Green and Registrar Curran provides a logical modern interpretation of this plain language i.e., that there is no difference in the scope of examination under the rule relating to interrogatories, save except of course that the rule for oral discovery does allow cross-examination. Further, I conclude that it is logical that there be no such difference as suggested by the Respondents. As Hickman, C.J. in *Bradbury v. Cabot Insurance Co.* has delineated, “... the relevant Rules be interpreted liberally to effect full disclosure.” How can it be that the hierarchy of scope postulated by the Respondents is such a literal interpretation?

I am therefore satisfied that a limitation on the form or number of interrogatories should only arise where the party being interrogated should be protected from annoyance, expense, embarrassment or oppression (Rule 31.02(2)) or that a legitimate objection to answering an interrogatory is taken on the ground of privilege or that it is not relevant to the subject matter in the proceeding (Rule 31.03(2)).

Jurisprudence presented to me by counsel for the Respondents in support of an hierarchical range of scope of examination generally reflects echoes of dated notions lingering from interpretations of former rules. I see no practical purpose in re-imposing such petty distinctions in the face of the clear language of the Rules.



CONSIDERATION OF THE SPECIFIC INTERROGATORIES

[12] The form of interrogatories submitted to the Respondents is identical for each of them. Each Plaintiff is a medical practitioner, the First Plaintiff, Poh Gin Szeto, being the mother of the Second Plaintiff, Christopher Szeto. Questions 1 and 2 of the interrogatories sought information from the period of time January 1, 2002, to the present, with respect to medical and other services received by the Respondents. This commencement date is almost three full years prior to the motor vehicle collision in which the injuries of the Respondents are alleged to have arisen. The Applicant seeks the names of all physicians from whom medical services were received, the location of their offices, the dates of the visits, the complaints made to the physician at each visit, and the treatment given including referrals and prescriptions rendered on each visit. The same sort of information is sought with respect to physiotherapists, massage therapists, chiropractors, psychologists or other health care related services. Paragraph 3 asks how each individual plaintiff supports him or herself at the present time. Paragraph 4 asks if they are presently employed and, if so, by whom. Paragraph 5 seeks information with respect to each employment position from January 1, 2002, to the present date. Paragraph 6 seeks information with respect to health care benefits provided by the employer and who the health care provider was as well as other detailed information. Paragraph 7 asks for annual income tax information for the years 2002 to and including 2006 and whether income tax returns were filed (paragraph 8). Paragraph 9 asks for the current address. Paragraph 10 asks how many people reside in the household at the current address and particulars of names, ages and relationships. Paragraph 11 asks a question with respect to whether any time was missed from employment.

[13] In my view, the following questions are irrelevant:

Question 9 – Re Current Address


Question 10 – Number of people residing in the household



[14] In all other respects, I am satisfied that the questions are relevant to the claims raised, namely “personal injuries”, “pain and suffering and loss of amenities”, “special damages”, and “further and other relief”. Certainly, claims for loss of amenities raise questions whether those amenities had been lost by reasons of earlier accidents or pre-existing disease. The Applicant needs to be able to verify prior incomes to determine potential lost incomes. All of the questions permitted can be answered easily without great effort or cost on the part of the Respondents. There is nothing oppressive or irrelevant being sought nor are the permitted questions embarrassing, unreasonably annoying nor likely to cause expense. In fact, the process chosen may obviate the need for oral discovery and thus save expense.

[15] Therefore, with the exception of questions 9 and 10 of the interrogatories, the Respondents are obliged to answer the interrogatories in question within the times required by the *Rules of Supreme Court, 1986*, unless otherwise extended by a counsel for the Applicant.

[16] The Third Defendant/Applicant shall be entitled to her costs of this application on a party and party basis.



ROBERT M. HALL
Justice