CITATION: Davis v. Amazon Canada Fulfillment Services, ULC, 2023 ONSC 5929
COURT FILE NO.: CV-20-00642361-00CP
DATE: 20231020

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	
DENVER DAVIS Plaintiff	*Louis Sokolov* and *Jean-Marc Leclerc* for the Plaintiff
- and –	
AMAZON CANADA FULFILLMENT SERVICES, ULC, AMAZON.COM, INC. and AMAZON.COM.CA, INC. Defendants	*David Di Paolo, Nadia Effendi, Laura M. Wagner, Graham Splawski* and *Haddon Murray* for the Defendant
Proceeding under the *Class Proceedings Act, 1992*	**HEARD**: In writing

PERELL, J.

REASONS FOR DECISION – Costs

A. Introduction and Overview

[1] In a proposed employment law class action pursuant to the *Class Proceedings Act, 1992*,[1] Denver Davis sued Amazon.Com, Inc., Amazon.Com.Ca, Inc., and Amazon Canada Fulfillment Services, ULC (collectively "Amazon").

[2] Mr. Davis brought a Certification Motion, and Amazon brought a motion to stay some of the putative class members' claims. Amazon was successful on its Stay Motion, and it was successful in resisting certification.

[3] Amazon claims costs on a partial indemnity basis of approximately **$2.0 million**, all inclusive. Mr. Davis submits that the appropriate costs award is approximately $400,000, all inclusive.

[4] For the reasons that follow, I award Amazon costs on a partial indemnity basis of **$750,000** all inclusive.

[1] S.O. 1992, c. 6.

B. Factual Background and the Submissions of the Parties

[5] In a proposed class action pursuant to the *Class Proceedings Act, 1992*, Mr. Davis sued Amazon.Com, Inc., Amazon.Com.Ca, Inc., and Amazon Canada Fulfillment Services, ULC (collectively "Amazon").

[6] Mr. Davis was represented by Sotos LLP. Amazon was represented by Borden Ladner Gervais LLP and Gowling WLG.

[7] Mr. Davis's claim for the approximately 73,000 putative class members was for general damages of $200 million and for $50 million in aggravated, exemplary, and punitive damages.

[8] There were two distinct branches to Mr. Davis's theory of a case against Amazon. In effect, he has combined two distinct proposed class actions against Amazon. In one action, Amazon is sued as an "employer", and in the other action, Amazon is sued as a "common employer," without naming the other 126 common employers.

[9] Mr. Davis moved for certification of his action as a class action.

[10] Amazon resisted certification, and it moved to have the proposed class action stayed in favour of arbitration for 16,000 Delivery Partners ("DPs") and for at least 21,000 of 57,000 Delivery Associates ("DAs").

[11] The Plaintiff's certification records (including its Reply, Supplementary, and Second Supplementary Records) were 1,190 pages, and included 12 affidavits from eight witnesses, including two experts. Amazon's responding certification records (including its Sur-Reply and Supplementary Records) were 3,292 pages, and included 23 affidavits from 20 witnesses, including DPs and Delivery Service Partners personnel residing in at least four different provinces, as well as two experts. Mr. Davis and Amazon cited 135 and 127 legal authorities in their respective factums. The motions were argued over the course of three days.

[12] I stayed the action against Amazon as an employer or as a co-employer for the DAs that have signed arbitration agreements.[2] Had I not granted a stay, I would have conditionally certified a class action for the DPs but not for the DA class members. The conditions would have been the appointment of a representative plaintiff and the amendment of the class definition. In the DP action, I would not have certified aggregate damages or punitive damages as a common issue. I would not have certified the claims for breach of a duty of good faith, unjust enrichment, or negligence.

[13] I dismissed the action as against Amazon as a common employer.[3] The cause of action, common issues, and preferable procedure criteria were not satisfied. The representative plaintiff criterion would have been satisfied and the identifiable class criterion would have been satisfied subject to an amendment to disqualify the approximately 21,000 DAs who signed arbitration agreements that enure to the benefit of Amazon as a covered party.

[14] The result was that Amazon was successful on the Stay Motion and in defeating the Certification Motion.

[15] The issues on the motions were legally and factually complex and the motions were very

[2] *Davis v. Amazon Canada Fulfillment Services, ULC*, 2023 ONSC 3665.
[3] *Davis v. Amazon Canada Fulfillment Services, ULC*, 2023 ONSC 3665.

hard fought. It was reasonable for Amazon to mount a vigorous defence and Mr. Davis would have expected no less.

[16] Amazon seeks costs on a partial indemnity scale of $1,958,377.84, inclusive of disbursements and HST.

[17] With respect to these costs, it may be noted that: (a) Amazon has a special fee arrangement so that the full indemnity rates are lower than Borden Ladner Gervais LLP's standard hourly rates; (b) Amazon is not claiming for all of the professionals who worked on the motions, including the timekeepers from Amazon's co-counsel Gowling WLG; and (c) Amazon is not claiming for all of its disbursements, including a significant portion of the fees its experts charged.

[18] Mr. Davis submits that although Amazon was successful in the ultimate outcome, he succeeded on several of the certification criteria, and that but for the arbitration provisions, he would have succeeded in the employer-employee branch of his proposed class action.

[19] Mr. Davis submits that the $1.9 million award requested is out of proportion to an amount the plaintiff reasonably expected to pay, in comparison to comparable cost awards by me in cases with far more extensive disputes and far larger damage claims.

[20] Mr. Davis submits that an approximately $2.0 million award is disproportionate in large part because Amazon utilized eight lawyers plus one law clerk who collectively billed over 4,489 hours on these motions. For an example of overbilling, Mr. Davis points out that Amazon claimed $356,000 in partial indemnity costs for its factum and book of authorities, on the basis of actual costs of $594,424.89 spread across eight lawyers and one law clerk, for a total of 1,056 lawyer hours claimed. Mr. Davis submits that this item of costs is unreasonable. As another example of alleged overbilling, Mr. Davis notes that Amazon claims 817.7 hours of time (eight lawyers), for a partial indemnity claim of just under $300,000 for preparation for the hearing. By contrast, his partial indemnity claim for hearing preparation costs would have been $99,304.50 from the expense of three lawyers who docketed a total of 185.2 hours.

[21] Mr. Davis submits that there should a discount for divided success and because there was a public interest element in his claim.

[22] In support of his submission that there should be a public interest component, Mr. Davis notes that the class proceeding was brought on behalf of workers having low bargaining power and the motions proceeded on the assumption that there was inequality of bargaining power between the drivers and Amazon, and the putative class members confronted significant disadvantages when seeking legal redress for alleged wrongs. Further, he submits that the subject matter of employment law class actions has been regarded as having an important contribution to make to the access to justice purposes of the class action legislation.[4]

[23] Mr. Davis disputes Amazon's claim for expert disbursements because: (a) the claim was unsupported by material information required by law, and (b) the expert evidence was not material to the Court's decision. In these regards, to quote from his costs submissions, Mr. Davis stated:

> Amazon claims expert fees totaling $291,415.95, not including tax. However, Amazon's claim does not comply with the requirement that "the party claiming the disbursement should provide information about the amount of time spent by the expert in preparing the report […] together with the hourly rate of the expert."[5] This is to enable the court to determine whether an expert's fee is

[4] *Fulawka v. Bank of Nova Scotia*, 2012 ONCA 443.
[5] *Das v. George Weston Limited*, 2017 ONSC 5583 at para. 72.

> fair and reasonable. The Court of Appeal has held that the failure to give such information "significantly constrains a review of the fees charged."[6] Although Amazon cites at footnote 22 the caselaw that contains these principles, it has not complied with the criteria.
>
> This Court has cited Justice Edwards' decision in *Hamfler v. 1682787 Ontario Inc.*[7] on non-exhaustive criteria to assist courts to determine whether an expert's fee is fair and reasonable or excessive. One of the questions is whether the expert's evidence is relevant and whether it contributed to the decision, and whether the expert's evidence was of marginal value or crucial to the ultimate outcome.[8] Here, none of Amazon's expert evidence was cited by the court. Amazon did not heavily rely on the evidence in its factum submissions either. For example, while it paid $54,678 to a Quebec lawyer for an opinion on Quebec law, the evidence is entirely relegated to footnotes in Amazon's factum. No amount should be awarded in respect of the Quebec lawyer disbursement. Similarly, while Amazon claims a $200,000 disbursement for its aggregate damages expert, Amazon's factum devotes a mere five paragraphs of its certification factum to his evidence. An award of $20,000 for that expert would be fair and reasonable.

[24] Mr. Davis submits that the fair and reasonable costs award would be $386,667, all-inclusive. He arrives at this sum by submitting that a reasonable costs award for the Certification Motion would be $550,000, all inclusive; however, this sum should be reduced by a 1/3rd public interest reduction of $183,333, for a total costs award of $366,667, plus $20,000 in respect of Amazon's aggregate damages expert, for a total award of $386,667.

C. Legal Principles: Costs under the *Class Proceedings Act, 1992*

[25] Modern costs rules are designed to advance five purposes in the administration of justice: (1) to indemnify successful litigants for the costs of litigation, although not necessarily completely; (2) to facilitate access to justice, including access for impecunious litigants; (3) to discourage frivolous claims and defences; (4) to discourage and sanction inappropriate behaviour by litigants in their conduct of the proceedings; and (5) to encourage settlements.[9]

[26] An important factor in awarding costs in class actions is the principle that the court should have regard to the underlying goals of the *Class Proceedings Act, 1992*; namely: (1) access to justice; (2) behaviour modification; and (3) judicial economy.[10]

[27] With respect to access to justice, defendants, just as much as plaintiffs, are entitled to access to justice, and the court in exercising its discretion must be aware of the access to justice implications of its award to both plaintiffs and defendants.[11]

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[6] *Yip v. HSBC Holdings plc*, 2018 ONCA 626 at para. 85.
[7] *Hamfler v. 1682787 Ontario Inc*, 2011 ONSC 3331.
[8] *Hamfler v. 1682787 Ontario Inc*, 2011 ONSC 3331 at para. 17.
[9] *Reynolds v. Kingston (City) Police Services Board* (2007), 86 O.R. (3d) 43 (C.A.); *1465778 Ontario Inc. v. 1122077 Ontario Ltd.* (2006), 82 O.R. (3d) 757 (C.A.); *British Columbia (Minister of Forests) v. Okanagan Indian Band*, [2003] 3 S.C.R. 371 (S.C.C.); *Somers v. Fournier* (2002), 60 O.R. (3d) 225 (C.A.); *Fong v. Chan* (1999), 46 O.R. (3d) 330 (C.A.).
[10] *Green v. Canadian Imperial Bank of Commerce*, 2016 ONSC 3829; *Brown v. Canada (Attorney General)*, 2013 ONCA 18 at para. 37; *Smith v. Inco Ltd.*, 2012 ONSC 5094 at paras. 74-109; *Ruffolo v. Sun Life Assurance Co. of Canada*, 2009 ONCA 274, at para. 37; *KRP Enterprises Inc. v. Haldimand (County)*, [2008] O.J. No. 3021 (S.C.J.); *McNaughton Automotive Ltd. v. Co-operators General Insurance Co.*, [2007] O.J. No. 1453 (Div. Ct.).
[11] *Das v. George Weston Limited*, 2017 ONSC 5583 at para. 43, var'd 2018 ONCA 1053.
[11] (2009), 100 O.R. (3d) 66 (C.A.); *2038724 Ontario Limited v. Quizno's Canada Restaurant Corporation*, 2010 ONSC 5390 at para. 17, leave to appeal to Div. Ct. denied 2011 ONSC 859 (Div. Ct.); *Fresco v. Canadian Imperial Bank of Commerce*, 2010 ONSC 1036 at para. 18.

[28] In *Pearson v. Inco Ltd.*,[12] at para. 13, the Court of Appeal established the following principles for fixing costs on a certification motion: (1) Ontario, unlike other class proceedings jurisdictions such as British Columbia, has not sought to interfere with the normal rule that costs will ordinarily follow the event; (2) the costs must reflect what is fair and reasonable; (3) the costs should, if possible, reflect costs awards made in closely comparable cases, recognizing that comparisons will rarely provide firm guidance; (4) a motion for certification is a vital step in the proceeding and the parties expect to devote substantial resources to prosecuting and defending the motion; (5) the costs expectations of the parties can be determined by the amount of costs that an unsuccessful party could reasonably expect to pay; (6) the complexity of the issues; (7) whether the case raises an issue of public importance; and (8) a fundamental object of the *Class Proceedings Act, 1992* is to provide enhanced access to justice.

[29] The court's discretion in awarding costs arises under the authority of s. 131 of the *Courts of Justice Act*[13] and is to be exercised by a consideration of the factors in rule 57.01(1) of the *Rules of Civil Procedure*.[14] The traditional discretionary principles developed for costs awards are codified in rule 57.01(1), which states:

> *Factors in Discretion*
>
> 57.01 (1) In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,
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> (0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;
>
> (0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;
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> (a) the amount claimed and the amount recovered in the proceeding;
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> (b) the apportionment of liability;
>
> (c) the complexity of the proceeding;
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> (d) the importance of the issues;
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> (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
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> (f) whether any step in the proceeding was,
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> (i) improper, vexatious or unnecessary, or
>
> (ii) taken through negligence, mistake or excessive caution;
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> (g) a party's denial of or refusal to admit anything that should have been admitted;
>
> (h) whether it is appropriate to award any costs or more than one set of costs where a party,

[12] (2006), 79 O.R. (3d) 427 (C.A.).
[13] R.S.O. 1990, c. C-43.
[14] R.R.O. 1990, Reg. 194.

> (i) commenced separate proceedings for claims that should have been made in one proceeding, or
>
> (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer; and
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> (i) any other matter relevant to the question of costs.

[30] The most general rule about costs, not to be departed from without good reason, is that costs at a partial indemnity scale follow the event, which is to say that normally costs are ordered to be paid by the unsuccessful party to the successful party on a partial indemnity scale.[15]

[31] A critical controlling principle for the awarding of costs is that the sum awarded reflect the fair and reasonable expectations of the unsuccessful litigant.[16] The overriding principle in awarding costs is reasonableness.[17]

[32] The assessment of reasonableness is discretionary and very much dependent upon the circumstances of each case. In some cases, it may be reasonable for the successful party to make exhaustive efforts and to commit enormous legal resources, and in those cases, it might be said that the unsuccessful party could reasonably expect to pay those costs. In other cases, however, the successful party may have been well served by giving his or her lawyer instructions to make exhaustive efforts, but it might be disproportionate and unreasonable to expect the unsuccessful party to pay those costs, even if he or she would have expected or anticipated that his or her foe would have marshalled those legal resources.[18]

[33] In *Davies v. Clarington (Municipality)*[19] at para. 52, Justice Epstein stated that the overriding principle in awarding costs is reasonableness. She stated:

> 52. As can be seen, the overriding principle is reasonableness. If the judge fails to consider the reasonableness of the costs award, then the result can be contrary to the fundamental objective of access to justice. Rather than engage in a purely mathematical exercise, the judge awarding costs should reflect on what the court views as a reasonable amount that should be paid by the unsuccessful party rather than any exact measure of the actual costs of the successful litigant. In *Boucher* [*Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.)], this court emphasized the importance of fixing costs in an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding at para. 37, where Armstrong J.A. said: "[t]he failure to refer, in assessing costs, to the overriding principle of reasonableness, can produce a result that is contrary to the fundamental objective of access to justice."

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[15] *McCracken v. Canadian National Railway*, 2012 ONSC 6838; *Hague v. Liberty Mutual Insurance Co*., [2005] O.J. No. 1660 (S.C.J.); *Pike's Tent and Awning Ltd. v. Cormdale Genetics Inc.* (1998), 27 C.P.C. (4th) 352 (Ont. Gen. Div.); *Bell Canada v. Olympia & York Developments Ltd.* (1994), 17 O.R. (3d) 135 (C.A.).
[16] *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 at para. 24 (C.A.); *Stellarbridge Management Inc. v. Magna International (Canada) Inc.*, [2004] O.J. No. 2102 at para. 97 (C.A.); *Zesta Engineering Ltd. v. Cloutier* (2002), 21 C.C.E.L. (3d) 161 at para. 4 (Ont. C.A.); *McGee v. London Life Insurance Co*., [2008] O.J. No. 5312 at paras. 5-8 (S.C.J.); *Caputo v. Imperial Tobacco Ltd.* (2005), 74 O.R. (3d) 728 at paras. 23-25 (S.C.J.); *Lee v. General Motors Co. of Canada*, [2004] O.J. No. 2245 (S.C.J.).
[17] *Davies v. Clarington (Municipality)* (2009), 100 O.R. (3d) 66 at para. 52 (C.A.).
[18] *Das v. George Weston Limited*, 2017 ONSC 5583 at para. 65, var'd 2018 ONCA 1053.
[19] (2009), 100 O.R. (3d) 66 (C.A.).

[34] The same approach is applied to the recovery of fees paid to an expert witness. In *Pearson v. Inco Ltd.*,[20] at para. 20, Justice Nordheimer stated:

> [T]he approach to the recovery of fees paid to expert witnesses ought to be exactly the same as the approach to the fees to be recovered by counsel. The court should consider what is fair in terms of hours and rates as well as the overall amount and should then fix an amount which it is reasonable for the losing party to pay. In so doing, the court is not bound by what the client may have actually had to pay the expert.

[35] Although the unsuccessful party is not obliged to disclose what he or she expended on costs, where the unsuccessful party submits that the costs claimed by the successful party are excessive, evidence of what he or she expended is relevant to the determination of what is reasonable and of what the unsuccessful party might reasonably have expected to pay and the failure to proffer this evidence tempers and diminishes the unsuccessful party's criticism of the excessiveness of the costs claim.[21] An attack on the quantum of the opponent's claim for costs without disclosing one's own bill of costs is no more than an attack in the air.[22]

[36] The court has the discretion to make "no order as to costs" where the success on the motion or appeal is divided or to reduce the amount of the costs awarded.[23] Divided success may mean that the successful party was not as successful as his or her aspirations, i.e., less unilateral success, or it may mean that both parties won something, i.e., that there was bilateral success.[24] No order as to costs or a reduced order as to costs may be appropriate in either case. Rule 57.01 (1) provides that in exercising its discretion to award costs, the court may consider, among other things: the amount claimed, the amount recovered, the apportionment of liability, the complexity of the proceeding; the importance of the issues; and the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding, and these factors may justify a court making no order as to costs or reducing the costs awarded.[25]

[37] In exercising its discretion with respect to costs in class proceedings, the court may consider such factors as: (a) conduct or poor judgment that unduly prolonged the preparation or argument of the motion for certification; (b) failure to follow the schedule; (c) improper case-splitting; (d) delays in abandoning causes of action and issues that were ultimately dropped; (e) failing to communicate the revised list of common issues; and (f) refusing to acknowledge the significance of submissions and concessions.[26]

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[20] [2002] O.J. No. 3532 (S.C.J.).
[21] *Chapman v. Benefit Plan Administrators Ltd.*, 2014 ONSC 537 at paras. 11-12; *MacDonald v. BMO Trust Co.*, 2012 ONSC 2654 at para. 27; *Hague v. Liberty Mutual Insurance Co.* (2005), 13 C.P.C. (6th) 37 at para. 15 (S.C.J.).
[22] *United States of America v. Yemec*, [2007] O.J. No. 2066 (Div. Ct.) at para. 54; *Risorto v. State Farm Mutual Automobile Insurance Co.* (2003), 64 O.R. (3d) 135 at para. 10 (S.C.J.).
[23] *Strype Barristers LLP v. Pavlovic*, 2022 ONSC 1226; F. Nicholas Suarez-Amaya, "The Cost of Discretion: Making Sense of Costs Awards in Cases with Divided Success" [2020] *Annual Review of Civil Litigation* 639.
[24] *1637063 Ontario Inc. v. 2404099 Ontario Ltd*., 2020 ONSC 741.
[25] *Alliance v. Gardiner Roberts,* 2020 ONSC 1580; *Angela Beauty Parlour Ltd. v. Multani,* 2020 ONSC 1428; *Singh v. Ace Marketing Ventures Inc.*, 2020 ONSC 995; *Teplitsky v. Coulson LLP. v. 2169252 Ontario Inc.*, 2020 ONSC 557; *Bell v. Cloudwifi,* 2020 ONSC 550; *Curtis v. The Bank of Nova Scotia,* 2019 ONSC 7359; *Bakshi v. Global Credit & Collection Inc*., 2015 ONSC 6842; *Eastern Power Limited v. Ontario Electricity Financial Corporation*, 2012 ONCA 366.
[26] *Good v. Toronto Police Services Board,* 2016 ONCA 250, leave to appeal to the S.C.C. refused [2016] S.C.C.A. No. 255; *Pollack v. Advanced Medical Optics, Inc.*, 2012 ONSC 1850; *Lau v. Bayview Landmark Inc.*, [1999] O.J. No. 4385 at para. 4 (S.C.J.)

[38] In *Del Guidice v. Thompson*,[27] I set out a chart of 41 cost awards, which ranged from $10,000 to $1,350,000. The average award was $334,000, with a median award of $215,000. The highest award was in *Das v. George Weston Limited*,[28] which involved a $2 billion claim and motions that were argued over nine days, with 73 volumes of evidence and compendiums, and 21 witnesses who swore 34 affidavits, 22 of which were sworn by the expert witnesses.

[39] An important factor in awarding costs in class actions is s. 31 of the *Class Proceedings Act, 1992*, which provides that:

> In exercising its discretion with respect to costs under subsection 131(1) of the *Courts of Justice Act*, the court may consider whether the class proceeding was a test case, raised a novel point of law or involved a matter of public interest.

[40] Under s. 31 of the *Act*, in class proceedings, the approach to fixing costs is the same as in ordinary actions, but the court should give special weight to whether the class proceeding was a test case, raised a novel point of law, or involved a matter of public interest.[29]

D. Discussion and Analysis

[41] In the immediate case, my discussion and analysis of how the court should exercise its discretion can be brief because: (a) I generally agree with Mr. Davis's submissions, but I do not agree with his quantification of the appropriate costs award; and (b) the critical factor in the immediate case is the overriding principle of reasonableness.

[42] In the immediate case, having regard to all of the relevant criteria for the court's exercise of discretion, but especially the factors that: (a) the costs should reflect costs awards made in closely comparable cases; (b) a Certification Motion and a Stay Motion are vital motions and parties should expect to devote substantial resources to prosecuting and defending the motions; (c) there is a public interest and access to justice component to the immediate case; and (d) the judge awarding costs should reflect on what the court views as a reasonable amount rather than any exact measure of the actual costs of the successful litigant to avoid a result that is contrary to the fundamental objective of access to justice, I conclude that a costs claim of approximately $2.0 million is unreasonable. In the immediate case for the same reasons, I conclude that a costs award of approximately $400,000 is unreasonable.

[43] Amazon's request for costs is far too high. Mr. Davis's response to the request is far too low. As Justice Epstein pointed out in *Davies v. Clarington (Municipality)*, *supra*, rather than engaging in a purely mathematical exercise, the judge awarding costs should reflect on what he or she views as a reasonable amount that should be paid by the unsuccessful party rather than any exact measure of the actual costs of the successful litigant. In the immediate case, having made that reflection, I conclude that the appropriate award is $750,000, all inclusive.

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[27] *Del Giudice v. Thompson*, 2021 ONSC 6974.

[28] *Das v. George Weston Limited*, 2017 ONSC 5583.

[29] *Das v. George Weston Limited*, 2017 ONSC 5583; *Holley v. Northern Trust Company*, 2014 ONSC 3057; *Sutherland v. Hudson's Bay Co.*, [2008] O.J. No. 602 at para. 11 (S.C.J.); *DeFazio v. Ontario (Ministry of Labour)*, [2007] O.J. No. 1975 (S.C.J.); *Caputo v. Imperial Tobacco Ltd*. (2005), 74 O.R. (3d) 728 at para. 32 (S.C.J.); *Joanisse v. Barker*, [2003] O.J. No. 4081 (S.C.J.); *Fehringer v. Sun Media Corp*., [2002] O.J. No. 5514 (S.C.J.); *Garland v. Consumers' Gas Co*. (1995), 22 O.R. (3d) 767 (Gen. Div.), aff'd (1996), 30 O.R. (3d) 414 (C.A.).

E. Conclusion

[44] For the above reasons, I award Amazon costs on a partial indemnity basis of $750,000, all inclusive.

Perell, J.

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