

**CITATION:** Swan v Firearms Safety Education Service of Ontario 2025 ONSC 5042  
**COURT FILE NO.:** CV-18-601387  
**MOTION HEARD:** 20250903

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Leslie Arthur Swan, Plaintiff

**AND:**

His Majesty the King in Right of Ontario, as represented by the Minister of Community Safety and Correctional Services, the Firearms Safety Education Services of Ontario ("FSESO"), the Chief Firearms Office of Ontario ("CFO"), Don Bell, Kevin Culhane, Cindy Baldrec, Douglas Marshall, Andrew Ferguson and Bryan Martin, Defendants

**BEFORE:** Associate Justice Jolley

**COUNSEL:** Chris Afonso, counsel for the moving party defendants Firearms Safety Education Services of Ontario ("FSESO"), Don Bell, Cindy Baldree and Douglas Marshall

Michael Saad, counsel for the moving party defendants His Majesty the King in Right of Ontario, as represented by the Minister of Community Safety and Correctional Services, Chief Firearms Office of Ontario, Andrew Ferguson and Bryan Martin

Frances A. Marinic, counsel for the responding party plaintiff

**HEARD:** 3 September 2025

**REASONS FOR DECISION**

**A. Overview**

- [1] The defendants seek an order dismissing the plaintiff's action as a result of his failure to comply a history of costs orders.
- [2] On 5 June 2023 Shin Doi, J. granted the defendants' motion to strike the plaintiff's claim, with leave to amend, and ordered the plaintiff to pay the defendants His Majesty the King in Right of Ontario, as represented by the Minister of Community Safety and Correctional Services, Chief Firearms Office of Ontario, Andrew Ferguson and Bryan Martin ("the Crown defendants") \$22,890 as costs of that motion. On 27 September 2024, the Court of Appeal dismissed the plaintiff's appeal on jurisdictional grounds and ordered the plaintiff to pay the Crown defendants costs of \$8,000. On 7 February 2025 the Divisional Court refused leave to appeal the order of Shin Doi, J. and ordered the plaintiff to pay the Crown defendants costs of \$3,575. In total the plaintiff has outstanding costs orders in favour of the Crown defendants totaling \$34,465.

- [3] On 5 June 2023 Shin Doi, J. ordered the plaintiff to pay Firearms Safety Education Services of Ontario ("FSESO"), Don Bell, Cindy Baldree and Douglas Marshall ("the Fire Safety defendants") \$14,121.96 in respect of their motion to strike the plaintiff's statement of claim. On 27 September 2024, the Court of Appeal ordered the plaintiff to pay the Fire Safety defendants costs of \$8,000. On 7 February 2025 the Divisional Court ordered the plaintiff to pay the Fire Safety defendants costs of \$5,000. In total the plaintiff has outstanding costs orders in favour of the Fire Safety defendants totaling \$27,121.96.
- [4] The plaintiff argues that he is entitled to a hearing before a panel of the Divisional Court for clarification of their order that granted him an extension of time to seek leave to appeal Shin Doi, J's order and then dismissed the motion for leave to appeal. The plaintiff argues that, once he receives such a hearing, he can have the issue of his appeal rights clarified and will then pay the costs he is ordered to pay, if any.

## **B. Analysis**

- [5] There are four difficulties with the plaintiff's argument. First, there is no process for an explanatory attendance or appointment before a panel once their order has been settled. Second, the plaintiff has made this request for an appointment/hearing to Divisional Court and it has been dismissed. Third, even were an audience granted, the order is quite clear on its face. Fourth, this argument does not explain why none of the costs orders has been paid.

### **(1) No process for an explanatory attendance**

- [6] The plaintiff purports to rule on rule 59.04(9)(10) for his position that he is entitled to an audience before the Divisional Court to discuss the implementation of the order. Rule 59.04 does not facilitate a request to the court for the court to explain its order. It provides for an appointment to settle the form of an order in the event of disagreement. In this case, the form of the order has already been settled. There is no right of audience thereafter.

### **(2) The Divisional Court has refused any further attendance**

- [7] The plaintiff sought leave to appeal the order of Shin Doi, J. On 7 February 2025, the Divisional Court released the following endorsement:

[1] The motion for leave to extend the time for leave to appeal the orders of Shin Doi J. dated January 26, 2024 [the date Shin Doi, J. signed the orders] is granted.

[2] The motion for leave to appeal the orders of Shin Doi J. dated January 26, 2024 is dismissed.

[3] Costs to the responding parties, Firearms Safety Education Services of Ontario, Cindy Baldree, Doug Marshall, and Don Bell are awarded in the amount of \$5,000, all-inclusive.

[4] Costs to the responding parties, His Majesty the King in Right of Ontario, as represented by the Minister of Community Safety and Correctional Services and Chief Firearms Office of Ontario are awarded in the amount of \$3,575, all-inclusive.

- [8] In March 2025, the plaintiff submitted a Notice of Appointment to Settle Order (form 59D) to Divisional Court to settle the order. On 11 March 2025 the court advised that “as per the attached emails all parties that participated on the motion has [sic] now approved the form and content of the draft order. Accordingly, an appointment is no longer required, and the order will be signed and issued by the Registrar in due course.”
- [9] The plaintiff does not accept that decision as it did not come from a member of the panel of the court, but from court staff. He continued to press for an appointment and sent various documents to Divisional Court. On 12 May 2025, the court wrote: “The Panel has reviewed the material you provided and has asked that you be advised that your interpretation of their February 7, 2025 Order is incorrect. Leave to appeal from Justice Shi [sic] Doi’s entire January 26, 2024 Order including costs (emphasis added) was dismissed.”
- [10] In case there was any doubt of the court’s position, the court wrote to counsel again on 11 August 2025 in respect of the plaintiff’s request for an appointment and stated: “As the Order has been issued and entered and you have been sent the Panel’s advice of May 14 [sic – May 12], 2025, the court is unaware of any further outstanding concern.” In short, there is no further route to Divisional Court open to the plaintiff to address his issues.
- [11] The plaintiff cannot unilaterally determine not to pay outstanding costs until the happening of some future event, even more so when that event has been requested and declined.

**(3) The order is clear on its face**

- [12] The plaintiff argues that the Divisional Court order is not clear as to whether he has a further right of appeal on costs. He argues that, absent an appointment before the panel, his right for an extension of time to appeal costs is still a live issue, thereby precluding this motion.
- [13] The plaintiff argues that, because paragraph 1 of the Divisional Court decision granted an extension of time for leave to appeal the orders of Shin Doi, J., he has been given an extension for a further right of appeal on costs, or at least he has a plausible argument to that effect. Not only has the Divisional Court rejected this argument when it stated that “leave to appeal from Justice Shi [sic] Doi’s entire January 26, 2024 Order including costs (emphasis added) was dismissed”, it is a misreading of the court’s endorsement. The court granted the extension for leave to appeal the 26 January 2024 orders and then dismissed that motion for leave to appeal the orders. The order is clear on its face.

**(4) None of the costs has been paid**

- [14] The plaintiff admits that he has not appealed the Court of Appeal costs order or the Divisional Court costs order but has not paid those costs either.
- [15] His counsel advised that her client believes that once he obtains his explanatory appointment with the Divisional Court panel, he can address those costs. Had that appointment been granted, which it was not, and had he been allowed to speak to the history of those costs, that would not have acted as an appeal or provided any remedy by which he could continue to ignore payment of the costs ordered.

**C. Costs of the motion**

- [16] The plaintiff sought substantial indemnity costs if successful on the motion on the basis that the defendants should have facilitated his request for an explanatory appointment with Divisional Court.
- [17] The defendants seek partial indemnity costs. I find them entitled to those costs, given the outcome of the motion.
- [18] Considering the comprehensiveness of the materials and the arguments before me, I find the sum of \$7,500 to the Crown defendants and \$8,000 to the Fire Safety defendants to be a reasonable sum that the plaintiff should have expected to pay in the event he was unsuccessful on this motion and I so order.

**D. Conclusion**

- [19] The plaintiff has indicated that he will pay the outstanding costs “when directed”. He may now consider himself directed.
- [20] I will provide him until 22 September 2025 to pay the defendants their costs, excluding costs of this motion which are due in 30 days. If costs are not paid, the defendants are to submit a supplementary affidavit to my assistant trial coordinator at [Christine.Meditskos@ontario.ca](mailto:Christine.Meditskos@ontario.ca) confirming that they are not in receipt of the payment of costs and an order shall follow dismissing the plaintiff’s action.

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Associate Justice Jolley

**Date:** 3 September 2025