

**CITATION:** Whitehead v. Ontario Shores Centre for Mental Health Sciences, 2024 ONSC 4249  
**COURT FILE NO.:** CV-21-00666281-0000  
**DATE:** 20240729

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** DONALD JAMESON WHITEHEAD, Plaintiff

**AND:**

ONTARIO SHORES CENTRE FOR MENTAL HEALTH SCIENCES and DR.  
OMAR GHAFFAR, Defendants

**BEFORE:** VERMETTE J.

**COUNSEL:** *Donald Jameson Whitehead*, self-represented

*Nadine Tawdy*, for the Defendant Ontario Shores Centre for Mental Health  
Sciences

*Kosta Kalogiros and Erich Schultze*, for the Defendant Dr. Omar Ghaffar

**HEARD:** In writing

**ENDORSEMENT AS TO COSTS**

[1] On May 2, 2024, I released an endorsement (2024 ONSC 2566) granting the Defendants' motions for summary judgment and dismissing the action.

[2] The parties were not able to agree on costs. The Defendants delivered costs submissions on May 16, 2024. The Plaintiff did not deliver any responding costs submissions within the time set out in the last paragraph of my endorsement. The Plaintiff was given a second opportunity to deliver costs submissions and was advised that if he did not do so by the new deadline, I would decide the issue of costs without his input. The Plaintiff has not delivered costs submissions.

[3] This is my decision on costs.

**1. Positions of the Defendants**

**a. *Position of the Defendant Ontario Shores for Mental Health Sciences***

[4] The Defendant Ontario Shores for Mental Health Sciences (“**Ontario Shores**”) seeks its costs of the motion and the action in the amount of \$10,000.00, which represents 50% of its fees before tax, plus disbursements of \$15,934.87. Almost all of Ontario Shores' disbursements are associated with retaining an expert. Ontario Shores requests that the costs be payable within 60 days if demanded.

[5] Ontario Shores points out that it was entirely successful on summary judgment and obtained a full dismissal of the action.

[6] Ontario Shores submits that the issues on the action and the motion were important because the Plaintiff was making disparaging accusations against Ontario Shores staff and seeking damages in the amount of \$6.5 million. Ontario Shores states that it had to defend itself and its employees against the Plaintiff's baseless allegations.

[7] Ontario Shores argues that its requested costs are reasonable. Ontario Shores notes that it reduced its costs by having junior lawyers manage the file and bring the motion for summary judgment. It states that all the fees claimed were incurred by junior lawyers billing at lower hourly rates. While other lawyers and law clerks were involved, Ontario Shores advances a claim only for the work done by primary counsel.

[8] Ontario Shores acknowledges that the Plaintiff is self-represented and of limited means and states that this is why it is seeking only 50% of its costs, not partial indemnity. While Ontario Shores recognizes that costs should not be used to create a barrier to access to justice, it argues that the case law is clear that self-represented plaintiffs are still accountable for costs. According to Ontario Shores, if plaintiffs could bring meritless actions against public hospitals without fear of costs consequences, then hospitals would face increased burdens on their already limited funds.

***b. Position of the Defendant Dr. Omar Ghaffar***

[9] The Defendant Dr. Omar Ghaffar seeks costs in the amount of \$15,000.00 and disbursements in the amount of \$10,251.36 for his expert fees. He requests that the costs be payable within 60 days if demanded.

[10] Dr. Ghaffar points out that he was entirely successful on his motion for summary judgment. He submits that there is no reason in this case to deviate from the rule that costs follow the event, and that he is entitled to both his costs of the motion and his costs incurred in defending the Plaintiff's claims.

[11] Dr. Ghaffar notes that the action proceeded through pleadings and documentary and oral discoveries. He states that the Plaintiff's medical chart was voluminous and that he was forced to incur the costs of obtaining an expert report, preparing motion materials and attending the motion for summary judgment.

[12] Dr. Ghaffar argues that he was entitled to a robust defence given that the Plaintiff leveled serious allegations against him and sought damages in excess of \$6 million. Dr. Ghaffar points out that the Plaintiff then failed to adduce any evidence and failed to submit any materials whatsoever prior to the motion for summary judgment.

[13] Dr. Ghaffar submits that his counsel reasonably allocated work to junior counsel, who billed at a lower rate, and that the time spent was proportionate to the seriousness of the issues and could be reasonably expected by the Plaintiff. Dr. Ghaffar states that his fees on the motion were \$60,728.46 on a partial indemnity basis, but he is only seeking \$15,000.00 to reflect a discount for

the self-represented Plaintiff. He is also only seeking disbursements for expert fees plus GST, and no other disbursements. Dr. Ghaffar's position is that his discounted request for costs on a partial indemnity scale is fair and reasonable in the circumstances.

## **2. Discussion**

[14] The Defendants were successful on the motions and are entitled to their costs of the motions and the action.

[15] I agree with the Defendants that: (a) the allegations raised against the Defendants by the Plaintiff in the action were serious; and (b) the Plaintiff's medical chart was voluminous. Further, the Defendants were required to retain experts given the nature of the Plaintiff's claims. In light of these factors, among others, it could reasonably be expected that the Defendants would incur significant legal fees and disbursements in this action.

[16] I have reviewed the Defendants' bills of costs. As noted above, the Defendants are not seeking their full partial indemnity costs. In my view, the discounted costs sought by the Defendants are fair and reasonable in light of the issues raised, the documents that had to be reviewed to defend the action, the motion materials that had to be prepared, and the expert reports that had to be obtained.

## **3. Conclusion**

[17] Taking the foregoing into account, as well as the factors set out in Rule 57.01(1) of the *Rules of Civil Procedure* and the reasonable expectations of the parties, I find that:

- a. the fair and reasonable award of costs in favour of Ontario Shores is in the all-inclusive amount of \$25,934.87; and
- b. the fair and reasonable award of costs in favour of Dr. Ghaffar is in the all-inclusive amount of \$25,251.36.

[18] In my view, these are amounts that the Plaintiff should reasonably have expected to pay in the event that he was unsuccessful on the motions and the action.

[19] The costs are payable by the Plaintiff to the Defendants within 60 days if demanded.

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**Vermette J.**

**Date:** July 29, 2024