

**CITATION:** Mostacci v. 2025590 Ontario Ltd., 2026 ONSC 1867  
**COURT FILE NO.:** CV-23-00000093-0000  
**DATE:** 2026-03-31

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
Melanie Mostacci and Carl Mostacci ) D. Lilko, counsel for the Plaintiffs  
)  
Plaintiffs )  
)  
– and – )  
)  
2025590 Ontario Ltd. o/a Remley Homes, ) N. Therens, counsel for the Defendants,  
Allen Timothy Remley, Home Group Realty ) Home Group Realty Inc., Keller Williams  
Inc., Keller Williams Home Group Realty, ) Home Group Realty, Matthew James  
Matthew James Webster, John Doe, and ) Webster  
John Doe Inc. )  
)  
Defendants )

**HEARD:** December 11, 2025

**THE HONOURABLE JUSTICE A.J. OHLER**

**REASONS FOR JUDGMENT**

- [1] The plaintiffs seek an order compelling the defendants, Matthew James Webster, Home Group Realty Inc., and Keller Williams Home Group Realty, to provide answers and productions following Mr. Webster’s examination for discovery on January 15, 2024.
- [2] The refusals relate to (i) the timeframe of when certain defendants were copied on emails sent by other defendants; and (ii) production of the defendants’ response to the plaintiffs’ complaint to the defendants’ professional regulator.

*Background Facts*

- [3] In January 2021, the plaintiffs purchased a property (“the Property”). The Property was located within a new development area. At the time, the land behind the Property was vacant, offering a view of the river valley below.
- [4] The defendant 2025590 Ontario Ltd. (“202 Ontario”) is the builder and seller of the Property under the Agreement of Purchase and Sale (“APS”). The defendant Allen Remley

is the President, director and controlling mind of 202 Ontario (collectively, the “Remley defendants”).

- [5] The defendants, Home Group Realty Inc. and Keller Williams Home Group Realty, were hired by 202 Ontario to advertise, market and complete the purchase and sale of properties within the project.
- [6] The defendant Matthew Webster (“Webster”) worked as a real estate agent and representative of Home Group. Webster was 202 Ontario’s agent in the sale of the Property and the plaintiffs’ agent in the purchase of the Property. For the purpose of these reasons, reference to Webster and the brokerage will be referred to collectively as “the Webster defendants.”
- [7] As set out in the pleadings, the plaintiffs claim that Webster and Remley both represented to them that the land behind the Property would not be developed. While signing the APS, Webster assured the plaintiffs that the view from the Property would not be obstructed and that no foreseeable development would interfere with it. Post-closing, the plaintiffs learned that a condominium development would be built behind the Property, obstructing the view.
- [8] In January 2023, the plaintiffs issued the statement of claim. In March 2023, the Webster defendants delivered a statement of defence and crossclaim against the Remley defendants. In May 2023, the Remley defendants delivered a statement of defence and crossclaim against the Webster defendants.

#### *The RECO Complaint*

- [9] In November 2021, the plaintiffs submitted a complaint to the Real Estate Council of Ontario (“RECO”) regarding Webster’s representation as their real estate agent.
- [10] In the complaint, the plaintiffs state that Webster and Remley both presented the Property as the last remaining lot within the development that would have an unobstructed view of the surrounding valley. The lot next door to the Property would have an obstructed view as there was planned development. The plaintiffs state that on the day that they signed the APS, Webster repeatedly assured them that the view from the Property would not be obstructed or impacted by any future development. In September 2021, the plaintiffs learned from property developer Trevor Prior (not a representative of 202 Ontario) that a condominium would be built directly behind the Property.
- [11] The RECO complaint did not proceed to a public hearing.
- [12] On April 29, 2022, RECO rendered a written decision. It is very brief, comprised of a point-form summary of the plaintiffs’ complaint. It also includes a brief summary of Webster’s response as follows:
- Respondent has stated that he told the Complainant that they cannot control what can happen in the future.

- Respondent says he made the comments because he had personally confirmed with Mike Doyle representative of the developer who was the main contact for Remley Homes, unfortunately Mike Doyle has since passed away. However, Mike's message corresponds with the message sent to the builder on May 14, 2020.
- Respondent says he was never provided the Plan showing the obstruction that Trevor Prior had shared with [the plaintiffs].

[13] RECO found that Webster did not take steps to independently confirm the information provided by the builder. Webster was issued a warning and directed to attend a professional responsibility course.

#### *Webster's Examination for Discovery*

#### *Emails Copying the Remley Defendants*

[14] During examination for discovery, Webster was presented with an email responding to a potential buyer, interested in the development. A representative of the Remley defendants was blind copied on the email. Webster advised that there was a period during which the representative wanted to know when they were speaking to potential leads and how they were responding to emails.

[15] Counsel requested that Webster review his emails to provide the timeframe during which the defendants were copied on emails to potential buyers. Counsel objected based on relevance.

#### *Response to the RECO Complaint*

[16] During examination for discovery, counsel refused all questions about the RECO complaint based on relevance. Counsel for the plaintiffs argued that the RECO complaint, as evidence of professional negligence, was relevant to whether Webster met the expected standard of care. Counsel for Webster argued that the standard of care was to be determined by the court and that a finding by RECO was not binding.

[17] Following the examination, the plaintiffs delivered a request to admit with respect to the RECO complaint. Webster's response included that information and documents provided by Webster to RECO are confidential.

### **Law and Analysis**

[18] Rule 31.06(1) of the *Rules of Civil Procedure, R.R.O. 1990, Reg. 194* provides that a person examined for discovery shall answer to the best of his or her knowledge, information and belief, any proper question relevant to any matter in issue in the action.

[19] The court's role on a refusal's motion is to rule on the propriety of questions asked and refused such that "any proper question which may lead to evidence that could legitimately influence the judge hearing the motion should be allowed": *Hemming v. Oriole Media*

*Corp.*, et al., 2022 ONSC 4368, at para. 48, citing *Inco Ltd. v. McGrath*, 2005 CanLII 22151 (Ont. S.C.), at para. 27.

- [20] To determine whether a question is relevant, the court must consider the pleadings. “Proper questions” are those relevant to the issues defined in the pleadings. An answer, or document, is relevant if it is logically connected to, and tends to prove or disprove, a matter in issue: *Sycor Technology Incorporated v. Kiaer*, 2012 ONSC 5285, at para. 23; see also *CIBC v. Deloitte & Touche*, 2013 ONSC 917, at paras. 68-69.
- [21] Courts must assess proportionality in every case, considering the factors set out in r. 29.2.03, including the time and expense of providing the answer or producing the document, undue prejudice, interference with the orderly progress of the action and whether the information or document is readily available to the party requesting it.

*Refusal #1 – To Advise When Webster Copied, or Blind-Copied the Builder on Emails*

- [22] The plaintiffs seek an order directing Mr. Webster to respond to the following:
- To review Mr. Webster’s emails to confirm when representatives of the Remley defendants were copied on emails to potential purchasers.
- [23] During argument, the plaintiffs narrowed their request to the timeframe that the Remley defendants were copied on emails to potential buyers for the Property, as opposed to all lots within the development. The plaintiffs submit that as the claim involves the collective negligence of the defendants, whether the Remley defendants were aware of the representations made by Webster to other potential buyers of the Property is relevant to whether they knew, or ought to have known, what the plaintiffs were told about the Property.
- [24] Webster submits that what other potential buyers were told about the Property is not relevant to the determination of the plaintiffs’ claim; the plaintiffs have not pled that other potential buyers were given information that they were not. The determination of the claim will depend on what the plaintiffs were and were not told.
- [25] I accept the position of the plaintiffs. The statement of claim alleges that the defendants collectively knew or ought to have known about the proposed construction behind the Property at the time they met with the plaintiffs. During discovery, Webster acknowledged that at one point in time, a representative of the Remley defendants asked to be kept apprised of representations made to potential buyers. I agree that a request for information relating to representations made to potential buyers of other lots within the development is clearly not relevant. However, the timeframe that the Remley defendants were copied on emails to potential buyers for the Property may assist in establishing the Remley defendants’ knowledge with respect to representations made about the Property and when they were aware of them. As such, the information sought could assist the court in drawing an inference as to the Remley defendants’ knowledge of the representations made to the plaintiffs.

- [26] Counsel for the Webster defendants did not argue that the narrowed request was overly broad, or that it would require an unreasonable amount of time, expense, or prejudice. While these emails may also be producible through the Remley defendants, they are not readily available to the plaintiffs. The request is relevant, material and proportionate.
- [27] The timeframe that the representatives of the Remley defendants were copied on emails to other potential buyers of the Property will be produced.

*Refusal #2 – Response to the RECO Complaint*

- [28] The plaintiffs seek an order directing Webster to answer the following refusals with respect to the RECO complaint:

To advise whether Webster was aware that the plaintiffs filed a complaint with RECO;

To advise whether Webster had the opportunity to review the RECO complaint;

To advise whether Webster prepared a response to the RECO complaint; and

To produce the response to the plaintiffs.

*Refusals with Respect to the RECO Complaint*

- [29] The plaintiffs submit that Webster's refusal to produce his response to the RECO complaint, if any, was improper.

- [30] First, the response is relevant to the issues in the action. The subject of the RECO complaint is the same as the action. Second, Webster's response is likely to contain direct evidence about what he knew and when he knew it. In this, the plaintiffs note that during his examination, Webster did not recall representations made during the signing of the APS. The response to the complaint, having been produced much closer in time to the material events, may be more accurate and detailed. Third, emails and text messages that Webster no longer has in his possession may have been included with the response to the complaint. Finally, as a prior statement to Webster's regulator, the document may be relevant to his credibility and reliability.

- [31] Webster resists production not on the ground that it is not relevant, but that the response is protected by confidentiality provisions in the *Real Estate and Business Brokers Act, 2002*, S.O. 2002 c. 30, Schedule C ("REBBA"), the relevant legislation at the time of the complaint.

- [32] Section 44 of REBBA provides, under the sub-heading "Confidentiality":

44 (1) A person who obtains information in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations shall preserve secrecy with respect to the information and shall not communicate the information to any person except,

- (a) as may be required in connection with a proceeding under this Act or in connection with the administration of this Act or the regulations;
- (b) to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act or legislation that protects consumers or to any other entity to which the administration of legislation similar to this Act or legislation that protects consumers has been assigned;
- (b.1) as authorized under the *Regulatory Modernization Act, 2007*;
- (c) to a prescribed entity or organization, if the purpose of the communication is consumer protection;
- (d) to a law enforcement agency;
- (e) to his, her or its counsel; or
- (f) with the consent of the person to whom the information relates.

#### Testimony

(2) Except in a proceeding under this Act, no person shall be required to give testimony in a civil proceeding with regard to information obtained in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations.

[33] Section 44 of the *Trust in Real Estate Services Act, 2002*, S.O. 2002, c. 30, Sched. C (“TRESA”), the legislation currently in force, contains the same provision, word for word.

[34] Part V of the REBBA concerns Complaints, Inspection and Discipline. Section 19(1) provides that if the registrar receives a complaint about a registrant, the registrar may request information in relation to the complaint from any registrant. Pursuant to s. 19(2), a request for information under subsection (1) shall indicate the nature of the complaint.

[35] Registrants who receive a request for information from the registrar must comply. Section 19(3) provides:

#### Duty to comply with request

(3) A registrant who receives a written request for information shall provide the information as soon as practicable.

[36] Webster argues that registrants have a duty to respond to a request for information, and a registrant is carrying out a duty related to the administration of the Act when they do so.

Accordingly, the written response falls within the protection of s. 44 and cannot be produced.

- [37] The plaintiffs argue that the confidentiality provision applies only to REBBA investigators, not to registrants. The plaintiffs rely on the wording of the statute: “a person who obtains information *in the course of exercising a power or carrying out a duty related to the administration of this Act* (emphasis added.)” The purpose of s. 44(1) and 44(2) is to provide a protection for information provided to, or in the hands of REBBA only, not a registrant.
- [38] Neither party was able to locate a case considering the scope of s. 44 under REBBA or TRESA.
- [39] Webster relies on *F.(M.). v. Dr. Sutherland* (2000), 188 D.L.R. (4th) 296 (Ont. C.A.) for the proposition that if provided for in the applicable legislation, documents prepared in professional discipline proceedings are inadmissible in a civil action.
- [40] *F.(M.)* was an appeal from a decision allowing a motion to strike portions of a statement of defence in a civil action. Sutherland was a doctor and M.F. his former patient. M.F. made a complaint to the College of Physicians and Surgeons alleging sexual assault and at the same time, brought a claim for damages. The action was settled and M.F. signed a statement recanting the allegations of abuse. The complaint against Sutherland was withdrawn, following which he refused to make further payments under the settlement agreement. M.F. brought an action for the balance of the settlement payments and Sutherland filed a statement of defence, relying on M.F.’s recantation. M.F. brought a motion to strike paragraphs in the statement of defence that referred to the recantation, arguing that they pleaded facts which were inadmissible pursuant to s. 36 of the *Regulated Health Professions Act, 1999*, S.O. 1991, c. 18. The motion was granted and the paragraphs struck. Sutherland’s appeal to the Divisional Court was dismissed. Sutherland subsequently appealed to the Court of Appeal.
- [41] Webster argues that s. 36(3) at issue in *F.(M.)* is strikingly similar to s. 44(2) of REBBA. Section 36(3) provided:
- 36(3) Evidence in civil proceedings.
- No record of a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, no report, document or thing prepared for or statement given at such a proceeding and no order or decision made in such a proceeding is admissible in a civil proceeding other than a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulations Act* or a proceeding relating to an order under section 11.1 or 11.2 of the *Ontario Drug Benefit Act*.
- [42] In dismissing the appeal, Laskin J. rejected Sutherland’s argument that s. 36(3) must be read to include an exception for fraud or bad faith. Applying the modern approach to statutory interpretation, Laskin J. held as follows, at paras. 29 – 31:

I find no relevant indicators of legislative meaning to displace the presumption in favour of the ordinary meaning of s. 36(3). The purpose of s. 36(3) is to encourage the reporting of complaints of professional misconduct against members of a health profession, and to ensure that those complaints are fully investigated and fairly decided without any participant in the proceedings - a health professional, a patient, a complainant, a witness or a College employee - fearing that a document prepared for College proceedings can be used in a civil action. This purpose would be defeated by reading a fraud or bad faith exception into s. 36(3). The mere allegation of fraud or bad faith, however unfounded, could make the provision inapplicable.

Ensuring that documents prepared for College proceedings are always inadmissible in civil proceedings is especially important in cases, like this one, of alleged sexual abuse. Indeed, a fraud or bad faith exception to the application of s. 36(3) would be inconsistent with s. 1.1 of the Health Professions Procedural Code. Section 1.1 of the Code provides that "[t]he purpose of the provisions of this Code with respect to sexual abuse of patients by members is to encourage the reporting of such abuse ..." Without the absolute protection given by s. 36(3) patients might be discouraged from, not encouraged to, report complaints of sexual abuse. Gans J. made the same point in *B.(J.L.) v. Dr. B.(E.J.)* (1997), 13 C.P.C. (4th) 206 at 209:

The Code is designed to encourage the reporting of alleged acts of sexual abuse (s. 1.1), to provide assistance to those subjected to the same, and to eradicate this conduct on the part of the profession. If the proceedings are not clothed with an aura of confidentiality throughout, even if terminated before a hearing and ultimate decision, in my view, the underlying policy of the Code would be thwarted.

Section 36(3) is one of a number of legislative provisions whose broad objective is to keep College proceedings and civil proceedings separate. Section 36(1) provides for the confidentiality of information that comes to the knowledge of College employees; and s. 36(2) provides that College employees cannot be compelled to testify in civil proceedings about matters that come to their knowledge in the course of their duties.

- [43] Webster argues that s. 44 of REBBA is strikingly similar and the result ought to be the same as that in *F.(M.)*; that information obtained in the course of a REBBA complaints investigation be kept confidential.
- [44] The modern approach to statutory interpretation requires the court to consider the words of the provision "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R., 27, at para. 21, quoting Elmer A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983), at p. 87.

- [45] The purpose of s. 44 is to protect information obtained in the course of exercising a power or carrying out a duty related to the administration of the Act. A person who receives information shall keep it secret and not communicate it to any other person, subject to the limited exceptions. The purpose of the section is to protect the “information” from disclosure, subject to the enumerated exceptions.
- [46] Section 44(1) would apply to prevent REBBA administrators, investigators or employees from disclosing information obtained from a registrant, who provides information in response to a complaint. Section 44(2) prevents a REBBA investigator from testifying in a civil proceeding with respect to information obtained from either the plaintiffs or Webster. I cannot accept the plaintiffs’ argument that s. 44(2) applies only to information and not documents, records or statements: information may be contained in documents, records or statements. It is the information that is protected, whatever its source.
- [47] Nothing in the plain language of the statute limits the application of s. 44 to REBBA administrators; the provision clearly applies to persons carrying out a duty under the Act. Pursuant to s. 19(3), a registrant has a duty to comply with a request for information. Indeed, the subheading to the section is titled “duty to comply with request.” A registrant who provides a response to a complaint is carrying out a duty under the Act.
- [48] Accordingly, section 44(1) applies with equal force to REBBA registrants. The provision would apply to bar a registrant who receives a complaint from disclosing information contained in that complaint in a civil proceeding without the consent of the person to whom it relates. Similarly, s. 44(2) would prevent Webster from testifying at the trial of this action with respect to information he obtained in providing his response to the plaintiffs’ complaint. In other words, Webster could not rely on the plaintiffs’ complaint in defending the action, absent their consent.
- [49] The real question is whether s. 44 applies to information that Webster *provided* while carrying out his duty to respond. The section is silent on this issue.
- [50] In *F.(M.)* the court held, at para. 38:
- In interpreting a legislative provision the court may take into account the consequences of adopting the ordinary meaning. The court should consider whether the ordinary meaning was intended if it produces absurd results.
- [51] In this case, restricting the application of s. 44 strictly to information obtained, rather than that provided, could produce an absurd result: that a registrant’s response to a complaint in the hands of REBBA would be protected by s. 44, but not confidential in the hands of the registrant.
- [52] Considering the confidentiality provision together with a registrant’s duty to respond, I find that restricting the confidentiality provisions to information obtained, as against information provided, would produce an absurd result. In my view, the intention to keep the REBBA complaints process separate from civil proceedings is clear.

- [53] However, if I am wrong in my interpretation of s. 44, I would find Webster's response is protected by case-by-case privilege.
- [54] The four elements to establishing a case-by-case privilege were summarized in *Philip Services Corp. v. Deloitte & Touche*, 2015 ONCA 60, at para. 18:
1. the communication must originate in a confidence that they will not be disclosed;
  2. the confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;
  3. the relation must be one which in the opinion of the community ought to be sedulously fostered; and
  4. the injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of the litigation.
- [55] The Webster defendants argue that the four criteria are met in this case: (i) the response was provided with the assurance of confidentiality under s. 44 of REBBA; (ii) the assurance of confidentiality is essential to a full and fair complaints process; (iii) the relation between RECO and its registrants must be sedulously fostered so that RECO can perform its duties in the public interest; and (iv) the injury to the relation between RECO and its registrants is greater than the benefit gained, given the response was summarised in the decision.
- [56] The plaintiffs submit that *Philip Services Corp.* is determinative of this issue, standing for the proposition that case-by-case privilege can never apply to the fruits of a regulatory investigation once charges are laid.
- [57] *Philip Services Corp.* was an appeal from an order dismissing a motion under r. 30.10(1) for production of records in the hands of a non-party.
- [58] Philip was the representative plaintiff in a billion-dollar class action involving allegations that Deloitte & Touche ("Deloitte") was negligent in preparing annual statements for a public company. Two years before the litigation commenced, the Institute of Chartered Accountants of Ontario (the "Institute") conducted an investigation into Deloitte's audits. Nine years later (seven years after the litigation commenced) the Institute brought charges against the senior partner responsible for the audits. A year after charges were laid, the senior partner was found guilty of professional misconduct. Several years after the finding of misconduct, Philip brought a motion for an order requiring the Institute to produce its investigators' report, witness statements, notes of interviews conducted and other documentation concerning its investigation and discipline of the senior partner.
- [59] The motion judge dismissed the motion finding that the Institute's file was protected by case-by-case privilege. The Court of Appeal held that the motion judge erred in doing so, finding that any assurances of confidentiality only applied until charges were laid.

- [60] The facts in *Philips* are crucial to understanding the outcome in that case.
- [61] When the Institute commenced its investigation, it enclosed a copy of its “Complaints Investigation and Disciplinary Procedures” which indicated that the information gathered was confidential to the professional conduct committee except to the extent necessary to carry out a prosecution for professional misconduct. The senior partner requested that the Institute defer its investigation, on the basis that it could prejudice Deloitte in parallel civil proceedings. The Institute provided a subsequent assurance of confidentiality, that materials that had not been made public through the discipline process would remain confidential.
- [62] Eventually, the Institute and the senior member entered into a settlement agreement whereby the senior partner would not receive disclosure of the Institute’s file; the Institute would call its investigator as the only witness at the hearing and the brief of documents relied on would not be filed in evidence: *Philip Services Corp.*, at para. 25. The court inferred that this agreement was entered into after the assurance of confidentiality had been made, after the senior partner made representations to the Institute and after he had been notified he would be charged. This was a “unique” agreement, contrary to the Institute’s policy and standard practice: *Philip Services Corp.*, at paras. 23, 28.
- [63] The court found the motion judge erred in finding that the first of the Wigmore criteria had been met, that is, whether the communication *originated* in confidence it would not be disclosed. Although the actual agreement between the Institute and the member was not produced, the court was prepared to find that it was entered into after disclosure was complete, after the senior partner had provided his representations, and that to maintain confidentiality during the public hearing was contrary to the Institute’s policy and standard practice: *Philip Services Corp.*, at para. 28-29.
- [64] With respect to the second Wigmore criteria, the court found, at para. 33:
- In my view, where a member is required to cooperate with its self-regulating body, where the self-regulating body has an obligation to provide disclosure to the member at or before the time charges are laid, and where the governing framework does not provide an assurance of confidentiality, confidentiality after charges are laid would usually not be found to be “essential to the full and satisfactory maintenance of the relation between the parties.” [Emphasis added.]
- [65] The plaintiffs rely on *Philip Services Corp.* as a complete answer to the Webster defendants’ claim for case-by-case privilege.
- [66] I disagree.
- [67] There are two crucial distinctions in this case. First, REBBA provides a statutory promise of confidentiality, not present in *Philip Services Corp.* Section 44(1) provides assurance that information obtained during an investigation will be kept confidential, subject to the enumerated exceptions. Second, the plaintiffs’ complaint did not proceed to a public hearing.

- [68] I find the first of the Wigmore criteria has been met; the communication originated in confidence that it would not be disclosed, subject to one of the exceptions having been met. None of the exceptions have been met. Had the plaintiffs' complaint proceeded to a public hearing, Webster's response may well have been filed as an exhibit on the hearing, and the situation would be different.
- [69] I find that the second of the Wigmore criteria has also been met. That confidentiality is essential to fostering a registrant's cooperation with its regulator is evidenced by the existence of s. 44.
- [70] Given the assurance of confidentiality, and the importance of confidentiality to cooperation between RECO and a registrant, I have no difficulty concluding that the relation is one that ought to be sedulously fostered.
- [71] Again, the situation in this case is different to that in *Philips*, where the court found the senior partner deliberately avoided coming into possession of materials that would be producible in his hands and entered into an agreement with his regulator to ensure confidentiality would be maintained during a public hearing. Indeed, the court concluded that *after* charges were laid and *after* a public hearing commenced, confidentiality was no longer essential to the relationship: *Philip Services Corp.*, at para. 34.
- [72] In this case, Webster was entitled to rely on the confidentiality of the process. There was no public discipline hearing with respect to the plaintiffs' complaint. If there had been a hearing, Webster could not reasonably rely on s. 44 any longer. But there was not.
- [73] Finally, the injury that would inure to the relationship by the disclosure of the communications is greater than the benefit gained for the correct disposal of the litigation. While the RECO complaint and the allegation of misrepresentation arise out of the same set of facts, the issues are different. Whether or not Webster engaged in professional misconduct is not necessarily dispositive of the issues at trial, including the standard of care in negligence.
- [74] The response to the RECO complaint shall not be produced.

### **Costs**

- [75] Given the mixed success, the parties are strongly encouraged to resolve the issue of costs. If the costs cannot be resolved, the Webster defendants shall serve and file written submissions of no more than two pages, double-spaced and in 12-point font, with case law hyperlinked, plus a detailed bill of costs and copies of any offers to settle attached, within 14 days of release of these reasons. The plaintiffs' submissions of no more than two pages double-spaced and in 12-point font, with case law hyperlinked, plus a detailed bill of costs and copies of any offers to settle attached, shall be served and filed within seven days thereafter. Once filed with the court, a copy of the submissions shall be sent to my attention by email to St.Catharines.SCJJA@ontario.ca with confirmation of filing. If a party does

not meet these deadlines, there shall be no costs payable to that party. In the event there are no submissions filed in accordance with these timelines, costs shall be deemed resolved.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal tail, positioned above a solid horizontal line.

A.J. Ohler

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Melanie Mostacci and Carl Mostacci

Plaintiffs

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2025590 Ontario Ltd. o/a Remley Homes, Allen  
Timothy Remley, Home Group Realty Inc., Keller  
Williams Home Group Realty, Matthew James Webster,  
John Doe, and John Doe Inc.

Defendants

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**REASONS FOR JUDGMENT**

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A. J. Ohler J.

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