

CITATION: Schaeffer v. Woods, 2010 ONSC 6500
COURT FILE NO.: CV-09-390573
DATE: 20101125

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: RUTH SCHAEFFER, EVELYN MINTY and DIANE PINDER, Applicants

AND:

POLICE CONSTABLE CHRIS WOODS, ACTING SERGEANT MARK PULLBROOK, POLICE CONSTABLE GRAHAM SEGUIN, JULIAN FANTINO, COMMISSIONER OF THE PROVINCIAL POLICE, IAN SCOTT, DIRECTOR OF THE SPECIAL INVESTIGATIONS UNIT AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO (MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES), Respondents

BEFORE: Low J.

COUNSEL: *Julian N. Falconer* and *Asha James*, for the Applicants

Ian Roland and *Michael Fenrick*, for the Respondents Police Constable Kris Wood, Acting Sergeant Mark Pullbrook and Police Constable Graham Seguin

Marlys Edwardh and *Jessica Orkin*, for the Respondent Ian Scott, Director of The Special Investigations Unit

Christopher Diana, for the Respondent Julian Fantino, Commissioner of the Provincial Police

HEARD: November 9, 2010

COSTS ENDORSEMENT

[1] The respondent police officers were successful on their motion to strike the application as non-justiciable. They seek costs and ask that the respondent Ian Scott, Director of the Special Investigations Unit, be held responsible for a part of their costs as he took a position on the merits which were aligned with that of the applicants.

[2] The respondent Julian Fantino, former Commissioner of the Ontario Provincial Police, also seeks his costs.

[3] It is submitted on behalf of the applicants and on behalf of Ian Scott that there should be no costs award in this case.

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[4] In my view, this is not a case where costs should be awarded to the respondents.


[5] The motion to strike is cognate to the motion under Rule 21.01(3) to stay or to dismiss an ~~action~~ on grounds of lack of jurisdiction, absence of capacity on the part of the plaintiff or on grounds that the action is frivolous, vexatious or an abuse of process. The motion is to be brought promptly and should be moved along diligently. The rationale for the requirement to move promptly is to spare all of the parties, applicants and respondents alike, legal expenses that might turn out to be wasted. Failure to move promptly may be taken into account in awarding costs.

[6] On the motion to strike, the application is taken as found. The least expensive and most expeditious route to a disposition of the matter would have been to take out a motion hearing date, file facts, and proceed to a hearing. The detour into case management exacerbated the costs of litigation.

[7] The applicants examined SIU investigators under rule 39.03. The respondent officers made an unmeritorious assertion of privilege with the result that significant delay and additional costs were incurred by the applicants and the respondent Director Scott.

[8] It has been submitted on behalf of the applicants and on behalf of Director Scott that the applicants ought not to have to bear the costs of the application or of the motion because they are public interest litigants. In my view, it is unnecessary to determine whether or not the applicants were public interest litigants. I make no finding in that regard.

[9] There will be no costs of the motion or the application.



Low J.

Date: November 25, 2010