

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**DR. KULVINDER KAUR GILL, AND DR. ASHVINDER KAUR
LAMBA**

Plaintiffs

-and-

**DR. ANGUS MACICER, DR. NADIA ALAM, ANDRE PICARDS,
DR. MICHELLE COHEN, DR. ALEX NATAROS, DR. ILAN
SCHWARTS, DR. ANDREW FRASER, DR. MARCO PRADO,
TIMOTHY CAULFIELD, DR. SAJJAD FAZEL, ALHELI PICAZO,
BRUCE ARTHUR, DR. TERRY POLEVOY, DR. JOHN VAN
AERDE, DR. ANDREW BOOZARY, D. ABDU SHARKAWY, DR.
DAVID JACOBS, TRISTAN BRONCA, CARLY WEEKS, THE
POINTER, ~~THE HAMILTON SPECTATOR, SOCIÉTÉ RADIO-~~
~~CANADA~~, THE MEDICAL POST**

Defendants

PLAINTIFFS' JOINT CASE CONFERENCE BRIEF
(Case Conference scheduled for August 3, 2022, at 10:00 a.m.)

July 29, 2022

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A. Context

1. The Plaintiffs retained new counsel on July 14, 2022. An initial review of the file suggested, and this fact should be uncontroversial amongst experienced Defendants' counsel, that proper costs submissions had to be submitted to the Court on behalf of the Plaintiffs. Together, the Defendants have requested full indemnity fees of **\$1,182,005.58** and made "joint" submissions totalling 163 pages. The three paragraph, half-page, costs submissions prepared by former counsel are utterly deficient given the stakes at play for the Plaintiffs.

2. The day after they were retained, new counsel to the Plaintiffs wrote to the Court and corresponded with some of the Defendants. The Plaintiffs had asked for the consent of the Defendants to make further costs submissions, but this request has been denied by at least some of them, requiring that this case conference be held.

B. Initial Costs Submissions Were Made Without Instructions

3. While the Plaintiffs are prepared to swear affidavits on the undertaking that the Defendants will not rely on those documents as a waiver of solicitor-client privilege or otherwise release the information publicly, a very brief outline of the facts is necessary here to understand what transpired and what led to this request to make proper costs submissions.

4. Attached to this brief are three sets of exchanges between the Plaintiffs and their former counsel, Mr. Rocco Galati:

- i. The first are two emails dated April 7, 2022, where Mr. Galati forwarded the "joint" costs submissions of the Defendants and provided the submissions

prepared and filed on behalf of the Plaintiffs (that had already been submitted to the Court by then) with the notation: “*These are your cost submissions. We will explain why there were terse tomorrow*”.

ii. The second is an email from the Plaintiffs to Mr. Galati the next day where they confirm that they had not seen the costs submissions until sent to them on April 7, 2022. Other portions of the email have been redacted as it contains other information subject to solicitor-client privilege and over which such privilege is maintained.

iii. The third is a letter from Mr. Galati dated April 11, 2022, which has been redacted as it contains other information subject to solicitor-client privilege and over which such privilege is maintained, where Mr. Galati states: “*The cost submissions were not ‘short’ due to ‘lack of time’ but, given the statutory parameters, and clearly biased decision of the Superior Court, a tactical judgment call for appeal purposes*”.

5. To be clear, this was a supposed “tactical judgment call” taken solely by Mr. Galati without any instructions from the Plaintiffs.

6. After these exchanges, Mr. Galati brought a motion to remove himself as counsel of record. The Plaintiffs spoke with various potential counsel between the date Mr. Galati was removed from the record and when the ultimately retained current counsel.

7. The Plaintiffs did not understand when the issue of costs would be dealt with, at various times understanding that it would be part of the appeal, and other times that no

decision would be made until the appeal was heard. It was only on July 13, 2022, after receiving the Court’s endorsement and Defendants’ counsel response, that they definitively understood that a costs decision would be released before the appeal.

8. At the request of some of the Defendants, Mr. Galati was made aware of this case conference date and of the fact that the Plaintiffs would be raising issues relating to his representation to request the right to make further submissions.

C. Plaintiffs’ Request

9. Ultimately, this is an issue of procedural fairness. There is no suggestion on the part of the Plaintiffs that this situation was caused by anyone other than their former counsel. They simply ask for the opportunity to make submissions – there is no substantive prejudice to the Defendants or any of their rights.

10. Moreover, as should be evident from the fact that the Plaintiffs are now represented by separate counsel, their interests with respect to costs are not identical and may even conflict. It was not appropriate for Mr. Galati to file joint submissions on their behalf, let alone “terse” submissions. The Plaintiffs should therefore each be entitled to file separate submissions.

11. The Plaintiffs are prepared to bring a formal motion to seek leave to file further costs submissions, but it is their hope that this can simply be agreed upon during the case conference. Making submissions to request leave to make submissions is an inefficient use of the Court and the parties’ time, especially considering the Defendants’ insistence that the costs decision be released as soon as possible.

12. The Plaintiffs request fourteen (14) days from the date of the case conference to file their submissions. While reply submissions by the Defendants were not envisioned in this Court's endorsement, the Plaintiffs take no issue with such a right being granted to them. However, this again would seem contrary to the position taken by some of the Defendants – that they simply want the costs decision to be released as soon as possible.

July 29, 2022

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[Fwd: RE: Gill v. Lamba / CV-20-652918-0000]

rocco@idirect.com <rocco@idirect.com>
To: [REDACTED]

Thu, Apr 7, 2022 at 1:52 PM

Please see attached the Defendants' Cost submissions.

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"Oh why, oh why, does the wind never blow backwards?"—Woody Guthrie



[Fwd: RE: Gill v. Lamba / CV-20-652918-0000]


rocco@idirect.com <rocco@idirect.com>
To: [REDACTED]

Thu, Apr 7, 2022 at 1:53 PM

These are your cost submissions.

We will explain why they were terse tomorrow.

[Quoted text hidden]

 GILL:LAMBA Cost Submissions.pdf
192K

2



conference call

Kulvinder Gill

To: Rocco Galati <rocco@direct.com>, Ash Lamba

Fri, Apr 8, 2022 at 5:29 PM

Hello Rocco,

Thank you for making time for a brief discussion via zoom today with Ash and me.

As we had discussed, on our previous one-hour phone call on March 3, 2022 to discuss the anti-SLAPP judgement,

That was our last conversation with you prior to today.

Ash and I had then emailed you on March 15, 2022 to inquire about reviewing the drafts of the legal submissions and when we could send our feedback and input. You had emailed us back the same day saying that "we do not need your review for the notice of appeal".

Then we heard nothing back for several weeks until I had emailed you on April 1st enquiring why Ash and I were only being made aware of legal filings on costs made by all of the defendants and by you on our behalf only through social media postings by the defendants and the public.

Our zoom virtual meeting this morning unfortunately was short and abrupt. We had only obtained full copies of the cost submissions made by you and the defendants via email from you yesterday afternoon. Unfortunately, on our meeting today, we were not able to ask you any of our questions re these cost submissions and further details about the appeal. It is troubling that Amina shared today that the legal costs submission made on our behalf was only three short paragraphs because a sufficient response could not be prepared in the 30 day timeframe. Why was this never conveyed to us before the submission deadline or an extension sought?

Thank you,

Kulvinder and Ash

3

conference call

rocco@direct.com <rocco@direct.com>

To: Kulvinder Gill

Cc: Rocco Galati <rocco@direct.com>, Ash Lamba

Mon, Apr 11, 2022 at 12:21 PM

Please see attached correspondence, which is self explanatory.

Samantha Coomara
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"Oh why, oh why, does the wind never blow backwards?"—Woody Guthrie

[Quoted text hidden]

> "Please let us know what future steps are required as soon as possible as
> you know time is of the essence. Please let us know if you are available
> for a zoom meeting either this weekend or on Monday to complete our
> discussion re the costs submissions made and the appeals application."

[Quoted text hidden]

ltr to clients april 11 .pdf
85K

VIA EMAIL[illegible]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

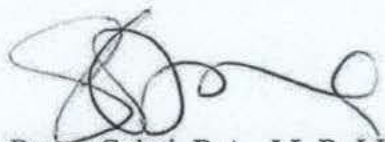
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[REDACTED]

ROCCO GALATI LAW FIRM PROFESSIONAL CORPORATION
Per:



Rocco Galati, B.A., LL.B, LL.M.
RG*sc

letter dictated
by Rocco Galati

Dr. Gill et al.
Plaintiffs

-and- **Dr. MacIver et al.**
Defendants

Court File No. CV-20-652918

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

PLAINTIFFS' JOINT CASE
CONFERENCE BRIEF
(August 3, 2022, at 10:00 a.m.)

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