

**CITATION:** Canadian Union of Postal Workers v. Canada, 2024 ONSC 4589  
**COURT FILE NO.:** CV-18-00610573-0000  
**DATE:** 20240820

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** CANADIAN UNION OF POSTAL WORKERS/SYNDICAT DES  
TRAVAILLEURS ET TRAVAILLEUSES DES POSTES, JAN SIMPSON,  
MYRON MAY and SOPHIE GRENIER, Applicants

– and –

HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY  
THE ATTORNEY GENERAL OF CANADA, Respondent

– and –

CANADA POST CORPORATION, Intervenor

**BEFORE:** Justice E.M. Morgan

**COUNSEL:** *Paul J.J. Cavalluzzo, Adrienne Telford, and Balraj Dosanjh* , for the Applicants

*Christopher Pigott and Rachel Counsell*, for the Intervenor

**HEARD:** Costs submissions in writing

**COSTS ENDORSEMENT**

[1] The Applicant, Canadian Union of Postal Workers (“CUPW”), was unsuccessful in its challenge to the constitutionality of back-to-work legislation, the *Postal Services Resumption and Continuation Act*, SC 2018, c. 25. It has settled the issue of costs with the Attorney General for \$400,000 once any appeals are concluded.

[2] The Intervenor, Canada Post Corporation (“CPC”), seeks its costs in the total amount of \$492,258.13.

[3] With the greatest of respect, the CPC’s request is extraordinarily high for an intervenor. It is a rare occurrence for an intervenor to seek costs at all, let alone to seek an amount that more than doubles the cost burden for the unsuccessful party.

[4] To be clear, this was not a case where the Attorney General sat back and let the intervenor carry the ball on the constitutional issues at play. The Attorney General was by any definition the lead responding party in the Application, making the principle constitutional arguments and framing the overall response by the government. From my perspective, CPC played the backup role, filling in the factual details of the lengthy negotiations between the parties.

[5] I do not, of course, say that to belittle the necessity of the CPC’s input or to in any way denigrate the good work of its counsel. It is also not meant to question the number of hours that CPC’s counsel spent on the matter. Rather, it is simply to set out the reality of which party played the major role, and which one played the support role.

[6] CUPW submits that, taken together, the nearly \$900,000 in costs sought by the Attorney General and CPC is disproportionate to the size of the Application. CUPW’s counsel says that its client is caught by surprise at the size of the costs request, and that is understandable. As CUPW’s counsel point out in their costs submissions, if CUPW had been successful in challenging the legislation it would not have been in a position to claim anything near that figure from the Attorney General and CPC, even though those two combined their efforts in responding to the Application.

[7] In *Working Families Ontario v. Ontario*, 2017 ONSC 5178, at para. 11, I expressed the view that in constitutional cases where there are intervenors supporting one side or another in the litigation, “some economies of scale must apply, or else [the unsuccessful party] should be spared the full brunt of [multiple] cost bills.”. On a combined basis, one would expect the primary responding party to receive substantially more of the overall costs than the supporting intervenor, as was the case in the last round of constitutional litigation involving these same parties: *CUPW v. Canada*, 2017 ONSC 6503.

[8] Costs are always discretionary under section 131 of the *Courts of Justice Act*. Rule 57.01(1)(0.b) of the *Rules of Civil Procedure* directs me to exercise my discretion in fixing costs with a view to the reasonable expectations of the parties. As indicated above, CUPW’s reasonable expectation and, frankly, the reasonable expectation from any objective viewpoint, would be a combined costs bill of somewhat more than one-half of the combined bill sought in this case. That would be more in line with an inflation-adjusted range of costs awarded in other constitutional and public interest litigation of similar magnitude: See e.g., *Mounted Police Association of Ontario v Canada*, 2009 CanLII 42308 (ONSC).

[9] CUPW shall pay CPC costs in the all-inclusive amount of \$150,000.

**Date:** August 20, 2024

---

**Morgan J.**