

Plaintiff obtains summary judgment against former lawyers (Longarini v. Llyod)

Litigation | Litigation & Dispute Resolution | Summary Judgment

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Motions for summary judgment are often ill-suited for disputes where there are contested issues involving credibility and material facts. However, under [Rules 20.04\(2.1\) and \(2.2\)](#) of the Ontario *Rules of Civil Procedure*, a motion judge can determine if the need for a trial can be avoided by weighing the evidence, evaluating the credibility of a deponent, or drawing any reasonable inference from the evidence. The motion judge may use those powers, at their discretion, to reach a conclusion that they see to be in the interest of justice, as demonstrated by the decision in *Longarini v. Llyod*, [2025 ONSC 974 \(CanLII\)](#).

The plaintiff in the case was a 50 percent shareholder in a company which operated legal cannabis dispensaries. She had been embroiled in a dispute with the other 50 percent shareholder which resulted in litigation, including an application under the *Ontario Business Corporations Act* (OBCA), a defamation action, and a Human Rights Tribunal application. The defendant lawyers acted for the plaintiff.

After their relationship broke down, the plaintiff sued the lawyers to recover costs that had been awarded against her in the OBCA application and defamation action, legal fees she paid to the defendants, and other damages she claimed to have suffered because of their conduct during the proceedings. She moved for summary judgment of her claim.

As the moving party, the plaintiff had the initial burden to prove there were no issues requiring a trial before the burden shifted to the responding defendants to establish whether there were any issues requiring a trial: *Sanzone v. Schechter*, [2016 ONCA 566](#), at paragraph 30. The defendants did not dispute that the claims could be decided by way of summary judgment based on the affidavits filed by the parties. In fact, the defendants sought their own summary judgment by way of “boomerang order” to dismiss the plaintiff’s action against them.

The motion judge commented that all of the affidavits filed for the motion contained “hyperbole and overreach” and that the credibility of the parties was undermined by the documentary record. The plaintiff made assertions in her affidavit which were not factually true, and overstated or misstated facts. The defendants’ affidavits disguised argument as fact, vouched for their own credibility, and were filled with bald assertions and conclusory statements rather than facts.

In the motion judge’s view, the necessary findings of fact and inferences could be drawn from what the parties had filed (or not filed) in the evidentiary record. Any disputed facts that could not be determined on the record were not ones that went to the core of the dispute. As a result, summary judgment was the appropriate procedure to determine the action.

While the claim was framed in breach of fiduciary duty and negligence, the motion judge determined that the plaintiff had not established any breaches of fiduciary duty. The hallmarks of such a claim, such as a lawyer failing to disclose material information to a client, misuse of client funds, or failing to disclose secret profits, were not present.

The motion judge therefore focused on the claim in negligence. To establish that there was no genuine issue requiring a trial in negligence, the plaintiff had to prove that (a) the defendants owed her a duty of care; (b) the defendants breached the standard of care; and (c) the breach of the standard of care caused the plaintiff to suffer damages.

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The plaintiff's primary claim was that the defendants had been retained to act for her pursuant to a written agreement. The defendants denied that the agreement was for legal services in the litigation and argued instead that it was a "mergers and acquisitions agreement" to assist the plaintiff with the sale of her shares in the cannabis business.

Based on the evidence filed, the motion judge concluded that the parties understood that the defendants agreed to act for the plaintiff in all the shareholder-related litigation. The defendants in fact acted as the plaintiff's lawyers, representing the plaintiff in court, in court documents, and in communications with opposing counsel. In the motion judge's view, virtually all the evidence filed on the motion demonstrated that the defendants were providing legal services in the context of litigation involving the plaintiff.

Further undermining the position of the defendants was that they submitted and relied upon the lower court decision of *Ristimaki v. Cooper*, 2004 CanLII 16074, which considered and dismissed a negligence claim against a lawyer. The defendants did not provide the motion judge with the decision of the Court of Appeal which overturned the decision: *Ristimaki v. Cooper*, 2006 CanLII 12415 (ON CA). In the motion judge's view, the defendants had breached a duty discussed in that case, namely the duty to warn the client of the risks involved in a course of action.

The defendants' breach of the standard of care exposed the plaintiff to costs in the OBCA proceeding that was directly related to their conduct of the litigation. Among other issues, the court in the OBCA proceeding awarded costs against the plaintiff on an elevated scale, attributable to the defendants, for:

- not putting forward evidence from the plaintiff and instead to relying on affidavits that resulted in additional work and additional time at the hearing;
- sending a threatening letter to the witness;
- refusing to produce the plaintiff to be examined in advance of a motion;
- vitriolic and improper communications sent to the other party's lawyer;
- advancing irrelevant and unsustainable arguments;
- making submissions on issues that had already been determined, thereby lengthening the hearing from the scheduled 2.5 hours to a full day; and
- late filing of materials, leading to wasted costs.

Overall, the costs were ordered to sanction inappropriate behaviour by litigants in their conduct of the proceedings. In the motion judge's view, the above conduct exposed the plaintiff to the elevated costs award and amounted to a breach of the standard of care for which the defendants were liable.

Further, the defendants' breach of the standard of care concerning the evidence filed on behalf of the plaintiff also deprived her of the opportunity of successfully resisting a motion brought by the other shareholder that could have changed the course of the litigation. However, these costs could not be determined with precision. The motion judge ultimately fixed damages with respect to the costs arising out of the OBCA proceedings at \$26,500.

The plaintiff's claim for the loss of her shareholder assets was otherwise dismissed as the defendants did not cause or create the conflict or the shareholder litigation.

With respect to the defamation action, the motion judge determined that there were no costs that were connected to the defendants' breach of the standard of care.

Lastly, the motion judge found that there was no medical evidence in the form of expert reports or otherwise connecting any psychological harm to the conduct of the defendants. If anything, the evidence was that if the plaintiff suffered any harm, it was because of the alleged improper conduct of the other shareholder.

In the result, the plaintiff's summary judgment motion was granted and her total damages were fixed at \$41,000, plus pre-judgment interest, for the defendants' breach of the standard of care.

The case is noteworthy as summary judgment is generally viewed to be inappropriate where credibility or material facts are seriously in dispute. However, the motion judge reasoned that once the motion was initiated the parties had many months to put their evidence together for the motion and each side filed affidavits and conducted cross-examinations. The parties therefore had ample time to "put their best foot forward" and neither side argued for the existence of other relevant evidence that needed to be put before the court at trial that was not before the court for the motion. The motion judge therefore concluded that the court could make a decision to resolve the proceedings based on the record before it. A PDF version is available for download [here](#).

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