

ONTARIO SUPERIOR COURT OF JUSTICE

5 THE ESTATE OF PETER NATHAN PERVAN, DECEASED,  
BY HIS ESTATE REPRESENTATIVE,  
PETER MARK PERVAN, PETER MARK PERVAN,  
PERSONALLY, CATHERINE PERVAN,  
HANNALEE BUFFY PERVAN and MARK DAVID PERVAN

Plaintiffs

- and -

10 DANIEL JACKSON, RONALD FORNAROLO, MICHAEL  
FRYER, STEPHEN AVERY, REGION OF DURHAM PARAMEDIC  
SERVICE, REGION MUNICIPALITY OF DURHAM,  
OSHAWA CENTRAL AMBULANCE COMMUNICATION CENTRE,  
KAREN VAN MIL, DANIELLE BAKER, MICHAEL BURKE,  
15 AMBULANCE COMMUNICATION OFFICER #14756,  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
AS REPRESENTATED BY THE MINISTRY OF HEALTH  
AND LONG-TERM CARE, THE TOWNSHIP OF UXBRIDGE,  
THE CITY OF OSHAWA

Defendants

**PROCEEDINGS ON APPLICATION**

20 BEFORE THE HONOURABLE JUSTICE H.K. O'CONNELL  
on Thursday, January 23, 2020, at OSHAWA, Ontario

Legend

[sic] - Indicates preceding word has been  
reproduced verbatim and is not a  
transcription error  
(ph) - Indicates preceding word has been  
spelled phonetically

APPEARANCES:

30 K. Cahill

Counsel for the Plaintiffs

A. Sharabi

Counsel for the Defendants

1.  
**Pervan et al v. Jackson et al**

THURSDAY, January 23, 2020

THE COURT: Good morning.

MS. CAHILL: Good morning.

MR. SHARABI: Good morning.

THE COURT: Okay, so who's who, we'll start with that?

MS. CAHILL: Kate Cahill for the plaintiff.

THE COURT: Right. I didn't recognize you, but I knew that you prepared the affidavit, yes.

MR. SHARABI: Avi Sharabi for the ....

THE COURT: And you were here on the last day?

MR. SHARABI: I was.

THE COURT: Okay. I'll just start out by saying the following: Mea culpa, mea maxima culpa on my part. I did reserve on this, and I realized yesterday that - I was going on the assumption that I had the usual three months to release my reasons, which given this was in the middle of October, actually expired the end of January and I was working on it, and then yesterday, Justice Dawe emailed me to say did I have the file, and he said he had a motion. So I procured the file, which I had on my credenza, and I reviewed the file. I realized that the date for the motion before Justice Dawe, which he told me he had up today, was today. So my apologies for not addressing this earlier. I'm going to give quick reasons, and then Justice Dawe will come in. The reason I'm sitting in his court is because my

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**Reasons for Ruling, O'Connell, J.**

5 court is an on-going self-represented jury trial. It's sealed, and it would have been too difficult to have you two go in there and try to set up with all the material that's in that court.

R E A S O N S F O R R U L I N G

10 O'CONNELL, J. (Orally):

On October the 11<sup>th</sup>, 2019, Ms. Cahill's partner, I am assuming, argued a motion record on behalf of Ms. Cahill with respect to litigation where they are representing the plaintiffs. It involves a young gentleman, about 31 years old, who died of a wasp sting and went into shock, and allege negligence by others, inclusive of, allegedly, Durham Paramedics.

20 The motion was heard before me. The notice of motion, as I said, at page 1 in the bottom corner sets out the relief sought. It is asking for compelling of examination for discovery of the Durham Paramedic representatives and/or in the alternative, an adjournment of the security for costs motion, which was actually returnable today, until after discoveries have completed.

30 Ms. Gilbert, in succinct argument, took me through the case law, the factual background, the requirement of Rule 56 for the court to impose security for costs. She cited case law in her materials, and read out portions from the

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**Reasons for Ruling, O'Connell, J.**

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decisions in *Turner v. UAP Inc.*, 2016 ONSC 696;  
and *Zeitoun v. Economical Insurance Group* (2008),  
91 O.R. (3d) 131 (Div Ct.) another case.

Ms. Gilbert submitted the following:

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This case before me was an example of a case  
where there was not enough evidence to meet the  
burden at the motion, that is the plaintiffs'  
burden under Rule 56, to repel the argument  
that security for costs should be posted.

Ms. Gilbert referred to other cases as well, and  
made extensive submissions as to why the relief  
that she was seeking should be granted. She  
referred to Ms. Cahill's affidavit, Ms. Cahill  
being present today, and I am happy you are here,  
Ms. Cahill. It turns out that I do not have any  
questions, but to set out the history of this and  
as to why this matter should proceed to discovery  
of the Durham Paramedics. Ms. Gilbert reminded  
the court that there had been extensive back and  
forth between the lawyers for each side with  
respect to getting the Durham Paramedics  
discovered, and indeed other parties in this  
matter have already been discovered by the  
parties to inform the eventual record that will  
presumably meet the eyes of a trial judge and/or  
result in a settlement in due course.

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**Reasons for Ruling, O'Connell, J.**

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Ms. Gilbert's position was basically that the discovery was needed because the pleadings and the documents to date will leave too many questions unanswered. Without discovery, the plaintiffs cannot get an expert opinion. On that ground, she said that if the discovery was done, at least then they could go to their retained expert, that is the plaintiffs' retained expert, to get an informed opinion about negligence and the potential scope of the negligence of Durham Region Paramedics. The argument of Ms. Gilbert came down as well to that if the defence believed the document evidence was enough, why were they bringing an application for security for costs under Rule 56.

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Essentially, Ms. Gilbert said, when you look at the history of this, you look at the pleadings and the documents disclosed to date, that the plaintiffs would be left in an unfair position if they do not have discovery access to the paramedics before the defendants' motion for security for costs. Once again, Ms. Gilbert, and I will compliment her on this, went through what was already known, including the dosage of the Epi, the fact the ambulance stopped twice in close proximity, she said, to the hospital, all steps which she said form or will form part of the argument of the plaintiffs as to why security for costs should not be granted in this case.

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**Reasons for Ruling, O'Connell, J.**

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Now again, it is conceded that at least two of the plaintiffs live or did live, and Ms. Cahill, I am assuming it is still the case, in San Francisco in the US of A.

MS. CAHILL: Your Honour, it is conceded three of the plaintiffs, in fact, live in San Francisco. One lives in Vancouver.

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THE COURT: Right, and one was out west, thank you.

Ms. Gilbert noted the test has a good chance of success.

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With respect to the background, Ms. Gilbert pointed out the extensive efforts she said were made to tee up the time for the discovery. I think there was some 66 dates offered by you, Ms. Cahill, if I have my memory right, that she referred to, and effectively, also referred to Rule 1.04 of the *Rules of Civil Procedure*, which I will call the overriding fairness rule, for lack of a better phrase, and Ms. Gilbert said, under all the circumstances, at the very least the alternative should be granted adjourning the security for costs motion, which had been set by the defendants returnable today, so that a full record could be before the judge, and so that the plaintiffs can meet the onus that they must meet under Rule 56.

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**Reasons for Ruling, O'Connell, J.**

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Mr. Sharabi for the defendants made equally compelling submissions. I note that both counsel should really be applauded for breaking down their submissions and how they had sub-submissions within each submission. He talked about a pattern of delay, and then urgency propagated, he said, by the plaintiffs. He referred to the chronology in the affidavit in his materials. He noted that the plaintiffs were attempting or at least plaintiffs' counsel were attempting to force the defendants to appear on dates they were not available, and he said he took umbrage with the suggestion that the security for costs motion should occur after the discoveries. He agreed that there is no fixed rule nor fixed definitive law on that issue, but he said under the circumstances of this case, including case law that he took me to, that this was a case where there was no need for those discoveries before the motion for security for costs, and again, as was the case before me and now re-confirmed by Ms. Cahill, there is no issue that one part of the prompt for security for costs has been met, namely that three of the plaintiffs are out of the jurisdiction; one out in B.C., two in the United States of America, and secondly, there is no argument being made by the plaintiffs that their clients are impecunious,

**Reasons for Ruling, O'Connell, J.**

which had they been, would have informed the security for costs motion.

5 Mr. Sharabi went through when the parties exchanged various affidavits of documents and other material. He put a lot of the delay at the feet of Ms. Cahill/Ms. Gilbert's client. He referred to Ms. Cahill's affidavit with respect to the delay in the discoveries of the 10 paramedics, all to say, and I will say this at this stage, there was some focus put on both sides as to who is responsible for why the time passed as it did before the motion came before me in October 2019, a motion that the plaintiffs brought, as I have already indicated, in response to the motion brought by the defendants for security for costs.

20 Mr. Sharabi took me again to case law. In particular, he took me to his factum at paragraphs 23, 24, and 25, where he indicated to me he basically could not say it better orally, and because he put it in writing, as to why he was of the view that this motion today could proceed without discoveries.

25 I engaged Mr. Sharabi in some discussion about, I am not going to call it the equities, Mr. Sharabi, because I did not call it that, but 30 discussion about his position. Mr. Sharabi



**Reasons for Ruling, O'Connell, J.**

5 distinguished, from his perspective, some of the case law, and said the cases that the plaintiff referred to where discoveries were held to be appropriate before a security for costs motion did not parallel the fact pattern before me.

10 With respect to a reply, Ms. Gilbert talked about the pattern of urgency and delay as it was described by Mr. Sharabi for the defendants. Her response included the fact that the delay, if anything, was in getting the motion date booked some eight months or more after it was discussed with respect to the motion. Ms. Gilbert referred to tab EE in Ms. Cahill's affidavit with respect to the position of Ms. Cahill and Ms. Gilbert's clients, and took the position there was no need, effectively, for discoveries before the motion for security for costs.

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20 I have already indicated at the beginning of this that through my oversight, no one else's, this matter was on reserve. I was not late in producing the reserve, but I did note when I  
25 listened to portions of the tape last night, in anticipation of the need to get this out with now realizing that the motion was up today, that I did say I would try to have a short endorsement out the next week in October. That obviously did not happen. That is no fault of the parties. It  
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**Reasons for Ruling, O'Connell, J.**

rests on my shoulders, and again, I apologize for any anguish that may have caused either side.

5 Both sides appear today. This matter is on a list before my brother Judge Dawe with respect to the motion for security of costs. I considered carefully all the material and very well prepared factums and submissions, and Mr. Sharabi, because 10 you are here, I am going to compliment you in person, with respect to the positions of the parties. Leaving aside for the sake of argument whether either side is responsible for delay more than the other, leaving aside Mr. Sharabi's argument that he did not receive a response from Ms. Cahill's firm or one of the partners, I think 15 it was Ms. Berlach, for an inordinate amount of time about the issue of discoveries and setting them up, I am of the considered position, having considered the argument of both counsel, and in applying Rule 1.04 of the *Rules of Civil Procedure*, that this is a case where discoveries 20 should occur before the motion for security for costs.

25 I find under Rule 1.04 that is the most just and efficient way to deal with the justice of this case. In coming to that conclusion, I note that the plaintiffs did not just pop up and say we want to discover the paramedics. This discussion 30 had been in the wings for a long period of time.

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**Reasons for Ruling, O'Connell, J.**

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Again, in saying that, I am not suggesting that the defendants acquiesced in any delay with respect to dealing with the paramedics, but I do note that dates were offered, and for various reasons, lawyers could not jive their own calendars with respect to attending at such a discovery of the three Durham Region Paramedics and their representatives.

As a consequence, I am in agreement that the motion for the security for costs, unless something has happened in the interim, should not be held until after the discoveries have been completed. I note that there was discussion about discoveries in November after I heard the motion. My understanding was that was not amenable to the defendants.

So my order will be:

(1) the discoveries will proceed before the motion for security for costs occurs;

(2) that that is necessary for the justice of the case and has regard to the history of the attempt to discover all parties well before the motion for security for costs was set down.

In saying that, I am not suggesting that it was tactical maneuvering in setting down the security for costs motion. Maybe one side got impatient,

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**Reasons for Ruling, O'Connell, J.**

5 but these things are all understandable. But  
when I apply Rule 1.04, and very recently, I  
think it was earlier this week, and I apologize  
for not having the case name, Justice Nordheimer  
overturned a motion judge's decision<sup>1</sup> not to  
10 overturn the noting in default of a party, and he  
referred to Rule 1.04, and reminded that that  
Rule has real stock in trade, not his words,  
mine, in respect of the justice of the case.  
This is a serious case on its face. It is a  
sensitive case. There was a death, and given the  
history of this, I see no reason not to accede to  
the plaintiffs' suggestion and their submissions  
15 that discoveries are necessary to inform a proper  
record so that the justice hearing the motion for  
security for costs is in the best position to  
determine whether or not the onus that the  
plaintiffs have, which they readily admit, has  
20 been met to repel, if they can, the posting of  
security for costs.

Those are my reasons on the motion as late as  
they may be. At the time, I am going to ask you  
25 this, Ms. Cahill, if you know this, your  
associate, Ms. Gilbert, presented a cost outline  
seeking, I am just going to get the total  
quantity here, this is independent of  
disbursements, seeking about \$11,777.00, I think  
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<sup>1</sup> After counsel ordered these reasons I looked up the decision that I was referring to. It is *Zeifman Partners Inc. v. Aiello*, 2020 ONCA 33, with *Nordheimer J.A. speaking for the court*.

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**Submissions**

plus disbursements and HST, although it might have been all inclusive. It is hard for me to tell.

Mr. Sharabi took the view that all-in, if he was the successful party, his clients that is, he was seeking, as I understood you, Mr. Sharabi, about \$3,500.00, including your fee for attendance on the day of the motion. Have I got that accurate, because I wrote that down in ink on the bottom of your costs outline.

MR. SHARAVI: From what I remember, it was something like that.

THE COURT: All right. Mr. Sharabi's position was that those costs, independent if he succeeded, would be an appropriate amount of costs for this kind of motion, effectively referred to his cost outline, and also said to me, if memory serves correctly, that this was a case where most of the material was already available, save and except for the need to produce affidavits to argue the motion.

Ms. Gilbert basically said to me on the conclusion of the motion date relying upon her cost outline that the issue of costs was of course in the court's discretion. Her biggest concern on behalf of her clients was making sure that they had admission to the security for cost

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**Submissions**

motion on informed record, and she would leave costs to the court.

5 I will start out by saying, and I do not think, Mr. Sharabi, but you might want to look, that the disbursements appear to be completely reasonable, \$693. They do include, however, parking and mileage. Do you have anything to say about that?

10 MR. SHARABI: Sorry, the?

THE COURT: Of the plaintiffs.

15 MR. SHARABI: I guess the one thing, in terms of parking and mileage, I don't have anything to say about that, but the one thing that I would suggest is, regardless of the outcome here, and I understand you've made your decision, the motion was based on insufficient evidence for a security for cost motion. This is what we received on Friday, so I don't ....

20 THE COURT: Okay, so you are referring now to about ...

MR. SHARABI: To five volumes ....

THE COURT: ... 18 inches, using the Imperial, of materials for the security for costs motion.

25 MR. SHARABI: Sixteen hundred pages ...

THE COURT: Okay.

30 MR. SHARABI: ... of the security for costs motion. To be fair to my friend, the first one sets out, a lot of it sets out what was before you, so we're going to take that out ...

THE COURT: Okay.

**14.**  
**Submissions**

MR. SHARABI: ... and that was about two hundred and something pages ...

THE COURT: All right.

MR. SHARABI: ... so fourteen hundred pages. The plaintiffs said they didn't have enough - Sorry, I should be standing. The plaintiffs said they didn't have enough material to proceed today. I was ready to go, because they presented this to us late on Friday, and then did a 30 page factum that had one paragraph asking for the adjournment, and I don't know, 60-something paragraphs on the merits. So the only reason I bring that up, Your Honour, because I know you made your decision. If you're not going to change your mind, that's fine. I'm not going to ask you to do that retroactively. You did what was before you. This was before you then ...

THE COURT: Right.

MR. SHARABI: ... this wasn't before you then, but in that case, given that the plaintiffs were clearly ready to go, decided to serve us with their material at the last minute, I don't think that that other motion was reasonable, because they clearly were ready to make these submissions.

THE COURT: Okay. Just before I call on Ms. Cahill, thank you for that. I did not know about all this material in front of you, which as I said, is about, let's just say 30 centimetres tall, about a foot now. One of the things you

**15.**  
**Submissions**

5 had asked in your relief was, and Ms. Gilbert took issue with it understandably was, you said you should leave this to the security for costs motions judge, right?

MR. SHARABI: Yes.

10 THE COURT: And Ms. Gilbert said well that is just not efficient because that is currently set for four hours on today's date, January 23<sup>rd</sup>, and why would we have this motion now before you just for you to turn around, Your Honour, and say judge of January 23<sup>rd</sup>, you will deal with it as a preliminary matter, and Ms. Gilbert's response to that was well if the judge agrees with us, we are back to square one, and we have wasted today.

15 That was part of the argument, right?

MR. SHARABI: Yes, and I think that what I had suggested was, no matter, and you have the record before you, when the judge hearing the actual motion looks at records, if my friend wants to make a submission ...

20 THE COURT: Right.

MR. SHARABI: ... and say well we still need more, I mean it's like a summary judgment motion. It isn't always that judge who decides ....

25 THE COURT: No, I know. I remember your argument well on that.

MR. SHARABI: Sorry.

30 THE COURT: Okay, Ms. Cahill, your friend says as of Friday or whatever day it was, last week, he was served with a much more comprehensive record



**16.**  
**Submissions**

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for security for costs. Let me ask you something. Leaving aside my decision, while it was on reserve, did you change your mind at all about whether or not you needed the discoveries or your position was still the same, but because you did not have my reserve, you needed to be loaded for bear, so to speak ....

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MS. CAHILL: Yes, Your Honour. I can address that. In terms of looking at the volume of materials that have been delivered, they bear no relation to the substance of the merits of the claim because the bulk of it is related to financial hardship and not the merits of the claim, and if you look at my desk, if we're going through this exercise of judging this based on the volumes that have been delivered, three of those volumes relate to financial hardship and not discovery. So to the point, you know, we're now ready, no I didn't change my position. In fact, I sent Mr. Sharabi two letters in which I told him it's unfortunate that we don't have this ruling yet. We will still be requesting an adjournment at the motion on the 23<sup>rd</sup>, and my view with that, if we didn't get this ruling, there was no way, as a matter of fact, that we could proceed with this. It would result in an abuse of process.

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THE COURT: Right, so your opinion ...

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MS. CAHILL: However ...

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**Submissions**

THE COURT: ... sorry, just interrupted, your  
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5 MS. CAHILL: ... to protect my clients interests  
in the even that I was not successful in that  
argument as unlikely as I thought it to be that  
we would have to proceed today with no ruling on  
an outstanding issue, I was forced to prepare  
10 materials, and said to Mr. Sharabi, I will have  
to claim costs thrown away for doing that,  
because it doesn't make procedural sense, and it  
would result in an abuse of process, and I had no  
choice.

15 THE COURT: Just a couple of quick things. One  
is, as I think I told you at the beginning of my  
commentary today, yesterday Justice Dawe was  
telling me this was up, which put me into hyper-  
drive, okay?

MS. CAHILL: yes.

20 THE COURT: And it was my omission about the 23<sup>rd</sup>.  
Your position was going to be, in front of  
Justice Dawe, and I have no reason to believe he  
would not have found favour with it is, we are  
waiting on a reserved judgment. So we cannot get  
25 to the second base until we are clear of the  
first base, and if we are not clear of the first  
base, then we will get to the second base, so if  
you had lost today via me ...

30 MS. CAHILL: Yes.

**18.**  
**Submissions**

THE COURT: ... would you have been prepared to proceed then or would you position might have been we want to digest?

MS. CAHILL: We might not have been given that opportunity is the concern ...

THE COURT: No, I understand.

MS. CAHILL: ... and so we filed what we have, but substantively, what has been filed for this motion is no different than what was file on the first motion where we argued we needed more materials, and ...

THE COURT: With respect to ...

MS. CAHILL: ... we still maintain that position.

THE COURT: ... what documents and the rest of it ...

MS. CAHILL: Yes.

THE COURT: ... was you were relying upon. Okay, last comment to you, Mr. Sharabi. If you have anything else to say?

MR. SHARABI: Yes, so the only thing I would say is, so what was put to you in the original motion was a final report from the Ministry of Health investigator that kind of summarized all of the foundation documents, and Ms. Gilbert went through that and said I have all these questions for you, and she said well I don't have statements from, you know, the paramedics. I don't have this and I don't have that, and what I had put to you, and it was my fault, I hadn't brought the Crown's list of documents, and I said

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**Submissions**

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to you, Your Honour, those are actually all in there. All of the factual matrix or foundation for any expert report would be already in the file. The discoveries won't say anything new, and I will say that these materials, while they - So first of all, the financial hardship answer is one of the defences to the motion.

THE COURT: Yes.

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MR. SHARABI: On the merits issue, all that was put to you was the final report. We have another report that informs the final report. We have the ...

THE COURT: Okay.

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MR. SHARABI: ... ambulance call report and statements, etcetera.

THE COURT: So what do you say then about costs?

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MR. SHARABI: So I say that my clients really had no choice but to come here today because of the positions taken by the plaintiffs. At the end of the day, we were put in this difficult situation of we waited to schedule the motion at the mutually convenient time. My friends made no requests for discoveries, and then at that point, and you know we went over this, my client said  
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look, once you schedule a motion for security for costs, don't you want to protect your costs before you engage in all these steps. So yes, we had the back and forth, but really, we were just  
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trying to get this motion heard and get it over

**20.**  
**Submissions**

with, and I don't think we took any unreasonable steps.

5 THE COURT: No, that is fine. I accept what you are saying. You wanted to get the motion heard and get it over with, but of course, this motion was dependent on whether or not that one piece of the puzzle, which the plaintiffs said they needed, which was discoveries which were agreed to be appropriate. No one would say they would not have been, not in the context necessarily of a security for costs motion, so I do not think there is really any big difference there. So what do you say, what is your position before I hear very briefly from Ms. Cahill what total costs should be in favour of the defendants or is your position they should be reserved to the motion judge who hears security for costs? I just need to know.

10 MR. SHARABI: So that's my position. I think that when you think about the fact that this separate motion was really something that when you look at the endorsements and the case law that I provided, it's usually an argument made to the motions judge hearing the motion ...

15 THE COURT: Right.

20 MR. SHARABI: ... I think this is just essentially taking one argument away from them, and so be it. It should be really, once we finally determine the issues on the security for

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**Submissions**

costs motion, you know how they say costs in the cause, but not costs in the cause ...

THE COURT: Right.

MR. SHARABI: ... of the action, to the motion.

THE COURT: Okay, but then would that then go back before me, because, if I agree with you, the judge who determined that would really have no idea of the - Well, they would have an idea of the time and what was filed, but I have got more of an intimate knowledge.

MR. SHARABI: I would be very happy with you being seized ...

THE COURT: Your position is ....

MR. SHARABI: ... with this motion so that we can, and at least if you're seized of it, you had talked to us last time, you said if I'm going to, you said I'm going to do one of two things. I'm either going to let you have this motion today, and you can make these arguments again in front of that judge, and you tried to dissuade me from doing that or you said I'm going to delay, but you said I'm not going to delay your motion for a long time. We're going to, you know, you almost hinted as if you're going to, I don't know, case manage this motion.

THE COURT: That might be a better, appropriate way. I tend to do that sometimes, because I have found in the past that when it goes from judge to judge to judge, you lose continuity.

MR. SHARABI: I'd be very happy with that.

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**Submissions**

5 THE COURT: Well, I'm not inviting that part, but what do you say the costs should be if I believe they should, as the normal rule is, subject to adaptation, be extended to the plaintiffs for the hearing of the motion before me and forget about today? What do you say the costs ....

MR. SHARABI: In terms of the number?

THE COURT: Yes.

10 MR. SHARABI: I don't think it should be greater than our number, because I think ....

THE COURT: So the number should stay?

MR. SHARABI: Yeah.

THE COURT: Okay. Ms. Cahill?

15 MS. CAHILL: Your Honour, my position is that the costs should be made payable forthwith and not put off to another date that is really only for exceptional circumstances, and there's no justification for that in this case. In terms of the amount of costs sought, for the plaintiffs, 20 this motion was of huge importance, and the reason being as stated in the original motion, if the plaintiff loses on a security for costs motion, they risk having to abandon this case. Given the importance of the motion, I think the 25 level of costs sought are appropriate. Ms. Gilbert is a senior partner with Thomson Rogers. The time allocated, I think, is highly reasonable, and the volume of materials was 30 extensive, in part, because the nature of the correspondence was mischaracterized in the moving

**23.**  
**Submissions**

5 party's motion record, and I believe Ms. Gilbert took you through that on the motion when she argued it. So my submission is that the time spent on this motion was appropriate. The costs sought are appropriate, and there's no reason to deviate from the rule that the costs should be awarded immediately.

10 THE COURT: Okay. Just before I determine that issue, because my jury is waiting, not my jury thankfully, are you two going to have a discussion about timeframe now for having the paramedics produced for discovery without any, you know, undue delay? They've got lives, they've got work schedules.

15 MS. CAHILL: I'm happy to do that.

THE COURT: All right. That should be done. That would be nice to have that done today ...

MS. CAHILL: Yes.

20 THE COURT: ... and then to get a return date for the motion. Now here is what I want to guard against. You can talk to Ms. Travis downstairs. Justice Dawe will be coming in. When this was set, it was eight months later, right, your motion? I want to get it right. What took the eight months? Was that for the security for costs motion to be set?

MR. SHARABI: Security - Sorry.

MS. CAHILL: Yes.

30 THE COURT: Right. I want to avoid that. One of the things that is happening in this jurisdiction



**Reasons for Ruling - O'Connell, J.**

5 is there were a flood of long motions, and then  
you get into that long motion date, and there's  
only a few available dates here, there, and  
everywhere, but because the date for confirmation  
of those motions, I believe, is consistent with  
short motions, a lot of them fall apart. So what  
you end up having is, a judge like Justice Dawe,  
10 this is not this case, is told the day before,  
your motion is settled, and then there is nothing  
on a long motions list. So you should attend to  
Ms. Travis once you work out discovery dates to  
find out when you can get your first available  
long motion date. I am not going to say I am  
going to remain seized of it, because this jury  
15 trial with a self-represented gentleman is  
supposed to go four months, but we need to  
navigate that. That is the case management  
offer, suggestion I am making, okay, all right?

20 MS. CAHILL: Your Honour, I think that's  
reasonable.

THE COURT: All right. Okay, thank you.

MR. SHARABI: Thank you.

25 THE COURT: So Ms. Cahill for plaintiffs, Mr.  
Sharabi for defendants, oral reasons given.  
Discoveries of paramedics to occur before  
security for costs motion, which was set for  
today. Costs in favour of plaintiffs of six  
thousand dollars all inclusive, including  
30 attendance today, payable within presumptive 30  
days. Who is the gentleman in court?

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MS. CAHILL: I apologize for not introducing ...

THE COURT: That is okay.

MS. CAHILL: This is my client, Mr. Pervan. He  
5 flew in from San Francisco for ....

THE COURT: You are the father?

MS. CAHILL: Yes.

THE COURT: Irrespective of what happened, that  
10 is horrible. I'll tell you a quick story. A  
friend of mine got bit by a wasp this summer.  
Had no prior conditions, and but for fast acting,  
would have died. So it's a horrible thing, and  
it reminds you how delicate life is. All right,  
so I made the endorsement. I will see if I can  
15 have a message run up to Justice Dawe to hold  
down until you come back. If you need me to re-  
speak to it, just tell him and I can see you at  
about 11:30 if that works just because I know it  
right, and you can just tell him the motion is  
20 not proceeding based on my ruling. And again,  
and I mean this, I apologize to you for not  
having done this earlier, because I was working  
on the three month usual trigger for release. In  
future, if it helps you, this is not blaming  
25 anyone, nothing wrong with a letter to say can  
you please tell us, and I know lawyers are shy to  
do it, but with me, it doesn't bother me, can you  
please tell me when we can anticipate it because  
30 there's a trigger date, and that applies to  
trigger dates that the judge may not even be

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5  
aware of. I take no offence to that. I know the secretaries, their common response back is we don't comment upon release dates, but they do ask us about it, okay?

MS. CAHILL: Thank you, Your Honour.

MR. SHARABI: Thank you, Your Honour.

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... WHEREUPON THESE PROCEEDINGS WERE CONCLUDED.