

 **St. Leonard's Place v. Brown, [2018] O.J. No. 2796**

Ontario Judgments

Ontario Superior Court of Justice

F.L. Myers J.

March 27, 2018.

Court File No. CV-16-557186

**[2018] O.J. No. 2796**

Between St. Leonard's Place, Peel and Christopher McIntosh, Applicants, and Richard Brown, Barry Turnbull, Victor Sinclair, Ray Scanlan, [Maggie McCallion], John Lomax, Aimee Adams, Grant Kerr, Jim Stephenson, Michael Walsh, Tom Keyes, [John Mullen], Tom Trevelyan, Eliza Juszczak, Estelle Wieler, Bruce Gaskin, Jeff Banton, Joanne Robertson, Craig Ellis, Garnet Manning, and John Sanderson, Mark McNeil, [Elayne McDermid, Fran Baines and Irene Evans], Respondents

[Editor's note:

Text in brackets is struck out in the original.]

(9 paras.)

## **Counsel**

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No counsel mentioned.

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## **COSTS ENDORSEMENT**

### **F.L. MYERS J.**

- 1 The Respondents succeeded in full. Application dismissed for oral reasons dictated today.
- 2 The Respondent Brown is entitled to his costs on a substantial indemnity basis. The Applicants made very serious allegations against him that were unsubstantiated. They besmirched his good name after 35 years of service to their organization. Costs are fixed at \$99,300 all in payable by the Applicants jointly and severally.
- 3 The Applicants ask that costs stop at January 31, 2018 when they made an offer to settle based on the facts learned on cross-examinations. The offer was not beaten. It gave Brown far less than he was entitled to. It did not fully compensate the other respondents for the allegations made against them for no reason. I do not see a basis in Rule 49 to consider this offer.

**4** The Applicants remind the Court that SLPP is a charity. It did not behave very charitably in suing. Now it wants to force its former directors and Executive Director to contribute [illegible text] legals without even getting a receipt. SLPP should have a good look at its corporate purposes.

**5** The Respondents represented by Mr. MacDonald are entitled to full indemnity as former directors and due to the serious allegations made against them without cause. I do not agree that the charity had no choice. No one is required to sue and allege illegal conduct with [illegible text] evidence. When the board saw it was suffering high costs there was no duty to sue with no basis. Mr. McIntosh's refusal to particularize breaches of fiduciary duty and breach of trust was utterly offensive. You don't sue just because something didn't work out as planned -- at least not for dishonesty.

**6** In my view the Applicant's inappropriate claims set the wheels in motion that led Mr. MacDonald's clients to claim against the current board members who had also taken a step that could be claimed to have at least recognized the validity of the IPP. The claim over was not strong, but it was understandable [illegible text] from the Applicant's actions.

**7** As the current board is in all likelihood indemnified under the by-laws now in place, to leave the Applicants in the claim over without recourse is to have them pay SLPP's costs.

**8** Therefore, the Applicants are jointly and severally liability to pay the costs of Mr. MacDonald's clients on a substantial indemnity basis for both applications in the amount of \$110,000 all in and indemnify them for the costs they are required to pay to the current board of \$82,000 all in.

**9** Mr. Sinclair is entitled to indemnity for disbursements and the time that would have been spent for a lawyer. I found his submissions compelling and helpful in resolving the matter. The Applicants are jointly and severally liable to pay Mr. Sinclair his costs fixed at \$500.00.

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