

SUPERIOR COURT OF JUSTICE (ONTARIO)

RE: JUDITH LOGAN (Plaintiff)

- and -

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 (Defendants)

BEFORE: WINKLER J.

COUNSEL: *John Legge*, for the Plaintiff
Christopher A. Amerasinghe, Q.C., for Her Majesty the Queen
Evert Van Woudenberg, for Her Majesty the Queen in 18 of 19 actions
sought to be stayed
William E. Pepall and *Patrick J. Cotter*, for Montreal General
Hospital

HEARD: By Written Submissions

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

ENDORSEMENT

[1] The plaintiff in this intended class proceeding moved to add Wendy Bulloch-MacIntosh as a representative plaintiff. There were lengthy and complex proceedings, including submissions in writing, as well as attendances in person, before Master MacLeod, and case conferences before this court, with a view to finalizing a record upon which this motion could be decided. Ultimately, the parties made written submissions to the court addressing all issues relating to the plaintiffs motion. This court released it's preliminary reasons on February 13, 2002, stating that it could not grant the plaintiffs relief without deciding the threshold issue of whether the Bulloch-MacIntosh individual action ought to be discontinued or dismissed. The matter was scheduled for continuation of hearing on April 19, 2002 to provide the parties an opportunity to present evidence and oral argument on the issues raised in the reasons.

[2] Shortly before the return date for this hearing the plaintiff advised counsel of his intention to withdraw the motion. Accordingly, at the hearing on April 19, 2000 the plaintiff sought the leave of the court to withdraw the motion. Leave was granted subject to a disposition as to costs.

[3] The respondents seek their costs in respect of the abandoned motion. These costs are substantial. The Attorney General of Canada seeks its costs in the amount of \$50,000, on a discounted basis. Counsel for the Attorney General in 18 of the 19 actions sought to be stayed by the plaintiff, seeks costs in the amount of \$1,000. Montreal General Hospital seeks its costs in the amount of \$8,080, from either of the plaintiff in the individual action or in the intended class proceeding. In response, plaintiff's counsel asks that the costs be reserved to the court disposing of the certification motion. I cannot accede to this request. It is contrary to the costs regime presently in force which calls for costs to be disposed of by the court on an ongoing basis, except in unusual circumstances.

[4] During the attendance before this court on April 19, 2000, plaintiff's counsel advised the court that the representative plaintiff Logan wished to withdraw from the proceeding. A new representative plaintiff was put forward subject to the order of the court being obtained reflecting this amendment. Counsel was requested by the court to advise as to whether he intended to seek to amend the statement of claim by replacing the representative plaintiff, or alternatively, whether he would seek the leave of the court to discontinue the action and commence a fresh proceeding. Counsel for the Attorney General has written to the court outlining the position of the crown, with copies to all counsel, under cover of May 7, 2002. Plaintiff's counsel has yet to respond to this correspondence, or to advise the court as to which of the two courses of action set out above he wishes to follow.

[5] Although, as indicated above, I am not disposed to reserve the costs disposition in respect of the abandoned motion until after the certification motion is heard and disposed of, as requested by the plaintiff, I will reserve my disposition regarding costs until plaintiff's counsel responds to all outstanding questions regarding this proceeding and the proceeding is properly constituted one way or the other. Counsel may arrange a case conference to speak to these matters, if necessary, at their convenience.



WINKLER J.

COURT FILE NO.: 99-CV-181819CP
DATE: 20020515

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JUDITH LOGAN

Plaintiffs

-and -

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 (Defendants)

Defendants

ENDORSEMENT

WINKLER J.

Released: 20020515