

CITATION: Lamoureux v. Low Murchison Radnoff LLP, 2024 ONSC 6575
COURT FILE NO.: CV-13-59702
DATE: 2024-11-25

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Lamoureux v. Low Murchison Radnoff LLP
BEFORE: Justice A. Kaufman
COUNSEL: Ronald F. Caza and Albert Brunet, for the Plaintiff
Stephen Cavanagh, for the Defendant

COSTS ENDORSEMENT

- [1] On October 3, 2024, the court dismissed the plaintiff's action after a trial lasting nearly three weeks. The parties could not agree on costs.
- [2] The defendant seeks costs on a substantial indemnity basis of \$222,969.68 or, alternatively, on a partial indemnity basis of \$150,152.65. The plaintiff argues against the award of any costs but has not submitted a bill of costs or commented on the defendant's counsel's hourly rates, hours, or disbursements.

Quantum of Costs

- [3] Fixing costs is not a mechanical exercise. Costs should reflect what the court considers a fair and reasonable amount for the unsuccessful party to pay, rather than simply the successful party's actual costs.¹ The incurrence of costs and time spent by counsel is a judgment call, and the prudence of counsel's judgment must be considered at the time the work was done.
- [4] The defendant's counsel charged \$350 per hour until 2022, at which point the rate increased to \$400. Mr. Cavanagh was called in 1980. The defendant was originally represented by Heather J. Williams, who was called in 1991. Her hourly rate was also \$350. These rates are considered low for counsel with comparable experience.

¹ *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (ON CA).

[5] The court has reviewed the defendant’s bill of costs and finds that the time spent on the various steps in this action, along with the incurred disbursements, are reasonable. There is no basis for reducing the defendant’s fees, hours, or disbursements.

Scale of Costs

[6] The primary issue to determine is the appropriate scale of costs.

[7] The defendants argue for costs on a substantial indemnity scale for two reasons. First, Mr. Lamoureux accused the defendant of dishonesty, including allegations that Mr. Boyd attempted to steal his practice. The defendants claim the action was a vendetta, brought to punish them for asking Mr. Lamoureux to leave the firm in 2011.

[8] Second, the defendants highlight Mr. Lamoureux’s offer on August 4, 2022, to settle the action for \$1 plus costs. They argue this offer demonstrates the plaintiff himself did not consider his claim to have any merit.

[9] The plaintiff disputes the defendants’ reliance on *Baryluk (Wyrld Sisters) v. Campbell*,² noting that it involved baseless accusations of case-fixing, abuse of public office, and dishonesty against judges of this court. The plaintiff argues that he never alleged criminal or fraudulent conduct by the defendant; rather, he claimed the defendant's conduct was aimed at taking over his practice. The plaintiff points to remarks in the court’s judgment that support the reasonableness of his belief, such as the defendant’s failure to locate correctly filed wills and certain actions that exacerbated the situation, and which added fuel to the fire.

[10] The plaintiff contends that his offer to settle by accepting his partial indemnity costs should not be seen as an admission that the action lacked merit. Instead, it was a reasonable compromise which would have covered a portion of his legal fees. The plaintiff argues that using this offer to justify awarding substantial indemnity costs would discourage parties from making settlement offers.

Analysis

[11] Elevated costs may be warranted where a party has engaged in conduct that is reprehensible, scandalous, or outrageous.³ Costs on the higher scale can be awarded as a “form of chastisement” and as a “mark of the court’s disapproval of a litigant’s conduct”.⁴ However, failing to prove fraud or dishonesty on a balance of probabilities does not automatically warrant substantial indemnity costs, as not all such attempts constitute “reprehensible, scandalous, or outrageous conduct”.⁵

² *Baryluk (Wyrld Sisters) v. Campbell*, 2009 CanLII 34041, (Ont. S.C.J.).

³ *Davies v. Clarington (Municipality)*, [2009 ONCA 722](#), at para. 28.

⁴ *Manning v. Herb Epp*, [2006 CanLII 35631](#), at para.7.

⁵ *Hamilton v. Open Window Bakery Ltd.*, [2004] 1 S.C.R. 303, 2004 SCC 9.

- [12] This case arose from a dispute between parties following the breakdown of a 10-year professional relationship. The dispute was charged with emotion for both sides, but particularly the plaintiff, who directed various epithets at Mr. Boyd and was eventually cautioned by the Law Society. The court does not doubt that Mr. Lamoureux honestly held these beliefs, even though they were not proved at trial on the balance of probabilities. The court also noted in its judgment that the defendant could have behaved more constructively, unnecessarily impugned Mr. Lamoureux's professional integrity, and recognized why Mr. Lamoureux might have perceived a conspiracy.
- [13] In these circumstances, the court declines to make an award of substantial indemnity costs. Although Mr. Lamoureux's serious allegations were not proven, he had a basis for making them, and the court accepts that he sincerely believed in these views.
- [14] The court also agrees with the plaintiff that his settlement offer does not indicate an acknowledgment that his action lacked merit. Numerous reasons can motivate a settlement offer unrelated to one's belief in his or her case's strengths. Additionally, settlements are crucial for the effective administration of civil justice,⁶ and I concur that they should not be discouraged by using them against the offering party as evidence of belief that their case lacks merit.

Disposition

- [15] For the preceding reasons, the court awards the defendant its partial indemnity costs, fixed at \$150,152.65, payable within 30 days.

JUSTICE A. KAUFMAN

DATE: November 25, 2024

⁶ *M. (J.) v. B. (W.)* (2004), [2004 CanLII 8541 \(ON CA\)](#), 71 O.R. (3d) 171 (C.A.), at para. 65.

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RE: Pierre Lamoureux

-and-

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BEFORE: Justice A. Kaufman

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for the Plaintiff

Stephen Cavanagh, for the Defendant

ENDORSEMENT

Justice A. Kaufman

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