

CASE LAW UPDATE

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Attis v. Ontario (Minister of Health)

2010 ONSC 4508, Released 10 September 2010

Class Actions – Costs Awards Against Plaintiffs’ Solicitors

The Attorney General sought an order for the outstanding costs of a class action to be paid by the plaintiffs’ solicitors. Following unsuccessful appeals to the Court of Appeal and the Supreme Court, the total costs awarded against the plaintiffs were over \$165,000. The plaintiffs were impecunious. The Court granted the motion and required the solicitors to bear the costs of the action.

The Court placed a special emphasis on the need for proper disclosure of costs consequences to representative plaintiffs in a class proceeding. The decision emphasizes that the absence of informed consent is equivalent to absence of consent, and given the evidence that the action would not have been brought by the plaintiffs if they were aware of the costs consequences, it was within the court’s jurisdiction to hold their solicitors personally liable.

There was no documentary evidence that the solicitors advised the plaintiffs of their potential liability to pay a costs award. Given the lack of sufficient evidence to establish that the plaintiffs were advised of potential personal liability, and given the evidence of the plaintiff’s complete confidence in their solicitors, the court was satisfied that it was appropriate that the costs award should be payable by the firm.

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