

COURT FILE NO.: 2455/05

DATE: 2006-6-26

**ONTARIO
SUPERIOR COURT OF JUSTICE**

RE: 1st Aylmer, 1st Belmont, 1st Sheddon, 1st Springfield, 7th St. Thomas,
8th St. Thomas, 13th St. Thomas, 14th St. Thomas, 18th St. Thomas and
24th St. Thomas Scout Groups

Applicants

The Provincial Council For Canada, Boy Scouts of Canada

Respondents

BEFORE: Mr. Justice B.T Granger

COUNSEL: Mark Shields, for the Applicants

Ron Craigen, for the Respondents

ENDORSEMENT - COSTS

[1] On May 2, 2006 I dismissed the application and allowed counsel to make written submissions on costs.

[2] The Respondent successfully argued before me that the Applicants, as described in the application, lacked the legal capacity to maintain such an application.

[3] In his written submissions on costs, Mr. Craigen, counsel for the Respondent states:

Just as these scout groups lack legal capacity to sue, so do they lack sufficient legal identity to bear responsibility for any order for costs,

In addition to their lack of legal capacity, there is a further practical reason why the Applicant scout groups are not the proper responsible parties for cost purposes. These scout groups are merely the local extensions of Scouts Canada. To the extent that such groups hold or have access to funds, these are Boy Scouts funds held for the purpose of local Scouts Canada programming. Requiring the name Applicants to pay costs to the successful Respondent, Scouts Canada, would result in Boy Scouts money being paid to Scouts Canada in satisfaction of a cost order. This would achieve the opposite effect intended by a costs award and defeat the principle of indemnity in costs awards as codified in Rule 57.01(1) (o.a). It would

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transfer responsibility from the true litigant, David Palmer, back to Boy Scouts.

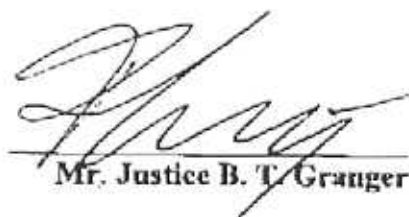
[4] The Respondent submits that David Palmer is the real litigant in the application and as such should be responsible for the costs of the Respondent personally.

[5] I am not persuaded that David Palmer is the real litigant in the application and should be responsible for the Respondents costs. He was not a party to the application and had no financial interest in the subject matter of the application.

[6] As pointed out by Mr. Craigen, if I ordered the named Applicants to pay the costs of the successful Respondent, I would be ordering Boy Scouts' money to be paid to Scouts Canada to satisfy any order for costs. Accordingly, given the special nature of the relationship between the Applicants and the Respondent and that the relief claimed in the Application was not a frivolous claim, there will be no order for costs.

[6] If I had ordered the Applicants to pay the costs of the Respondent, I would fix the amount of such costs at \$2,500.00 inclusive of disbursements and GST. This was a straightforward motion which did not require cross-examinations and should have been brought as soon as the Respondent was served with the order of Haines J. dated May 16, 2005.

DATE: June 26, 2006



Mr. Justice B. T. Granger