

CITATION: Meehan et al v. Good et al, 2025 ONSC 6730
COURT FILE NO.: CV-14-60040
DATE: 20251201

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: THE ESTATE of MICHAEL MEEHAN by his litigation administrator ANTHONY MEEHAN, ANNE MEEHAN by her litigation guardian MICHAEL MEEHAN ANTHONY MEEHAN, MICHAEL MEEHAN, KATARINA MEEHAN, KATHLEEN MEEHAN and ANTHONY MEEHAN, Plaintiffs

AND:

DONALD GOOD, DONALD R. GOOD A PROFESSIONAL CORPORATION o/a DONALD R. GOOD & ASSOCIATES, IAN STAUFFER, JOHN CARDILL and TIERNEY STAUFFER LLP, Defendants

BEFORE: The Honourable Justice A. Kaufman

COUNSEL: Bryan D. Rumble, Counsel, for the Plaintiffs

Joseph Y. Obagi, Counsel, for the Defendant John Cardill

HEARD: September 5, 2025

COSTS ENDORSEMENT

- [1] The parties settled this solicitor's negligence action midway through trial.
- [2] Under their minutes of settlement, the costs of the action were left to the trial judge. The parties agreed that the trial judge could rely on all evidence heard during the trial and any additional evidence submitted. Because Anne Meehan is a party under disability, the settlement required court approval. The Honourable Madam Justice Jensen approved the settlement on August 21, 2025.
- [3] The parties agreed on the quantum and scale of costs: \$262,500 on a partial indemnity basis. The sole issue before the Court is whether that costs order should be payable by the Estate of Michael Meehan and either Anne Meehan, a party under disability or her litigation guardian Anthony Meehan.

The Action

- [4] Donald Good acted for the plaintiffs, Michael and Anne Meehan, in personal injury litigation arising from a motor vehicle accident that occurred on September 26, 1999. He was counsel of record in both the tort action and the accident benefits action. Both matters

were resolved before trial through minutes of settlement dated June 16, 2005, and January 18, 2007.

- [5] Following the settlement of the personal injury actions, the plaintiffs retained the defendant, John Cardill, to assess Mr. Good's fees under the *Solicitors Act*.¹ Mr. Cardill indicated that there were "serious issues regarding [Mr. Good's] handling of [the actions]," which would be addressed during the assessment.
- [6] On January 16, 2013, the plaintiffs commenced this solicitor's negligence action. They alleged, among other things, that Mr. Cardill failed to advise them that any negligence claim against Mr. Good was subject to a two-year limitation period.
- [7] The claim was dismissed as against Mr. Good on September 22, 2015, and as against Ian Stauffer on March 8, 2018. Mr. Cardill was the only remaining defendant at trial.

Anne Meehan becomes a party under disability and Michael Meehan passes away

- [8] In 2020 and 2021, Anne Meehan underwent capacity assessments. Dr. Bruto concluded that she was incapable of instructing counsel.
- [9] On September 19, 2022, the Court granted leave to amend the claim. Michael Meehan was appointed as Anne Meehan's litigation guardian. At the same time, Anne Meehan was removed as litigation guardian for her son, Anthony Meehan, who had reached the age of majority.
- [10] On December 28, 2022, Michael Meehan passed away. Anthony Meehan then assumed the role of litigation guardian for Anne Meehan and litigation administrator for the Estate of Michael Meehan.

The trial

- [11] The trial of this action was heard over several weeks: March 25 and 31, 2025, April 14, 2025, and June 2, 2025.
- [12] On August 11, 2025, the parties entered into minutes of settlement. Under those minutes, the plaintiffs' action was to be dismissed.

Issue

- [13] The sole issue before the Court is whether the costs of the action should be borne by the Estate of Michael Meehan, and by Anne Meehan, a person under disability or her litigation guardian, Anthony Meehan.

¹ R.S.O. 1990, Chapter S.15.

Analysis

- [14] Rule 57.06(2) of the *Rules of Civil Procedure*² provides that a litigation guardian who has been ordered to pay costs is entitled to recover them from the person under disability for whom he or she has acted, unless the court orders otherwise.
- [15] In their minutes of settlement, the parties agreed that Anthony Meehan would not have recourse to Rule 57.06(2). They further agreed that it would be for the trial judge to determine, in the context of this motion, whether Anthony Meehan ought to be personally liable for Mr. Cardill's costs of this action.

Applicable Principles

- [16] Section 131(1) of the *Courts of Justice Act*³ provides that the costs of a proceeding are in the discretion of the Court. That discretion extends to determining both the party responsible for costs and the extent of liability. The discretion must be exercised on a principled basis.⁴
- [17] The plaintiffs do not oppose a costs order in the agreed amount against Anthony Meehan.
- [18] The *Rules of Civil Procedure* contemplate that either a litigation guardian or the person under disability may ultimately be liable for costs. Rule 7.02(h) requires litigation guardians to file an affidavit acknowledging that they have been informed of their potential personal liability for costs awarded against them or against the person under disability. In addition, Rule 57.06(2) permits a litigation guardian who has been ordered to pay costs to recover those costs from the person under disability, unless the Court orders otherwise.
- [19] The jurisprudence identifies several factors relevant to the exercise of discretion in this context. These include:
- the conduct of the litigation guardian;
 - whether the litigation guardian acts for a plaintiff or defendant;
 - whether the litigation guardian is a public body or a private person;
 - the person who stands to gain in the litigation;
 - whether the person under disability is a child;
 - the public policy objective of encouraging private guardians to act; and
 - the financial circumstances of the parties.

² R.R.O. 1990, Reg 194.

³ R.S.O. 1990, c C.43.

⁴ *Davies v. Clarington Municipality*, [2009 ONCA 722](#), 100 O.R. (3d) 66, at para. [40](#).

- [20] In *Berman v. Schwartz*,⁵ the defendants moved to remove the plaintiff's litigation guardian and counsel on account of a conflict of interest. Although the plaintiffs were unsuccessful, Justice Morgan held that they were justified in defending the motion. In considering costs, the Court identified two competing interests: persons who assume guardianship duties should not be unduly deterred from carrying them out, and litigation guardians must be held accountable for the manner in which they fulfill those duties.
- [21] The Court concluded that the party under disability, rather than her litigation guardian, should bear the costs, out of an overriding concern for the integrity of the system of litigation guardianship.
- [22] In *MacMaster (Litigation Guardian of) v. York (Regional Municipality)*,⁶ the plaintiff driver was seriously injured after making a turn, veering off the road, and flipping the vehicle upside down. The action was brought by his litigation guardian against the municipality for negligently maintaining the roadway. The claim was dismissed, and costs were awarded against the litigation guardian. The Court of Appeal upheld the order, emphasizing that it was the litigation guardian who initiated the proceedings and assumed the attendant risks.⁷
- [23] In *Lopaschuk v. Henderson and Houston*,⁸ the Court considered costs in an action successfully brought against two infant defendants, defended by their litigation guardians. The Court held that, whether appointed by the Court or acting voluntarily, a litigation guardian should not ordinarily be made personally liable for costs where he undertakes to protect an infant's interests in good faith. To do so would risk discouraging legitimate defences and undermine the protection of infants' rights. The Court added, however, that a litigation guardian may be liable where his conduct is unreasonable or where costs are incurred improperly.
- [24] The policy rationale for protecting litigation guardians is particularly compelling where they act in defence of an action. In such circumstances, the guardian has no personal stake in the outcome and undertakes the role solely to safeguard the interests of the person under disability. By contrast, a litigation guardian acting for a plaintiff may stand to benefit contingently if the claim succeeds.
- [25] In *Socha (Public Trustee of) v. Millar*,⁹ the plaintiffs suffered catastrophic injuries but were ultimately unsuccessful in their claim. The action was brought by the Public Guardian and Trustee ("PGT"), who, although not obliged to commence proceedings, had a responsibility to ensure the matter was heard. The Court held that the statutory guardian had no financial interest in the outcome and that it would not serve the public interest to

⁵ 2013 ONSC 555.

⁶ 2000 CarswellOnt 2749, [2000] O.J. No. 2941, 98 A.C.W.S. (3d) 1163 (ONCA).

⁷ *Ibid*, at para 3.

⁸ 1951 CanLII 467 (BCSC),

⁹ [1995] O.J. No. 371 (ONSC).

deter such agents from fulfilling their duties by exposing them to personal liability for costs.

- [26] The Court further found that OHIP had a significant financial interest in the litigation, both in recovering over \$1 million for past care and in avoiding future care costs that would otherwise have been borne privately by the defendants had the claim succeeded. In allocating costs, the Court directed that they be paid by those who stood to benefit financially from the action—namely, the party under disability and OHIP, which had advanced a subrogated claim—in proportion to their respective interests. The PGT, acting as OHIP’s agent, was held liable for 75% of the costs, while the party under disability was responsible for the remaining 25%.
- [27] In *Hockey-Sweeney v. Sweeney*,¹⁰ the wife in a family law proceeding became a party under disability after trial. Her appeal was conducted by the PGT. Although the appeal was only partly successful, with the respondent husband prevailing on the main issues, the Court declined to order costs against the PGT. In reaching that conclusion, the Court balanced two policy considerations: the need to avoid deterring the PGT from carrying out its duties by exposure to costs orders, and the requirement that it not pursue frivolous litigation or act improperly.¹¹ The Court found that the appeal was not frivolous and therefore no costs were awarded against the PGT.
- [28] In *Hoang v. Vicentini*,¹² a personal injury action was brought by a child and other family law claimants against the child’s father, another motorist, and Ford Credit Canada. The child’s mother acted as litigation guardian. The claim succeeded against the father but was dismissed against the motorist and Ford Credit Canada. The trial judge ordered that the costs of the successful defendants be paid by the plaintiffs.
- [29] On appeal, the plaintiffs argued that awarding costs against minor plaintiffs conflicted with the general practice of ordering costs against litigation guardians rather than parties under disability. The Court of Appeal referred to the authorities cited, including *Asselin-Normand v. King Edward Realty*.¹³ However, the Court ultimately varied the costs order on consent, and ordered that costs be payable by the child’s mother personally and in her capacity as litigation guardian. As the variation was made on consent, I do not accept that the Court of Appeal endorsed any general practice of limiting costs orders against parties under disability.
- [30] In *Asselin-Normand*, a 17-year-old plaintiff commenced an action against a hotel that refused his reservation on the basis of its minimum age policy. The defendants moved to stay the action on the ground that no litigation guardian had been appointed. The Court

¹⁰ *Hockey-Sweeney v. Sweeney*, 2004 CanLII 34840 (ONCA).

¹¹ *Ibid*, at para 37.

¹² 2016 ONCA 723.

¹³ 2015 ONSC 2876 (“*Asselin-Normand*”).

stayed the proceeding until the plaintiff reached the age of majority or a litigation guardian was appointed. The defendants sought their costs.

- [31] Justice Stinson held that the plaintiff, as a minor, was incapable of conducting litigation and therefore lacked the legal capacity to incur costs. Although the *Rules of Civil Procedure* did not expressly prohibit costs orders against parties under disability, the Court observed that the jurisprudence reflects an established practice of avoiding such orders.
- [32] In my view, *Asselin-Normand* should be confined to its facts. It concerned an action commenced by a minor who lacked capacity to sue. The jurisprudence reviewed by Justice Stinson in that case involved proceedings brought either by a next friend on behalf of a child or by children without a litigation guardian. In some older authorities, solicitors who commenced actions on behalf of minors without a litigation guardian were held personally responsible for costs. I do not read *Asselin-Normand* as making a broad declaration that there is a general practice against awarding costs against parties under disability generally. As the cases discussed above demonstrate, such orders are made. That said, I agree with Justice Stinson that where an action is commenced by a litigation guardian on behalf of a minor, a general rule against awarding costs against the minor makes eminent sense. A child lacks the authority and capacity to initiate proceedings, and where a litigation guardian brings an action on a child's behalf, the guardian should ordinarily bear primary responsibility for the defendant's costs if the claim fails.
- [33] Finally, in *Cameron (Litigation Guardian of) v. Loudon*,¹⁴ the Court dismissed a medical malpractice action and the defendants sought costs against the PGT. The Court awarded costs against the PGT, noting that its office had been alerted to several warning signs indicating the plaintiff's case was unlikely to succeed and that the defendants would pursue costs. The Court was critical of the PGT's refusal to accept the defendants' offer, which would have ended the action without adverse cost consequences. By continuing in the face of strong contradictory evidence, the PGT exposed the defendants to significant expense and was held accountable for that decision.¹⁵
- [34] In summary, the question of whether costs should be ordered against a party under disability or against the litigation guardian is highly fact-specific. Guided by the principles set out in the jurisprudence, I now turn to consider which of Anne or Anthony Meehan ought to bear responsibility for the costs of this action.

Application of the Principles

- [35] The parties agreed that the Court could consider all of the evidence heard at trial prior to settlement. Mr. Cardill submits that Anne and Michael Meehan advanced this case on a fraudulent basis. He contends that Anne Meehan misled medical assessors and the Canada

¹⁴ 2002 CanLII 14895 (ONSC), ("*Cameron*").

¹⁵ *Ibid*, at paras 41-45.

Pension Plan Disability Tribunal for her own financial benefit, and that she should therefore be held responsible for the costs of this action.

- [36] I expressed reservations about making definitive findings, as I had not heard the entirety of the evidence nor the benefit of full submissions from counsel. Nonetheless, certain conclusions can be drawn. The plaintiffs' claim for damages appeared persuasive on paper. Following their accident, they were assessed as catastrophically injured and found entitled to CPP disability benefits. They were represented by counsel lacking expertise in personal injury litigation. In a costs assessment, Justice Hackland observed that the plaintiffs' "claims were not worked up and presented properly" and that "the adequacy of the settlement was very much in question."
- [37] The plaintiffs' case began to unravel at trial. Physiotherapy and neurology records predating the accident revealed that Ms. Meehan had reported intense headaches, paresthesia, left arm numbness, temporomandibular joint pain, and chest and back pain shortly before the accident. These complaints had not been disclosed to her medical assessors, who had proceeded on the assumption that she had no pre-existing impairments. In addition, physiotherapy records following the accident indicated that Ms. Meehan was capable of performing demanding physical tasks, undermining the theory that her impairments were accident-related. Confronted with these records, Dr. Morrison, one of Ms. Meehan's assessors, acknowledged that they were "totally inconsistent" with the picture presented to her at the time of her assessment. Dr. Gagnon similarly testified that, in light of the information produced at trial, her earlier conclusion that Ms. Meehan was catastrophically injured was not reliable.
- [38] The evidence at trial also revealed that the Meehans were experiencing significant financial difficulties prior to the accident. This finding directly contradicted the CPP Disability Tribunal's conclusion that they had operated a "very productive dairy and beef cattle farm for over 20 years until they were involved in a motor vehicle accident."
- [39] It can be safely concluded that the evidence elicited at trial through cross-examination prompted a re-evaluation of the strength of the plaintiffs' case and led to their agreement to have the action dismissed.
- [40] As between Anne Meehan and her litigation guardian, Anthony Meehan, I conclude that Anne Meehan should bear responsibility for the costs of this action.
- [41] First, this action was commenced in 2013 when Anne Meehan was an adult with capacity to instruct counsel. In doing so, she accepted the risks inherent in litigation, including potential liability for costs. Moreover, she was the person who stood to gain if the claim succeeded. It was only in September 2022—nine years after the action was commenced—that Anthony Meehan became his mother's litigation guardian. In this respect, the case is analogous to *Hockey-Sweeney*, where proceedings were initiated while the applicant was not under disability and the Public Guardian and Trustee assumed carriage of the appeal only after she became a party under disability.

- [42] This case is distinguishable from those in which a litigation guardian initiates proceedings on behalf of a person incapable of doing so, whether by reason of minority or other disability, and is thereby held responsible for the costs consequences. Ms. Meehan was a capable adult for most of this litigation.
- [43] Second, the jurisprudence establishes that litigation guardians must be held accountable for the conduct of the proceedings. Unlike the litigation guardian in *Cameron*, Anthony Meehan cannot be faulted for his handling of this litigation. The action appeared strong at the outset, but when confronted at trial with evidence that seriously undermined the claim, Mr. Meehan acted responsibly by agreeing to settle it.
- [44] A further consideration is the policy objective of encouraging individuals to act as litigation guardians. Mr. Meehan assumed this role out of filial duty and, as noted above, discharged his responsibilities appropriately. To impose a costs order against him in these circumstances would risk deterring others from undertaking guardianship responsibilities. It would discourage the pursuit of valid claims or defences on behalf of vulnerable parties and potentially impair access to justice.

Disposition

- [45] The defendant shall have his costs of this action, in the agreed amount of \$262,500, payable by the Estate of Michael Meehan and Anne Meehan.

A. Kaufman J.

Date: December 1, 2025