



# **COMPENDIUM OF COSTS AWARDED IN ACTIONS IN TORONTO, CENTRAL EAST REGION, CENTRAL SOUTH REGION, EAST REGION AND NORTHEAST REGION**

JULY 1, 2005 – MARCH 31, 2020

PARISA KHAZRA (University of Ottawa)  
ALEXANDER DIGIOVANNI (University of Ottawa)

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The Honourable Justice Robert Smith; The Honourable Justice Denis Power;  
Aleksandar Jeremic, Charlotte Wolters, Jennifer Brigandi; Shaun Brown; Keith Rose; Richard  
Norian; Joseph Horrigan  
Liam Cardill (Cardill Law); and Sarah Saad (Associate – Rasmussen Star Ruddy LLP)

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### NOTES:

1. “Leading Cost Cases” section is organized by importance;
2. All other Sections are organized by the most recent date; and
3. Court of Appeal and Supreme Court cases appear in **bold** formatting.

**LEADING COSTS CASES**

| Judge   | Case name  | Citation   | Judge's Comments  |
|---|--|--|---|
| Armstrong, Robert P.<br>(writing for the Court);<br>Abella, Rosalie<br>Silberman; Cronk,<br>Eleanore A. | Boucher v. Public<br>Accountants Council for<br>the Province<br>of Ontario | (2004), 71 O.R. (3d)<br>291 (C.A.)                       | The fixing of costs is not simply a mechanical exercise. It does not begin and end with a calculation of hours times rates. Overall, as this court has said, the objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding, rather than an amount fixed by the actual costs incurred by the successful litigant. In deciding what is fair and reasonable, as suggested above, the expectation of the parties concerning the quantum of a costs award is a relevant factor.   |
| Finlayson, George;<br>Charron, Louise;<br>Simmons, Janet M.   | Zesta Engineering Ltd. v.<br>Cloutier                                      | (2002), 164 O.A.C. 234<br>(C.A.)                         | The costs award should reflect more what the court views as fair and reasonable for the unsuccessful party to pay rather than any exact measure of the actual costs to the successful litigant.   |
| Borins, Stephen<br>(writing for the Court);<br>Lang, Susan E.;<br>Juriansz, Russell G.                  | Moon v. Sher   | (2004), 246 D.L.R. (4 <sup>th</sup> )<br>440 (Ont. C.A.) | <p>If a lawyer wants to spend four weeks in preparing for a motion when one week would be reasonable, this may be an issue between the client and his or her lawyer. However, the client, in whose favour a costs award is made, should not expect the court in fixing costs to require the losing party to pay for over-preparation, nor should the losing party reasonably expect to have to do so.</p> <p>To avoid a windfall it is not appropriate for a party to seek or receive an award of costs in excess of the fees and disbursements actually charged to it. Therefore, the hourly billing rates actually charged and the fees actually billed to the successful litigant are relevant considerations.</p>   |
| Smith, Robert   | Cogan (Re)   | (2007), 88 O.R. (3d) 38                                  | <p>In approving the settlement, the Court must ensure that the whole settlement including the amount charged for legal fees is in the infant plaintiff's best interests. Here, the plaintiff's future needs will be provided for, even after the fees provided for in the contingency agreement are paid. This must be considered in the context where any recovery at all was far from certain.</p> <p>The fact that a contingency fee entered into by a litigation guardian on behalf of a child is not binding unless approved by a judge does not mean that the agreement should be disregarded by the court when assessing its fairness and reasonableness.</p> <p>The factors to be considered in approving a contingency fee arrangement are:<br/>a) the financial risk assumed by the lawyer;<br/>b) the results achieved and the amount recovered;<br/>c) the expectations of the party;<br/>d) who is to receive an award of costs; and<br/>e) the social objective of providing access to justice.<br/>These factors must be accorded much more weight than the time spent by the lawyer.</p> <p>In this case, the financial risk was high because there was a significant causation issue, so the likelihood of success was very uncertain. The results achieved were "very impressive"--the child's future needs will be well provided for. The recovery was approximately double the expectations of the parties. The contingency agreement provided that any costs awards would be included in the recovery, and not paid to the solicitor in addition to the percentage. All these factors support a higher contingency fee.</p> <p>The contingency agreement was obtained in a fair way. The litigation guardian was financially</p> |

**LEADING COSTS CASES**

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|   |  |                                     | <p>sophisticated and experienced. The agreement was understood and accepted by the litigation guardian; the parents and litigation guardian support approving the agreement.</p> <p>Access to justice requires that an injured child should have the right to enter into contingency fee arrangement, provided that it is fair and reasonable. "Substantial weight should be given to a contingency agreement entered into by a sophisticated party who considered and weighed the risks involved and acted in the best interests of the child."</p> <p>The question of whether the legal fees are simply "too high" does not reflect a principled approach. Where the percentage is reasonable and the agreement was fairly entered into, the agreement should be approved even if the recovery by the law firm is very high.</p>  |
| Hackland, Charles T.  | J Arther Cogan QC  | 2010 ONSC 915                       | <p>The factors to be considered in approving an agreement for contingency fees are:</p> <ol style="list-style-type: none"> <li>1) the financial risk assumed by the lawyer;</li> <li>2) the likelihood of success;</li> <li>3) the nature and complexity of the claim;</li> <li>4) the results achieved and the amount recovered;</li> <li>5) the expectations of the party;</li> <li>6) who is to receive an award of costs; and</li> <li>7) the achievement of the social objective of providing access to justice.</li> </ol> <p>Here the financial risk was substantial but the likelihood of success was quite high. The plaintiffs had a strong case which was settled in 1 day of mediation after 8 days of discovery. The results achieved are excellent for the minor defendant in all respects: the fee claimed by the solicitor does not encroach at all on the amounts needed to cover the defendant's present or future needs.</p> <p>There were no "exceptional circumstances" to justify the solicitor to receive any of the party and party costs as part of the contingency fee. In evaluating what should be viewed as qualifying circumstances, the court must focus on the need to balance counsel's claim for adequate compensation with the future needs of the disabled party. Here, given the medium risk nature of the case, the contingency fee itself represented adequate compensation. Therefore the costs recovered as part of the settlement (amounting to \$800,000) should be excluded.</p> <p>In the circumstances, a contingency fee in the amount of 25% of the settlement attributable to damages would provide fair compensation to the solicitor. This was estimated to represent a 400% premium on the accrued hourly billings, which was sufficient to promote the goal of access to justice.</p> <p>Hackland RSJ directed the solicitor to consult with the parents on the best use of the funds that would consequently be re-directed from the contingency fee to the benefit of the minor defendant and present a plan to the court. The solicitor would be entitled to compensation on a full indemnity basis out of this fund for reasonable additional work required to complete the settlement</p> |
| <b>Feldman, Kathryn N;<br/>Simmons, Janet M.;<br/>Borins, Stephen</b> | <b>Celanese Canada Inc. v. Canadian National Railway Co.</b> | <b>(2005), 196 O.A.C. 60 (C.A.)</b> | <b>Although there is case law from the Superior Court that suggests that the maximum rate in the costs grid is reserved for the most experienced counsel and the most important cases, we do not agree that only a small, elite group of lawyers in the province arguing the most financially</b>   |

**LEADING COSTS CASES**

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| (dissenting)  |  |  | significant cases is entitled to that rate. Instead, the trial judge is to assess the seniority of counsel and the significance of the case in monetary, jurisprudential and procedural terms, and to decide on a case-by-case basis the appropriate rate for senior and junior counsel on the applicable scale.  |
| Rothstein, Marshall (delivered judgment of the Court); McLachlin, Beverley; Bastarache, Michel; Binnie, William; LeBel, Louis; Deschamps, Mariel Fish; Morris; Abella, Rosalie; Charron, Louise | Walker v. Ritchie                            | [2006] S.C.R. 428                                    | <p>Risk premium set aside. The more risky a case is to the plaintiff, the more defensible it is to the defendant. The threat of a risk premium would incline defendants with meritorious defences to settle. This increased tendency to settle brings with it an undesirable corollary effect -- it would encourage plaintiffs to pursue the least meritorious claims. Encouraging plaintiffs to pursue the least meritorious claims is not an objective which the costs scheme should promote.</p> <p>Complexity, length, result, and a failure to admit are enumerated factors under Rule 57.01(1) and experience and expertise of counsel were taken into consideration according to the express terms of the Tariff. Indeed, in this case the trial judge noted that while the costs award was "substantial" it was fair and reasonable. A full reading of his reasons indicates that he considered all of the above factors in arriving at that award. Compensating for these factors again through the addition of a risk premium arguably constitutes a double count in the costs award against the unsuccessful defendant.</p> <p>These reasons apply to the costs scheme in place in Ontario at the time costs were fixed in this case. Since that time the costs scheme has been modified in a number of ways. Whether or not the reasoning in this judgment applies to the costs scheme currently in place will be an issue for the courts as the occasion arises.</p> |
| Laskin, John I.; Rouleau, Paul S.; Epstein, Gloria J.   | St Elizabeth Home Society v. Hamilton (City) | 2010 ONCA 280  | Rule 49 does not permit an award of substantial indemnity costs to a defendant who makes an offer to settle that is greater than the amount ultimately awarded. Nor is there a provision that substantial indemnity costs can be awarded against a plaintiff whose offer to settle is inordinately high.  |
| Doherty, David H.; Feldman, Kathryn N.; Cronk, Eleanore A.  | Ksiazek v. Halton (Police Services Board)    | 2010 ONCA 341  | <p>1) Rule 49.10(2) was not triggered where, although the total amount of the defendant's offer exceeded the total amount awarded at trial, the terms of the offer were not favorable to all plaintiffs. The terms of the offer were expressly not severable. The defendants cannot therefore ask the court to treat the offer made to the main plaintiff as being severable for the purposes of Rule 49.10(2).</p> <p>2) In applying Rule 49.10, the actual judgment should be considered net of any statutory accident benefits paid.</p> <p>3) Although the plaintiff's belief that they could do better than the defendant's offer was not unreasonable, it was nonetheless incorrect. "In exercising its discretion regarding costs, a court should accord significant cost consequences to such a miscalculation."</p> <p>4) In applying its discretion, the court should consider the purpose underlying rule 49.10. Where the second offer was substantially greater than the total award at trial, it should have been accepted. The defendants should not recover legal fees after its operative date. But where the offer was made on the eve of trial, they should be entitled to their disbursements throughout.</p>   |
| Cunningham, J. Douglas; Hackland, Charles T.; Taliano, Donald J.  | Carleton v Beaverton Hotel                   | (2009), 98 O.R. (3d) 391 (Ont. Sup. Ct. J. Div. Ct.) | <p>Rule 57.07 orders must only be made sparingly, in clear cases and not simply because the conduct of a solicitor may appear to fall within the scope of the rule. The solicitor's comments, while unfortunate and discourteous, were not egregious and were directed to matters in issue on the motion.</p> <p>The legal test for Rule 57.07 is concerned with costs unreasonably incurred and not with professional conduct generally. It is a two step test:</p>  |

**LEADING COSTS CASES**

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|   |  |                                 | <p>1) Did the lawyer's conduct cause costs to be incurred unnecessarily; and<br/>                 2) In the circumstances, is the imposition of costs against the lawyer personally warranted?<br/>                 The motions judge erred in not addressing the second step.</p> <p>A judge awarding costs under Rule 57.07 must provide sufficiently detailed reasons to enable a party and counsel to know why costs were awarded against him or her and to allow meaningful review. It was "not clear" this had occurred in this case.</p>  |
| Weiler, Karen; Juriansz, Russel; MacFarland Jean  | Jean Estate v. Wires Jolley LLP                      | 2009 ONCA 339                   | <p><b>Parties are entitled to agree to resolve disputes about lawyers' fees through arbitration. But any such assessment by an arbitrator must uphold the substantive rights provided by the Solicitors Act, R.S.O. 1990, c. S.15.</b></p>   |
| Goudge, Stephen; Sharpe, Robert; Epstein, Gloria  | Clarington (Municipality) v. Blue Circle Canada Inc. | 2009 ONCA 722, 100 O.R. (3d) 66 | <p><b>Substantial indemnity costs are only expressly authorized in two circumstances:</b><br/>                 1) offers to settle under Rule 49; and<br/>                 2) when a party has engaged in "reprehensible, scandalous or outrageous" conduct, worthy of sanction.</p> <p>Discretion under Rule 49.13 and Rule 57 must be exercised on a principled basis. "Apart from the operation of Rule 49.10, elevated costs should only be awarded on a clear finding of reprehensible conduct on the part of the party against which the cost award is being made."</p>  |
| Binnie, William (delivered judgment of the Court); McLachlin, Beverley; LeBel, Louis; Deschamps, Marie; Fish, Morris; Charron, Louise; Rothstein, Marshall; Cromwell, Thomas; concurring reasons from Abella, Rosalie | R. v. Caron  | 2011 SCC 5                      | <p>Superior courts may, in some circumstances, issue interim costs orders to fund the defence of regulatory prosecutions in provincial courts. The authority to do so derives from the Superior court's inherent jurisdiction to "render assistance to inferior courts to enable them to administer justice fully and effectively."</p> <p>This intervention must be exercised cautiously, and is only available where:<br/>                 the inferior tribunal is powerless to act;<br/>                 the intervention is essential to prevent a serious injustice in derogation of the public interest;<br/>                 and,<br/>                 the intervention has not been barred by statute.</p> <p>The criteria formulated in <i>British Columbia (Minister of Forests) v. Okanagan Indian Band</i> and <i>Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)</i> (No. 2) are helpful to assess whether intervention is essential. These criteria are:<br/>                 (1) the litigation would be unable to proceed if the order were not made;<br/>                 (2) the claim to be adjudicated is prima facie meritorious;<br/>                 (3) the issues raised transcend the individual interest of the particular litigant, are of public importance, and have not been resolved in previous cases.</p> <p>The superior court must decide whether, considering all the circumstances, the case is sufficiently special that it would be contrary to the interests of justice to deny the funding application, or whether it should consider other methods to facilitate the hearing of the case.</p> |
| Hamilton  | Open Window Bakery Ltd                               | [2004] 1 SCR 303                | <p>A cost award should not be set aside on appeal unless the trial judge made an error in principle or the award is plainly wrong.</p>   |
| Epstein, van Rensburg   | Lavender v. Miller                                   | 2018 ONCA 955                   | <p><b>Costs for a class action proceeding, settled on summary judgement:</b></p>   |

**LEADING COSTS CASES**

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| and Brown JJA                                       | Bernstein LLP                           |               | <p>S. 31(1) of the <i>Class Proceeding Act</i> will not be engaged where there is not any novel question of law or matter of public interest.</p> <p>Where a party asserts that costs should be reduced because of delays in admitting certain facts, the party should be able to point to specific amounts of costs that could have been avoided if admissions had been made at an earlier stage. The court can also consider whether the asserting party created delays by refusing to admit facts.</p> <p>The court will consider whether the quantum of costs are reasonable and proportionate. This court noted, “ the issues were complex and important, the record voluminous, and the parties provided lengthy submissions”.</p>   |
| Rouleau, Trotter, Zarnett JJA                       | Benarroch v. Fred Tayar & Associates PC | 2019 ONCA 228 | <p>Clarification of <i>Fong</i>: Where there is little evidence of lost opportunity costs, any award the court may decide to make will likely be in a nominal amount. Where the self-represented party has demonstrated that the lost opportunity costs were significant, an award for an amount greater than mere nominal costs is justified.</p>   |
| Strathy CJO, Hoy ACJO, Feldman, Brown, Paciocco JJA | Cadieux v. Cloutier                     | 2019 ONCA 241 | <p>No costs awarded for a jury trial because the offer to settle was higher than the recovery. Plaintiff recovered \$350,000.00 but the offer to settle was for net of \$500,000.00</p>  |
| Roberts JA  | Nexwell v. Sax                          | 2019 ONCA 445 | <p>Court applied <i>quantum meruit</i> to determine costs where there are no time records of the solicitors work, no retainer agreement, and the sale of the property was for \$14 million. Court also considered that while there was no retainer, the solicitor did “good work” on a complicated transaction.</p> <p>In assessing costs on a <i>quantum meruit</i> basis, the court should not conduct a mathematical analysis. The analysis is a nuanced, contextual approach. The court should consider the following factors:</p> <ol style="list-style-type: none"> <li>1. The time expended by the solicitor;</li> <li>2. The legal complexity of the matter dealt with;</li> <li>3. The degree of responsibility assumed by the solicitor;</li> <li>4. The monetary value of the matters in issue;</li> <li>5. The importance of the matter to the client;</li> <li>6. The degree of skill and competence demonstrated by the solicitor;</li> <li>7. The results achieved;</li> <li>8. The ability of the client to pay; and</li> <li>9. The reasonable expectation of the client as to the amount of fees.</li> </ol> |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| <b>Judge</b>                               | <b>Case Name</b>                                       | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
|--|--|------------------------|-------------------------|--|--|---|
| Corthorn J.                                | Donleavy v. Ultramar Ltd.                              | 2019 ONSC 2985         | Plaintiff               | \$306,832.45   | \$175,000  | Hourly rates should have regard to what clients would typically pay for the same services. The court had previously determined that \$425/hour was excessive so when \$550/hour was claimed, it was held to be excessive and a rate of \$350/hour was implemented. The court also recommended that the lawyers not redact info from their dockets, but to simply remove privileged info and describe work done to facilitate accounting for costs. Finally, no costs were awarded for a request to fix costs.   |
| <b>Bell J.</b>                             | <b>Chapadeau v. Devlin</b>                             | <b>2019 ONSC 241</b>   | Respondent's Committee  | Costs of Application (1) against applicants \$113,920.01 and (2) against certain respondents \$28,576.50 | \$90,000   | A provision for legal fees in a co-tenancy agreement determined the scale of costs in this case.  |
| <b>Epstein, van Rensburg and Brown JJA</b> | <b>Lavender v. Miller Bernstein LLP</b>                | <b>2018 ONCA 955</b>   | <b>Plaintiff</b>        | <b>Summary judgement motion: \$1,009,063.32<br/>Appeal: \$159,463.29</b>                                 | <b>Summary judgement motion: \$1,009,063.32<br/>Appeal: \$159,463.29<br/>Both inclusive of disbursements and HST</b> | <b>Costs for a class action proceeding, settled on summary judgement:</b><br>S. 31(1) of the <i>Class Proceeding Act</i> will not be engaged where there is not any novel question of law or matter of public interest.<br>Where a party asserts that costs should be reduced because of delays in admitting certain facts, the party should be able to point to specific amounts of costs that could have been avoided if admissions had been made at an earlier stage. The court can also consider whether the asserting party created delays by refusing to admit facts.<br>The court will consider whether the quantum of costs are reasonable and proportionate. This court noted, "the issues were complex and important, the record voluminous, and the parties provided lengthy submissions". |
| <b>P. Lauwers J.<br/>J. MacFarland</b>     | <b>790668 Ontario Inc. v. D'Andrea Management Inc.</b> | <b>2015 ONCA 557</b>   |                         |  |  | Cost appeal was allowed as the judges ruled the case management judge had erred in allowing full recovery of the amount charged to the client while only granting partial indemnity. The Court of Appeal saw no reason to stray from the  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge               | Case Name  | Citation / Date      | Costs awarded to             | Costs Requested  | Costs Awarded   | Judge's Comments   |
|---------------------|--|----------------------|------------------------------|--|---|--|
| <b>G. Huscroft</b>  |  |                      |                              |  |   | <b>1/3 of amount charged for partial indemnity.</b>  |
| Kane, J.            | Carleton Condominium Corporation No. 396 v. Burdet | 2015 ONSC 1361       | Plaintiff                    | \$853,480.26 total with \$547,362.80 being for fees and the remaining \$306,117.46 for disbursements. (Full indemnity) | \$790,914.63 total with \$491,388 for fees and the remaining \$299,526.63 for disbursements. (Full indemnity granted) | The defendants represent the majority owners of condo corp. 396 and were in arrears of their fees for 2 years. They lost a summary judgment and brought the same issues that they lost at summary judgment up again at trial. The judge ordered full indemnity under s. 85 of the <i>Condominium Act</i> . Section 85 allows for an award of all reasonable legal costs and expenses incurred in connection with collection of an unpaid amount.   |
| Cumming, J.         | Bell Expressvu Limited Partnership v. Pieckenhagen | 2013 ONSC 195        | Plaintiff                    | \$389,249.18 (Substantial Indemnity)   | \$363,488.01 (Substantial Indemnity)  | Defendants fraudulently concealed facts through misrepresentations in a way that was designed to mislead investigators and conceal evidence.<br><br>Plaintiff awarded substantial indemnity costs on motion for summary judgment brought by the defence where it ought to have been evidence that the "full appreciation test" could not be met on the facts of the case.  |
| <b>Goudge, J.A.</b> | <b>Marcus v. Cochrane</b>                          | <b>2014 ONCA 207</b> | <b>Defendant/ Respondent</b> | <b>\$160,706.99</b>  | <b>\$60,000</b>   | <b>OVERTURNED</b><br><b>Trial Judge found no evidence of negligence. The Court of Appeal did not interfere with this judgment, as it was open to the Trial Judge on the evidence provided.</b><br><br><b>Court of Appeal agreed with Trial Judge that the appellant suffered no actual damages.</b><br><br><b>Trial Judge found "reprehensible" conduct by appellant, leading Trial Judge to award full indemnity to the respondent. Court of Appeal found that these charges were unsustainable.</b><br><br><b>Set aside full indemnity, and awarded partial indemnity instead.</b> |
| Rutherford, J.      | Ontario Community Housing Corporation v.           | 2013 ONSC 5443       | Plaintiff                    | Full indemnity   | Full indemnity (\$630,475.47)   | Full indemnity costs awarded of ~\$630,000 to plaintiff; finding of fraud by defendant.  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge           | Case Name                           | Citation / Date | Costs awarded to | Costs Requested | Costs Awarded  | Judge's Comments   |
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|                 | Foustanellas (Argos Carpets)(No. 2) |                 |                  |                 |  |  |
| Newbould, J.    | GB/Plasman v. APP Holdings          | 2013 ONSC 6401  | Applicant        | \$100,821       | \$100,000  | <p>Claim that judgment (information on a foregoing basis) not more favourable than offer to settle because offer to settle did not contain a confidentiality undertaking as was ordered in judgment. This argument was denied. The confidentiality agreement was ordered not because it was required, but because it was offered by the applicant. It was not a contested issue.</p> <p>The element of compromise is not necessary to an offer to settle but absence of such can be considered.</p> <p>The applicant argued that costs should only be paid by the general partner and not the limited partnership, as the applicant is a substantial limited partner, and would therefore, in effect, be paying their own costs. This submission was accepted by the judge. The applicant should not be required to partially fund the costs ordered to be paid to it</p> <p>It is normal for the work done by a plaintiff to be far more than the work needed to be done for a defendant.</p> |
| Hackland R.S.J. | Veritaaq v. ADGA Group et al        | 2013 ONSC 1253  |                  | \$115,301.81    | <p>\$25,000 to defendant on successful motion to strike</p> <p>\$75,000 to plaintiff on success of summary judgement</p> | <p>D argues no cause of action, judge agrees to strike, with leave to P to amend, and D awarded costs thrown away. P then files statement of claim with new grounds (this time viable). Because the new statement of claim was "radically different", motion for summary judgment would now not be pursued, despite substantial time spent preparing it and argues these are costs thrown away.</p> <p>The position of the plaintiff is that its amended statement of claim supplements and clarifies its prior pleading and rejects the argument that it is pleading an entirely new action. The plaintiff further submits</p>  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge        | Case Name   | Citation / Date | Costs awarded to | Costs Requested                               | Costs Awarded                                 | Judge's Comments  |
|--------------|---|-----------------|------------------|---|---|---|
|              |   |                 |                  |   |   | <p>that while the defendant is entitled to reasonable costs for its motion to strike the statement of claim on which it was successful, the defendant is not entitled to its costs of the summary judgment motion because it should not have been brought in the first place in view of the principle of proportionality.</p> <p>Judge determined that the disposition of the costs referable to the motion for summary judgment should be dealt with as an award of costs to the defendant in the cause. As this motion was never argued and as the facts and events canvassed in the affidavits and cross-examinations bear on the events that will be heard at trial (even though the legal issues will differ to an extent), these costs should be paid to the defendant if it is ultimately successful on the merits of the action.</p>  |
| Beaudoin, J. | Victoria Order of Nurses v. Greater Hamilton Wellness Foundation (ALREADY IN) | 2012 ONSC 1527  | Applicants       | \$454,686.19 on a substantial indemnity basis | \$454,686.19 on a substantial indemnity basis | <p>The applicants requested substantial indemnity costs on the basis that the respondent engaged in unfounded accusations of dishonest and deceitful behaviour on the part of the applicants, and on the grounds that the respondent refused reasonable offers to settle as per rule 49, on two occasions.</p> <p>The judge relies on <i>Bargman v. Rooney</i>, [1998] O.J. No.5528 and <i>Manning v. Epp</i>, [2006] O.J. No. 4239, argued by applicants, which set out when substantial indemnity costs are to be awarded and define the conduct which would give rise to a substantial indemnity cost award. Unfounded allegations of fraud or deceitful behaviour meet the mark.</p> <p>The judge rejects the respondent's arguments that the applicant unnecessarily complicated the proceedings, that they (the respondents) were not acting in a reprehensible, scandalous or outrageous</p> |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| <b>Judge</b>    | <b>Case Name</b>                 | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>   | <b>Judge's Comments</b>  |
|-----------------|----------------------------------|------------------------|-------------------------|--|--|--|
|                 |                                  |                        |                         |  |  | manner or that the offers to settle did not comply with rule 49.   |
| Beaudoin, J.    | Boily v Carleton Condominium 145 | 2012 ONSC 1324         | Applicants              | Applicants: \$48,538.48 on a full indemnity basis<br><br>Respondent: submit there should be no costs, alternatively, that costs be fixed on a partial indemnity basis and be payable by the Condominium Corp, not by the Board personally. | (a) The interlocutory injunction: \$9711.79<br>(b) Motion to enforce settlement: \$13,560.00<br>(c) Application: \$9435.50<br>(d) Disbursements: \$3995.57<br>-all include HST<br>-(b) is to be paid by Board; the rest is to be paid by the Condominium Corporation | The main area of concern involves the Board's attempts to resile from the Minutes of Settlement; in this, the board acted in bad faith in attempting to resile from the agreement their own solicitor negotiated<br><br>There was legitimate dispute whether alterations and repairs to the courtyard constituted a substantial change with the meaning of the Act. As a result, the Applicant costs should be paid by the Condominium Corp, with the exception of the fees incurred to enforce the settlement, which are to be paid by the Board. |
| Mackinnon J.    | Alden v. Thomas,                 | 2012 ONSC 422          | Respondent              | Applicant seeks \$86,832 on a substantial indemnity basis up to July 26, 2011 and 10,617.60 on the June 14, 2010 motion  | \$19,650   | This is not a case where substantial indemnity costs are applicable.<br><br>Settlement is encouraged but is not required and a trial is not always an unreasonable process.<br><br>The court may consider the financial ability of the respondent in terms of the quantification of the award of costs<br><br>The total costs awarded were \$27,650; however the \$8000 portion of the property settlement owed to respondent shall be put against balance owing.  |
| McCartney, J.   | Jung v Fraser                    | 2012 ONSC 1308         | Plaintiff               | Costs not specified  | \$5080.00 (including disbursements)  | No costs will be assessed against Plaintiff as their position all along has been helpful and has not prolonged the motion in any way and in the end, helped finalize the motion short of a full hearing.<br><br>Allstate showed reluctance to cooperate in bringing matter to conclusion, would have been responsible for Plaintiff having to incur greater costs for motion, costs will be assessed 2/3 against Allstate insurance and 1/3 against Aviva insurance.   |
| <b>Rouleau,</b> | <b>Lawson v. Viersen</b>         | <b>2012 ONCA</b>       | <b>mixed</b>            | <b>Not specified</b>   | <b>The Viersens are to pay</b>   | <b>The appeal concerns the costs</b>   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge  | Case Name                   | Citation / Date  | Costs awarded to | Costs Requested  | Costs Awarded  | Judge's Comments  |
|--|-----------------------------|------------------|------------------|--|--|---|
| Paul (J.A);<br>Sharpe,<br>Robert<br>J.(J.A.);<br>Armstrong,<br>R.P. (J.A.) |                             | 25               |                  |  | 35% of the Lawsons' costs, only up to the date of the Viersens offer, less a 10% adjustment to fees to account for duplication of the work; Mr. Hart is to pay the Viersens' partial indemnity costs from the date of the Viersens offer to contribute in the amount of \$149,071. the Viersens are awarded the costs of their appeal at \$33,000 inclusive of disbursements and taxes; this is split evenly between Mr. Hart and the Lawsons. | <p>consequences of a plaintiff's failure to accept an offer to settle and of a co-defendant to accept an offer to contribute as well as a court's discretion in awarding costs.</p> <p>There were 3 offers to settle, none of which were accepted. Both defendants made offers but the offers were not made jointly in accordance with rule 49.11, which states that where two or more defendants are alleged to be jointly and severally liable, they must make a joint offer to settle.</p> <p>The question raised by this appeal is whether the damages in issue need to be caused or contributed by multiple tortfeasors acting together or at the same time.</p> <p>Although neither the Viersens nor the Hart offer complied with Rule 49.11, the total amount offered exceeded the Plaintiff's recovery at trial. The Viersens should only be responsible for the Lawson's costs up to the date their offer was served. The Viersens offer to contribute should have weighed heavily in favour of ordering that Mr. Hart pay the Viersens costs under Rule 29.12(2)(a)</p> |
| Armstrong;<br>Epstein, G.;<br>Karakatsani<br>s                             | Smith Estate v.<br>Rotstein | 2011 ONCA<br>833 | Respondent       | Respondent seeks costs of the appeal on a full indemnity scale for \$72,420 or on a substantial indemnity scale of \$59,537. | <p>Respondent: Costs of the appeal on a partial indemnity scale for \$32,866.00 inclusive of disbursements and taxes.</p> <p>Appellant: Costs of the costs appeal on a partial indemnity scale for \$9,273.30 inclusive of disbursements and taxes.</p>  | <p>This endorsement deals with the costs of both the appeal on the merits and the costs appeal.</p> <p>There is no basis for costs awarded on either a full or substantial indemnity basis.</p> <p>The respondent is entitled to his costs of the appeal on the merits on a partial indemnity scale; the appellant is entitled to her costs of the costs appeal on a partial indemnity scale.</p>   |
| Conway J.  | Sandborn v. Pottruff        | 2011 ONSC        | Defendant        | \$59,228.74 on a partial   | \$42,000 to Defendant  | There is no basis for substantial indemnity   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge                                   | Case Name                                | Citation / Date | Costs awarded to | Costs Requested  | Costs Awarded  | Judge's Comments  |
|---|--|-----------------|------------------|--|--|---|
|   | and Malik,                               | 2819            |                  | indemnity basis up to December 16, 2010 and substantial indemnity afterwards.    |  | <p>costs as per <i>Clarington (Municipality) v. Blue Circle Canada Inc.</i> 2009 ONCA 722. There was no reprehensible conduct by the Plaintiffs so costs are awarded on a partial indemnity basis.</p> <p>Costs were submitted as up to December 16, 2010 (\$24,729.25) and a substantial basis afterwards (\$30,632). No hours breakdown was given. Used the calculation of substantial indemnity costs as 1.5 times the amount of partial indemnity costs bringing the total partial indemnity fees to \$44,729.25.</p> <p>Took into account rule 57.01 (1) and the issue of proportionality, the amount awarded is considered to be fair and reasonable amount for the plaintiff to pay.</p> |
| Ellies, J.                              | Savage v Belecque et al                  | 2011 ONSC 5771  | Plaintiffs       | <p>From CGU/Aviva: \$91,749.00</p> <p>For Belecque plaintiffs: not specified</p> | <p>To the Plaintiffs : \$180,168.29</p> <p>Allstate shall pay to CSU/Aviva \$79,220.84</p> | <p>The costs associated with defending the main action ought to be rewarded on a full indemnity basis; also costs of coverage claim and motion declaratory relief/summary judgment should also be paid on a full indemnity basis; hourly rates charged by counsel representing insurers are often lower than counsel representing one-time or infrequent litigants.</p> <p>The issues between CGU/Aviva and Allstate under section 258 of the Insurance Act were important to both of them but also to other insurers as a result of the dearth of jurisprudence on this issue</p>  |
| LaForme, H.S.; Feldman, K.; Blair, R.A. | Toronto Star Newspapers Ltd. V. Fraleigh | 2011 ONCA 555   | Respondent       | Not specified—this is an appeal of a previous costs decision                     | \$28,000 inclusive of disbursements and taxes on a partial indemnity scale                 | <p><b>This is an appeal of a costs decision from September 2010 (2010 ONSC 4637) in which full indemnity costs of \$96,173.67 were awarded against the Toronto Star.</b></p> <p><b>The original trial judge erred in three respects in awarding elevated costs (i) he made no findings of misconduct (ii) he relied on the relative resources of the parties (iii) he awarded costs for steps taken by Mr. Fraleigh which should not</b></p>  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge   | Case Name                        | Citation / Date      | Costs awarded to  | Costs Requested   | Costs Awarded   | Judge's Comments  |
|---|----------------------------------|----------------------|-------------------|---|---|---|
|   |                                  |                      |                   |   |   | <p><b>be the responsibility of the Star.</b></p> <p><b>The original order of full indemnity costs is set aside and an order of partial indemnity costs is issued; however, only for the contested litigation that occurred after Feb 25, 2010 on a partial indemnity scale.</b></p>   |
| MacKinnon, J.   | Pearsell v. Welsh                | 2011 ONSC 4582       | Plaintiff         | Plaintiff: \$88,330 plus HST on a partial indemnity basis plus \$35,074.47 in disbursements         | \$84,750 in partial indemnity fees inclusive of HST. Disbursements are set at \$32,574.47 inclusive of HST. \$500 for the work performed in the cost fixing itself. | <p>The accident benefits docketed time is not the responsibility of the tort defendant and \$1936.25 has been deducted from the fee portion of the plaintiff's bill.</p> <p>The Plaintiff breached Rule 53.03 by breaching the 90 day rule mandated. This costs breach must be sanctioned and \$2500 is deducted from the disbursements claim.</p>  |
| <b>MacPherson J.C.(J.A.); R.G. Juriansz (J.A.); Karakatsanis (J.A.)</b> | <b>Wielgomas v Anglocom Inc.</b> | <b>2011 ONCA 490</b> | <b>Respondent</b> | <b>This is an appeal of a decision by Justice Andra Pollak of the S.C.J. dated December 2, 2010</b> | <b>Reduction of the original costs award by 50% to \$12, 750.</b><br><br><b>\$5,000 inclusive of disbursements and HST for the costs of the appeal</b>              | <p><b>Court agrees that the appellant had not met his burden of established that his action had a real and substantial connection with Ontario.</b></p> <p><b>Court cannot see any basis for a large discrepancy (4:1 proportion) in the costs sought by the two parties.</b></p>   |
| McDermot, J.  | Patton-Casse v. Casse            | 2011 ONSC 6188       | Applicant         | Partial indemnity fees of \$102,273.00 plus disbursements of \$108,173.45                           | \$157,202.20 all-inclusive  | <p>Where child support is in issue and is ordered, and where there is a disparity in income between the parties, 'the paying spouse should pay the costs of child support litigation': see Tauber v Tauber 2000 CarswellOnt 3097 (C.A.)</p> <p>The Respondent had substantial success on the appeal and so the costs of the appeal should be set off as against the award of costs in favour of the applicant.<br/>Total awarded was \$179,377.20 minus \$22,175 allowed to respondent for total shown.</p> |
| Quinn, Joseph W.  | Pirbhai v. Singh et al.          | 2011 ONSC 1366       | Plaintiff         | full indemnity costs of \$131,211.74  | \$131,211.74, all-inclusive, plus \$2,000 plus HST for the costs hearing  | <p>[at paras 119-120]<br/>Full indemnity costs were justified where:<br/>"(1) he added, perhaps, 25 days or more to the evidence in the trial and years to its length;</p>  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge   | Case Name   | Citation / Date | Costs awarded to                     | Costs Requested  | Costs Awarded  | Judge's Comments   |
|---|---|-----------------|--------------------------------------|--|--|--|
|   |   |                 |                                      |  |  | (2) he was not forthright with his documentary disclosure;<br>(3) he fraudulently created documents;<br>(4) he repeatedly lied under oath; and,<br>(5) he attempted to perpetrate a fraud upon the plaintiff and upon the court."<br><br>"Equity requires that the plaintiff not be put to one penny of expense in his pursuit of justice."  |
| Ratushny, Lynn D  | Murray v. Lesk  | 2011 ONSC 1144  | Defendant, plaintiff by counterclaim | for the Estate Trustee claims \$4,135.93 on a full indemnity basis or, alternatively, \$3,807.33 on a substantial indemnity basis for Karen Murray: \$2,000 on a substantial indemnity basis for the Estate Solicitors: \$4,998.50 on a full indemnity basis plus disbursements and all taxes or, \$4,500 on a substantial indemnity basis plus disbursements and taxes. | to the Estate Trustee: \$4,135.93 all inclusive, to be deducted from the counterclaimant's share in the estate (full indemnity) to Karen Murray: \$2,000 (substantial indemnity) to the Estate solicitors: \$5,853.01 all inclusive. | The counterclaim was improper, vexatious and unnecessary, per clause 57.01(1)(f). This improper counterclaim threatened to drain estate assets. Serious allegations of dishonesty were made against the Estate trustee and Estate solicitors. These unsupported allegations of dishonesty, breach of fiduciary duty and breach of professional duties particularly justify an award of elevated costs. |
| Roccamo, T.   | Lobo v Carleton University                                      | 2011 ONSC 5798  | Defendants                           | \$19,142.29 on a partial indemnity basis. Alternatively, each party should bear their own costs  | \$18,400.87 plus taxes on a partial indemnity basis  | Applied jurisdiction under rule 57.01 (4)(b) in awarding a proportion of the partial indemnity costs incurred by Defendants, in consideration of their failure to succeed to strike the claim based on wrongful arrest   |
| Rosenberg, M. (J.A.); Feldman, K. (J.A.); Juriansz, R.G. (J.A.) | Cimmaster Inc. v. Piccione (Manufacturing Technologies Company) | 2011 ONCA 486   | Respondent                           | <b>This is an appeal of a decision by Justice Douglas K. Gray of the S.C.J. dated January 6, 2010 (2010 ONSC 96)</b>   | <b>Reduction of the original costs award from substantial to partial indemnity for \$40,000 inclusive of disbursements and taxes.</b><br><br><b>\$6,000 inclusive of disbursements and taxes</b>                                     | <b>The original claim was never in dispute and occupied little time at trial which is apparent from the trial judge's reasons and transcript. Given these circumstances, this is not a case for substantial indemnity costs and is thus reduced.</b>   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge         | Case Name                     | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments  |
|---------------|-------------------------------|-----------------|------------------|---|---|---|
|               |                               |                 |                  |   | <b>for the costs of the appeal.</b>   |   |
| Shaw, D.C.    | Skead v. Skead                | 2011 ONSC 7075  | Applicant        | Applicant requests costs of \$5141.50 on a partial indemnity basis.   | \$3000 plus HST   | Family Law Rules do not address costs on either a substantial indemnity basis or a partial indemnity basis.<br><br>There must be a realistic amount awarded for costs in family law matters so that the justice system remains accessible to most people in this province.  |
| Shaw, D.C.    | BOT CONSTRUCTION v. DUMOULIN, | 2011 ONSC 2887  | Plaintiff        | Plaintiffs seek \$40,000 on a partial indemnity basis<br>Towanda defendants seeks partial indemnity fees of \$40,061.05<br>Dumoulin defendants seek \$18,557.50 on a substantial indemnity basis. | \$15,000 inclusive of HST and disbursements.  | Costs are to be determined on a summary basis<br><br>In <i>Serra v. Serra</i> (2009), 66 R.F.L. (6th) 40 (Ont. C.A.), reiterated the fundamental purposes which modern costs rules are designed to foster: (1) to partially indemnify successful litigants for the costs of litigation;<br>(2) to encourage settlement; and<br>(3) to discourage and sanction inappropriate behaviour.<br><br>because of the difficulty in allocating the parties' respective costs between the various issues which were argued over five days, it is appropriate that each group of defendants pay half of the total amount awarded to Bot. Therefore each defendant shall pay \$7500 to Bot. |
| Smith, Robert | Vigna v. Levant               | 2011 ONSC 629   | Plaintiff        | For Heenan Blaikie: \$26,434.54 on substantial indemnity basis<br>For self-represented plaintiff: \$68,250 substantial indemnity plus disbursements of \$7,516                                    | \$20,000 (inclusive) towards costs incurred with Heenan Blaikie, plus \$10,000 for his own costs, plus applicable HST and disbursements of \$2,500 plus HST | Substantial indemnity costs were justified for two reasons.<br>1) Although the plaintiff's offers to settle did not qualify as Rule 49 offers, they were reasonable and a better or equivalent award was obtained at trial.<br>2) Levant's publication of defamatory statements was part of his campaign to denormalize the Human Rights Commissions. This amounted to malicious conduct on his part.   |
| Wilson, D.A.  | Gutbir v University           | 2011 ONSC       | Plaintiffs       | \$2,021,933.30 including  | Plaintiffs awarded  | The magnitude of the fees submitted are out   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge                  | Case Name                                  | Citation / Date | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments   |
|------------------------|--|-----------------|------------------|--|---|--|
|                        | Health Network                             | 7635            |                  | both partial and substantial indemnity costs and HST. \$383,290.61 is claimed in disbursements   | \$1,184,440.000 plus taxes in fees.<br><br>\$250,000 in disbursements | of the realm as to what is fair and reasonable.<br><br>Under rule 57.01, fees of \$500,000 on a partial indemnity scale up to Oct 1, 2010 are reasonable.<br><br>The fact that an expert was not called as a witness does not mean their fees are not recoverable<br><br>Partial indemnity costs of \$500,000, substantial indemnity of \$684,440 plus taxes and disbursements of \$250,000 plus taxes   |
| Granger, Thomas        | GasTOPS Ltd. v. Forsyth                    | 2010 ONSC 7068  | Plaintiff        | Fees of \$9,577,568 based on maximum full indemnity rate of \$583, disbursements of \$509,481, plus GST of \$649,007.81. Total: \$10,916,057.38.                     | \$4,252,920.24, the total amount billed to the client                 | Defendants had systematically hidden and destroyed evidence in order to mislead the court. Defendants' acts were deliberate attempt to frustrate the plaintiff's claim by fraud and/or deception, and their actions increased the complexity and length of the proceedings.<br><br>Full indemnity for plaintiff's costs allowed, at the maximum possible rate, including for the determination of costs. Disbursements for experts who were not called at trial were to be included.<br><br>No misconduct was attributed to the defendants' counsel. |
| Harvison Young, Alison | Sandra Bonaiuto v. Pilot Insurance Company | 2010 ONSC 1248  | plaintiff        | \$75,932.23 (including GST and disbursements) on a substantial indemnity basis, or alternately \$54,504.09 representing the same costs on a partial indemnity basis. | \$75,932.23 (including GST and disbursements), as requested.          | The plaintiff was entitled to substantial indemnity costs for several reasons.<br><br>1. The defendant vigorously asserted a fraud claim against the plaintiff, with very little evidence to support it.<br><br>2. Although the plaintiff's offer was for more than the award at trial, the plaintiff had indicated a willingness to consider reasonable counteroffers. None were forthcoming.   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge          | Case Name  | Citation / Date | Costs awarded to | Costs Requested                                | Costs Awarded   | Judge's Comments  |
|----------------|--|-----------------|------------------|--|---|---|
|                |  |                 |                  |  |   | <p>3. The mere fact that costs exceed damages awarded does not alone make an order inappropriate.</p> <p>4. The plaintiff had a case which the jury could reasonably have believed warranted an award above the small claims or simplified procedure thresholds.</p> <p>5. The defendant did not submit a Bill of Costs, making it impossible to assess what their reasonable expectations would have been.</p>   |
| Polowin, Heidi | Kaymar Rehabilitation Inc. v. Champlain Community Care Access Centre, et al. | 2010 ONSC 6614  | Defendants       | On a substantial indemnity basis: \$187,487.63 | \$126,600 plus GST less \$13,794.73, plus disbursements of \$21,744.08 inclusive of GST | <p>Three separate motions for summary judgment and/or dismissal were brought by the three defendants. Two defendants (COTA and Carefor) were successful, leaving the third (OCCAC) as the only remaining defendant in the action.</p> <p>With respect to the Carefor motion:<br/>"Kaymar leveled serious allegations of dishonesty, misconduct, collusion and conspiracy against Carefor. These allegations were found to be entirely unsupported by the evidence and without merit."</p> <p>The plaintiff need not have acted with malice or an improper motive. Where the plaintiff acted recklessly in pursuing unfounded allegations with no evidentiary basis, and where the inferences it asked the court to draw were not reasonable, the Court must sanction this behaviour with substantial indemnity costs.</p> <p>However Carefor was not entitled to its costs for motions that were settled. Also a set-off was required for Carefor's</p> |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge  | Case Name                      | Citation / Date | Costs awarded to      | Costs Requested | Costs Awarded          | Judge's Comments   |
|--|--------------------------------|-----------------|-----------------------|-----------------|------------------------|--|
|  |                                |                 |                       |                 |                        | participation  |
| Price, David   | MCAP Leasing v. Lind Furniture | 2010 ONSC 4308  | Repondent (Defendant) | \$23,591.06     | \$15,000.00, inclusive | <p>Under the amended rule 20.06 there was no longer a presumption in favour of substantial indemnity where a motion for summary judgment is unsuccessful. The successful party had a burden to establish that the unsuccessful party had acted unreasonably in bringing the motion. It was the reasonableness of the motion itself, not of the amount claimed, that was at issue.</p> <p>The Court must focus on whether it reasonably appeared to the moving party that there was a genuine issue for trial, on the basis of the information known, when the motion was brought. The outcome of the motion in this case was not "virtually certain" based on the pleadings. Partial indemnity costs were therefore appropriate.</p>   |
| Rosenberg, Marc;<br>Goudge, Stephen T.;<br>Feldman, Kathryn N. | Keam v. Caddey                 | 2010 ONCA 565   | Appellant (Plaintiff) |                 |                        | <p><b>The appellants had successfully sued for damages resulting from a motor vehicle accident. The respondents' insurer had twice refused to participate in mediation, despite a statutory requirement to do so under subsection 258.6(1) of the Insurance Act. The insurer's position was that the damages did not meet the statutory threshold.</b></p> <p><b>The issue on appeal was whether the failure to mediate should have resulted in an award of substantial indemnity costs, or have attracted some other costs consequence. The Court noted that subsection 258.6(2) required the Court to take the failure to mediate into consideration in a costs award. The Court described this as a "remedial penalty" that was intended to go beyond merely providing compensation for the unnecessary litigation steps.</b></p> |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge                | Case Name  | Citation / Date   | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments   |
|----------------------|--|---|------------------|---|---|--|
|                      |  |   |                  |   |   | <b>The Court held that the insurer's conduct warranted a costs sanction, but did not rise to the level of justifying substantial indemnity. Instead, the Court increased the plaintiff's partial indemnity costs award by \$40,000.</b>  |
| Smith, Robert        | Milone v. Delorme  | 2010 ONSC 4162  | Plaintiff        | Plaintiff: costs thrown away of \$13,066.83 as well as an additional \$2,282.75 for the costs of the motion<br>Defendants: \$2,887.00 on a partial indemnity basis for the motion | for costs thrown away: \$3,000.00 plus GST plus disbursements of \$426.35<br>No costs for the motion  | Costs thrown away should be assessed on a full indemnity scale, but should be limited to those costs that were actually unnecessary. Here most of the costs incurred would not be wasted as the matter would proceed in the normal course.   |
| Archibald, Thomas L. | Empire Life Insurance Company v. Krystal Holdings Inc.                       | (2009 Ont. Sup. Ct. J.) Court File No.: 02-CV-222931CM4                       | Plaintiff        | Unreported costs on a substantial indemnity basis   | \$440,008.32 inclusive for the G.B. accounts, \$10,000 inclusive for the B.S accounts, and \$4,000 inclusive for the costs submissions, all on a partial indemnity basis  | The language of the costs and expenses provisions of the mortgages did not create a clear and unambiguous contractual entitlement to costs on a substantial indemnity basis. In any case, the award is at the court's discretion, notwithstanding any contractual language. This was a complex case involving multiple legal issues; the defendant prevailed on some. Even if there had been clear contractual language, it would be an appropriate case for the court to exercise its discretion to award costs on a partial indemnity basis. |
| Brennan, W. J. Lloyd | Magas v. Canada (Attorney General);<br>Magas v. Monette;<br>Magas v. Pasanen | (2009 Ont. Sup. Ct. J.) Court File No.: 01-CV-16939; 00-CV-13064; 00-CV-12194 | Defendants       | Unreported in the Pasanen and Monette Actions; \$130,079.70 in the Crown action   | The plaintiff was a lawyer who conducted her own case. Although the trial consequently lasted longer than it would have had she had counsel, she conducted herself competently. This did not amount to conduct tending to lengthen the proceedings unnecessarily, under Rule 57.01(1)(e). | Partial indemnity scales are appropriate in all three actions. The plaintiff succeeded on appeal of summary judgment dismissals, demonstrating that there were genuine issues that required a trial. The defendant Pasanen gave incorrect or incomplete evidence at her examination for discovery, and the error was not disclosed to the plaintiff. This factor was considered in exercising the discretion as to costs.<br><br>Costs in relation to the dismissal motion and appeal ought not to be included in the order.                   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge   | Case Name   | Citation / Date                                     | Costs awarded to  | Costs Requested  | Costs Awarded   | Judge's Comments   |
|---|---|---|-------------------|--|---|--|
|   |   |   |                   |  |   | Neither should costs in relation to air fare for one defendant to return from China on one occasion.   |
| <b>Goudge, Stephen; Sharpe, Robert; Epstein, Gloria</b> | <b>Clarington (Municipality) v. Blue Circle Canada Inc.</b> | <b>2009 ONCA 722, 100 O.R. (3d) 66</b>              | <b>Defendants</b> | <b>As ordered by trial judge, \$509,452.18 plus disbursements of \$25,276.77</b> | <b>Costs award to defendants reduced to \$300,000.</b><br><br><b>Costs for the appeal to the settling defendants awarded at \$10,000, all-in.</b> | <b>The trial judge erred in awarding full indemnity costs without a finding of sanction-worthy conduct.</b><br><br><b>Substantial indemnity costs are only expressly authorized in two circumstances:</b><br><b>1) offers to settle under Rule 49; and</b><br><b>2) when a party has engaged in "reprehensible, scandalous or outrageous" conduct, worthy of sanction.</b><br><br><b>Discretion under Rule 49.13 and Rule 57 must be exercised on a principled basis. "Apart from the operation of Rule 49.10, elevated costs should only be awarded on a clear finding of reprehensible conduct on the part of the party against which the cost award is being made."</b> |
| Power, Denis  | Simpson v. Laushway Law Office                              | (2009 Ont. Sup. Ct. J.) Court File No.: CV-09-45516 | Respondent        | Not disclosed  | \$16,920, all inclusive, on a substantial indemnity basis   | An award on a substantial indemnity basis is appropriate where the application was an abuse of process. The applicant should reasonably have expected to play costs on a scale higher than partial indemnity. The respondent's offer to settle without costs was not accepted; the result achieved was more favourable to the respondent. However the abuse of process occurred from the outset, not from the offer to settle.   |
| Power, Denis  | Tulchinsky v. Shuster                                       | (2009, Ont. Sup. Ct. J.) Court File No.: FC-08-2541 | Applicant         | \$30,000   | Full indemnity costs of \$25,000 all inclusive  | The conduct of the respondent amounted to "bad faith" within the meaning of rule 24(8) of the Family Law Rules. (Justice Power cited the Rules of Civil Procedure, but it is clear from context that he was actually referring to the Family Law Rules.)<br><br>The respondent's behaviour amounted to an abduction of the child. There was no   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge               | Case Name   | Citation / Date                                      | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments   |
|---------------------|---|--|------------------|--|---|--|
|                     |   |  |                  |  |   | evidence of any abuse by the applicant, and there was no justification for the respondent's conduct. Her assertion that that the success of the motion was divided was entirely unreasonable.<br><br>Note: leave to appeal denied: March 23, 2009, Ont Sup Ct J, McNamara J.   |
| Ray, Timothy        | j2 Global Communications, Inc. v. Protus IP Solutions, Inc. | (2009 Ont. Sup. Ct. J.) Court File No.: CV-09-387586 | Respondent       | Full indemnity costs of \$32,877.23  | As requested  | Rule 57.01(4)(d) allows a court to order full indemnity costs in certain cases. If an order for enforcing the Letters Rogatory had been enforced, the applicant may have been obliged to indemnify the respondent for all costs. The motion has the hallmarks of an indulgence being sought against a non-party for assistance in prosecution of an action in which the respondent has no interest. If full indemnification of the respondent could have been available if the motion was successful, it is all the more reasonably to allow it where it was unsuccessful. |
| Smith, Robert       | Forsyth v. Li   | (2009, Ont. Sup. Ct. J.) Court File No.: 06-CV-35128 |                  | Full indemnification in the amount of \$78,408.52.   | On a partial indemnity basis, \$50,000.00 plus GST plus disbursements of \$2,966.02 inclusive of GST. | "[25] Substantial indemnity costs should be awarded only on very rare occasions to mark the court's disapproval of the parties' outrageous conduct during litigation. This test is a high standard to meet."<br><br>In this case, despite unfounded allegations against both the defendant and his counsel, and an unmeritorious claim against an elderly neighbour seeking to exercise legitimate rights as a citizen, only "costs at the high end of the partial indemnity range" are warranted to indicate the court's disapproval.                                     |
| Whitten, Alan C. R. | Keam v. Caddey  | (2009 Ont. Sup. Ct. J.) Court File No.: 04-12444     | Plaintiff        | The bill of costs indicated fees on a partial indemnity basis of \$130,252, however the plaintiff sought substantial indemnity | Legal fees assessed at \$110,000 on a partial indemnity basis.  | There was no basis for costs above partial indemnity where the defendant's decision not to mediate was a legitimate, though ultimately unsuccessful position to take. It could not be characterized as "malevolent".   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge   | Case Name  | Citation / Date                        | Costs awarded to | Costs Requested  | Costs Awarded                                   | Judge's Comments  |
|---|--|--|------------------|--|---|---|
|   |  |  |                  | costs.   |   |   |
| Laskin, John; Simmons, Janet; Armstrong, Robert | McNaughton Automotive Ltd. v. Co-Operators General Insurance Co. | 2008 ONCA 597, 95 O.R. 365 (Ont. C.A.) | Defendants       | Plaintiffs sought leave to appeal the costs orders on multiple grounds | leave to appeal refused                         | <p>The decision of how much weight to accord to the factors listed in s. 31(1) of the Class Proceedings Act is discretionary. This is evident from the use of the wording "may consider" in the provision.</p> <p>Allegations of dishonesty or fraud that were made in connection to issues that were resolved by the motions judge, and were unproven, could attract substantial indemnity costs. To the extent that the motions judge only intended substantial indemnity costs to apply in the cases where the plaintiffs persisted in unsubstantiated allegations of fraud in connection with the expiration of the imitations period, they were sustainable. Allegations of fraud in support of a claim for punitive damages could not support substantial indemnity costs because the issue was not resolved.</p> <p>Substantial indemnity costs were justified where the plaintiffs created a duplicate proceeding to which the defendant was forced to respond.</p> |
| Toscano Roccamo, Giovanna                       | Crete v. Carleton Condominium Corporation #47                    | 2008 CanLII 475 (Ont. S.C.J.)          | Defendant        | Full or substantial indemnity in the amount of \$114,485.70.           | Partial indemnity in the amount of \$62,245.73. | Defendants had offered, in the fall of 2007, to consent to a dismissal without costs. However, unless the circumstances of a case trigger consideration of a number of the factors in Rule 57, including conduct of the kind described in Rule 57.01(1) (e) or (f), a defendant will not be awarded enriched costs over and above partial indemnity fees in the absence of any reasonable offer to settle a plaintiff's claim by payment of some amount.  |
| Aitken, Catherine D.                            | Doherty v. Wilcox  | [2007] O.J. No. 738 (S.C.J.)           | Defendant        | Costs on a full indemnity basis in the amount of \$8,309.07            | Costs in the amount of \$4,000                  | Doherty made an early, comprehensive, reasonable offer; Ms. Wilcox should have paid child support for Sept – Dec 2005 on a  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge                      | Case Name  | Citation / Date              | Costs awarded to   | Costs Requested  | Costs Awarded  | Judge's Comments   |
|----------------------------|--|------------------------------|--|--|--|--|
|                            |  |                              |  |  |  | voluntary basis; trial did not deal with complex or difficult issues; Doherty failed to make full, frank and timely financial disclosure   |
| Brockenshire, John H.      | Dinsmore v. Southwood Lakes Holding Ltd.   | [2007] O.J. No. 263 (S.C.J.) | Plaintiff & Defendant (Ontario New Home Warranties Plan) | Plaintiff: Costs on a substantial indemnity basis in the amount of \$148,464.50 in fees, plus \$45,403.40 in disbursements plus GST of \$11,611.85, totaling \$205,479.75.<br><br>Defendant: Costs on a substantial indemnity basis in the amount of \$67,424.25 plus disbursements of \$27,027.61, plus GST of \$6,583.55, totaling \$101,035.41. | Plaintiff: Costs on a partial indemnity basis in the amount of \$38,250 (inclusive of GST) plus \$28,525.62 in disbursements.<br><br>Defendant: Costs on a partial indemnity basis in the amount of \$67,497 (\$36,080.55 for fees, \$27,027.61 in disbursements plus GST) | The general entitlement of a defendant who succeeds at trial is to costs on a partial indemnity basis.   |
| de Sousa, Maria T. Linares | United States of America v. Yemec  | [2007] O.J. No. 2066         | Respondents (Defendants)                                 | Costs on a substantial indemnity basis in the amount of \$691,304.74.  | Costs on a substantial indemnity basis in the amount of \$384,385.   | The motion judge stated that there is a "plethora of cases standing for the proposition that costs on a substantial indemnity basis can and should be awarded where there is a finding of want of adequate disclosure, regardless of whether such was occasioned willfully or through inadvertence". This view is incorrect in law. While it does properly characterize a judge's discretion to award costs, it disregards the high threshold of willful misconduct identified by the Supreme Court in <i>Young v. Young</i> . |
| Hackland, Charles T.       | Co-founders Inc. & Tom Johnson v. GMC Guardian Mobility Corporation, Jean Carr & Johannes Hill | 2007                         | Defendant  | Costs on a substantial indemnity basis   | Costs on a partial indemnity basis in the amount of \$12,955.34  | There was no allegation of fraud or deceit; not every claim involving alleged conspiracy or breach of fiduciary duty gives rise to costs on a substantial indemnity scale  |
| C. Horkins J.              | 1175777 Ontario Ltd. v. Magna International Inc.   | (2007) 61 R.P.R. (4th) 68    | Defendant  | Costs on substantial indemnity basis of \$528,307.12 plus GST and \$319,130.32 in disbursements.   | Costs on a substantial indemnity basis in the amount of \$453,257.62 plus GST and disbursements of \$292,284.54 plus GST.  | Substantial indemnity awards are not limited to cases alleging fraud. Unfounded allegations of improper conduct seriously prejudicial to the character or reputation of the party, can also justify a substantial indemnity award. The allegation that Frank   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge             | Case Name   | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments  |
|-------------------|---|-------------------------------|------------------|--|---|---|
|                   |   |                               |                  |  |   | Stronach, Chairman of the Board of Magna, would personally profit from the conspiracy is a serious ethical attack. In my view substantial indemnity costs are warranted.  |
| Lax, Joan L.      | Antorisa Investments Ltd. v. 172965 Canada Ltd.   | [2007] O.J. No. 195 (S.C.J.)  | Defendant        | Costs on a full indemnity scale in the sum of \$1,223,434.63, or, in the alternative, costs on a substantial indemnity scale totaling \$931,161.90 | Costs in the amount of \$650,000 plus GST, plus disbursements in the sum of \$50,073.60, plus GST | There are two scales of costs: partial indemnity and substantial indemnity.<br><br>Antorisa made allegations against the defendant of fraudulent misrepresentation. At no time did Antorisa abandon its claims of dishonest and fraudulent conduct against the corporate defendants. This entitles the defendant to an elevated costs award.  |
| Low J.            | Pandi v. FieldOfWebs.com                          | 2007 WL 2407344 (Ont. S.C.J.) | Defendant        |  |   | The fact of the unsubstantiated allegations of fraudulent conduct, made without research or solid evidentiary basis, would itself militate in favour of the imposition of substantial indemnity costs, but here, the allegations are compounded by the plaintiffs' unreasonable conduct in maintaining the allegation while at the same time seeking to prevent the court seeing the refuting evidence. That the plaintiffs withdrew the allegation around the middle of the first day of the hearing does little to mitigate the situation as the fraud allegation had the effect of escalating the gravity and risk to the defendants and enlarging the effort required to defend the motion. |
| Métivier, Monique | Mick v. Boulder City Climbing School Inc.         | 2007                          | Plaintiff        | Costs on a substantial indemnity basis   | Costs in the amount of \$14,000 inclusive of fees, disbursements and GST                          | Plaintiff should be indemnified for costs incurred throughout the litigation in light of following circumstances: a) the plaintiff made several offers; b) the sum of \$28,814 was recovered at trial; c) during the course of the first trial, a mid trial settlement conference resulted in the parties agreeing to a settlement that later fell apart; d) the defendants made 3 offers   |
| Métivier, Monique | Canadians for Language Fairness v. City of Ottawa | 2007                          | Defendant        | Costs on a partial indemnity basis in the amount of \$149,349.46   | Costs in the amount of \$50,000   | Public interest litigation. The Court has the discretion to award no costs. In this case, it would be unjust to have the taxpayers of Ottawa absorb the entire cost of this litigation. Bringing a court action always  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge                  | Case Name                                | Citation / Date  | Costs awarded to       | Costs Requested  | Costs Awarded  | Judge's Comments  |
|------------------------|--|--|------------------------|--|--|---|
|                        |  |  |                        |  |  | involves a risk   |
| Panet, A. deLotbinière | Vie Holdings Inc. v. Imperial Oil Ltd.   | 2007 CarswellOnt 1578 (Ont. S.C.J.)                                  | Plaintiff/ third party | Substantial indemnity in the amount of \$18,243.74.  | Substantial indemnity in the amount of \$18,243.74.  | The result of the third party claim, had it been successful, would have been the disqualification of the evidence of the third party. In these circumstances, the principle of indemnity is a proper factor to consider in arriving at a decision that an award of costs on a substantial indemnity is appropriate in these circumstances. Further, in asserting the third party claim, the Defendant could reasonably have expected an award of costs against it on a substantial indemnity basis in the event that it was unsuccessful. |
| Power, Denis           | Margo Willmot v. Julie D. Willmot        | 2007 CarswellOnt 4199, 34 E.T.R. (3d) 276 (Ont. S.C.J. Jun 28, 2007) | Applicant              | Full indemnity in the amount of \$9,190.20.  | Full indemnity in the amount of \$9,190.20.  | There is no merit in the Respondent's allegations. There was no wrongdoing as alleged and I find, as well, that the conduct of the Respondent in pursuing these allegations is reprehensible. Such unfounded allegations should be sanctioned by the court through, at the very least, an order for costs in favour of the parties against whom the allegations are made.   |
| Power, Denis           | Charlton v. Canada Post Corporation      | 2007   | Plaintiff              | Substantial indemnity costs totaling \$9,959.76 + \$504.38 (disbursements)   | Substantial indemnity costs totaling \$9,959.76 + \$504.38 (disbursements)   | Under Rule 20.06(1): Defendant sought summary judgment, but it should have been obvious that the motion stood virtually no chance of success.   |
| Power, Denis           | Ward v. Manulife Financial               | [2007] O.J. No. 37 (S.C.J.)  | Plaintiff              | Costs on a substantial indemnity basis in the amount of \$1,037,033.00 (includes a 15% premium)  | Costs on a substantial indemnity basis in the amount of \$792,283.81   | Substantial indemnity scale awarded. Defendant's conduct was malicious, arbitrary and high-handed. Defendant's conduct towards plaintiffs designed to punish them. Rule 57 contains no barrier to an award of costs on a substantial indemnity basis where there has been an award of punitive damages.   |
| Sedgwick, G. Gordon    | Bouchard et al. v. Ayotte et al.         | 2007   | Defendants             | Costs on a substantial indemnity basis in the amount of \$7,500 and disbursements in the amount of \$504.74 including applicable GST), for a total amount of \$8,004.74. | Costs on a partial indemnity basis in the amount of \$3,000 together with disbursements in the amount of \$504.74 (including applicable GST) for a total amount of \$3,504.74. | Defendants provided no explanation for why substantial indemnity was the proper scale. This is an appropriate case for partial indemnity.   |
| Shaw J. D.C.           | Chrusz v. Cheadle Johnson Shanks MacIvor | 54 C.C.L.I. (4th) 183 (2007)   | Applicant              | Substantial indemnity costs.   | Partial indemnity in the amount of \$2,500 plus GST.   | While the Respondents have delayed in agreeing to pay out the settlement monies owed to the Applicants, there has not been  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge   | Case Name                                       | Citation / Date   | Costs awarded to                          | Costs Requested   | Costs Awarded  | Judge's Comments  |
|---|---|---|---|---|--|---|
|   |   |   |   |   |  | misconduct that should lead to an award of substantial indemnity costs. Costs will be set on a partial indemnity basis. However, the award does take into account the fact that there was a clear opportunity for the Respondents to avoid the necessity of the Applicants' motion.   |
| Smith J.  | Dunstan v. Flying J Travel Plaza                | 2007 WL 3127365 (Ont. S.C.J.)   | Defendant                                 | Partial indemnity until offer, substantial indemnity thereafter.  | Partial indemnity until offer, substantial indemnity thereafter.                 | In exercising discretion pursuant to Rule 57.01(1), the court may find it appropriate to award costs on a substantial indemnity basis from the date of the defendant's offer to settle, if the defendant made an offer to settle and the plaintiff did not recover a judgment of any value after trial.                               |
| Aitken, Catherine D.  | Chenier v. Hôpital Général de Hawkesbury        | 2006  | Plaintiff                                 | Plaintiff : Costs on a partial indemnity basis in the amount of \$2,657; costs on a substantial indemnity basis in the amount of \$3,932<br><br>Defendant: Costs on a partial indemnity basis in the amount of \$2,576            | Costs on a partial indemnity basis in the amount of \$1,500                      | No reasons were suggested by the Plaintiff as to why substantial indemnity costs should be awarded. Plaintiff made no Offers to Settle.   |
| <b>Armstrong, Robert P. (delivered judgment of Court); Cronk, Eleanore A.; Lang, Susan E.</b> | <b>Plester v. Wawanesa Mutual Insurance Co.</b> | <b>(2006), 269 D.L.R. (4th) 624, 213 O.A.C. 241 (Ont. C.A.) leave to appeal refused [2006] S.C.C.A. No. 315</b> | <b>Cross-appeal on costs by plaintiff</b> | <b>Trial judge awarded partial indemnity costs until date of offer to settle and full indemnity costs thereafter. Plaintiffs argue that substantial indemnity costs should have been awarded throughout. Costs not disclosed.</b> | <b>Trial judge did not err in principle in his discretion in awarding costs.</b> | <b>There are cases where the fact of an award of punitive damages will militate against an award of substantial indemnity costs. This is such a case. An award of substantial indemnity costs is not automatic even where there are allegations of serious wrongdoing.</b>  |
| Brennan, W.J. Lloyd   | Birtch v. Diffin                                | 2006  | Plaintiff                                 | Not disclosed   | Costs on a full indemnity basis in the amount of \$12,549.98                     | Defendant made no submission concerning costs sought; Defendant acted in bad faith, ignored the Rules and the Court's directions and was willfully unprepared for the proceedings. The plaintiff was successful on both motions and was prepared, along with his counsel, to proceed with a case conference as scheduled by the court |
| Charbonneau, Michel Z.  | Barker v. Montfort Hospital, <i>et al.</i>      | [2006] O.J. No. 39 (S.C.J.)   | Plaintiff                                 | Not disclosed   | Costs on a partial indemnity basis in the  | The fact that the defendants were unsuccessful does not constitute grounds for  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge                      | Case Name                     | Citation / Date               | Costs awarded to             | Costs Requested  | Costs Awarded  | Judge's Comments  |
|----------------------------|-------------------------------|-------------------------------|------------------------------|--|--|---|
|                            |                               |                               |                              |  | amount of \$136,000 + GST (for a total of \$145,520) + \$34,449.53 (disbursements inclusive of GST) for a total costs award of \$179,969.53  | a higher scale of costs. A higher scale should only be awarded where an offer contemplated by Rule 49 was made in a timely fashion and not accepted, the decision to defend was unreasonable or the unsuccessful party was guilty of some misconduct during the litigation process. None of these elements are present in this case.  |
| Charbonneau, Michel Z.     | Laurin v. Martin              | 2006                          | Plaintiff                    | Costs on a substantial indemnity basis (amount not disclosed)  | Costs on a partial indemnity basis in the amount of \$700  | There is no reason to award costs on a substantial indemnity basis. The defendant was authorized to bring this motion by the case management judge. Although the motion was dismissed, it cannot be said that by bringing the motion the respondent acted unreasonably.   |
| de Sousa, Maria T. Linares | Chetty v. Payet               | 2006                          | Plaintiff                    | Not disclosed  | Costs on a full indemnity basis in the amount of \$9,000   | Family law issue – Rule 24(8). Defendant acted unreasonably and in bad faith in his intentional disregard for Court orders. Pursuant to Rule 24(8), Plaintiff should receive her costs on a full recovery basis.  |
| Ducharme, Todd             | Hawley v. Bapoo <i>et al.</i> | [2006] O.J. No. 2938 (S.C.J.) | Defendants (Crown and Bapoo) | <p>Defendant Bapoo claimed costs on a substantial indemnity basis in the amount of \$77,684.65, inclusive of disbursements and GST.</p> <p>Defendant Crown claimed costs on a substantial indemnity basis in the amount of \$114,570.21, inclusive of disbursements and GST.</p> | <p>Defendant Bapoo entitled to costs on a substantial indemnity basis in the amount of \$69,721.91, inclusive of disbursements and GST.</p> <p>Defendant (Crown) entitled to costs on a substantial indemnity basis in the amount of \$103,842.50 plus G.S.T. of \$7,268.98 for legal fees and \$3,314.73 for disbursements, for a total of \$114,426.21</p> | <p>While the possibility exists that a finding of perjury can act as a factor in awarding substantial indemnity costs, the preferred approach in this case is to rely on the authorities where dishonesty on the part of one of the parties either alone, or in combination with other factors, has resulted in an award of substantial indemnity costs. There are few types of conduct engaged in by litigants that are more deserving of judicial disapprobation than perjury or knowingly leading false evidence. Such behaviour increases the costs incurred by the innocent party, dissipates the resources of the court, undermines the integrity of the trial process and can perilously complicate the search for justice. The costs sanction is one of the few ways a court can signal its disapproval of such conduct and make it clear to other litigants that such behaviour will not be condoned.</p> <p>Grave allegations that are completely without merit are a basis on which to award</p> |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge  | Case Name   | Citation / Date  | Costs awarded to | Costs Requested | Costs Awarded   | Judge's Comments   |
|--|---|--|------------------|-----------------|---|--|
|  |   |  |                  |                 |   | substantial indemnity costs.   |
| Hackland, Charles T.                             | Basilevska v. Seto                                | 2006   | Defendant        | Not disclosed   | Costs on a substantial indemnity basis in the amount of \$8,500 plus GST  | Plaintiff's claim had no legal basis whatsoever. Defendants should have their costs due to their success in defending the application and the scale should be substantial indemnity.   |
| Hackland, Charles T.                             | Bater v. Bater                                    | 2006   | Plaintiff        | Not disclosed   | Costs on a partial indemnity basis in the amount of \$6,000 plus disbursements and GST  | Neither party achieved a result as good or better than their offer. The plaintiff was the successful party.  |
| Hackland, Charles T.                             | Bond v. Bond                                      | 2006   | Plaintiff        | Not disclosed   | Costs on a partial indemnity basis in the amount of \$7,000 plus GST  | Plaintiff was successful party. Plaintiff's offer not more favourable than judgment at trial. There is a large income disparity between the parties. Defendant would suffer a financial blow from the outcome of this proceeding. Costs should be awarded on a partial indemnity basis.  |
| Kitely, Frances; Molloy Anne; Swinton, Katherine | Greenlight Capital, Inc et al. v. Stronach et al. | (2006), 91 O.R. (3d) 241 (Ont. Sup. Ct. J. (Div. Ct.)) | Respondent       | Not disclosed   | Application judge awarded costs on a substantial indemnity basis: \$870,000 to respondents MID and Simonetti, \$653,000 to 445 and Stronach, \$561,000 to the members of the Special Committee and \$85,000 to Brian Tobin.<br><br>The Divisional Court reduced the award to MID and Simonetti to \$829,514 to account for costs incurred before the Notice of Application was served. Such costs could not have been "incidental to the proceeding". | It was not an error in principle to award costs on a substantial indemnity basis. The application judge was aware that substantial indemnity costs are awarded only in exceptional cases. He concluded this was such a case on the basis of three factors:<br>1) none of the many allegations made were substantiated;<br>2) serious allegations of misconduct were made against individuals, and were unfounded; and<br>3) the court's process was abused for business purposes, and this should not be condoned. |
| Lalonde, Paul F.                                 | Higgerty v. Higgerty                              | 2006   | Defendant (wife) | Not disclosed   | Costs on a partial indemnity basis in the amount of \$10,000 in fees and \$1,252.01 in disbursements, all inclusive of GST  | Full indemnity costs should not be awarded in this case. It was the plaintiff's right to offer a robust challenge to his wife's demands. He did, however, incur a risk by doing so. He should have expected to pay this amount in fees if he was unsuccessful,   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge                  | Case Name  | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments  |
|------------------------|--|-------------------------------|------------------|--|---|---|
|                        |  |                               |                  |  |   | given that his counsel submitted roughly the same amount of fees.   |
| Lalonde, Paul F.       | St. Amand v. Brookshell Pontiac Buick GMC Ltd.         | 2006                          | Plaintiff        | Costs on a partial indemnity basis until first offer totaling \$4,519.68 and costs on a substantial indemnity scale thereafter totaling \$74,469.74 for a total of \$79,469.74 | Costs on a substantial indemnity basis totaling \$60,000 plus GST + \$1,637.66 (disbursements) plus GST | Costs should not be scaled down because the case was tried under the Simplified Procedure. Four different pre-trials were held; in three of those pre-trials, Justices presiding supported the Plaintiff's position on his unjust dismissal. Defendant, throughout the nine-day trial, continually gave directives to his counsel. Defendant wanted litigation to proceed, no matter what the cost. The fact that this case came under the Simplified Procedure does not mean that automatically a small amount of costs has to be ordered. |
| Low, Wailan            | Petro-Quip International Inc. v. Kala Naft Canada Ltd. | [2006] O.J. No. 2369 (S.C.J.) | Defendant        | Costs on a partial indemnity basis in the amount of \$199,366.73, but urged court to consider costs on a substantial indemnity basis.  | Costs on a partial indemnity basis in the amount of \$150,000, plus GST.                                | Plaintiff's pleaded conspiracy against the defendant. Although the conspiracy claim was not withdrawn, there was no significant attempt to prove it. For all practical purposes, the conspiracy claim was not proceeded with.   |
| Panet, A. deLotbinière | Cunningham v. Lefebvre                                 | 2006                          | Plaintiff        | Costs on a full indemnity basis in the sum of \$12,275.45  | Costs on a full indemnity basis in the sum of \$12,275.45 (inclusive of disbursements and GST)          | Family law issue. Rule 24(8) of the <i>Family Law Rules</i> , O. Reg. 114/99 provides that where a party has acted in bad faith, the court shall award costs on a full recovery basis. Defendants repeatedly failed to comply with the orders of the court. This constituted willful ignoring by the defendant of the court orders. The behaviour of the defendant constituted bad faith. Moreover, the Plaintiff made several Offers to Settle, and the outcome of the trial was more favourable to her than her Offer to Settle.          |
| Panet, A. deLotbinière | Macrae v. MacLean                                      | 2006                          | Plaintiff        | Costs on a full indemnity basis in the amount of \$13,221.53 inclusive of disbursements and GST  | Costs on a full indemnity basis in the amount of \$13,221.53 inclusive of disbursements and GST         | Rule 24(8) of the <i>Family Law Rules</i> , O. Reg. 114/99, provides that where a party has acted in bad faith, the court shall decide costs on a full recovery basis. Mr. MacLean repeatedly failed to comply with court orders for financial disclosure, he failed to attend questioning and answer all questions, and he failed to provide an affidavit of documents. These circumstances support the proposition that Mr. MacLean acted in bad  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge                  | Case Name  | Citation / Date               | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments   |
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|                        |  |                               |                  |   |  | faith  |
| Panet, A. deLotbinière | Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc. | [2006] O.J. No. 4032 (S.C.J.) | Defendant        | Costs on a partial indemnity basis until time of offer to settle and costs on a substantial indemnity basis thereafter; total requested costs: \$405,636.94 | Costs in the amount of \$265,000, plus \$47,010 in disbursements, totaling \$312,010 + GST   | Costs on a substantial indemnity basis after offer made by defendant inappropriate. Plaintiff's conduct did not warrant an award of costs on a substantial indemnity basis, but award of costs should be greater than on a partial indemnity basis in these circumstances. The defendant was completely successful at trial. The defendant made an offer to settle. The result obtained at trial was more favourable to the defendant than the offer to settle. The trial was lengthened and made more complex due to failure by witnesses called by plaintiff to fully disclose relevant documents prior to trial. The defendant was also successful in its counterclaim  |
| Pepall, Sarah E.       | Pricewaterhousecoopers Inc. v. Rohwedder Automated Systems Inc.              | [2006] O.J. No. 1245 (S.C.J.) | Plaintiff        | Costs on a substantial indemnity basis in the amount of \$134,804.98.   | Costs on a partial indemnity basis in the amount of \$74,722.48.   | Absent a Rule 49 offer, a substantial indemnity award is rare and exceptional. None of the factors set out in the plaintiff's written submissions were successful in persuading the judge that such an award is merited in this case. Accordingly, the plaintiff shall have its costs on a partial indemnity basis.  |
| Polowin, Heidi         | 3869130 Canada Inc. v. I.C.B. Distribution Inc.                              | 2006                          | Plaintiff        | A total of \$294,347.33 is claimed on a partial indemnity basis and \$361,858.34 on a substantial indemnity basis   | Partial indemnity costs to June 2, 2003 Offer to Settle and substantial indemnity costs thereafter. Cyr parties to pay costs in the amount of \$280,000 plus GST and disbursements of \$14,101.04 plus GST | <p>Plaintiffs argued that courts have, in deciding scale of costs, treated allegations of fraud, conspiracy and other offences against business morality differently. Where such claims are leveled and then not proven, the courts have ordered costs on a substantial indemnity basis. The court has the discretion to award costs on a substantial indemnity basis, but should do so only in exceptional cases, where there has been reprehensible conduct which makes such costs desirable as a form of chastisement where it is necessary for the court to mark its disapproval of the conduct of a party.</p> <p>During this case, the Defendants raised allegations suggesting the plaintiff had failed to act in good faith, that the plaintiff took advantage of his position in the company to hide certain information from</p> |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge          | Case Name  | Citation / Date               | Costs awarded to            | Costs Requested  | Costs Awarded   | Judge's Comments  |
|----------------|--|-------------------------------|-----------------------------|--|---|---|
|                |  |                               |                             |  |   | the defendant, and that the plaintiff manipulated certain business transactions. None of these allegations were proven. However, substantial indemnity costs have already been granted in this matter from June 2, 2003 pursuant to Rule 49. This fairly responds to the unfounded allegations and suffices in marking the court's disapproval of the conduct of the Cyr parties.   |
| Polowin, Heidi | Rowe v. Unum Life Insurance Company of America   | 2006                          | Plaintiff                   | Costs on a substantial indemnity basis throughout the proceeding in the amount of \$212,500, plus a premium of \$150,000 and disbursements and GST.<br>Total: \$412,790.22 | Substantial indemnity costs after Sept. 26, 2005 offer to settle but only partial indemnity costs prior to this date. Total costs: \$140,000 + GST in costs and \$32,280.66 | A court should only award costs on a substantial indemnity scale in rare and exceptional cases. Generally, these costs are awarded where there has been some sort of reprehensible conduct, either in the circumstances giving rise to the cause of action, or in the proceedings, and are used to mark the court's disapproval of the conduct of the party in the litigation. The defendant's conduct was not reprehensible, scandalous or outrageous. This was not a case of an insurer using its greater financial might to dissuade a vulnerable plaintiff from proceeding; the defendant was entitled to defend the case and to defend it strongly; mounting a strong defence, absent illegal or dishonest tactics, does not warrant fixing costs on a substantial indemnity basis |
| Power, Denis   | Campeau v. Campeau   | [2006] O.J. No. 2297 (S.C.J.) | Defendants / Moving Parties | Costs on a substantial indemnity basis is the amount of \$26,570.80; costs on a partial indemnity basis in the amount of \$21,044.25                                       | Costs on a partial indemnity basis in the amount of \$15,000, all inclusive. No costs should be paid unless Defendants / moving parties are successful in this litigation.  | This matter was not entirely straightforward and, therefore, costs should be fixed on a partial indemnity basis.  |
| Power, Denis   | Hanis v. University of Western Ontario<br>*This was a proceeding against third party insurance companies to indemnify UWO for the fees they incurred in defending themselves | [2006] O.J. No. 2763 (S.C.J.) | Defendant                   | Costs on a full indemnity basis in the amount of \$667,920.36  | Costs on a substantial indemnity basis totaling \$554,491.54  | Bound by <i>E.M. v. Reed</i> , [2003] O.J. No. 1791 (C.A.), where it was found that when an insurer denies its duty to defend and the insured is forced to pursue the insurer for defence costs, the insured is <i>prima facie</i> entitled to costs on a substantial indemnity basis; this is subject to the 2005 changes to the rules concerning costs; UWO was not one hundred percent successful in its claim against Guardian Insurance Company of   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge        | Case Name                                 | Citation / Date  | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments   |
|--------------|---|--|------------------|---|--|--|
|              |   |  |                  |   |  | Canada; Rule 57.01(4)(c)(d) authorizes a judge to award all or part of the costs on a substantial indemnity basis or to award costs in an amount that represents full indemnity; Ontario Courts have not yet pronounced at length on what criteria should be considered in the making of an award that represents full indemnity; here, the coverage issues were complicated and Guardian did not act in bad faith; Guardian did not challenge the reasonableness of the legal accounts rendered to UWO; given these circumstances, it would be an improper exercise of discretion to award costs on a higher scale than substantial indemnity |
| Power, Denis | Manstan v. Faktor                         | 2006   | Plaintiffs       | Costs on a substantial indemnity basis in the amount of \$13,825.68, inclusive of fees, GST and disbursements   | Substantial indemnity costs totaling \$11,060.54 for fees, GST and disbursements (which is 80% of the solicitor and client account of \$13,825.68) | Costs should be awarded on a substantial indemnity scale. Respondents alleged bad faith on the part of the Applicants, but there was no evidence of bad faith. There was a suggestion of conspiracy. An unproven allegation of bad faith is something that a court can take into consideration when arriving at the appropriate scale of costs   |
| Power, Denis | Riddell v. Conservative Party of Canada   | [2006] O.J. No. 4141 (S.C.J.)                                    | Plaintiff        | Costs on a partial indemnity basis in the amount of \$8,216.80 and costs on a substantial indemnity basis in the amount of \$8,805.30 (both amounts inclusive of GST and disbursements) | Costs on a partial indemnity basis in the amount of \$6,500, all inclusive.  | This is not a case for an award on the substantial indemnity scale. Counsel for the Plaintiff argues that the substantial indemnity scale is appropriate one because, among other things, the Defendant failed to voluntarily strike the objected portions of its affidavit. However, this was not an issue at this motion. The subject of this motion was the striking of one of the summonses. The reasons of the Plaintiff for an award on a higher scale are mostly irrelevant in this motion.   |
| Power, Denis | Rodriguez Holding Corp. v. Vaughan (city) | [2006] O.J. No. 4779, 28 M.P.L.R. (4 <sup>th</sup> ) 96 (S.C.J.) | Defendant        | Costs just short of full indemnity totaling \$58,094.14   | Costs on a substantial indemnity scale \$48,000 (fees) + \$4,349.00 (disbursements) totaling \$52,349  | Plaintiff's motion for summary judgment was dismissed, while the defendant's motion for summary judgment in dismissing the action was granted; according to Rule 20.06(1), this entitles the defendant to costs on a substantial indemnity scale throughout; substantial indemnity is not full indemnity nor is it an amount just under 100% of full indemnity; there are now three scales of costs: partial indemnity, substantial  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge            | Case Name  | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded  | Judge's Comments   |
|------------------|--|-------------------------------|------------------|--|--|--|
|                  |  |                               |                  |  |  | indemnity and full indemnity; decisions regarding costs must be made subject to Rule 57.01(1); if a Court chooses to award costs on a partial indemnity basis, the court must do so in accordance with Part I of Tariff A; if a decision to award costs on a substantial indemnity scale, the Court must fix them on a partial indemnity scale and then multiply the results by 1.5; the Court possess the jurisdiction to adjust this arithmetic result in appropriate circumstances; fixing costs on a full indemnity basis excludes any consideration of the partial and substantial indemnity scales |
| Power, Denis     | Walford v. Stone & Webster Canada LP                       | [2006] O.J. No. 4431 (S.C.J.) | Defendant        | Defendant appealed award from Small Claims Court   | \$1,500 plus disbursements of \$1,299.33 and G.S.T. of \$89.20 for a total award of costs of \$2,888.53 (affirmed cost award of trial judge in Small Claims Court) | Section 29 of the <i>Courts of Justice Act</i> provides that costs are limited to, exclusive disbursements, an amount not exceeding 15 per cent of the amount claimed in the action; this award was within the prescribed limit; no basis upon which to substitute discretion for that of the trial judge  |
| Sedgwick, Gordon | Johnston v. Karpova  | 2006                          | Defendant        | Costs on a full indemnity scale in the sum of \$3,357.18   | Costs on a partial indemnity scale in the sum of \$1,700, including disbursements and applicable GST   | Defendant was the successful party, and the presumptive rule that the successful party is entitled to costs should apply to this case. Defendant provided no explanation for why she should be entitled to costs on a full indemnity scale. As such, the Defendant's costs are set on a partial indemnity scale.   |
| Smith, Robert J. | Armenia Rugs - Tapis Ltd. v. Axor Construction Canada Inc. | [2006] O.J. No. 1566 (S.C.J.) | Plaintiff        | Costs of fees and disbursements and GST of \$64,988.07 on a substantial indemnity basis. The fees sought, including counsel fee and GST amount to \$61,339.25. The fee portion without GST is \$57,326.40. | Costs on a partial indemnity basis in the amount of \$30,000 plus GST plus disbursements of \$3,648.82 inclusive of GST  | Plaintiff was largely successful in this claim, no offer to settle under Rule 49 existed. As a result, there is no basis on which to award costs on a substantial indemnity scale.   |
| Smith, Robert J. | Blackburn v. Fortin  | [2006] O.J. No. 3228 (S.C.J.) | Defendant        | Costs on a substantial indemnity scale in the amount of \$23,553.75 plus GST plus disbursements of \$1,471.84 plus GST for a   | Costs on a partial indemnity basis at \$14,500 inclusive of GST plus disbursements of \$1,471.84 plus GST of \$88.68   | Notwithstanding the parents' (defendant) ultimate success at trial, the finding that the parents terminated their children's access to their grandmother (plaintiff) for reasons other than the best interest of the children is a factor which will reduce the amount of  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge            | Case Name  | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded  | Judge's Comments   |
|------------------|--|-------------------------------|------------------|--|--|--|
|                  |  |                               |                  | total of \$26,763.04   |  | costs awarded and is a reason for not awarding costs on a substantial indemnity basis  |
| Smith, Robert J. | Danis v. 1292024 Ontario Inc. (c.o.b. as Rendez-Vous Nissan) | [2006] O.J. No. 2495 (S.C.J.) | Plaintiff        | Not disclosed  | Costs on a partial indemnity basis in the amount of \$10,000 plus GST plus disbursements of \$1,332.96                           | The plaintiff made two offers to settle. The second of these offers was above the amount recovered at trial. This offer would reasonably have been understood to cancel the first offer. Costs, as a result, should be fixed on a partial indemnity basis. |
| Smith, Robert J. | Fournier v. Burton   | [2006] O.J. No. 5053 (S.C.J.) | Plaintiff        | Plaintiff: Costs of \$12,098.67 (which amounts to 92% of the total legal costs incurred by the plaintiff of \$13,150.73)<br><br>Defendant: Costs of \$5,000  | Costs on a partial indemnity basis in the amount of \$4,000 plus GST plus disbursements of \$400 inclusive of GST                | Substantial indemnity costs are not appropriate for this case. Neither party's conduct would justify such an award, and the success between the parties was divided.   |
| Smith, Robert J. | Llance Communications Ind. v. Star Web Ltd.                  | [2006] O.J. No. 5054 (S.C.J.) | Plaintiff        | Costs in the amount of \$10,005.75 plus GST plus disbursements of \$241.28   | Costs on a partial indemnity scale in the amount of \$4,000 plus GST plus disbursements of \$241.28                              | Neither party submitted an offer to settle. While the Defendant was unsuccessful, bringing the motion for leave to appeal was not unreasonable conduct which should be punished by awarding costs on a substantial indemnity basis.                        |
| Smith, Robert J. | Nelligan v. Fontaine   | [2006] O.J. No. 3699 (S.C.J.) | Plaintiff        | Plaintiff (law firm) sought their costs thrown away as a result of attending the assessment hearing and for the motion to set-aside the default assessment order.<br><br>Plaintiff law firm claims fees of \$22,816.68 inclusive of GST on a substantial indemnity basis, plus disbursements of \$531.36 | Costs thrown away were assessed at \$10,000 plus GST and disbursements of \$371.80, inclusive of GST                             | Defendants' conduct was not so reprehensible to justify an award on a substantial indemnity basis. Costs on a partial indemnity basis will be awarded.   |
| Smith, Robert J. | Sauvé v. Merovitz  | [2006] O.J. No. 5059 (S.C.J.) | Defendant        | Not disclosed  | Merovitz Motion: Applicant ordered to pay \$8,000 + \$716.91 (disbursements) + GST<br><br>Cotes Motion: Applicant ordered to pay | Sauvé's claims were found to be frivolous, vexatious and an abuse of process. As a result of this, costs were awarded on a substantial indemnity basis.  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge                     | Case Name                                 | Citation / Date               | Costs awarded to           | Costs Requested   | Costs Awarded  | Judge's Comments  |
|---------------------------|---|-------------------------------|----------------------------|---|--|---|
|                           |   |                               |                            |   | \$5,000 + \$431.03 (disbursements) + GST<br><br>Cotes Application: Applicant ordered to pay \$6,000 + \$729.51 (disbursements) + GST |   |
| Speigel, Gertrude F.      | Milne v. Ontario (Securities Commission)  | [2006] O.J. No. 1573 (S.C.J.) | Defendant                  | Costs on a partial indemnity basis in the amount of \$39,200.   | Costs on a partial indemnity basis in the amount of \$30,000, including GST.   | The allegations made by the plaintiff in his statement of claim were not sufficient to warrant an increase in the scale of costs. The oral offers made by the defendants to allow the action to be discontinued without costs were also not sufficient to warrant an increase in the scale of costs.  |
| Stewart, Elizabeth M.     | Norbar Insurance Agencies Inc. v. Freeman | [2006] O.J. No. 709 (S.C.J.)  | Plaintiff                  | Costs on a substantial indemnity basis – amount not disclosed.  | Costs on a partial indemnity basis in the amount of \$58,690, plus disbursements in the amount of \$3,518.52, plus applicable taxes. | This is not a proper case to award costs on a substantial indemnity basis. The conduct of the Defendants, including their failure to provide full and timely production, was regrettable and improper, but not so egregious and reprehensible so as to justify an award of costs on the higher scale. |
| Toscano Roccamo, Giovanna | Champion v. Guibord                       | [2006] O.J. No. 3197 (S.C.J.) | Plaintiff                  | Costs on a full indemnity basis in the amount of \$13,617.50 in fees, plus \$1,748.89 in disbursements, plus applicable GST | Costs on a partial indemnity basis in the amount of \$11,098 in fees, plus \$1,748.89 in disbursements, plus applicable GST          | No valid offer to settle under Rule 49.13   |
| Aston, David              | Delellis v. Delellis                      | [2005] O.J. No. 4345 (S.C.J.) | Plaintiff                  | Costs in the amount of \$39,000, inclusive of fees, disbursements and GST.  | Costs in the amount of \$15,000, inclusive of fees, disbursements and GST.   | An applicant who expects full indemnity for costs under the Family Law Rules has an obligation to make timely and reasonable offers.  |
| Beaudoin, R.              | Brooks v. Morand                          | [2005] O.J. No. 3579 (S.C.J.) | Plaintiff                  | Not disclosed   | Costs on a substantial indemnity basis in the amount of \$8,000 inclusive of GST and disbursements.                                  | Defendant brought a motion for summary judgment which motion was unsuccessful. Rule 20.06(1) directs that the Court shall fix costs on a substantial indemnity basis where the moving party obtains no relief, unless the making of the motion was reasonable. The motion here was not reasonable.    |
| Beaudoin, R.              | Harvey v. Leger                           | [2005] O.J. No. 3582 (S.C.J.) | Defendants & Third Parties | Defendants: Costs on a substantial indemnity basis in the amount of \$7,901.95 plus disbursements of \$628.06 inclusive of  | Defendants: Costs on a partial indemnity basis in the amount of \$3,000 inclusive of GST and disbursements                           | Plaintiff brought a motion for summary judgment which motion was unsuccessful. Rule 20.06(1) directs that the Court shall fix costs on a substantial indemnity basis where the moving party obtains no relief, unless the making of the motion was reasonable.  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge              | Case Name   | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments  |
|--------------------|---|-----------------|------------------|---|--|---|
|                    |   |                 |                  | GST.<br><br>Third Parties: Costs on a partial indemnity basis in the amount of \$5,061.15 inclusive of counsel fee, GST and disbursements | Third Parties: Costs on a partial indemnity basis in the amount of \$3,500 inclusive of GST and disbursements          | The motion here was held to be reasonable. As a result, costs on a partial indemnity basis were awarded.  |
| Belch, Douglas     | Millen v. Kingsway General Insurance Company        | 2005            | Defendant        | Costs on a partial indemnity basis in the amount of \$20,849.27 or costs on a substantial indemnity basis in the amount of \$25,225.57    | Costs on a partial indemnity basis in the amount of \$7,500, including fees and disbursements and GST where applicable | The damages were fixed at \$9,700, an amount that is within the jurisdiction of the Small Claims Court. However, this is not a case calling for the severe penalty of imposing substantial indemnity when the plaintiff missed the limit by only \$300.   |
| Brennan, W.J. Lloy | Woodcliffe Corporation, et al. v. Rotenberg, et al. | 2005            | Third Parties    | Costs on a full indemnity basis, amount no disclosed  | Costs on a substantial indemnity basis, amount not disclosed   | The third parties in this litigation have contractual rights to indemnification from the claims disposed of in the old litigation, but litigation costs are always a matter of the court's discretion.<br><br>The court should fix the costs on a scale that reflects its view of a fair and reasonable amount that should be paid by the unsuccessful party.<br><br>The plaintiffs must have had a reasonable expectation that the third parties as well as defendants would move to strike their claim. But that expectation would not have been that the full costs of those motions would be transferred to the plaintiffs. |
| MacLeod, Helen K.  | Afseth v. Maracle                                   | 2005            | Defendant        | Costs on a full indemnity basis in the amount of \$8,880.70   | Costs on a full indemnity basis in the amount of \$8,880.70  | Judge exercised discretion under Rule 57.01(4)(d) and s. 131 of the <i>Courts of Justice Act</i> to award costs on a full indemnity basis. This action was without merit. The plaintiff had received offers to settle that would have resulted in no costs being awarded against her. The plaintiff had ample opportunity to reconsider her position in the litigation but chose to proceed to trial. The claim was found to be spurious in nature. The defendant was required to pay \$5,000 as the deductible to her professional liability insurer in order to defend this claim.  |
| McKinnon,          | Taylor v. Guindon                                   | [2005] O.J. No. | Defendant        | Costs in the amount of  | Costs on a substantial   | Substantial indemnity costs should be   |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| Judge          | Case Name   | Citation / Date                                  | Costs awarded to | Costs Requested  | Costs Awarded  | Judge's Comments  |
|----------------|---|--|------------------|--|--|---|
| Colin          |   | 4634 (S.C.J.)                                    |                  | \$158,840, inclusive of fees and disbursements.  | indemnity basis in the amount of \$125,000 inclusive of GST and disbursements                      | awarded; Plaintiff did not disclose a proposal in bankruptcy that she had made, despite being explicitly asked by Defendant; this constituted bad faith   |
| Polowin, Heidi | Arenas v. Longmire                                  | 2005   | Defendant        | Costs on a partial indemnity scale in the sum of \$19,533.51, or, costs on a full indemnity scale in the sum of \$23,462.22. | Costs on a partial indemnity basis in the sum of \$6,000, inclusive of GST.                        | The Respondent was the more successful party. The presumption that the more successful party should have his costs applies to this case. Both parties acted reasonably. This is not a case for costs on a full indemnity scale.   |
| Polowin, Heidi | Sommerard v. I.B.M. Canada Ltd.                     | [2005] O.T.C. 944; 32 C.C.L.I. (4th) 57 (S.C.J.) | Plaintiff        | Costs on a substantial indemnity basis   | Costs on a partial indemnity scale in the amount of \$60,000 plus GST and \$7,250 in disbursements | <p>Court has the power and discretion to award costs on a substantial indemnity basis, but this should only be exercised in rare and exceptional cases. Generally, substantial indemnity costs have been awarded where there has been some sort of reprehensible conduct, either in the circumstances giving rise to the cause of action, or in the proceedings, which makes such costs desirable as a form of chastisement to mark disapproval of the conduct of a party to the litigation. Defendant did not engage in conduct that was reprehensible, scandalous or outrageous. Although punitive damages were awarded to the Plaintiff, this alone is not grounds for an award of costs on a substantial indemnity basis.</p> <p>Plaintiff submitted that the amount of punitive damages awarded was modest and will not buy the costs which he must pay for his counsel if costs are not awarded on a substantial indemnity basis. Cost orders are not to be made by way of damages, or on the view that the award of damages should reach the plaintiff intact. Costs will be awarded on a partial indemnity basis.</p> |
| Power, Denis   | Kitchen v. Collinson                                | 2005   | Plaintiff        | Costs on a full indemnity basis in the sum of \$2,827.48.  | Costs on a partial indemnity basis in the sum of \$1,500 inclusive of disbursements and GST        | Family law issue. Plaintiff was the successful party on the motion and, under Rule 24, is presumptively entitled to costs. This is not a case for full recovery nor is it a case for substantial indemnity.   |
| Power, Denis   | Nandy (c.o.b. Distributed System Links) v. Attorney | [2005] O.J. No. 4869 (S.C.J.)                    | Defendant        | Fees of \$31,637.37 plus disbursements of \$1,315.89 for a total of  | Costs on a partial indemnity scale totaling \$15,000 (all inclusive)                               | Plaintiff's late delivery of his materials on the motion for summary judgment does not warrant an award of costs on a scale higher  |

**CRITERIA FOR CHOICE OF SCALE OF COSTS**

| <b>Judge</b>             | <b>Case Name</b>                               | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|--------------------------|--|-------------------------------|-------------------------|--|---|--|
|                          | General of Canada                              |                               |                         | \$32,953.26  |   | than that of partial indemnity   |
| Power, Denis             | Spearhead Management Canada Ltd. v. Henningsen | 2005                          | Defendant               | Costs on a substantial indemnity basis in the amount of \$27,219.23, inclusive of GST.   | Costs in the amount of \$12,000, inclusive of GST.  | The higher scale of costs is not appropriate, even though the allegations of misconduct were serious and the matter was extremely important to all parties.  |
| Rutherford, Douglas J.A. | Conroy v. CCC. No. 169                         | [2005] O.J. No. 4600 (S.C.J.) | Plaintiff               | Costs on a partial indemnity basis in the amount of \$11,479 (inclusive of fees and disbursements) or costs on a substantial indemnity basis in the amount of \$12,949 (inclusive of fees and disbursements) | Costs on a partial indemnity basis in the amount of \$3,500   | Plaintiff's costs outline places partial indemnity at about 89% of substantial indemnity. That is far too high. As a rule of thumb, partial indemnity costs are approximately 66% of full indemnity. |
| Stinson, David G.        | Solway v. Lloyd's Underwriters                 | [2005] O.J. No. 5465 (S.C.J.) | Plaintiff               | Costs on a substantial indemnity basis in the amount of \$47,998.63  | Costs on a partial indemnity basis in the amount of \$30,000 for fees, plus GST of \$2,100, plus disbursements of \$845.87, for a total of \$32,945.87. | There were legitimate issues of interpretation that the Defendant was entitled to raise. There was no misconduct on the part of the Defendant that would warrant a punitive order as to costs.       |

**RULE 49 - OFFERS TO SETTLE**

| Judge                                     | Citation                   | Citation / Date      | Costs awarded to  | Offers by Plaintiff | Offers by Defendant  | Costs Requested     | Costs awarded       | Judge's Comments   |
|---|----------------------------|----------------------|-------------------|---------------------|--|---------------------|---------------------|--|
| Corthorn J.                               | Donleavy v. Ultramar Ltd.  | 2019 ONSC 2985       | Plaintiff         |                     |  | \$306,832.45        | \$175,000           | The offer fell within the scope of rule 49.10(1).  |
| <b>Cronk, Epstein and Huscroft J.J.A.</b> | <b>König v. Hobza</b>      | <b>2015 ONCA 885</b> | <b>Respondent</b> |                     |  | <b>\$127,616.56</b> | <b>\$127,616.56</b> | <b>The offer to settle was made only 4 days before trial and the trial judge had said that even though it did not meet the 7 day before trial it should stand. The Court of Appeal rejected this saying the No Near Miss doctrine should apply to amount and the date of the offer. Trial cost were still allowed due to a judge's discretion in Rule 49.13</b>  |
| Newbould, J.                              | GB/Plasman v. APP Holdings | 2013 ONSC 6401       | Plaintiff         |                     | Information available to date of judgment, but not afterwards, Confidentiality agreement | \$100,821.08        | \$100,000           | <p>Claim that judgment (information on a foregoing basis) not more favourable than offer to settle because offer to settle did not contain a confidentiality undertaking as was ordered in judgment. This argument was denied. The confidentiality agreement was ordered not because it was required, but because it was offered by the applicant. It was not a contested issue.</p> <p>The element of compromise is not necessary to an offer to settle but absence of such can be considered.</p> <p>The applicant argued that costs should only be paid by the general partner and not the limited partnership, as the applicant is a substantial limited partner, and would therefore, in effect, be paying their own costs. This submission was accepted by the judge. The applicant should not be required to partially fund the costs ordered to be paid to it.</p> |

**RULE 49 - OFFERS TO SETTLE**

| Judge                  | Citation            | Citation / Date | Costs awarded to | Offers by Plaintiff | Offers by Defendant  | Costs Requested  | Costs awarded      | Judge's Comments   |
|------------------------|---------------------|-----------------|------------------|---------------------|--|--|--------------------|--|
|                        |                     |                 |                  |                     |  |  |                    | It is normal for the work done by a plaintiff to be far more than the work needed to be done for a defendant.  |
| Rosenberg, J.A. (ONCA) | Elbakhiet v. Palmer | 2014 ONCA 544   | Plaintiff        | \$600,000           | D 1 <sup>st</sup> : \$120,000<br>D 2 <sup>nd</sup> : 145,000<br><br>P: \$600,000 | \$500,000  | \$100,000          | <p><b>A civil trial commences on the day that evidence is heard.</b></p> <p><b>No specified rate of interest. However, the respondents could know with sufficient precision whether to accept the offer. Did not prevent the respondents from fairly determining whether or not to accept offer.</b></p> <p><b>Judgment and offer were so close that appellants could not meet burden of proof imposed by 49.10 that the offer exceeded the judgment.</b></p> <p><b>There is no “near miss” policy. However, the court must consider 49.13, which provides that the court may take in to account the terms of the offer. – holistic approach.</b></p> <p><b>Trial Judge erred in principle in approach to 57.01(1)(a). Recognized that jury preferred defence theory of case, but instead relied upon own view of what case was worth.</b></p> |
| Toscano Roccamo, J.    | Elbakhiet v. Palmer | 2012 ONSC 3666  | Plaintiff        | \$600,000           | 1 <sup>st</sup> : \$120,000<br>2 <sup>nd</sup> : \$145,000                       | Ps claim<br>\$578,742.29<br><br>Ds claim<br>\$313,964.61 | \$578,742.29 to Ps | The key issue is entitlement to costs, and whether the operation of Rule 49.10 (2) dictates the Plaintiffs' forfeiture of partial indemnity costs from the date of the Defendants' Offer to Settle dated February 9, 2012, and a corresponding award of partial indemnity costs to the Defendants from February 10, 2012 to the end of trial. The result turns   |

**RULE 49 - OFFERS TO SETTLE**

| Judge       | Citation         | Citation / Date | Costs awarded to      | Offers by Plaintiff  | Offers by Defendant               | Costs Requested         | Costs awarded | Judge's Comments  |
|-------------|------------------|-----------------|-----------------------|--|-----------------------------------|-------------------------|---------------|---|
|             |                  |                 |                       |  |                                   |                         |               | <p>on the timing and content of the Defendants' Offer.</p> <p>With respect to whether an offer was made at least 7 days before trial began, the trial commencement date is the date on which evidence begins to be heard.</p> <p>Ps were awarded \$144,013.07 at trial. Issue arose as to whether Ps second offer matched or exceeded what was offered. Court finds that it does not; Ds offer was a lump sum. Judge holds: Where a plaintiff's claim is a mixed one, or involves different heads of damages and an offer is presented as a lump sum, a court is unable to calculate a fixed dollar amount in prejudgment interest without a breakdown of the differing heads of damages that attract different rates of interest. The Plaintiffs should not be deprived of partial indemnity costs throughout these proceedings unless considerations arising under Rule 57 justify an order otherwise (nothing per rule 57 was found)</p> |
| Kershman J. | Massey v. Massey | 2012 ONSC 1062  | Applicant (Plaintiff) | \$10K from proceeds of house sale, contingent on spousal support | \$10K from proceeds of house sale | \$1,879.36 by applicant | \$900.        | <p>The Applicant brought a motion for spousal support. Respondent brought cross motion for the release of monies from the sale proceeds of the matrimonial home to each party.</p> <p>Applicant argues since decision was in her favour she should be awarded on substantial indemnity cost.</p> <p>Respondent argues that had his offer been accepted, there would have been no need to argue the cross motion and that those costs were effectively thrown away</p>   |

**RULE 49 - OFFERS TO SETTLE**

| Judge            | Citation       | Citation / Date | Costs awarded to      | Offers by Plaintiff   | Offers by Defendant  | Costs Requested  | Costs awarded    | Judge's Comments   |
|------------------|----------------|-----------------|-----------------------|---|--|--|------------------|--|
|                  |                |                 |                       |   |  |  |                  | <p>Respondent did not have the ability to cherry pick and choose to accept only part of the Applicant's Offer dealing with the sale proceeds of the matrimonial home. He had to accept the Applicant's Offer to Settle in its entirety, which the Respondent was not prepared to do.</p> <p>Applicant should not be entitled to a higher scale of costs in accordance with her Offer to Settle</p> |
| Mackinnon J.     | Zheng v. Jiang | 2012 ONSC 6756  | Applicant (Plaintiff) | 1 <sup>st</sup> : \$125,398<br>2 <sup>nd</sup> : \$102,930                      |  | \$83,434   | \$63,750         | <p>Family law case, based on Family Law Rule 18, judge applies Rule 49 case law to analyze implications of two offers.</p> <p>A first offer that is never formally withdrawn is withdrawn by implication by the second offer. The first more generous offer was not available at the time of trial, and thus is not taken into consideration when determining cost consequences.</p>               |
| Smith, Robert J. | McLean v. Knox | 2012 ONSC 1069  | Plaintiff             | \$302,559.64 on a partial indemnity basis.<br><br>\$92,394.39 for disbursements | \$150,000 plus HST plus disbursements of \$80,000 plus HST | There were two offers to settle. The first was withdrawn prior to it being accepted. The second offer did not comply with Rule 49.10 as it was made only four days before the commencement of trial, and the plaintiff recovered damages after trial greater | Smith, Robert J. | McLean v. Knox   |

**RULE 49 - OFFERS TO SETTLE**

| Judge      | Citation                                    | Citation / Date | Costs awarded to | Offers by Plaintiff  | Offers by Defendant                                | Costs Requested  | Costs awarded   | Judge's Comments   |
|------------|---|-----------------|------------------|--|--|--|---|--|
|            |   |                 |                  |  |  | <p>than the amount of his offer to settle.</p> <p>The costs claimed do not exceed the amount an unsuccessful party would reasonably expect to pay.</p> |   |  |
| Healey, J. | Gogas v. Gogas,                             | 2011 ONSC 5368  | Applicant        | \$95,931.30 inclusive of HST   | None   |  | \$75,000 inclusive of HST   | <p>The applicant made two offers to settle. It is this court's duty to promote the primary objective means that I should accept the offer of March 14, 2011 as a valid offer.</p> <p>This is not a case in which impecuniosity should play a role in setting the amount of the cost award</p>  |
| James, M.  | Outaouais Synergist Incorporated and Keenan | 2011 ONSC 7340  | Plaintiff        | \$227,012.72 in a mixture of partial and substantial indemnity costs | Two offers prior to trial of \$50,000 and \$60,000 | By the Plaintiff: \$138,844.47 for costs prior to the delivery of his offer.   | <p>\$183,396.90 plus HST</p> <p>Two-thirds of this are allocated to be paid by Lang Michener and one-third by Harold Keenan</p> | <p>Prior to trial, the plaintiff gave an offer to settle</p> <p>There were two offers to settle by Keenan which he states should be considered in deciding whether the plaintiff should get costs on a substantial basis.</p> <p>None of the offers to settle were accepted.</p> <p>The Keenans also seek a crossclaim order against Lang Michener for \$289,037.10</p> <p>No costs are payable to or from Douglas Keenan; the crossclaims are dismissed without costs</p> |
| Power, J.  | 1221904 Ontario Inc.                        | 2011 ONSC 3961  | Defendant        | none   | May 25, 2010: defendant                            | \$97,891.74 which includes   | \$90,000 all-inclusive  | pursuant to Rule 49.10 of the Rules of Civil Procedure, R.R.O. 1990,   |

**RULE 49 - OFFERS TO SETTLE**

| Judge   | Citation   | Citation / Date      | Costs awarded to | Offers by Plaintiff               | Offers by Defendant  | Costs Requested   | Costs awarded   | Judge's Comments  |
|---|--|----------------------|------------------|-----------------------------------|--|---|---|---|
|   | v. 713949 Ontario Limited,                       |                      |                  |                                   | offered to settle the action without costs against defendant; July 4, 2010: defendant offered to settle the action without costs if the plaintiff vacated the lease by September 1, 2 010.   | disbursements, GST and HST  |   | Reg. 194, the defendant is prima facie entitled to costs on a substantial indemnity basis for the work done in preparation for trial and for the attendance at trial.<br><br>The costs and time submitted by the defendant were more than reasonable. However, the arithmetic submitted by the defendant's counsel could not be reconciled. Therefore, the amount was rounded to \$90 000 all-inclusive.  |
| Power, J.   | Michiels v Kinnear                               | 2011 ONSC 6024       | Defendants       | \$155,000 plus interest and costs | Dismissal of the claim in consideration of payment of his clients' costs on a substantial indemnity basis  | \$61,005.95 for all defendants except Mr. Vadala<br><br>\$125,575.50 for Mr. Vadala | \$50,000 to Mr. Vadala and \$50,000 to the rest of the defendants   | The action was statute barred against Mr. Vadala; The defendant's offers to settle were relevant and reasonable while the plaintiff's offers were not. Since the offers from the defendant's were rejected, they had no option but to proceed to trial.   |
| <b>Doherty, David H.; Feldman, Kathryn N.; Cronk, Eleanore A.</b> | <b>Ksiazek v. Halton (Police Services Board)</b> | <b>2010 ONCA 341</b> | <b>Plaintiff</b> |                                   | <b>First Offer: April 23, 2003: \$75,000, plus prejudgment interest and costs on a partial indemnity scale, with no reference to the Family Law Act plaintiffs</b><br><br><b>Second Offer: Made in August 2005, but by agreement of parties had an</b> | <b>Not disclosed</b>  | <b>Trial judge awarded costs on a partial indemnity basis of \$287,995, including disbursements of \$101,997.</b> | <b>1) Rule 49.10(2) was not triggered where, although the total amount of the defendant's offer exceeded the total amount awarded at trial, the terms of the offer were not favorable to all plaintiffs. The terms of the offer were expressly not severable. The defendants cannot therefore ask the court to treat the offer made to the main plaintiff as being severable for the purposes of Rule 49.10(2).</b><br><br><b>2) In applying Rule 49.10, the actual judgment should be considered net of any statutory accident benefits paid.</b><br><br><b>3) Although the plaintiff's belief</b> |

**RULE 49 - OFFERS TO SETTLE**

| Judge          | Citation                    | Citation / Date | Costs awarded to | Offers by Plaintiff | Offers by Defendant  | Costs Requested | Costs awarded | Judge's Comments   |
|----------------|-----------------------------|-----------------|------------------|---------------------|--|-----------------|---------------|--|
|                |                             |                 |                  |                     | effective date of February 10, 2005. The offer included \$140,000 for Ms. Ksiazek and a total of \$7,000 for three of the four Family Law Act plaintiffs, but nothing for the fourth claimant. The offer also included prejudgment interest and costs to be determined by the parties. The offer expressly provided that its terms were not severable. |                 |               | <p>that they could do better than the defendant's offer was not unreasonable, it was nonetheless incorrect. "In exercising its discretion regarding costs, a court should accord significant cost consequences to such a miscalculation."</p> <p>4) In applying its discretion, the court should consider the purpose underlying rule 49.10. Where the second offer was substantially greater than the total award at trial, it should have been accepted. The defendants should not recover legal fees after its operative date. But where the offer was made on the eve of trial, they should be entitled to their disbursements throughout.</p> |
| Ferguson, Jane | Hayden v. Stevenson, et al. | 2010 ONSC 633   |                  |                     | lump sum of \$300,000 plus costs and disbursements to the offer date, to be divided among the Plaintiffs and the Estate and subject to clawback of defendant's partial indemnity costs   |                 |               | <p>The lump sum offer did not qualify as a Rule 49 offer because it was impossible to ascertain the offers being made to each party. Per <i>Malik v. Sirois</i>, [2003] O.J. No. 3488, Rule 49 offers must be "crystal clear", especially when there are multiple claimants.</p> <p>However, the fact that the offer was diminishing due to the costs provision did not exclude the application of Rule 49. The purpose of Rule 49 is to encourage</p>   |

**RULE 49 - OFFERS TO SETTLE**

| Judge   | Citation                              | Citation / Date | Costs awarded to                 | Offers by Plaintiff                              | Offers by Defendant  | Costs Requested  | Costs awarded   | Judge's Comments   |
|---|---------------------------------------|-----------------|----------------------------------|--|--|--|---|--|
|   |                                       |                 |                                  |  | after the offer date, if not accepted within 30 days.  |  |   | settlement. It would be inconsistent with this purpose to disallow offers escalating or diminishing offers that include progressive incentives for the opposing party to settle.   |
| Gillease, Eileen E.; Blair, Robert A.; MacFarland, Jean | Schwark v. Cutting                    | 2010 ONCA 299   | Appellants , defendants at trial |  | April 2008: Terms not disclosed, but it "would have permitted the plaintiffs continued use of the beach front property". | partial indemnity prior to offer to settle; substantial indemnity thereafter | Total sum of \$89,755.19, inclusive of disbursements and GST, on the basis sought | <p>Though Rule 49.10 does not authorize an award of substantial indemnity when a plaintiff refuses to accept the defendant's offer but is unsuccessful at trial, costs are in the overall discretion of the Court under Rule 49.13. The Court is entitled to consider any written offers to settle.</p> <p>A costs premium in the form of substantial indemnity after an offer to settle is warranted where the record indicates the other party's conduct was deserving of chastisement. The plaintiffs wasted time in refusing to consent to amendments to pleadings, and in failing to narrow issues by admitting the obvious. Further, there was evidence of misconduct in the plaintiff's use of the defendants' property.</p> <p>In these circumstances, and where the amount claimed was comparable to what the plaintiffs had sought in costs, the amount sought by the appellant defendants was reasonable.</p> |
| Laskin, John I.; Rouleau, Paul S.; Epstein, Gloria J.   | St Elizabeth Home Society v. Hamilton | 2010 ONCA 280   | Defendant                        | March 2004: \$1,299,000 plus interest and costs. | February 21, 2003: \$153,200 plus interest and costs   | Trial judge awarded costs of \$2,317,000 to the City and                     | Costs to be assessed on a partial indemnity scale throughout.                     | Rule 49 does not permit an award of substantial indemnity costs to a defendant who makes an offer to settle that is greater than the amount ultimately awarded. Nor  |

**RULE 49 - OFFERS TO SETTLE**

| Judge   | Citation               | Citation / Date          | Costs awarded to        | Offers by Plaintiff | Offers by Defendant  | Costs Requested            | Costs awarded  | Judge's Comments   |
|---|------------------------|--------------------------|-------------------------|---------------------|--|----------------------------|--|--|
|   | (City)                 |                          |                         |                     |  | \$1,945,000 to the Region. | Fees awarded reduced by \$627,543 for the City (30% of actual costs of \$2,091,810) and \$490,322 for the Region (30% of actual costs of \$1,634,407). Remaining costs had already been assessed on partial indemnity scale. | is there a provision that substantial indemnity costs can be awarded against a plaintiff whose offer to settle is inordinately high.   |
| McCombs, J. David; Lederman, Sidney N.; Molloy, Anne M. | Bulut v. Walker-Fairen | 2010 ONSC 706 (Div. Ct.) | Appellants (Defendants) |                     | 18 Nov 2005: (1) \$200,000 all inclusive, expiring on 25 Nov 2005<br>18 Nov 2005: (2) \$100,000 plus partial indemnity costs to the date of the offer, costs payable declining on a sliding scale with the passage of time until acceptance<br>21 Dec 2007: \$200,000 plus partial indemnity costs to the offer date |                            | on the original action: partial indemnity costs, to be assessed on the appeal: \$10,000 inclusive  | The defendants had been ordered to pay substantial indemnity costs without having been given an opportunity to make submissions regarding costs. On appeal, the Divisional Court held that the trial judge had breached the rules of natural justice and procedural fairness in two ways: in granting the award without allowing the parties the opportunity to be heard, and in failing to provide adequate reasons.<br><br>The trial judge had since retired. The Divisional Court found it appropriate to substitute their own costs award based on the trial record. The trial judge's award of substantial indemnity costs throughout, on the basis of misconduct by the defendants, was rejected entirely. |

**RULE 49 - OFFERS TO SETTLE**

| Judge        | Citation                 | Citation / Date | Costs awarded to | Offers by Plaintiff  | Offers by Defendant | Costs Requested | Costs awarded | Judge's Comments   |
|--------------|--------------------------|-----------------|------------------|--|---------------------|-----------------|---------------|--|
|              |                          |                 |                  |  |                     |                 |               | The defendants' second offer of 18 November 2005 fell within Rule 49, as did the offer of 21 December 2007. The defendants were entitled to partial indemnity costs as of 18 November 2005. However there was no basis for any costs award prior to the offer date to either party.  |
| Price, David | Wright v. Wal-Mart et al | 2010 ONSC 2936  | Plaintiff        | 13 November 2008: global offer to all the defendants to settle both actions for \$300,000.00 |                     |                 |               | <p>The offer qualified as a Rule 49 offer: it was open to any of the defendants to accept it; it was made at least seven days before trial and it remained open at the beginning of the trial. The plaintiff received a judgment more favourable than the offer, and was therefore entitled to substantial indemnity costs from the offer date.</p> <p>Previous cases holding that global offers did not qualify under Rule 49 were distinguishable: they all involved distinct and independent causes of action in circumstances where there was no joint liability. Those defendants were unable to adequately assess their relative chances of success at trial. Here, each defendant contributed to the plaintiff's injuries, and there was a dispute between the defendants as to the apportionment of liability. The defendants were therefore at least as well placed as the plaintiff to assess their ultimate liability.</p> <p>There was no uncertainty as to whether the plaintiff "beat the offer" to each defendant. It was</p> |

**RULE 49 - OFFERS TO SETTLE**

| Judge         | Citation                      | Citation / Date | Costs awarded to | Offers by Plaintiff | Offers by Defendant   | Costs Requested   | Costs awarded   | Judge's Comments  |
|---------------|-------------------------------|-----------------|------------------|---------------------|---|---|---|---|
|               |                               |                 |                  |                     |   |   |   | <p>appropriate to apportion the offer in the same percentages in which the jury apportioned liability to make that determination.</p> <p>The fact that an earlier offer that was less favourable to the defendants remained open in no way impaired the defendants' ability to accept the latter one. It therefore had no bearing on its status under Rule 49.</p>  |
| Roy, Albert   | Madison v. Shoppers Drug Mart | 2010 ONSC 494   | Defendant        |                     | Offer made "shortly before trial"; details not disclosed.   | \$126,000 on partial indemnity basis, \$114,850 on substantial indemnity basis after offer, \$44,872.98 for disbursements and \$12,042.80 for GST, totaling \$297,771.78. | \$200,000 all-in  | The principle of reasonableness is of "primary importance". There is no basis for a cost premium in an offer made on the eve of a trial scheduled for four to six weeks for an amount well below what had already been expended to get to trial.  |
| Smith, Robert | Baird v. Botham               | 2010 ONSC 3057  | Defendant        |                     | March 2, 2005: dismiss action without costs<br>July 7, 2005: dismiss action with partial indemnity costs to that date<br>January 27, 2010: contribute \$1000 to the settlement and dismiss action without costs | \$49,924.88 for fees and \$11,524.61 for disbursements, both inclusive of GST for a total of \$61,449.49  | costs of \$30,000.00 plus GST plus disbursements of \$8,500.00 plus GST | <p>Rule 48.10(2) was not engaged because the plaintiff did not recover any damages. The action was settled. Instead rules 49.12 and 49.13 applied. These rules are discretionary and do not automatically entitle a recipient to substantial indemnity.</p> <p>There was no unreasonable conduct on the part of defendant Portage to justify an award of substantial indemnity. Portage co-operated by settling with the plaintiff which resulted in a short trial of an issue.</p> |

**RULE 49 - OFFERS TO SETTLE**

| Judge                | Citation   | Citation / Date   | Costs awarded to | Offers by Plaintiff  | Offers by Defendant                  | Costs Requested  | Costs awarded  | Judge's Comments   |
|----------------------|--|---|------------------|--|--------------------------------------|--|--|--|
|                      |  |   |                  |  |                                      |  |  | This type of conduct should be encouraged, not sanctioned.   |
| Archibald, Thomas L. | Empire Life Insurance Company v. Krystal Holdings Inc. | (2009 Ont. Sup. Ct. J.) Court File No.: 02-CV-222931CM4 |                  |  | Plaintiff                            | Unreported costs on a substantial indemnity basis                                    | \$440,008.32 inclusive for the G.B. accounts, \$10,000 inclusive for the B.S accounts, and \$4,000 inclusive for the costs submissions, all on a partial indemnity basis | No Rule 49 consequences were attracted where:<br>1) the first offer was implicitly withdrawn when the second offer was sent;<br>2) the first offer was in any case made on a "without prejudice" basis; and<br>3) the second offer was invalid because it was unenforceable for lack of certainty and because of a significant misrepresentation as to the quantum of costs.   |
| Polowin, Heidi       | Watters v. Blum  | (2009, Ont. Sup. Ct. J.) Court File No.: FS-06-1178     | Applicant        | 7 May 2008:<br>3 November 2008:  | 6 December 2007:<br>23 October 2008: | Applicant: \$11,581.50, inclusive of GST<br>Respondent: \$8,755.20, inclusive of GST | \$6,000  | Family Law issue. The Applicant was substantially successful and did not act unreasonably or in bad faith in conduct of the litigation. She is entitled to costs. However the conditions of Rule 18(14) have not been satisfied. The Respondent's access was increased, and he was given additional vacation access. The judgement was therefore not as favourable or more favourable than the offer the Applicant made.<br><br>The Respondent cannot "cherry pick" provisions from his offer, which was not severable, in order to claim some success at trial. The increase in access does not amount to success when what he was seeking was joint custody. |
| Polowin, Heidi       | Mitchell v. Mitchell                                   | (2009, Ont. Sup. Ct. J.) Court File No.: 08-1311        | Plaintiff        | 6 Jan 2009: parties would consent to a Removal Order for the child to be returned to the |                                      | \$40,289.03, on complete indemnity basis   | \$35,000, inclusive of GST and disbursements   | Although the Plaintiff's offer required the Defendant to consent to a Pick Up Order which was subsequently set aside in the State of Florida, the requirements of Rule 18(14) were satisfied. The Plaintiff  |

**RULE 49 - OFFERS TO SETTLE**

| Judge             | Citation  | Citation / Date                                      | Costs awarded to | Offers by Plaintiff  | Offers by Defendant                          | Costs Requested  | Costs awarded   | Judge's Comments  |
|-------------------|---|--|------------------|--|--|--|---|---|
|                   |   |  |                  | State of Florida; Defendant would be responsible for costs to transport the child, and would pay Plaintiff \$7,500 for his costs.  |  |  |   | retains sole custody of the child, and in other respects the outcome of the motion was more favourable than the offer.  |
| Power, Denis      | MB Kouri Insurance Brokers Ltd. v. RL Gougeon Ltd.                    | (2009 Ont. Sup. Ct. J.) Court File No.: 1522/05      | Plaintiff        |  |  | \$90,295.62, on a partial indemnity basis up to offer to settle, and on a substantial indemnity basis afterwards | \$50,000 all inclusive on a partial indemnity scale   | Rule 49 is not engaged where an offer addressed jointly to the defendants could not be accepted unilaterally by either of them. Although the offer was relevant and was a factor that must be considered in fixing costs, there were no circumstances justifying an award above partial indemnity scale.  |
| Roccamo, Giovanna | Crete v. Carleton Condominium Corporation #47 (Chateau Vanier Towers) | (2008, Ont. Sup. Ct. J.) Court File No.: 06-CV-33385 | Defendant        | May 2006: \$30,000 plus interest and costs<br>22 Sept 2006: \$37,500 all inclusive if accepted by 6 Oct; escalating to \$50,000 if not accepted by 20 Oct<br>Following settlement conference in Aug 2007: \$35,000 all inclusive | 1 Aug 2007: dismissal of claim with no costs | \$123,558.90 plus disbursements of \$28,333.47, for a total of \$151,892.37 (inclusive of GST)                   | Partial indemnity fees of \$63,435.3 plus \$24,934.92 for disbursements, 3, inclusive of GST, less offsets for costs to plaintiff for motions, totalling \$11,342.96. | Defendants' offer to dismiss claim with no costs did not trigger costs consequences under Rule 49. But it was a factor to consider in exercising discretion under Rule 57.<br><br>"[26] I prefer the view that, unless the circumstances of a case trigger consideration of a number of the factors in Rule 57, including conduct of the kind described in Rule 57.01(1) (e) or (f), a defendant will not be awarded enriched costs over and above partial indemnity fees in the absence of any reasonable offer to settle a plaintiff's claim by payment of some amount. Even then where the plaintiff's conduct has not been found to be on balance egregious, a court may decline to award costs sanctions throughout the proceedings or prior |

**RULE 49 - OFFERS TO SETTLE**

| Judge             | Citation                                | Citation / Date  | Costs awarded to | Offers by Plaintiff | Offers by Defendant  | Costs Requested   | Costs awarded  | Judge's Comments   |
|-------------------|---|--|------------------|---------------------|--|---|--|--|
|                   |   |  |                  |                     |  |   |  | to the defendant's offer to settle; see St. Louis-Lalonde v. Carleton Condominium Corporation No. 12, [2005] O.J. No. 4164 (S.C.J.)."  |
| Roccamo, Giovanna | Isildar v. Rideau Diving Supply         | (2008, Ont. Sup. Ct. J.), Court File No.: 04-CV-027264 | Defendants       |                     | <p>From defendant RDS</p> <p>First offer: 21 December 2007, all-inclusive offer of \$100,000.</p> <p>Second offer: 4 January, 2008, \$300,000, 3 days before trial.</p>                                | <p>Plaintiffs: partial indemnity costs of \$161,414.77, exclusive of post-trial costs</p> <p>Defendant Dow: partial indemnity costs of \$147,008.83 in fees, plus \$23,298.30 in disbursements</p> <p>Defendant RDS: partial indemnity costs of \$142,552.55, exclusive of post-trial costs</p> | <p>Plaintiff to pay Defendant Dow partial indemnity costs amounting to \$177,610.57, inclusive of disbursements and GST.</p> <p>Plaintiff to pay Defendant KDS partial indemnity costs amounting to \$142,552.55, plus disbursements of \$16,041.68 and GST.</p> | <p>Rule 49.10 does not guarantee an award of substantial indemnity costs. Rule 49.13 allows residual discretion to award costs above partial indemnity, but the circumstances in this case do not justify an award of substantial indemnity. The offer was made on the eve of trial. The plaintiffs were largely successful on all issues of liability and damages, though recovery was barred by the application of the a waiver.</p>   |
| Taylor, Gerald    | H. L. Staebler Company Limited v. Allan | (2008), 92 O.R. (3d) 788 (Ont. Sup. Ct. J.)            | Defendant        |                     | <p>1) June 21, 2004; open for acceptance until June 25, 2004, and made "without prejudice" - amount: "at least \$750,000".</p> <p>2) May 2, 2005; open for acceptance until five minutes after the</p> | <p>Substantial indemnity costs</p>  | <p>\$558,232.50, consisting of:</p> <p>Partial indemnity fees to May 2, 2005: \$8,650</p> <p>Substantial indemnity fees after May 2, 2005: \$462,000</p> <p>Disbursements: \$46,000</p> <p>GST: \$25,832.50</p> <p>costs for</p>                                 | <p>Rule 49.10 has no application where the defendant was completely successful. However the principles underlying the rule can support an award of substantial indemnity costs following an offer, at the court's discretion under Rules 49.13 and 57.01, even where the other party's conduct does not warrant an expression of disapproval. Offers to settle are to be encouraged.</p> <p>The policy objectives of Rule 49 were satisfied where at all times after May 2, 2005, there was an</p> |

**RULE 49 - OFFERS TO SETTLE**

| Judge          | Citation   | Citation / Date      | Costs awarded to | Offers by Plaintiff  | Offers by Defendant  | Costs Requested | Costs awarded  | Judge's Comments  |
|----------------|--|----------------------|------------------|--|--|-----------------|--|---|
|                |  |                      |                  |  | <p>commencement of trial - \$600,000 plus prejudgment interest.</p> <p>3) May 20, 2005; open for acceptance until five minutes after the commencement of trial - \$500,000 plus prejudgment interest.</p> <p>4) Oct. 9, 2006; open for acceptance until five minutes after the commencement of trial - \$500,000, with no release of plaintiff. Rescinded all previous offers.</p> |                 | <p>submissions on costs on the partial indemnity scale: \$15,000 plus \$750 GST, inclusive of disbursements.</p> | <p>offer on the table open for acceptance by the plaintiff, even though the defendant was not liable. This justified an award of partial indemnity costs up to that date and substantial indemnity thereafter.</p>  |
| Walters, Linda | Roma Construction (Niagara) Ltd. v. Dykstra Bros. Roofing (1992) Limited | [2008] O.J. No. 2755 |                  | <p>14 December 2007: \$104,011 "without prejudice"</p> <p>2 January 2008: \$96,000 "without prejudice", and to "settle all outstanding accounts"</p> | <p>23 November 2007: \$43,489 + \$5,000 in costs - \$9752 in unpaid invoices: \$38,737 total</p> <p>21 December 2007: \$48,489</p>   | Not disclosed   | Not disclosed  | <p>This action was a motion for an order to compel the plaintiff to settle the action on the terms of the plaintiff's last offer to settle. The defendants had previously orally rejected the offer, but contented that under rule 49 an offer to settle remains open until formally withdrawn.</p> <p>The plaintiff's final offer was made</p> |

**RULE 49 - OFFERS TO SETTLE**

| Judge | Citation | Citation / Date | Costs awarded to | Offers by Plaintiff | Offers by Defendant | Costs Requested | Costs awarded | Judge's Comments  |
|-------|----------|-----------------|------------------|---------------------|---------------------|-----------------|---------------|---|
|       |          |                 |                  |                     |                     |                 |               | <p>less than seven days before the start of trial. It was intended to be a common law offer, not a rule 49 offer. However simply stating that one did not intend to make a rule 49 offer is not sufficient to escape the reach of the rule. There must be additional evidence to support the contention.</p> <p>In all exchanges, the defendant's counsel specifically stated that their offers were made pursuant to rule 49. The plaintiff chose to use a "without prejudice" letter. This is evidence of the plaintiff's intent not to make a rule 49 offer.</p> <p>As a common law offer, it was automatically terminated when it was rejected. It was therefor not open to be subsequently accepted by the defendants.</p> |

**RULE 49 - OFFERS TO SETTLE**

| Judge                | Citation           | Citation / Date                             | Costs awarded to | Offers by Plaintiff  | Offers by Defendant  | Costs Requested                                    | Costs awarded                   | Judge's Comments   |
|----------------------|--------------------|---|------------------|--|--|--|---------------------------------|--|
| Whalen, Larry        | Dennie v. Hamilton | (2008), 89 O.R. (3d) 542 (Ont. Sup. Ct. J.) | Plaintiff        | Sept. 21, 2006: non-pecuniary damages of \$45,000, net of \$15,000 Insurance Act deductible, plus interest; pecuniary damages of \$50,000; plus partial indemnity costs  | Sept. 25, 2005: non-pecuniary damages of \$15,000, net of deductible, plus interest; no pecuniary damages; costs at 15%, plus disbursements and GST, or as otherwise agreed. | partial indemnity costs of \$135,357.85, inclusive | \$106,255.12, plus GST          | <p>The \$15,000 Insurance Act deductible should not be considered when comparing the judgment to an offer under Rule 49. Similarly, neither should the reduction for not having met the threshold for non-pecuniary loss under the same Act be considered. Consequently, the appropriate amount for the application of Rule 49 was the \$40,000 awarded by the jury, not the \$25,000 ultimately recovered after those deductions.</p> <p>The defendant's offer of "costs at 15%" is too vague to be an effective offer under Rule 49. It is uncertain if that refers to 15% of the \$15,000, or 15% of the plaintiff's assessed costs.</p> <p>As assessed, the plaintiff's recovery exceeds the defendant's offer, so Rule 49 does not apply.</p> |
| Aitken, Catherine D. | Galpin v. Galpin   | 2007  | Plaintiff        | One offer made on June 14, 2006 requesting: \$600,000 of Respondent's income \$8,227/mo. in child support \$22,820/mo. in spousal support Support arrears south from Oct. 1/05 \$5 million sought in life insurance \$17,774 sought in additional expenses | No offers to settle delivered  | Costs in the amount of \$27,205                    | Costs in the amount of \$13,000 | In some of the issues dealt with on the application, the Applicant did as well or better than what she had proposed in her offer (Respondent's income, child support)  |

**RULE 49 - OFFERS TO SETTLE**

| Judge                 | Citation                   | Citation / Date               | Costs awarded to   | Offers by Plaintiff                       | Offers by Defendant  | Costs Requested   | Costs awarded  | Judge's Comments  |
|-----------------------|----------------------------|-------------------------------|--|---|--|---|--|---|
| Blishen , Jennifer A. | Flentje v. Nichols         | 2007                          | Plaintiff  | One offer; details of which undisclosed   | No offers  | Costs sought not disclosed  | Partial indemnity costs to the date of the offer, and substantial indemnity costs thereafter                   | Respondents never served an offer to settle; the Applicant served one offer to settle that was never responded to; the offer complied with the requirements outlined in r. 49(1)(a)(b)(c); judgment obtained by plaintiff was more favourable than her offer with respect to both general and special damages   |
| Brown, David          | Caci v. MacArthur          | [2007] O.J. No. 1395 (S.C.J.) | Defendant Third Party (Non-Marine Underwriters, Lloyd's of London) | Not disclosed                             | Lloyd's offered to settle on the basis that Economical Mutual Insurance Company (plaintiff's automobile insurer) would reimburse Lloyd's for 75% of the amounts paid to settle the plaintiff's claims. | Costs on a partial indemnity basis until date of Offer and costs on a substantial indemnity basis thereafter, totaling \$125,753.93   | Costs on a partial indemnity basis until date of Offer, and costs on a substantial indemnity basis thereafter. | Lloyd's 'beat' their offer. Although Rule 49.12(2) does not specify the scale on which a court may order a defendant to pay the costs of another defendant who made an offer to contribute, several cases have concluded that it is open to the court to award costs incurred after the making of such an offer on a substantial indemnity basis. To reduce Rule 49.12 to one under which only partial indemnity costs could be awarded would cut against the grain of the overall policy objectives of Rule 49 to encourage and facilitate settlements prior to trial. |
| E.R. Browne J.        | Kourtesis v. Joris         | 2007 WL 2775283 (Ont. S.C.J.) | Plaintiff  | No offers to settle.                      | One offer on May 18, 2007 in the amount of \$85,000  | Defendant: Partial indemnity from May 18, 2007 to end of trial in the amount of \$106,531.66.<br><br>Plaintiff: partial indemnity up to May 18, 2007 in the amount of \$63,263.24 | Defendant: no costs.<br><br>Plaintiff: partial indemnity in the amount of \$63,263.24.                         | The plaintiff has no present ability to pay an award of costs. An award of costs against her would almost certainly result in her not completing her schooling. I conclude that to award costs to the defendant from May 18, 2007 to the end of trial would be an undue hardship upon the plaintiff Fotini Kourtesis. Accordingly, I make an order that the provisions of Rule 49.10(2) which would otherwise result in partial indemnity costs to the defendant from May 18, 2007 will not apply in this case.   |
| McKinnon, Colin       | Cerilli v. The Corporation | 2007                          | Plaintiff  | Sept. 2006: \$56,000 + costs to be agreed | Sept. 2006: \$51,000 + costs to be agreed  | Not disclosed   | Substantial indemnity costs totaling   | Plaintiff is <i>prima facie</i> entitled to receive costs on a substantial indemnity basis because she was  |

**RULE 49 - OFFERS TO SETTLE**

| Judge        | Citation               | Citation / Date             | Costs awarded to | Offers by Plaintiff   | Offers by Defendant | Costs Requested   | Costs awarded  | Judge's Comments   |
|--------------|------------------------|-----------------------------|------------------|---|---------------------|---|--|--|
|              | of the City of Ottawa  |                             |                  | upon or assessed July 2003: \$92,000 + costs to be agreed upon or assessed August 2004: \$80,000 + OHIP's subrogated interest and costs to be agreed upon or assessed January 2006: \$165,000 with costs to be agreed upon or assessed Sept. 2006: \$250,000 + OHIP's subrogated interest and costs to be agreed upon or assessed During Trial: \$200,000 + costs to be agreed upon or assessed | upon or assessed    |   | \$100,000, inclusive of GST, disbursements and submissions on costs                                      | awarded more than any offer made in the course of the proceedings  |
| Power, Denis | Ward v. Manulife       | [2007] O.J. No. 37 (S.C.J.) | Plaintiff        | 1) \$300,000 + \$200,000 (general and aggravated damages)<br>2) \$200,000 + \$75,000 (general and aggravated damages)   | No offers           | Costs on a substantial indemnity basis in the amount of \$1,037,033.00 (includes a 15% premium) | Costs on a substantial indemnity basis in the amount of \$792,283.81                                     | Results achieved by the Wards exceeded this offer; substantial indemnity costs awarded                                 |
| Power, Denis | Rivington v. Rivington | 2007                        | Plaintiff        | Terms of offer not disclosed  | No offers           | Not disclosed   | Costs on partial indemnity basis awarded until date of delivery of offer (March 31, 2006) and costs on a | Applicant won the motion and is entitled to costs on a substantial indemnity scale after the date of delivery of offer |

**RULE 49 - OFFERS TO SETTLE**

| Judge                | Citation   | Citation / Date                | Costs awarded to | Offers by Plaintiff           | Offers by Defendant  | Costs Requested   | Costs awarded   | Judge's Comments  |
|----------------------|--|--------------------------------|------------------|-------------------------------|--|---|---|---|
|                      |  |                                |                  |                               |  |   | substantial indemnity basis awarded thereafter  |   |
| Sedgwick, Gordon     | Tudor Inn Reception Hall (1992) Ltd. <i>et al.</i> v. Merzat Industries Ltd. <i>et al.</i> | 2007                           | Defendants       | No offers                     | First offer: Offer of \$25,000 in damages<br><br>Second offer: Offer for \$100,000 inclusive of damages, interest and costs            | Costs in the amount of \$161,957.20, including fees, disbursements and applicable GST       | Costs in the amount of \$80,000, inclusive of fees, disbursements and applicable GST                                  | Ontario Court of Appeal in <i>S &amp; A Strasser Ltd. v. Richmond Hill (Town)</i> (1990), 1 O.R. (3d) 243 that subrule 49.10 does not apply where the plaintiffs' action is dismissed.  |
| R.J. Smith J.        | Dunstan v. Flying J Travel Plaza   | 2007 WL 3127365 (Ont. S.C.J.)  | Defendant        | No offers to settle.          | One offer on February 26, 2007 to dismiss claim without costs.   | Partial indemnity until offer, substantial indemnity thereafter.                            | Partial indemnity until offer, substantial indemnity thereafter.  | In exercising discretion pursuant to Rule 57.01(1), the court may find it appropriate to award costs on a substantial indemnity basis from the date of the defendant's offer to settle, if the defendant made an offer to settle and the plaintiff did not recover a judgment of any value after trial.   |
| G.E. Taylor J.       | Farwell (Trustee of) v. Integrated Management & Investments Inc.                           | 2007 WL 1247349 (Ont. S.C.J.), | Defendants       | Offer to settle for \$300,000 | Two offers to settle for dismissal of action (June 2003 and November 2003) and costs; one offer to settle for \$30,000 in August 2006. | Substantial indemnity since time of first offer to settle for complete dismissal of action. | Partial indemnity until August 2006 offer, substantial indemnity thereafter in the total amount of \$76,500 plus GST. | In separate Offers dated June 9, 2003 and November 2003, the defendants offered to consent to a dismissal of the claim and counterclaim, both without costs. The defendants submit that because of these offers they ought to be entitled to costs on a substantial indemnity basis from June 10, 2003. However, offering to consent to a dismissal without costs is not a genuine attempt to compromise. |
| Aitken, Catherine D. | Baltruweit v. Goode  | 2006                           | Defendant        | None                          | One offer; details undisclosed   | \$25,000  | Costs on a partial indemnity basis in the amount of \$15,000  | Onus is on defendant to establish that the offer she made was as good or better for the Plaintiff than the eventual outcome in the case. In this case, the order left the Plaintiff in basically the same position as he would have been in had he accepted the Defendant's offer. He would   |

**RULE 49 - OFFERS TO SETTLE**

| Judge                | Citation  | Citation / Date               | Costs awarded to | Offers by Plaintiff   | Offers by Defendant  | Costs Requested   | Costs awarded   | Judge's Comments  |
|----------------------|---|-------------------------------|------------------|---|--|---|---|---|
|                      |   |                               |                  |   |  |   |   | <p>have been in the same position had he not started this litigation.</p> <p>Plaintiff submitted two statements of Claim lacking in merit, and the Defendant incurred significant costs to respond to the allegations in those claims.</p> <p>Defendant should have her costs on a partial indemnity basis until her offer was served and then on a substantial indemnity basis thereafter.</p>                                   |
| Aitken, Catherine D. | Chenier v. Hôpital Général de Hawkesbury        | 2006                          | Plaintiff        | No offers to settle   | One offer to settle which would have required the Plaintiffs to amend heir Statement of Claim and pay the Defendant Physicians \$1,000 in costs. | <p>Plaintiff : Costs on a partial indemnity basis in the amount of \$2,657; costs on a substantial indemnity basis in the amount of \$3,932</p> <p>Defendant: Costs on a partial indemnity basis in the amount of \$2,576</p> | Costs on a partial indemnity basis in the amount of \$1,500 | Defendant Physicians did not equal or better their Offer.   |
| Aitken, Catherine D. | Lavinskas v. Jacques Whitford & Associates Ltd. | [2006] O.J. No. 2697 (S.C.J.) | Plaintiff        | April 1, 2005: payment to him of \$27,500 inclusive of prejudgment interest, plus costs on a partial indemnity scale to the date of the acceptance of the offer | April 4, 2005: offer to settle whereby proceeding would be dismissed on a without-costs basis  | Costs on a substantial indemnity basis in the amount of \$44,134.   | Costs in the amount of \$28,000                             | <p>This action was brought under the Simplified Procedure rule. An Offer to Settle under r. 49 is an important factor, but it is not determinative in the fixing of costs in Simplified Procedure actions.</p> <p>Plaintiff received a more favourable judgment than his offer to settle. Plaintiff's offer to settle is a significant factor in the determination for costs. Signals that plaintiff was prepared to accept a</p> |

**RULE 49 - OFFERS TO SETTLE**

| Judge                      | Citation   | Citation / Date | Costs awarded to | Offers by Plaintiff                                       | Offers by Defendant  | Costs Requested  | Costs awarded   | Judge's Comments   |
|----------------------------|--|-----------------|------------------|---|--|--|---|--|
|                            |  |                 |                  |   |  |  |   | reasonable resolution of this matter, while the defendant was not prepared to move from its hard-line position.  |
| Brennan, W.J. Lloyd        | Brash v. Brash                                     | 2006            | Defendant        | Waiver of costs if accepted by 10 a.m. January 31.        | Accept a lump sum of \$75,000 from the plaintiff on account of all arrears and future support obligations. | Costs on a full indemnity basis in the sum of \$30,643.24, inclusive of disbursements and taxes. | Costs on a partial indemnity basis in the sum of \$7,500  | The discretion to award costs includes the consideration of offers to settle, although the Rule do not provide specifically what effect is to be given to them. The Plaintiff's offer contained practically no element of compromise, while the Defendant's offer would have represented the opportunity for the Plaintiff to satisfy his outstanding and future spousal support obligations at a reasonable cost, likely less than the judgment made after the trial will cost him over time. |
| Charbonneau, Michel Z.     | Barker v. Montfort Hospital                        | 2006            | Plaintiff        | Not disclosed   | No offers by defendant   | Not disclosed  | Costs on a partial indemnity basis in the amount of \$136,000 + GST (for a total of \$145,520) + \$34,449.53 (disbursements inclusive of GST) for a total costs award of \$179,969.53 | The plaintiffs' offer did not contain an element of compromise in view of the fact that the parties had already agreed to the quantum of damages after a full trial  |
| de Sousa, Maria T. Linares | Chetty v Payet                                     | 2006            | Plaintiff        | Offer included the offer of supervised access to children | No offers made by defendant  | Not disclosed  | Costs on a full indemnity scale in the amount of \$9,000  | Plaintiff was successful at the motion on the issue of supervised access to the children.  |
| Forget, Jean A.            | Handa Travel Services Ltd. v. 1091873 Ontario Inc. | 2006            | Plaintiff        | Dec. 13, 2004: Offer to settle for \$17,500               | Jan. 13, 2005: Offer to settle for \$12,500<br>Sept. 2005: Offer to settle for \$20,000 all inclusive      | Costs in the amount of \$21,193.80, inclusive of costs and disbursements                         | Costs in the amount of \$13,500, inclusive of disbursements and GST   | Plaintiff obtained a judgment of \$23,222.24 against the defendants. If the judgment obtained is as favourable or more favourable than the terms of the offer to settle, the plaintiff is entitled to partial indemnity costs to the date the offer  |

**RULE 49 - OFFERS TO SETTLE**

| Judge                | Citation                             | Citation / Date               | Costs awarded to | Offers by Plaintiff  | Offers by Defendant                       | Costs Requested   | Costs awarded   | Judge's Comments   |
|----------------------|--------------------------------------|-------------------------------|------------------|--|---|---|---|--|
|                      |                                      |                               |                  |  |   |   |   | to settle was served and substantial indemnity costs from that date, unless the court exercised its discretion otherwise.  |
| Hackland, Charles T. | Bond v. Bond                         | 2006                          | Plaintiff        | Two offers:<br>1) Details not disclosed<br>2) Defendant would have received net monthly sum of \$345   | No offers                                 | Not disclosed   | Costs on a partial indemnity basis in the amount of \$7,000 plus GST  | Plaintiff's second offer was not more favourable than what was awarded at trial. Costs should be awarded on a partial indemnity basis.   |
| Hackland, Charles T. | Keryluk v. Lamarche                  | 2006                          | Plaintiff        | Two offers. They provided for the plaintiffs to withdraw their claim for damages or to transfer same to Small Claims Court provided that the defendants agreed to dispose of their cross-claims in the same manner. The latter offer is an amendment to the former. It contains a proposed alternate dispute resolution mechanism for dealing with future property related issues between the parties. | No offers by defendant                    | Plaintiff's actual fees are \$123,538.77, inclusive of \$8,018.97 GST and disbursements of \$7,856.53 inclusive of \$413.14 GST | Costs awarded on a partial indemnity scale totaling \$50,000 plus GST in addition to disbursements totaling \$7,443.38 plus GST in the sum of \$413.15. | Rule 49 amended offer to settle cannot be relied on. The terms, length and complexity of the Offers to Settle make it impossible for the Court to apply Rule 49.10 and make an award of substantial indemnity costs subsequent to the date of either of the Offers to Settle. The Offer contains references to discussions at a pre-trial conference. These references are inappropriate and contravene Rule 50.03. Plaintiffs will have their costs on a partial indemnity scale. |
| Lalonde, Paul F.     | Lockhard v. Quiroz and CAA Insurance | [2006] O.J. No. 5220 (S.C.J.) | Defendant (CAA)  | No Offers  | CAA, automobile insurer to Lockhard, made | CAA requested from Quiroz its costs of the action on a  | Costs on a partial indemnity basis to the date of   | The ultimate result on the hearing of the motion was as favourable or more favourable than the terms of the offers and the consequences of   |

**RULE 49 - OFFERS TO SETTLE**

| Judge            | Citation  | Citation / Date | Costs awarded to | Offers by Plaintiff  | Offers by Defendant   | Costs Requested  | Costs awarded   | Judge's Comments  |
|------------------|---|-----------------|------------------|--|---|--|---|---|
|                  | Company (Ontario)<br>*Note: This costs decision involved the CAA claiming costs from Quiroz |                 |                  |  | an offer to settle with Plaintiff for \$275,000, plus costs to be agreed upon or assessed | partial indemnity basis from the commencement of the action until the settlement (\$64,896.93), and costs on a substantial indemnity basis thereafter (\$30,228.57). CAA submitted that Quiroz should reimburse the CAA for the settlement monies paid to Plaintiff, as well as costs of defending these actions | settlement totaling \$36,350 (72.7% of the amount outlined in the CAA bill of costs) plus costs for its summary judgment motion in the sum of \$20,000 plus all disbursements, except for the sum of \$6,630.55, being the costs of travel to Ottawa for the various court appearances.<br><br>Settlement monies are to be reimbursed by Quiroz to the CAA as well. | Rule 49.10 are triggered. CAA is entitled to costs on a substantial indemnity basis after the date of settlement.   |
| Lalonde, Paul F. | St. Amand v. Brookshell Pontiac Buick GMC Ltd.  | 2006            | Plaintiff        | First offer: Plaintiff would accept \$20,000, including payment in lieu of notice, interest and costs<br><br>Second offer: Plaintiff would accept \$10,000<br><br>Third Offer: Plaintiff would accept \$23,500, plus costs and interests | No offers by defendant  | Costs on a partial indemnity basis until first offer totaling \$4,519.68 and costs on a substantial indemnity scale thereafter totaling \$74,469.74 for a total of \$79,469.74   | Costs on a substantial indemnity basis totaling \$60,000 plus GST + \$1,637.66 (disbursements) plus GST   | Offer to Settle was substantially less than the trial judgment (\$43,509.02). Plaintiff had incurred over \$15,000 in costs as of the date of the third offer. The Offer to Settle was reasonable by way of reference to his costs incurred.<br><br>The cost consequences of Rule 49 would apply even if the technical requirements of the rule are not met. The difference between what was offered and what was awarded is slight. The Plaintiff made efforts to settle the case and avoid trial. He was pushed into this protracted litigation by the Defendant and as a |

**RULE 49 - OFFERS TO SETTLE**

| Judge              | Citation  | Citation / Date              | Costs awarded to | Offers by Plaintiff  | Offers by Defendant  | Costs Requested   | Costs awarded   | Judge's Comments  |
|--------------------|---|------------------------------|------------------|--|--|---|---|---|
|                    |   |                              |                  |  |  |   |   | result the Defendant must pay substantial indemnity costs.  |
| Marchand, Clair    | Brownhall v. Canada (Ministry of National Defence)              | [2006] O.J. No. 187 (S.C.J.) | Plaintiff        | Offer was that the defendant's motion should be dismissed with costs on a partial indemnity basis to the date of acceptance, payable forthwith | No offers  | Costs in the amount of \$58,336.98.                       | Costs in the amount of \$54,018 in fees, \$3,781.26 as GST on those fees, \$537.72 in disbursements, for a total of \$58,336.98   | In the case at bar, it would have been exceedingly difficult, if not impossible, to formulate an offer which would indicate an element of "compromise". The plaintiff (respondent) could have offered a percentage of the "partial indemnity basis" that he otherwise would have expected. However, this would be unreasonable and unexpected of him to make such an offer. The nature of the defendant's motion which brought into play so many federal statutes and regulations ought to have expected the cost consequences of its action. Having to prepare to respond to such a complexity of submissions and number of court decisions, all of which were referred to during the hearing, ought to have prepared counsel for the moving party to expect costs being awarded on a substantial scale even though it might depart from the strict provisions of Rule 49.10 (1). This is a situation in which discretion should be exercised in "ordering otherwise." |
| Matheson, Barry H. | DeHeus v. Niagara (Regional Municipality) Police Services Board | [2006] O.J. No. 42 (S.C.J.)  | Defendants       | Plaintiffs would accept \$75,000 from Bell Canada and \$75,000 from the remaining defendants plus costs on a party-and-party basis.            | Defendants other than Bell Canada made two offers to settle, details of which were undisclosed<br><br>Bell made separate offer to settle | Bell Canada requested costs in the amount of \$135,977.25 | Costs on a partial indemnity basis until date of offer, and substantial indemnity costs thereafter. Bell Canada entitled to costs in the amount of \$50,000, all inclusive. | Plaintiff did not accept any offers to settle. Rule 49.10 does not apply in this situation because the action was dismissed in total. However there is discretion in the court in situations of this nature in Rule 49.13. There is good case law that a judge exercising his discretion may award partial indemnity costs to the time of the offer and following that offer, costs on a substantial indemnity basis.   |

**RULE 49 - OFFERS TO SETTLE**

| Judge             | Citation                                   | Citation / Date | Costs awarded to | Offers by Plaintiff  | Offers by Defendant   | Costs Requested  | Costs awarded   | Judge's Comments  |
|-------------------|--|-----------------|------------------|--|---|--|---|---|
| Métivier, Monique | Gerami v. Double Double Pizza Chicken Ltd. | 2006            | Defendants       | Counter-offer to defendants: demand of \$20,000            | Pay the plaintiff \$6,000   | Not disclosed  | Costs on a partial indemnity basis in the amount of \$6,000 with disbursements of \$594.25  | Plaintiff's action was dismissed. No reason to award costs to the plaintiff in this matter. However, the defendant brought a counterclaim and it was dismissed as well.   |
| Métivier, Monique | Glass Block Solutions Ltd. v. Pickles      | 2006            | Plaintiff        | May 2, 2005 (after defendant's first offer): \$10,000      | Prior to litigation: \$6,355.31<br>Second offer: \$8,000<br>Third offer (following mid-trial settlement conference): \$13,000   | Costs on a substantial indemnity basis in the amount of \$15,627.78            | Costs in the amount of \$7,000 plus GST and disbursements of \$1,655.21   | Plaintiff claimed costs on a substantial indemnity basis in the amount of \$15,627.78. Plaintiff had been awarded \$15,086.80 in damages at trial. Absent special circumstances, Rule 49.10 should apply. The matter could have been settled before trial for less than the final award. However, it is incumbent upon counsel to take precautions to ensure that the cost of the trial in a simplified procedure does not exceed the amount in dispute. Here, defendants' conduct lengthened the trial, but the hours expended by plaintiffs' counsel were excessive for the complexity and nature of this case. As a result, Rule 49.10 should not be applied strictly. |
| Morin, Gerald R.  | Brulé v. Brulé-Morgan                      | 2006            | Defendant        | Offer relating to joint custody and access to the children | Five offers to settle; only details of one offer disclosed:<br>May 20, 2005: Father to pay \$26,000 as full arrears in child support payments to Dec. 31, 2004.<br>Father to pay \$864 per month as child support | Bill of costs for fees and disbursements inclusive of GST totaling \$57,504.96 | Costs on a partial indemnity basis fixed in the amount of \$20,000 inclusive of GST together with disbursements of \$1,041.46 plus GST of \$62.18 | Any one of the offers made by the defendant would have, for the most part, put the plaintiff in a better position than he is now.   |
| Morin, Gerald R.  | Diallo v. Benson et al.                    | 2006            | Defendant        | No offers  | Offer to settle by paying plaintiff \$3,000 plus  | Costs on a partial indemnity basis   | Costs totaling \$5,000  | In consideration of the factors set out in R. 57.01, and the relative impecuniosity of the plaintiff in   |

**RULE 49 - OFFERS TO SETTLE**

| Judge                    | Citation   | Citation / Date               | Costs awarded to | Offers by Plaintiff   | Offers by Defendant  | Costs Requested  | Costs awarded  | Judge's Comments   |
|--------------------------|--|-------------------------------|------------------|---|--|--|--|--|
|                          | *This costs decision concerned the Ottawa Police Services Board defendant    |                               |                  |   | interest plus costs  | to date of offer and costs on a substantial indemnity basis thereafter.<br>Total costs claimed:<br>\$15,690.17   |  | comparison to that of the defendants, it is more equitable to only have the plaintiff pay a portion of the costs being claimed.  |
| Panet, A. deLotbinière   | Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc. | [2006] O.J. No. 4032 (S.C.J.) | Defendant        | None  | One offer to settle – undisclosed what the terms were  | Costs on a partial indemnity basis until time of offer to settle and costs on a substantial indemnity basis thereafter; total requested costs:<br>\$405,636.94 | Costs in the amount of \$265,000, plus \$47,010 in disbursements, totaling \$312,010 + GST | The entire claim by the plaintiff was dismissed and the counterclaim by the defendant was completely successful; Rule 49 is only applicable where the plaintiff obtains a judgment more favourable than the offer; the rule has no application where the plaintiff fails to recover any judgment |
| Polowin, Heidi           | Rowe v. Unum Life Insurance Company of America                               | 2006                          | Plaintiff        | Jan. 2002: \$197,948, plus ongoing benefits, interest and costs<br>Sept. 2005: \$360,000, inclusive of interest, plus costs                         | Oct. 6 2005: \$205,189.38, inclusive of interest, plus costs<br>Oct. 14, 2005: \$287,734.17, inclusive of interest, plus costs | Costs on a substantial indemnity basis throughout the proceeding in the amount of \$212,500, plus a premium of \$150,000 and GST for a total of \$412,790.22   | Costs in the amount of \$140,000 plus GST and \$32,280.66 in disbursements                 | Trial award exceeded both of these offers. Plaintiff is entitled to costs on a substantial indemnity basis from Sept. 26, 2005.  |
| Roy, Albert J.           | Lecompte v. A. Potvin Construction Ltd.                                      | 2006                          | Plaintiffs       | First offer: \$145,000<br>Second offer: Defendants should purchase the plaintiffs' properties for \$150,000 each and pay interest and costs to date | Purchase the plaintiffs' properties for \$100,000  | Costs in the amount of \$141,736.27, inclusive of disbursements  | Costs in the amount of \$50,000 plus \$20,000 in disbursements                             | Puzzling that the parties would exchange offers about purchasing the plaintiffs' properties when the damages were so limited; these offers did not appear to foster any settlement; they do not trigger the provisions of Rule 49  |
| Rutherford, Douglas J.A. | Haider v. Fiore et. al.  | 2006                          | Defendants       | No offers   | Many "walk away" offers, whereby neither   | Costs on a substantial indemnity basis   | Costs on a substantial indemnity basis   | There is no reason here not to apply the rule as to costs for parties who achieve a trial result that is superior  |

**RULE 49 - OFFERS TO SETTLE**

| Judge               | Citation  | Citation / Date               | Costs awarded to      | Offers by Plaintiff   | Offers by Defendant   | Costs Requested  | Costs awarded   | Judge's Comments  |
|---------------------|---|-------------------------------|-----------------------|---|---|--|---|---|
|                     |   |                               |                       |   | party would pay the other's costs – details of offers not disclosed                         | in the amount of \$12,500  | in the amount of \$12,500, including disbursements and GST  | to the position they had offered to accept prior to trial. The defendants' continuous offers were reasonable and the plaintiff's refusal to accept he offer was not backed up by the strength of his claim. The defendants displayed a continual willingness to compromise.   |
| Siegel, Herman J.W. | Clean-Mark Canada Inc. v. Home Depot of Canada Inc. <i>et al.</i> | [2006] O.J. No. 572 (S.C.J.)  | Defendant (Heartland) | No offers   | Defendant Heartland made an offer, details of which were not disclosed                      | Costs on a partial indemnity basis in the amount of \$48,396.64, inclusive of GST.   | Costs on a partial indemnity basis in the amount of \$39,000 plus GST, plus disbursements of \$4,386.43 inclusive of GST. | Offer made by Heartland included actual costs in its offer and as such did not come within the conditions of Rule 49.10(1).   |
| Smith, Robert J.    | Blackburn v. Fortin   | [2006] O.J. No. 3228 (S.C.J.) | Defendant             | No offers to settle   | Offer to Settle by allowing the grandmother to withdraw her claim for access without costs. | Costs on a substantial indemnity scale in the amount of \$23,553.75 plus GST plus disbursements of \$1,471.84 plus GST for a total of \$26,763.04  | Costs on a partial indemnity basis at \$14,500 inclusive of GST plus disbursements of \$1,471.84 plus GST of \$88.68      | Trial decision granted the grandmother the right to send cards and gifts. Technically, the defendants did not obtain a judgment more favourable to their offer. The offer also did not contain any benefit to the plaintiff other than the opportunity to avoid the risk of payment of legal costs. Substantial indemnity costs should not be awarded on these circumstances. |
| Smith, Robert J.    | Morris v. Cusack  | 2006                          | Defendant             | Jan. 11, 2006: Offer to settle by paying the solicitor (defendant) \$5,000. | Jan. 6, 2006: Offer to settle in the amount of \$12,000.                                    | Costs on a substantial indemnity basis in the sum of \$3,013.26 for counsel's time in preparing and attending at the motion to oppose confirmation, \$3,318.50 in fees incurred for preparing the record and | Costs not awarded for the assessment hearing. Costs in the amount of \$3,000 plus GST plus disbursements of \$1,343.26.   | Solicitor (defendant) recovered a total amount of \$14,464.57, which exceed the amount of his offer to settle. The offers were made prior to the assessment hearing and are a strong factor in favour of awarding costs to the solicitor.   |

**RULE 49 - OFFERS TO SETTLE**

| Judge           | Citation                                   | Citation / Date               | Costs awarded to                | Offers by Plaintiff   | Offers by Defendant                          | Costs Requested   | Costs awarded   | Judge's Comments   |
|-----------------|--|-------------------------------|---------------------------------|---|--|---|---|--|
|                 |  |                               |                                 |   |  | factum to oppose confirmation, and disbursements of \$1,343.26, costs for the assessment hearing of \$2,000 and a further amount of \$400 for the submissions on costs  |   |  |
| Spies, Nancy J. | Resch v. Canadian Tire Corp. <i>et al.</i> | [2006] O.J. No. 2906 (S.C.J.) | Plaintiff & Mills-Roy Defendant | No offers to settle by plaintiff<br><br>Mills-Roy made two formal offers to settle. The first was directed at the plaintiffs and the second was a formal Offer to Contribute directed to the Procycle defendants. | Procycle defendants made no offers to settle | Plaintiff:<br>Costs on a partial indemnity scale to date of Offer to Settle and costs on a substantial indemnity scale thereafter totaling \$852,736.39, inclusive of fees, disbursements, premium and GST<br><br>Mills-Roy:<br>\$38,613.48 on a partial indemnity scale and \$72,052.49 on a substantial indemnity scale, from the date of its first offer of November 10, 2005, for a | Costs in the amount of \$646,724, inclusive of fees and disbursements.<br><br>Mills-Roy:<br>Costs in the amount of \$108,165.97 | Because of the continued efforts by Mills-Roy to settle the action, including its two formal Offers, and its agreement to enter into the Mary Carter agreement, Mills-Roy is entitled to its reasonable costs on a substantial indemnity scale. The first offer was directed to the plaintiffs and it was only in its second offer that a formal Offer to Contribute was made, that clearly fell within Rule 49.12, and so Mills-Roy's entitlement to costs on that scale will commence after December 23, 2005. |

**RULE 49 - OFFERS TO SETTLE**

| Judge                     | Citation               | Citation / Date               | Costs awarded to | Offers by Plaintiff  | Offers by Defendant   | Costs Requested   | Costs awarded   | Judge's Comments   |
|---------------------------|------------------------|-------------------------------|------------------|--|---|---|---|--|
|                           |                        |                               |                  |  |   | total amount of \$110,665.97  |   |  |
| Toscano Roccamo, Giovanna | Summers v. Harrower    | [2006] O.J. No. 452 (S.C.J.)  | Plaintiff        | Two offers made. Details of both not disclosed, but each claimed costs on a substantial indemnity basis. | Offers made, but details not disclosed.   | Costs in the amount of \$86,238.79 in fees plus \$7,119.65 in disbursements for a total of \$93,358.44. | Costs on a substantial indemnity basis in the amount of \$42,500 plus \$5,137.23 in disbursements, plus GST | Two offers by plaintiff; first offer did not meet requirements of Rule 49. The offer claimed costs on a substantial indemnity basis and, in requiring such, the plaintiffs' first offer was missing the appropriate element of substantial indemnity costs. It has also been held by the Court of Appeal that a court may depart from the prima facie costs consequences of Rule 49.10 where, after giving proper weight to the policy of the rule and the importance of reasonable predictability, the interests of justice require departure. The second offer met requirements of rule, and plaintiff recovered a judgment more favourable to offer resulting in substantial indemnity costs being awarded. |
| Trousdale, Anne C.        | Leonhardt v. Leonhardt | 2006                          | Plaintiff        | One offer to settle – details not disclosed  | Two offers to settle – details not disclosed  | Costs on a partial indemnity basis in the amount of \$10,688.92   | Costs in the amount of \$3,600, inclusive of GST  | In comparing the Offers to Settle, the Defendant was overall more successful at trial than the Plaintiff. This must be weighed with the trial taking more time due to the Defendant's claim for sole custody.  |
| Wilson, Janet             | Crosby v. Wharton      | [2006] O.J. No. 1192 (S.C.J.) | Defendant        | No disclosed offers to settle  | Offer served was a graduated one reducing in scope. Original amount offered was \$100,000 for a one-week period, reducing to \$50,000 for one week. The outstanding offer at the date of the trial was for \$25,000 plus interest and | Costs on a partial indemnity basis in the amount of \$91,556.12 inclusive of GST                        | Costs on a partial indemnity basis in the amount of \$42,314  | The offer outstanding at the date of the trial was a token offer. It did not bear any semblance of reality had there been a split in liability.  |

**RULE 49 - OFFERS TO SETTLE**

| Judge                | Citation  | Citation / Date | Costs awarded to | Offers by Plaintiff   | Offers by Defendant  | Costs Requested                        | Costs awarded   | Judge's Comments  |
|----------------------|---|-----------------|------------------|---|--|--|---|---|
|                      |   |                 |                  |   | costs to be agreed upon as assessed.   |  |   |   |
| Brennan, W.J. Lloyd  | Mitchell v. Clarica Life Insurance Company, et. al. | 2005            | Plaintiff        | Details not disclosed   | No offers  | Not disclosed                          | <p>Costs to date of plaintiff's offer on a partial indemnity scale in the amount of \$5,500 plus \$250 (pre-trial conference) plus \$755.73 (disbursements). Subtracted from this is \$2,500 (costs paid by insurer)</p> <p>Costs on a substantial indemnity basis after date of offer in the amount of \$4,000 (preparation) + \$1,800 (two full days of trial)</p> <p>Total costs: \$9,050 plus GST of \$598.50 plus \$755.73 for disbursements</p> | The plaintiff's recovery at trial exceeded what she offered to accept and she is entitled to the higher scale of costs from the time of the offer.  |
| Hackland, Charles T. | Lauzon v. Lauzon                                    | 2005            | Plaintiff (wife) | Wife would have custody of the children and the husband would have access every weekend from Thursday after school to Monday; The husband would | The child will be with father every second week from Wednesday after school until Monday morning; he would pay \$1,292 per | Costs on a substantial indemnity basis | Costs on a partial indemnity basis in the amount of \$11,537 plus GST (\$807.62)  | The final outcome was close to the wife's offer. The husband should have accepted it. As a result of not accepting the offer, wife's counsel would not have had to carry out trial preparation for a potentially lengthy trial. Although the wife was substantially successful, the wife's offer was as good as the result she ultimately achieved in the |

**RULE 49 - OFFERS TO SETTLE**

| Judge             | Citation                                      | Citation / Date                                  | Costs awarded to | Offers by Plaintiff  | Offers by Defendant                                     | Costs Requested  | Costs awarded  | Judge's Comments   |
|-------------------|---|--|------------------|--|---|--|--|--|
|                   |   |  |                  | pay child support in accordance with the <i>Federal Child Support Guidelines</i> ; \$10,000 as an equalization payment in full settlement if her proposal for access and child support are agreed to | month; he would pay \$10,000 as an equalization payment |  |  | settlement. She is entitled to costs on a partial indemnity scale.   |
| Lalonde, Paul F.  | Monks v. ING Insurance company of Canada      | [2005] O.T.C. 758; 30 C.C.L.I. (4th) 55 (S.C.J.) | Plaintiff        | Dec. 2004: Defendant to pay plaintiff \$395,100.55   | No offers by defendant                                  | Costs on a partial indemnity basis in the amount of \$359,133.13 (exclusive of premium and GST) or costs on a substantial indemnity basis in the amount of \$553,350.53 (exclusive of premium and GST) | Costs in the amount of \$470,330.82 (inclusive of premium) plus \$44,827.85 in disbursements   | Court awarded plaintiff \$732,658.12. This was more favourable than the plaintiff's offer to the defendant. Plaintiff's offer met the two conditions under Rule 49.10: 1) offer must be a fixed, certain and understandable one; 2) it must be established that the judgment is as favourable as, or more favourable than the terms of the offer to settle. Plaintiff is therefore entitled to partial indemnity costs to the date of the offer, and substantial indemnity costs thereafter. |
| McMahon, John B.  | National Bank of Canada v. Reed <i>et al.</i> | [2005] O.J. No. 2957 (S.C.J.)                    | Plaintiff        | Offer to settle for \$900,000  | No offers   | Costs on a partial indemnity basis in the amount of \$302,122.73, inclusive of disbursements   | Costs in the amount of \$90,000 (inclusive of GST) against the defendant Reed Energy Co.; costs in the amount of \$90,000 (inclusive of GST) against the defendant | All parties had to agree to the \$900,000 settlement. The plaintiff never specifically treated each defendant as a separate entity entitled to a separate proposed offer to settle. To suggest a party should pay greater costs because an agreement could not be reached between the three defendants, makes no sense whatsoever. The offer to settle was insufficient to entitle the plaintiff to substantial indemnity costs.   |
| Métivier, Monique | Santini v. Thompson                           | 2005   | Defendant        | No offers  | Prior to litigation: Offer to settle of                 | Costs in the amount of \$16,495.97   | \$10,350, plus disbursements as claimed (not   | Defendant is entitled to her costs on a partial indemnity basis up to the date of the offer, and on a  |

**RULE 49 - OFFERS TO SETTLE**

| Judge            | Citation                        | Citation / Date                                  | Costs awarded to | Offers by Plaintiff   | Offers by Defendant   | Costs Requested   | Costs awarded   | Judge's Comments   |
|------------------|---------------------------------|--|------------------|---|---|---|---|--|
|                  |                                 |  |                  |   | \$13,000, inclusive of interest and costs   |   | disclosed), plus GST  | substantial indemnity basis thereafter   |
| Morin, Gerald R. | Cummings v. Douglas             | 2005   | Plaintiff        | No offers   | Details of offer not disclosed  | Costs on a partial indemnity basis in the amount of \$197,904.53 for fees, inclusive of GST, plus disbursements of \$52,252.81, inclusive of GST for a total amount of \$250,157.34 | Costs on a partial indemnity basis in the amount of \$184,957 plus GST of \$12,947.03 for a total of \$197,904.53 in fees, and \$48,864.36 plus GST of \$3,388.45 for a total of \$52,252.81. | The plaintiff's net recovery exceeded the Rule 49 Offer to Settle made by the defendant prior to trial. Accordingly, the plaintiff is entitled to his partial indemnity costs of the trial   |
| Polowin, Heidi   | Sommerard v. I.B.M. Canada Ltd. | [2005] O.T.C. 944; 32 C.C.L.I. (4th) 57 (S.C.J.) | Plaintiff        | Jan. 15, 2004: Defendants (two defendants), or either of them, shall pay the plaintiff \$100,000; defendants, or either of them, shall pay costs incurred by the plaintiff from the date of within offer to the date of payment as assessed on a substantial indemnity basis; defendants, or either of them, shall pay interest in accordance with the provisions of the <i>Courts of Justice</i> | Great West Life Assurance Company (second defendant): \$43,177 "all in" in return for plaintiff terminating his action as against GWL<br><br>IBM (after being informed of GWL's offer): offer to settle providing for a payment to the Plaintiff of the sum of four months salary, less all deductions required by law, together with | Not disclosed   | Costs in the amount of \$60,000, plus \$7.250 in disbursements  | This case involved two distinct causes of action against two defendants. While the two claims were properly joined in one action under Rule 5.02(2)(a), it remains that there were two separate, independent and distinct causes of action involved. The Defendants were not alleged to be joint and severally liable. Given these circumstances, the Plaintiff's offer was not a proper or valid Rule 49 offer and there should be no cost consequences flowing from IBM's refusal to accept the offer made. A joint offer made when Defendants are not jointly liable, where there are separate and independent causes of action, does not give the party receiving the offer the opportunity to engage in an appropriate analysis of its chances of success at trial as against the offer made. |

**RULE 49 - OFFERS TO SETTLE**

| Judge | Citation | Citation / Date | Costs awarded to | Offers by Plaintiff  | Offers by Defendant  | Costs Requested | Costs awarded | Judge's Comments |
|-------|----------|-----------------|------------------|--|--|-----------------|---------------|------------------|
|       |          |                 |                  | <p><i>Act</i> from the date of the within offer to the date of payment; plaintiff shall consent to an order dismissing the within action without costs; the within offer shall remain open for acceptance until immediately following the commencement of the hearing herein</p> | <p>interest under the <i>Courts of Justice Act</i>, and costs.</p> |                 |               |                  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |                       |                        |                         |   |   |   |
|---|-----------------------|------------------------|-------------------------|---|---|---|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |                       |                        |                         |   |   |   |
| <b>Judge</b>  | <b>Case Name</b>      | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
| Linhares De Sousa J   | Marchand v. MacKenzie | 2019 ONSC 5062         | Applicant               | Not disclosed   | \$40,000.00   | <p>Issues were simple but made complicated because of delays on the part of the respondent. Court considered all offers to settle, bill of costs, other costs awarded, parties' respective financial responsibility for the child.</p> <p><b>Considering the bill of costs: Where a party chooses not to submit bill of costs, the court will assume the party was fully aware of the cost of litigation.</b></p>   |
| R.J. Smith J.   | St. Lewis v. Rancourt | 2013 ONSC 6118         | Plaintiff               | \$79,556.50 for St. Lewis and \$58,004.55 to the University of Ottawa | \$52,000.00 for St. Lewis and \$42,000 for the University of Ottawa                     | Both the plaintiff and the University of Ottawa were forced to respond to a champerty motion brought by the defendant. These proceedings were made complex by the defendant's excessive pleadings. The judge found the costs incurred to have been reasonable and necessary given the serious allegations the defendant was putting forward.  |
| R.J. Smith J.   | St. Lewis v. Rancourt | 2012 ONSC 7066         | Plaintiff               | \$14,116.26 on a partial indemnity basis                              | \$12,000 (incl. HST) plus disbursements of \$417.76                                     | <p>As a judge appointed to deal with proceedings following recusal of judge who was previously hearing them, finds he has jurisdiction to determine costs for proceedings in front of previous judge.</p> <p>The University seeks costs on a partial indemnity basis. Judge agreed: Where a party raises many issues, in this case over 100 refusals, and forces the responding party to prepare and address each of these issues, that party would reasonably expect substantial legal expenses to be incurred and to be paid if he or she was not successful.</p> <p>The fact that Rancourt has chosen not to seek advice from independent experienced counsel in libel matters and has chosen to represent himself in these proceedings and has been completely unsuccessful on all of the refusals motions decided to date, is not a reason for not ordering costs.</p> |
| Mackinnon J.  | Johnstone v. Locke    | 2012 ONSC 1717         | Respondents             | \$85,000 on a substantial indemnity basis                             | <p>\$30,397.00 net to respondent</p> <p>Gross award \$36,000.</p> <p>The gross cost</p> | In the context of family law, simply obtaining judgment is not tantamount to success: "it is an unusual family law case where the applicant does not obtain a judgment for something". Determining successful party involves comparing what was asked for in the pleadings (and as modified during trial) and what was actually obtained.   |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |   |                        |                         |   |  |  |
|---|---|------------------------|-------------------------|---|--|--|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |   |                        |                         |   |  |  |
| <b>Judge</b>  | <b>Case Name</b>  | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>                        | <b>Costs Awarded</b>   | <b>Judge's Comments</b>  |
|   |   |                        |                         |   | <p>award is reduced by \$5,085.00 as finding of costs for the applicant during the contempt portion of the trial</p> <p>The gross cost award is further reduced by \$4,000 "due to facts that gave rise to finding of bad faith".</p> <p>Following these reductions, disbursements claimed of \$3,400.00 were added to reach net amount.</p> | <p>Considers definition of "bad faith" and reduces costs for the "retaliatory" behaviour by respondent as a response to the lawsuit being commenced. The respondent was also found in contempt, and cost award is discounted in the amount of \$5,085.00 for that portion of the trial.</p> <p>The respondent provided a general Bill of Costs "inadequate to allow me to do any meaningful review of the services provided and the amounts charged". In making the award the judge accepts the \$2000 per day of trial claim and doubles to take into account preparation time.</p>   |
| Beaudoin, J.  | Victoria Order of Nurses v. Greater Hamilton Wellness Foundation (ALREADY IN) | 2012 ONSC 1527         | Applicants              | \$454,686.19 on a substantial indemnity basis | \$454,686.19 on a substantial indemnity basis  | <p>The applicants requested substantial indemnity costs on the basis that the respondent engaged in unfounded accusations of dishonest and deceitful behaviour on the part of the applicants, and on the grounds that the respondent refused reasonable offers to settle as per rule 49, on two occasions.</p> <p>The judge relies on <i>Bargman v. Rooney</i>, [1998] O.J. No.5528 and <i>Manning v. Epp</i>, [2006] O.J. No. 4239, argued by applicants, which set out when substantial indemnity costs are to be awarded and define the conduct which would give rise to a substantial indemnity cost award. Unfounded allegations of fraud or deceitful behaviour meet the mark.</p> <p>The judge rejects the respondent's arguments that the applicant unnecessarily complicated the proceedings, that they (the respondents) were not acting in a reprehensible, scandalous or outrageous manner or that</p> |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |   |                        |                         |   |   |  |
|---|---|------------------------|-------------------------|---|---|--|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |   |                        |                         |   |   |  |
| <b>Judge</b>  | <b>Case Name</b>  | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|   |   |                        |                         |   |   | the offers to settle did not comply with rule 49.  |
| Campbell, J.A.  | Czegledy-Nagy v Seirli  | 2012 ONSC 119          | Applicant               | Not specified   | \$9500 plus HST   | <p>No litigant should expect to drive up the cost of litigation for his/her own satisfaction and saddle the other litigant with that bill. The applicant's cost-request was entirely overreaching. (see rule 24 (11)(d))</p> <p>Taking into account, the scandalous pleadings that the Respondent persisted in presenting and her decision to precipitate then exacerbate a traumatic separation in a most inappropriate manner, costs are awarded for preparation and attendance but no costs awarded for travel or second chairperson.</p> <p>40% of costs may be attributed to support for taxation and enforcement purposes.</p> |
| Fregeau, J.S.   | International Wall Systems v English Lane Residential Developments Limited and HSBC Bank Canada | 2012 ONSC 1424         | Applicant               | <p>Applicant seeks costs of \$73,936.47 on a substantial indemnity basis.</p> <p>\$50,392.92 on a partial indemnity basis</p> | Applicant awarded \$50,000 inclusive of disbursements and HST | <p>The court's decision on the motion was as or more favourable to the Applicant than the terms of offer to settle, which was not accepted.</p> <p>The applicant is entitled to partial indemnity costs to the date the offer was served and substantial costs afterwards.</p>   |
| Shaw, J.  | Briand v Briand   | 2012 ONSC 805          | Applicant               | Applicant: \$12,500 plus HST  | \$5500 inclusive of HST and disbursements                     | <p>Rules 24(10) requires a judge who heard each steps to summarily deal with the issue of costs. If costs of a step are not ordered, and the record is silent, the presumption is that the step was concluded without costs.</p> <p>The amount of costs should not be out of reasonable proportion to the amount of support awarded.</p>   |
| Shaw, D.C.  | Guignard v Guignard   | 2012 ONSC 783          | Applicant               | <p>Applicant seeks \$9500.</p> <p>Respondent seeks \$15,248.83</p>  | \$3500 to Applicant   | <p>Success at trial was divided; consideration must be given to fact that it was necessary for applicant to bring a case to receive support and equalization of parties' net family property.</p> <p>Because success at trial was divided, costs awarded should be tempered significantly.</p> <p>Applicant awarded \$3500, of which \$2500 will be attributed to issue of spousal support.</p>  |
| Smith, R.   | First Capital   | 2012 ONSC              | Applicant               | Applicant seeks   | \$20,000  | partial indemnity hourly rates that are higher than the  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

***Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))***

| <b>Judge</b>   | <b>Case Name</b>   | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>                            | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|----------------|--|------------------------|-------------------------|---|---|---|
|                | (Canholdings) Corporation v. North American Property Group | 1359                   |                         | costs of \$35,000 on a partial indemnity basis    | inclusive of HST plus disbursements of \$1865.00 inclusive of HST | maximum hourly rates established in the Information Notice for Mr. Gray for the following reasons:(a) the maximum hourly rates used in the Information Notice should be increased for inflation from at least 2005;(b) the maximum hourly rates in the Information Notice are intended to provide guidance and are not mandatory;(c) the amount involved in the dispute was substantial as the matter involved a commercial dispute related to a shopping centre worth 31 million dollars;(d) both parties retained well respected Toronto firms where hourly rates and office overhead costs are higher than the provincial average. I also infer that both parties would be incurring similar full indemnity costs and their reasonable expectations of the unsuccessful party would be to pay partial indemnity costs in excess of the maximum in the Information Notice in these circumstances; and(e) Mr. Gray has been called to the Bar for almost ten years (nine and one half years) which is almost the full ten year period. |
| Turnbull, J.R. | Park v. Park   | 2012 ONSC 1436         | Plaintiffs              | Not specified                                     | \$7585.00 plus HST and disbursements of \$687.55                  | <p>This decision is for costs regarding a dismissal of a counter claim and cross claim.</p> <p>Costs should be awarded in favour of the plaintiffs on a substantial indemnity basis. It is clear that the counterclaim/crossclaim was without merit and was unnecessary in these proceedings.</p> <p>I feel that 25 hours is an appropriate amount of time to have spent with this respect to this issue, at a rate of \$300 per hour.</p>  |
| Annis J.       | West Carlton Concrete Corp. v. Smavila Forming Ltd.,       | 2011 ONSC 3403         | Plaintiffs              | \$1240.80 (based on 56.4 hours at \$220 per hour) | \$11,500, inclusive of HST and disbursements.                     | <p>Plaintiffs submitted form 57B, listing the hourly rate of \$220 per hour for 56.4 hours, which is appropriate</p> <p>Costs on a substantial basis are not justified as there was no reprehensible conduct by the defendants, or otherwise.</p> <p>Costs will be increased to reflect the failure of the defendants to accept the plaintiff's offer to settle, even though it remained open for only 2 days.</p>  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |  |                        |                         |  |   |  |
|---|--|------------------------|-------------------------|--|---|--|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |  |                        |                         |  |   |  |
| <b>Judge</b>  | <b>Case Name</b>                                   | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
| Beaudoin, J.  | Smith v. Kearns                                    | 2011 ONSC 754          | Respondents             | Applicant:<br>\$48,469.00 on a partial indemnity basis<br><br>Respondent:<br>\$40,589.64 on a partial indemnity basis                                | \$20,000 all-inclusive  | Applicant sought a declaration of adverse possession over a portion of the respondent's lands. She was partially successful on the claim. Also brought claims for damages all of which were dismissed. Application converted into action on Respondent's motion due to damages claims, a move the judge thinks was necessary.<br><br>The Applicant was wholly unsuccessful on the damage claims and these claims necessitated additional preparation, cross-examination and trial time.<br><br>The respondents should be compensated for responding to the claims, and this will be half of the costs amount claimed by them.  |
| Beaudoin, J.  | Trisha Billings v. Lanark Mutual Insurance Company | 2011 ONSC 2564         | Plaintiffs              | Plaintiffs seek costs on pre-trial motion for \$4,935.00<br><br>Plaintiffs seek costs of the trial on a substantial indemnity basis for \$412,596.99 | There should be no costs with respect to pre-trial motions.                                 | The defendants argue that the applicable rate of interest is the bank rate at the end of the first day of the month preceding the quarter in which the proceeding was commenced, in this case 3.3%. There is no reason to deviate from this rate.<br><br>The rate of the Plaintiff's lawyer is given as \$350 per hour on a partial indemnity rate would equal \$585.00 per hour on an actual rate is a very high hourly rate for the Ottawa area. Given the judge's criticisms of his tactics in this trial, the highest rate cannot be invoked and conclude that a reasonable partial indemnity rate is \$260 per hour.<br>Total hours are 694.6 hours at \$260/hour equals \$180,596.00 (\$204,073.48 including GST/HST)<br><br>\$12,587.67 in disbursements are allowed.<br><br>Each party is to bear the costs of their own cost submissions. |
| Ellies, J.  | Lafontaine v Lafontaine                            | 2011 ONSC 3693         | Applicant               | Not specified  | \$22,247.98 in total.<br><br>\$8,000 for the period preceding the settlement meeting of Sep | Rule 24(1) of Family Law Rules entitles a successful applicant to a presumption that they are to be awarded their costs.<br><br>Even though the offer to settle wasn't signed, the court is entitled to take it into account, and the tentative settlement preceding it, when fixing costs.  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |  |                        |   |   |   |  |
|---|--|------------------------|---|---|---|--|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |  |                        |   |   |   |  |
| <b>Judge</b>  | <b>Case Name</b>                                     | <b>Citation / Date</b> | <b>Costs awarded to</b>   | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|   |  |                        |   |   | 14, 2010<br>\$12,000 for the period of time thereafter; plus disbursements and taxes  | Approximately \$13,000 in legal fees were incurred by the Applicant prior to the settlement meeting. Approximately \$15,500 in legal fees were incurred afterwards.  |
| Fitzpatrick, F.B.   | Pollock v. Pollock,                                  | 2011 ONSC 6255         | Defendant   | Plaintiff claimed partial indemnity costs of \$2500.00<br><br>Defendant claimed disbursements of \$640.00   | \$450.00 to Defendant   | Success at the trial was divided. Neither side's motions were granted and both were disorganized in their cases.<br><br>There were retroactive child support payments owing by the Plaintiff to the Defendant.<br><br>No offers to settle were exchanged. Taking into account <i>Serra v Serra (2009)</i> , the amounts recovered by the defendant and proportionality, the costs were awarded to be paid forthwith  |
| Himel J.  | Keum Tae Kim et al v. Dakin News Systems Inc., et al | 2011 ONSC 2955         | Respondent  | The Applicants requested \$19,372.50. The respondents state that the amount should be fixed at \$3,000  | \$14, 610.00 for the Respondents  | This case is regarding a breach of a franchise agreement.<br><br>The respondents were seeking costs on a substantial indemnity basis, which they claim is provided for in the franchise agreement. The ruling includes the fact that paragraph 24 & 25 of the franchise agreement expressly permit the costs on the higher scale.<br><br>While the case was somewhat complex, the amount of work claimed was excessive, but there was no bad faith.<br><br>Costs were fixed at \$10,000 for fees and \$4,610 for disbursements including HST payable within 30 days. |
| Kane, J.  | Dewan v Burdet                                       | 2011 ONSC 7686         | Dewan motion: Plaintiffs, Administrators and CCC396<br><br>Condominium Action: Plaintiffs | Dewan motion: plaintiffs claim \$62,000 on a partial indemnity fee. Administrators claim \$67,148.04 on full indemnity basis, \$57,470 on a substantial | Dewan action: no costs awarded to defendants; \$37,000 to plaintiffs on a partial indemnity basis. For the administrators, costs awarded are \$26,000 | Dewan action:deciding the costs of the motion, not the costs of the action. In 2009, there was a dismissal of the defendant's motion, therefore no costs are to be awarded to defendants. Time has been deducted from plaintiff's claim for time prior to may 27, 2010. For the administrator's costs, there is no justification for full or substantial indemnity costs<br>Defence counsel occasionally made derogatory comments about opposing counsel which were unnecessary and off topic; however, such remarks are   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))**

| Judge         | Case Name   | Citation / Date | Costs awarded to              | Costs Requested   | Costs Awarded  | Judge's Comments  |
|---------------|---|-----------------|-------------------------------|---|--|---|
|               |   |                 |                               | <p>indemnity basis, \$44,566 on a partial indemnity basis. CCC396 list costs of \$19,111.13 on a full indemnity scale but \$12,443 on a partial indemnity basis.</p> <p>Condominium Action: CCC396 claims \$169,375 on a substantial basis, and \$114,103 on a partial indemnity basis.</p>   | <p>inclusive of disbursements and tax, which is what an unsuccessful party could expect to pay. To CCC396, \$12,000 on a partial indemnity basis.</p> <p>Condominium Action: \$20,000 to the Plaintiff</p>   | <p>not a basis to increase costs</p> <p>Condominium Action: Given that the defendants were faced with a summary judgment, they are not entitled to costs.</p> <p>There are concerns regarding the time claimed by CCC396 in this claim. There are too many lawyers involved given the complexity level of the file: Too much time is being claimed (565 hours)</p> <p>Costs are fixed on a partial indemnity basis, the costs payable by the defendants are \$20,000.</p> <p>This judgment is without prejudice to what legal expenses are recoverable from unit owners</p>   |
| Lauwers, P.D. | Sweda Farms Ltd. et al. v. Ontario Egg Producers et al. | 2011 ONSC 2428  | Defendants (Responding Party) | <p>L.H.Gray argues they're entitled to substantial indemnity costs of \$83,293.50 or \$75,276.53 on a partial indemnity basis.</p> <p>Burnbrae seeks substantial indemnity costs of \$37,187.86 or \$25,410.36 on a partial indemnity basis</p> <p>OEP seeks substantial indemnity costs of \$13,111.58 or \$10,809.83 on a partial indemnity</p> | <p>Specific costs aren't detailed but the counsel rates are listed as follows:</p> <p>-Mr. Williams: \$400/hour<br/>-Ms. Webster: \$275/hour<br/>-Law student: \$75/hour<br/>-Clerk: \$100/hour</p> <p>Appropriate taxes will be attached and disbursements are payable in full.</p> | <p>Neither OEP nor Burnbrae had any interests to protect in the motion to set aside the order of Corkery J. they made no submissions except to indicate their support for L.H. Gray. Their requests for costs are dismissed.</p> <p>L.H.Gray: Counsel has 30 years of experience and charges \$400/hour on a substantial indemnity rate. Ms. Webster has \$275/hour on a substantial rate, and he seeks about 27 of her hours at \$300/per hour on a substantial rate.</p> <p>The order of Corkery J. is set aside as the plaintiff failed to make full, frank and fair disclosures of material and relevant facts. This failure by the Plaintiff entitles the responding party to substantial indemnity costs.</p> |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |   |                        |                         |  |  |   |
|---|---|------------------------|-------------------------|--|--|---|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |   |                        |                         |  |  |   |
| <b>Judge</b>  | <b>Case Name</b>                        | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
|   |   |                        |                         | basis  |  |   |
| McCartney, J.F.   | Moreira et al. v. Aileen Kay Pettersen, | 2011 ONSC 3247         | Defendant               | Not listed   | \$800.00   | At no time did the defendant advise the plaintiff of a time beyond which a motion would be brought.<br><br>Since there were refusals as well as undertakings, the only avenue for the defendant to deal with the refusals was through a court Motion.   |
| Métivier J.   | Leroux v. Casselman (Village),          | 2011 ONSC 5847         | Plaintiffs.             | \$68,237.34 on a substantial indemnity basis.<br><br>Alternatively, they ask for an award of \$47,106.10 on a partial indemnity basis. | \$38,500 to be paid by the Village of Casselman<br><br>\$1500 to be paid by Myke Racine for his failure to be examined and attempted use of improper evidence. | There was no judgement against Racine. While his conduct was questionable, it did not meet the standard required for a finding against him. However, no costs will also be awarded to him either.<br><br>Casselman ought to have expected that its overzealous and ill-founded defence would result in significant costs incurred.  |
| Métivier, M.  | Black v. Hamm,                          | 2011 ONSC 5846         | Plaintiff               | Plaintiffs were seeking \$38,191.85 on a partial indemnity scale.  | \$28,000.00 all-inclusive  | The defendants had submitted a claim for \$12,105.95 but that these costs should be left to be dealt with at trial, given that these are still live issues. On this the justice ruled that "the costs should reasonably and fairly be dealt with at this time, and not reserved for the trial". She went on to say that the requirement for additional time to for preparation of the affidavit by the cognitively impaired client was reasonable, that requested costs were too high and therefore fixed costs as shown. |
| Parayeski, J.   | Waxman v. Ontario racing Commission     | 2011 ONSC 5281         | Defendant               |  | \$20,000.00 inclusive of HST and disbursements   | There was nothing extraordinary to warrant moving away from partial indemnity.<br><br>Some of the costs were excessive that were being sought by the defendant, specifically the use of two associates, given that the holiday schedule of one of the associates shouldn't be a cause of the plaintiff. Also while the rates listed are lower than what the clients is being charged, they exceed the guidelines listed by the Civil Rules Committee.   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))**

| Judge            | Case Name                                     | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments  |
|------------------|---|-------------------------------|------------------|--|---|---|
| Parayeski, J.    | Duffin et. al. v NBY Enterprises Inc. et. al. | 2011-ONSC-5335                | Defendants       | <b>Not disclosed</b>   | All defendants:<br><br>Gordon Clare, and Luciano Butera, the sum of \$15,305.41, all-inclusive<br><br>Paul Leon, the sum of \$34,793.09, all-inclusive;<br><br>Luigi DeLisio, the sum of \$30,480.49, all-inclusive;<br><br>Harry Korosis and Chown Cairns LLP, the sum of \$28,564.90, all inclusive | The defendants asked for costs on a substantial indemnity basis, given that the nature of the claims by the Plaintiffs against the defendants were dishonesty or something approaching it. Based on <i>Manning v. Epp</i> , reported at 2006, CarswellOnt 6508, "Unproved allegations of breach of trust, conspiracy, misrepresentation, breach of fiduciary duty, and the like, may also attract this kind of award." Given this, the costs are awarded on a basis of substantial indemnity.<br><br>The costs submitted by the Defendants were also deemed reasonable. Although they may appear high for a matter which did not substantially get past the pleading stage, the scale of damages being asked for and that the defendants being impugned with such allegations are entitled to vigorously defend themselves. |
| Platana, T.A.    | Drinkwater v. Drinkwater                      | 2011 ONSC 6658                | Respondent       | Plaintiff costs not specified<br><br>Respondent submitted that a costs award of 4000 is appropriate plus a disbursement of \$531.33. | \$3500 including disbursements and HST  | The judge does not agree that success was divided at motion; the fundamental issue of the motion for temporary spousal support was clearly determined in favour of the Respondent.<br><br>The Court of Appeal in <i>Boucher v. Public Accountants Counsel for the Province of Ontario</i> , 71 O.R. (3 <sup>rd</sup> 291) (C.A.) states that the overall objective in determining costs is to fix an amount that is fair and reasonable for the unsuccessful party to pay rather than an amount fixed by the actual costs incurred by the successful party.   |
| Smith, Robert J. | Rodrigues v Toop                              | [2011] O.J. No. 2611 (S.C.J.) | Plaintiff        | Costs on a partial indemnity basis for \$16,560 for the motion summary judgment, plus  | Costs fixed in the amount of \$12,000 for the summary motion, plus \$10,000 for the costs incurred  | The issues were above average complexity as the issues involved defamation and the issue of applicability of the doctrine of qualified privilege to a communications related to union matters which occurred in a public place but not during a union meeting.  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))**

| Judge         | Case Name   | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments  |
|---------------|---|-----------------|------------------|---|---|---|
|               |   |                 |                  | \$13,188 in costs and disbursements to the main action.   | in the action, plus the applicable HST, both inclusive of disbursements.  | Both parties submitted offers to settle but the matter proceeded to a summary motion.<br><br>There were also issues of the jurisdiction of the court to deal with a matter involving a dispute between union members; these were also complex questions   |
| Smith, Robert | Vigna v. Levant   | 2011 ONSC 629   | Plaintiff        | For Heenan Blaikie: \$26,434.54 on substantial indemnity basis For self-represented plaintiff: \$68,250 substantial indemnity plus disbursements of \$7,516 | \$20,000 (inclusive) towards costs incurred with Heenan Blaikie, plus \$10,000 for his own costs, plus applicable HST and disbursements of \$2,500 plus HST | The self-represented plaintiff was a lawyer (called to Quebec bar in 1992; Ontario in 2000), but was not engaged in a private practice. An hourly rate of \$335 was not appropriate, since he had no overhead expenses to cover. Furthermore, he would have been present at trial and for submissions as a party, anyway. And it is not entirely clear what work was done by the plaintiff, and what was done by outside counsel. However he did devote a substantial amount of time and effort to work that normally would have been done by a lawyer. He was not a lay litigant and was entitled to more than an allowance for lost time. |
| Strathy, G.R. | Zurich Insurance Company Ltd. v. Ison T.H. Auto Sales Inc., | 2011 ONSC 3902  | Defendant        | \$73,902.27 on a full indemnity basis or \$41,936.90 on a partial indemnity basis   | \$30,000 inclusive of all taxes and disbursements   | The circumstances require a substantial award of costs but not on a substantial indemnity basis.<br><br>The amount of hours submitted, 80 hours, were reasonable and in line with those described for the plaintiff. There were additional hours by a junior associate (40) and a law clerk (15). The rate given was \$350 per hour for the counsel and \$150 for the associate.<br><br>The claim for full indemnity costs, given that there was no bad faith on the part of the insurance company, is unwarranted and out of proportion to what would be fair and reasonable in this type of case.   |
| Fregeau, J.S. | Jourdain v Ontario (Queen)                                  | 2010 ONSC 2432  | Defendant        | Defendants seeking \$14,325.96 on the plaintiff's motion. Also seek \$10,000 incurred in drafting a new   | Defendants awarded \$6,000 for costs of motion including disbursements and \$500 for costs in drafting a new Statement                                      | Success on the motion was divided but the Crown defendants were more successful than the plaintiffs.<br><br>The hours of docketed time by counsel for Crown was excessive.  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |                           |   |                         |  |  |   |
|---|---------------------------|---|-------------------------|--|--|---|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |                           |   |                         |  |  |   |
| <b>Judge</b>  | <b>Case Name</b>          | <b>Citation / Date</b>  | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
|   |                           |   |                         | Statement of Defense to respond to plaintiff's amendments  | of Defense.  |   |
| Granger, Thomas   | GasTOPS Ltd. v. Forsyth   | 2010 ONSC 7068  | Plaintiff               | Fees of \$9,577,568 based on maximum full indemnity rate of \$583, disbursements of \$509,481, plus GST of \$649,007.81. Total: \$10,916,057.38.   | \$4,252,920.24, the total amount billed to the client  | The maximum suggested substantial indemnity rate, at 1.5 times partial indemnity, is \$525 for a lawyer with 20 years experience. This would correspond to \$583 for full indemnity.<br><br>Although this amount would have been reasonable in the circumstances, actual billings were less than half that, under an agreement between the firm and the client. The costs regime is not intended to provide a windfall to the successful litigant. Only the amount actually agreed to be paid by the client can be recovered in full indemnity costs. |
| Smith, Robert   | Robinson v. Ottawa (City) | (2009, Ont. Sup. Ct. J.) Court File No.: 02-CV-21270 and 02-CV-21270A |                         | 75% of his actual rate of \$275.00 in the amount of \$24,708.75, as well as an additional amount for S. Kelly in the amount of \$12,595.12, plus GST and disbursements inclusive of GST of \$1,305.25 for a total amount claimed of \$40,821.85. | To the City: \$35,000 plus GST plus disbursements of \$1,305.25<br>To the plaintiffs: \$8,421.40 plus disbursements of \$1,669.15. | The requested partial indemnity rate of 75% of actual billings is appropriate where the actual rate charged is low, relative to counsel's experience. The rate is comparable to what would normally be partial indemnity for an actual rate of approximately \$340 per hour, which would be reasonable for a lawyer of equivalent experience and competence.  |
| Aitken, Catherine D.  | Galpin v. Galpin          | 2007  | Plaintiff / Applicant   | Costs in the amount of \$27,205  | Costs in the amount of \$13,000  | Time devoted by lead counsel to preparation for the motion alone was more than would have been expected, considering the preparation he already would have done in regard to the pleadings and the two previous court appearances (see also Hourly Rates)   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))**

| Judge                      | Case Name                                | Citation / Date             | Costs awarded to   | Costs Requested  | Costs Awarded  | Judge's Comments   |
|----------------------------|--|-----------------------------|--|--|--|--|
| Blishen, Jennifer A.       | Flentje v. Nichols                       | 2007                        | Plaintiff  | Total fees inclusive of disbursements and GST in the amount of \$30,399.88   | Costs in the amount of \$28,000 (inclusive of disbursements and GST)   | Total hours spent by counsel is reasonable (165.6 hours) for an occupier's liability case where medical, hospital and weather reports had to be obtained and notice provided. The estimated full and claimed substantial indemnity rates are reasonable in Ottawa based on the years of experience of the lawyers. Partial indemnity rates of 50-59 percent of full indemnity to be reasonable   |
| Brockenshire, John H.      | Dinsmore v. Southwood Lakes Holding Ltd. | 2007] O.J. No. 263 (S.C.J.) | Plaintiff & Defendant (Ontario New Home Warranties Plan) | Plaintiff: Costs on a substantial indemnity basis in the amount of \$148,464.50 in fees, plus \$45,403.40 in disbursements plus GST of \$11,611.85, totaling \$205,479.75.<br><br>Defendant: Costs on a substantial indemnity basis in the amount of \$67,424.25 plus disbursements of \$27,027.61, plus GST of \$6,583.55, totaling \$101,035.41. | Plaintiff: Costs on a partial indemnity basis in the amount of \$38,250 (inclusive of GST) plus \$28,525.62 in disbursements.<br><br>Defendant: Costs on a partial indemnity basis in the amount of \$67,497 (\$36,080.55 for fees, \$27,027.61 in disbursements plus GST) | Defendant: Counsel for Defendant docketed 121 hours in trial preparation and 160.3 hours for attending trial and preparation during trial. But counsel for Defendant builder had the more difficult case and only docketed 63.25 hours for trial preparation and 140 for attending trial and preparation during trial. Although counsel for defendant builder has many more years of trial experience, he had the more difficult case. Preparation time for ONHWP counsel is reduced by 30 hours for preparation, and his trial time is reduced by 15 hours.<br><br>Plaintiff: There was massive overkill in fees sought. Two lawyers often worked together so that the client was being charged both rates at the same time. This is the sort of case which would be expected to be handled by one lawyer, so that generally time docketed for discussions between various lawyers in the office should be excluded, as should repeated administrative actions between law students and clerks, which should be treated as office overhead and not billed out to the client, much less opposing parties. There are many cases frowning upon billing for two counsel representing a party at trial. It is commendable for senior to take on a case of this kind, but such counsel would not be expected to bill in a \$30,000 case as he would in a \$3 million case. Legal costs must be commensurate with the value of the lawsuit ( <i>Amherst Crane Rentals</i> ). |
| de Sousa, Maria T. Linares | United States of America v. Yemec        | [2007] O.J. No. 2006        | Respondents (Defendants)                                 | Costs on a substantial indemnity basis in the amount of \$691,304.74.  | Costs on a substantial indemnity basis in the amount of \$384,385.   | While the motions judge, in applying the principles of Boucher, need not engage in a detailed analysis of a party's accounts, as an assessment officer might do, some analysis of the accounts is required regarding time expended and number of lawyers called on to do the work. There is no indication that the motions judge did such an analysis. In accepting all of the time docketed   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))**

| Judge  | Case Name   | Citation / Date                         | Costs awarded to                      | Costs Requested   | Costs Awarded  | Judge's Comments   |
|--|---|---|---------------------------------------|---|--|--|
|  |   |   |                                       |   |  | without question, the motion judge denied himself the opportunity of "stepping back" after the calculation of costs to consider whether the result was fair and reasonable in the circumstances.   |
| Ground, John D. (delivered judgment of Court); MacDonald, Ellen M.; Hackland, Charles T. | Sears Holdings Corp. v. Ontario (Securities Commission) | [2007] O.J. No. 420 (S.C.J. – Div. Ct.) | Plaintiff<br>Minority<br>Shareholders | Costs in the amount of \$90,000   | Costs in the amount of \$75,000 for fees together with disbursements of \$14,890.94 and applicable GST | Plaintiffs docketed five hundred hours of time in respect of the appeal in question. There was considerable overkill in the amount of time spent.  |
| Lax, Joan L.   | Antorisa Investments Ltd. v. 172965 Canada Ltd.         | [2007] O.J. No. 195 (S.C.J.)            | Defendant                             | Costs on a full indemnity scale in the sum of \$1,223,434.63, or, in the alternative, costs on a substantial indemnity scale totaling \$931,161.90  | Costs in the amount of \$650,000 plus GST, plus disbursements in the sum of \$50,073.60, plus GST      | There was a great deal of "overkill" work done by the defendant's counsel, clerks and students. They docketed extraordinary amounts of time to the file. The trial was not factually complex, the legal issues raised were imaginative but not novel and the trial was not unduly lengthy. The amount of time devoted to trial preparation by defendant's counsel was "breathtaking". There was duplication in fees charged. |
| Aitken, Catherine D.   | Chenier v. Hôpital Général de Hawkesbury                | 2006                                    | Plaintiff                             | Plaintiff: Costs on a partial indemnity basis in the amount of \$2,657; costs on a substantial indemnity basis in the amount of \$3,932<br><br>Defendant: Costs on a partial indemnity basis in the amount of \$2,576 | Costs on a partial indemnity basis in the amount of \$1,500  | No issue was taken with the hours devoted to the motion or the rates charged by the parties' respective lawyers (not disclosed). Interestingly, their proposed partial indemnity costs are less than \$100 apart.  |
| Aitken, Catherine D.   | Lavinkas v. Jacques Whitford & Associates Ltd.          | [2006] O.J. No. 2697 (S.C.J.)           | Plaintiff                             | Costs on a substantial indemnity basis in the amount of \$44,134.   | Costs in the amount of \$28,000  | Preparation time by plaintiff's counsel until the date of trial is excessive. It included 11.4 hours for senior counsel, 80.8 hours for the counsel who had carriage of the file and 76.2 hours for the articling student. This is considerably more preparation time than one can afford  |

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|---|---|-------------------------------|------------------------------|--|---|---|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |   |                               |                              |  |   |   |
| <b>Judge</b>  | <b>Case Name</b>                        | <b>Citation / Date</b>        | <b>Costs awarded to</b>      | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|   |   |                               |                              |  |   | to devote to an action under the Simplified Procedure.<br><br>There was also a duplication of the time allotted to the preparation of pleadings, the motion regarding the pre-trial conference and trial preparation. |
| Backouse, Nancy L.  | LeVan v. LeVan                          | [2006] O.J. No. 4599 (S.C.J.) | Plaintiff                    | Costs on a partial indemnity basis until date of offer and costs on a full indemnity basis thereafter in the total amount of \$900,000 (this includes a \$160,000 premium) | Costs in the amount of \$646,602.20, inclusive of disbursements and GST.  | Ten lawyers worked on the same file, 9 of which were from the same firm. As a result, there was some inevitable duplication. Costs should be reduced.   |
| Beaudoin, R.  | George S. Szeto Investments Ltd. v. Ott | [2006] O.J. No. 2390 (S.C.J.) | Defendant (Attorney General) | Costs in the amount of \$5,393.77 (\$523.15 of which were for disbursements)   | Costs in the amount of \$5,393.77   | The fact that none of these defendants will incur these costs personally is irrelevant. The Crown is entitled to costs in the same way as any other party.  |
| Brennan, W.J. Lloyd   | Laurin v. Martin                        | 2006                          | Plaintiff                    | Total Bill of Costs, with disbursements, totaled \$10,230.82 (scale of costs requested not disclosed)  | Costs in the amount of \$6762.50 plus GST of \$405.75. Total fees awarded: \$7,168.25.<br><br>Breakdown: \$1,000 allowed for preparation and attendance on the motion (\$1,800 had been claimed); \$2,500 for preparation and attendance at examinations (\$3,375 | The preparation times claimed are excessive, given that counsel for the plaintiff has been the plaintiff's counsel during the long period of this litigation and is familiar with it.                                 |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))**

| Judge                                    | Case Name   | Citation / Date | Costs awarded to        | Costs Requested   | Costs Awarded  | Judge's Comments  |
|--|---|-----------------|-------------------------|---|--|---|
|  |   |                 |                         |   | claimed).<br><br>Disbursements claimed are awarded.  |   |
| Brennan, W.J. Lloyd                      | Sarajlic, et. al. v. Marshall, et. al.                  | 2006            | Plaintiff               | Costs on a partial indemnity basis until date of offer to settle (amounts and details of offer not disclosed); substantial indemnity costs thereafter<br><br>Mr. Sarajlic claim a cost amount of \$1,000/day while he was self-represented. | Costs while Mr. Sarajlic was represented by counsel: \$6,000 plus GST of \$420, and disbursements as claimed \$1,323.60 for a total of \$7,743.60<br><br>While Mr. Sarajlic was self-represented: Costs on a partial indemnity basis to date of Offer to Settle in the amount of \$3,000 (\$200/day and \$20/hr); costs on a substantial indemnity basis after Offer to Settle in the amount of \$11,480 (\$400/day and \$40/hr)<br>Total costs awarded: \$22,223.60 | Mr Sarajlic based his Bill of Costs on a rate of \$1,000/day while he was self-represented. This amount was based on the amount awarded to him and to Mr. Goren (his counsel) by Pepall, J. when the matter came on for trial before her. While that amount was a reasonable award for that occasion, effectively an award for one day's costs thrown away, it does not establish a rate at which Mr. Sarajlic should be compensated for costs when representing himself. His Bill of Costs treats each day working on his case as if he should receive \$1,000 for that day. This approach is not acceptable. His time is valuable, but it does not correspond to time spent by a qualified solicitor. |
| Cunningham, J. Douglas; Lane, G. Dennis; | Gray <i>et al.</i> v. Province of Ontario <i>et al.</i> | 2006            | Plaintiffs / Applicants | Costs on a partial indemnity basis. Amount not  | Costs on a partial indemnity basis in the amount of  | Counsel for the Gray Applicants and the Ventola Applicants divided their submissions and shared the cross-examinations so as to minimize unnecessary  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))**

| Judge                       | Case Name                                       | Citation / Date               | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments   |
|-----------------------------|---|-------------------------------|------------------|---|--|--|
| Hackland, Charles T.        |   |                               |                  | disclosed   | \$35,000 to the Ventola Applicants and costs on a partial indemnity basis in the amount of \$35,000 to the Gray Applicants | costs. Their respective time records show a roughly similar expenditure of time. It would be equitable that they each receive an equal award in respect of their claim for partial indemnity fees.   |
| de Sousa, Maria T. Linhares | Dool v. Jorge                                   | [2006] O.J. No. 4445 (S.C.J.) | Defendant        | Not disclosed   | Costs on a partial indemnity basis in the sum of \$8,000.  | Defendant's legal costs are extremely high as evidenced by this bill of costs. This was a high conflict and multi-proceedings matter and the counsel time required to deal with it is understandable and reasonable in all of the circumstances of this case.  |
| de Sousa, Maria T. Linhares | McAdam Estate v. McAdam                         | [2006] O.J. No. 1552 (S.C.J.) | Plaintiff        | Not disclosed   | Costs on a partial indemnity basis in the amount of \$10,000   | Family law issue – Rule 24(11). The lawyer's rates were reasonable. The intensity of the conflict in this matter explains the amount of time that went into this file and why the lawyer's bill of costs is as high as it is.  |
| Frank, E. Eva               | Mascioli v. Unilux Boiler Corp.                 | [2006] O.J. No. 1706 (S.C.J.) | Defendant        | Costs on a partial indemnity basis until date of offer, and on a substantial indemnity basis thereafter in the amount of \$99,265.80 plus GST | Costs in the amount of \$18,000, plus disbursements and GST  | The affidavits filed in response to the plaintiff's motion were relatively brief. The cross-examinations were concluded in two days and the argument was concluded in approximately two and a half hours. Over 250 hours for the motion is excessive.  |
| Hackland, Charles T.        | Schouten v. Rideau (Township)                   | 2006                          | Defendant        | Total requested costs not disclosed   | Total fees \$97,317.87 plus \$51,329.71 in disbursements plus GST  | Defendants' counsel is an experienced senior counsel handling the entire matter without junior counsel or a student or law clerk; preparation time (171 hours claimed for trial preparation), while on the high side, is not unreasonable; this matter was factually complex; defendants' counsel was required to prepare 13 of his own witnesses and had to cross-examine the plaintiffs' 5 witnesses |
| Lalonde, Paul F.            | Imperial Brush Co. Ltd. V. Pedott <i>et al.</i> | 2006                          | Plaintiff        | Costs in the amount of \$35,568.94  | Costs in the amount of \$20,000 inclusive of disbursements and GST   | Since this case was not a complex one, the use of more than one counsel was not appropriate and the claim for addition counsel's work is refused.  |
| Métivier,                   | Glass Block Solutions                           | 2006                          | Plaintiff        | Costs on a  | Costs in the   | Hours expended by plaintiffs' counsel are out of   |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |   |                               |  |  |   |  |
|---|---|-------------------------------|--|--|---|--|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |   |                               |  |  |   |  |
| <b>Judge</b>  | <b>Case Name</b>  | <b>Citation / Date</b>        | <b>Costs awarded to</b>                      | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
| Monique   | Ltd. v. Pickles   |                               |  | substantial indemnity basis in the amount of \$15,627.78   | amount of \$7,000 plus GST and disbursements of \$1,655.21  | proportion to the nature and complexity of the case. There was duplication of certain fees partially as a result of an experienced lawyer assisting a new call solicitor, but it is not fair to pass that cost on to the unsuccessful party.   |
| Panet, A. deLotbinière  | Madore-Ogilvie (Litigation Guardian of) v. Ogilvie Estate       | [2006] O.J. No. 703 (S.C.J.)  | All parties' costs were paid from the Estate | Plaintiff: \$39,014.71 (full indemnity); \$33,504.18 (substantial indemnity); \$30,413.51 (partial indemnity)<br><br>Defendants' requested costs not disclosed | Plaintiff: \$15,000 plus GST, plus disbursements as claimed in the amount of \$2,143.14<br><br>Defendant 1: \$7,500 plus GST plus disbursements as claimed in the amount of \$820.97<br><br>Defendant 2: \$7,500 plus GST plus disbursements as claimed in the amount of \$274.66 | Objection was taken to the time spent by counsel for the plaintiff. Courts are reluctant in most cases to make judgment calls, after the fact, on the appropriate level of work performed on a proceeding in representing a client. It may have an unfortunate impact on the civility of counsel, any such judgment is made after the fact with the benefit of hindsight and the dedication of counsel to the best possible representation of their client's interest may be called into question. Successful counsel may submit that it was the level of commitment and dedication to that particular proceeding which contributed to the favourable result obtained. |
| Pepall, Sarah E.  | Pricewaterhousecoopers Inc. v. Rohwedder Automated Systems Inc. | [2006] O.J. No. 1245 (S.C.J.) | Plaintiff                                    | Costs on a substantial indemnity basis in the amount of \$134,804.98.  | Costs on a partial indemnity basis in the amount of \$74,722.48.  | The plaintiff's hourly rate is reasonable, but the time spent and the resulting costs claimed are excessive. The exercise of fixing costs is not an exact science. Costs are to be based on 290.8 hours rather than the 478.2 hours spent. In that regard, 30 hours have been allowed for discovery of documents, 30 hours for the mediation, 80 hours for the examinations for discovery and 80 hours for trial preparation.  |
| Polowin, Heidi  | 3869130 Canada Inc. v. I.C.B. Distribution Inc                  | 2006                          | Plaintiff                                    | A total of \$294,347.33 is claimed on a partial indemnity basis and  | Partial indemnity costs to June 2, 2003 Offer to Settle and substantial   | 275.5 hours were claimed for "law clerk" time (\$25,750 at the substantial indemnity rate). Some 11 different law clerks were shown as having done the work. No explanation was provided by the Chenier party as to the work performed by these law clerks. Award of costs for   |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |  |                               |                             |  |  |   |
|---|--|-------------------------------|-----------------------------|--|--|---|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |  |                               |                             |  |  |   |
| <b>Judge</b>  | <b>Case Name</b>   | <b>Citation / Date</b>        | <b>Costs awarded to</b>     | <b>Costs Requested</b>   | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
|   |  |                               |                             | \$361,858.34 on a substantial indemnity basis  | indemnity costs thereafter. Cyr parties to pay costs in the amount of \$280,000 plus GST and disbursements of \$14,101.04 plus GST   | the 11 law clerks was denied.   |
| Power, Denis  | 1259695 Ontario Inc. (c.o.b. Upper Canada Office Systems) v. Guinchard | [2006] O.J. No. 550 (S.C.J.)  | Plaintiff                   | Costs in the amount of \$10,405.98, inclusive of fees, disbursements and GST.  | Costs on a partial indemnity basis in the amount of \$5,000, all inclusive.  | Counsel docketed 32.5 hours on this leave to appeal to the Divisional Court, and the law clerk spent 20.9 hours on the motion. The amount of hours expended in preparation is of some concern.  |
| Power, Denis  | Campeau v. Campeau   | [2006] O.J. No. 2297 (S.C.J.) | Defendants / Moving Parties | Costs on a substantial indemnity basis is the amount of \$26,570.80; costs on a partial indemnity basis in the amount of \$21,044.25 | Costs on a partial indemnity basis in the amount of \$15,000, all inclusive. No costs should be paid unless Defendants / moving parties are successful in this litigation. | A good deal of work was necessary to put together this motion and defend against the cross-motion. The time expended on behalf of the moving parties was not excessive, but high.   |
| Power, Denis  | Gilchrist v. Oak   | 2006                          | Defendant                   | Costs in the amount of \$4,667.88 (inclusive of fees, disbursements and applicable GST)  | Costs in the amount of \$2,500 (inclusive of fees, disbursements and applicable GST)   | The amount of time spent in preparation for the motion is somewhat onerous.   |
| Power, Denis  | Riddell v. Conservative Party of Canada                                | [2006] O.J. No. 4141 (S.C.J.) | Plaintiff                   | Costs on a partial indemnity basis in the amount of \$8,216.80 and costs on a substantial indemnity basis                            | Costs on a partial indemnity basis in the amount of \$6,500, all inclusive.  | Plaintiff's counsel submitted that members of the law firm, of which counsel is a partner, expended time on this motion. Unable to apportion what part of the total time claimed related specifically to this motion. Accordingly, in fixing costs, only the work performed by counsel of record will be looked at. |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |  |                              |                         |  |  |   |
|---|--|------------------------------|-------------------------|--|--|---|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |  |                              |                         |  |  |   |
| <b>Judge</b>  | <b>Case Name</b>   | <b>Citation / Date</b>       | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
|   |  |                              |                         | in the amount of \$8,805.30 (both amounts inclusive of GST and disbursements)  |  |   |
| Power, Denis (writing for the Court); O'Driscoll, John; Gravely, R.T Patrick                | Worthman v. Assessed Inc.                                  | 2006                         | Plaintiff               | Costs in the amount of \$47,000 (approx. Exact number not disclosed)   | Costs in the amount of \$15,000 (including fees and disbursements)   | Plaintiff's claim for costs is unreasonable both from the perspective of time spent and hourly rates claimed (amounts not disclosed). Preparation time as excessive, given that most of the preparation was likely done in advance of the earlier motions.  |
| Ratushny, Lynn D.   | Access Health Care Services v. Ontario Nurses' Association | 2006                         | Defendant               | Costs on a partial indemnity basis in the amount of \$14,031.35 inclusive of fees and GST and disbursements (\$3,701.57)   | Costs on a partial indemnity basis in the amount of \$14,031.35 inclusive of fees and GST and disbursements (\$3,701.57) | Given the complexity and importance of the proceeding, and that it was the plaintiff's refusal to pay monies owed into court or to provide specific information regarding its financial status that made cross examinations essential and precluded resolution, the hours claimed by the defendant are neither grossly excessive nor obvious overkill but are reasonable in these circumstances.  |
| Roy, Albert J.  | Lecompte v. A. Potvin Construction Ltd.                    | 2006                         | Plaintiff               | Costs and disbursements totaling \$141,736.27  | Costs in the amount of \$50,000 plus \$20,000 in disbursements   | Counsel for plaintiffs spent 380.8 hours on this matter; there were a number of experts involved, but 380 are still not justified; Junior counsel spending 149 hours on the case is also unjustifiable  |
| Siegel, Herman J.W.   | Bhaduria v. Toronto Star Newspapers Ltd.                   | [2006] O.J. No. 192 (S.C.J.) | Defendants              | Costs for the motion claimed on a partial indemnity basis in the amount of \$5,468<br>Costs for the action on a partial indemnity basis in the amount of \$15,084. | Costs for motion awarded in the amount of \$3,000.<br><br>Costs for the motion awarded in the amount of \$11,000.        | Defendants' claim for costs of the motion represent approximately 30 hours at an hourly rate of \$180. The time spent was not unreasonable, but an adjustment should be made to the hourly rate applied to reflect the relative complexity of the action and the seniority of counsel involved.<br>With respect to the action, defendants seek costs of \$15,084<br><br>With respect to the action, the defendants seek costs representing approximately 84 hours at the same hourly rate. The time spent on the action was not unreasonable, except in respect of the pre-trial conference for which an adjustment should be made to reflect the reasonable expectations of the plaintiff. |
| Siegel, Herman  | Taylor v. Morrison   | [2006] O.J. No.              | Plaintiff               | Costs on a partial   | Costs in the   | Plaintiff used the maximum rates available on the   |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |                                   |                               |                         |   |  |   |
|---|-----------------------------------|-------------------------------|-------------------------|---|--|---|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |                                   |                               |                         |   |  |   |
| <b>Judge</b>  | <b>Case Name</b>                  | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
| J.W.  |                                   | 194 (S.C.J.)                  |                         | indemnity basis in the amount of \$4,325  | amount of \$3,250, inclusive of disbursements and GST  | partial indemnity scale. Such rates, however, are appropriate only for the most experienced counsel in highly complex proceedings. This was a relatively straight-forward motion. As a result, a lower rate is appropriate.   |
| Smith, Robert J.  | Blackburn v. Fortin               | [2006] O.J. No. 3228 (S.C.J.) | Defendant               | Costs on a substantial indemnity scale in the amount of \$23,553.75 plus GST plus disbursements of \$1,471.84 plus GST for a total of \$26,763.04 | Costs on a partial indemnity basis at \$14,500 inclusive of GST plus disbursements of \$1,471.84 plus GST of \$88.68 | Family law – Rule 24. The rates and time spent by the defendant is reasonable, especially given that the plaintiff's own invoice for fees, disbursements and GST from her lawyer was \$20,869.89, which is in the same range as the amount claimed by the defendants.   |
| Smith, Robert J.  | Butler v. Poelstra                | [2006] O.J. No. 4969 (S.C.J.) | Plaintiff               | Costs on a full indemnity basis in the amount of \$16,259.42  | Costs on a partial indemnity basis in the amount of \$5,000 plus GST plus \$722 in disbursements                     | Family law issue – Rule 24. The hourly rates for counsel were not contested and no submissions were made on the time spent.   |
| Smith, Robert J.  | King v. Merrill Lynch Canada Inc. | [2006] O.J. No. 1257 (S.C.J.) | Defendant               | Costs on a partial indemnity scale in the amount of \$831,493   | Costs on a partial indemnity basis in the amount of \$350,000 plus GST and disbursements of \$109,431.24 plus GST    | The cost grid provides for a maximum allowable counsel fee of \$9,500 per week, as opposed to \$2,300 per day. There has been conflict in caselaw regarding whether this amount is a maximum for all counsel attending trial or whether a counsel fee should be allowed an additional counsel. A reasonable interpretation of the costs grid would be to allow for more than one counsel fee, where the attendance of the additional counsel at the trial was appropriate in the circumstances of the case. However, if a counsel fee is awarded for more than one counsel attending trial, then preparation time during the trial would not be allowable, except in exceptional cases.<br><br>It is appropriate to award counsel fees for two lawyers in this case, given the amount claimed (approximately \$100 million) in damages, the complex nature of the securities issues involved and the extensive investment portfolios of over 200 clients. |
| Smith, Robert J.  | Llance Communications Ind.        | [2006] O.J. No. 5054 (S.C.J.) | Plaintiff               | Costs in the amount of  | Costs on a partial indemnity scale   | Thirty-one of the 37 paragraphs in the Defendant's factum were identical to the factum opposing the   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

***Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))***

| Judge           | Case Name                                  | Citation / Date               | Costs awarded to                | Costs Requested  | Costs Awarded   | Judge's Comments   |
|-----------------|--|-------------------------------|---------------------------------|--|---|--|
|                 | V. Star Web Ltd.                           |                               |                                 | \$10,005.75 plus GST plus disbursements of \$241.28  | in the amount of \$4,000 plus GST plus disbursements of \$241.28  | summary motion. Therefore, most of the time must have been spent on the cross-motion on costs. This is factor which will result in a reduction of the costs awarded.   |
| Spies, Nancy J. | Resch v. Canadian Tire Corp. <i>et al.</i> | [2006] O.J. No. 2906 (S.C.J.) | Plaintiff & Mills-Roy Defendant | Plaintiff:<br>Costs on a partial indemnity scale to date of Offer to Settle and costs on a substantial indemnity scale thereafter totaling \$852,736.39, inclusive of fees, disbursements, premium and GST<br><br>Mills-Roy:<br>\$38,613.48 on a partial indemnity scale and \$72,052.49 on a substantial indemnity scale, from the date of its first offer of November 10, 2005, for a total amount of \$110,665.97 | Costs in the amount of \$646,724, inclusive of fees and disbursements.<br><br>Mills-Roy:<br>Costs in the amount of \$108,165.97 | Total time spent on preparation by plaintiffs' counsel is high. Given that the Procycle defendants had two counsel at trial, and given the complexity and length of the trial, the significance of the case to the parties, and the active role played by plaintiffs' second counsel during the course of the trial, the plaintiffs' claim of a second counsel fee is appropriate. |
| Wilson, Janet   | Crosby v. Wharton                          | [2006] O.J. No. 1192 (S.C.J.) | Defendant                       | Costs on a partial indemnity basis in the amount of \$91,556.12 inclusive of GST   | Costs on a partial indemnity basis in the amount of \$42,314  | Excessive time was spent on preparation for trial and administrative matters (approx. 200 hours for counsel other than trial counsel). It was not necessary to have a second lawyer at trial. This is not a cost that should in these circumstances be borne by the plaintiffs.  |
| Wood, Thomas M. | Grant v. Grant                             | [2006] O.J. No. 23 (S.C.J.)   | Defendant                       | Costs on a substantial indemnity basis   | Costs in the amount of \$7,500, inclusive   | Family law issue – Rule 24(11). The respondent hired one of the more senior and respected counsel in the province. The respondent and the applicant were each  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |  |   |                         |  |   |  |
|---|--|---|-------------------------|--|---|--|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |  |   |                         |  |   |  |
| <b>Judge</b>  | <b>Case Name</b>   | <b>Citation / Date</b>                          | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|   |  |   |                         | in the amount of \$50,076.   | of disbursements and tax.   | entitled to retain any counsel they wished. It does not follow that costs should be higher because one party has hired senior counsel. Similarly however, it does not follow that an automatic discount should be applied because the rates charged to one party are higher than those normally seen in a given area.  |
| Aitken, Catherine D.  | Stoate v. Stoate   | [2005] O.J. No. 3087 (S.C.J.)                   | Defendant               | Costs on a partial indemnity basis in the sum of \$8,731.63  | Costs on a partial indemnity basis in the sum of \$5,000 inclusive of disbursements and GST   | Time relating to trial preparation is a little high, but not drastically so. Counsel fee of \$2,000 for the trial not allowed. The actual time spent will be multiplied by the hourly rate of \$135/hr.  |
| Belch, Douglas M.   | Blais v. Cook  | [2005] O.J. No. 5881 (S.C.J.)                   | Plaintiffs              | Costs in the amount of \$29,703.20, inclusive of GST   | Costs in the amount of \$24,814.99, inclusive of GST and disbursements.   | Preparation time is high. Fees should be proportionate to the damages, which amounted to \$27,152.85.  |
| Cunningham, J. Douglas;<br>McKinnon, Colin D.A.;<br>Bryant, Alan W.                         | Lee Brothers Ltd. v. Windsor (City)  | [2005] O.J. No. 4624 (S.C.J.)                   | Defendant               | Costs on a partial indemnity basis in the amount of \$70,987 plus GST and \$4,315 for disbursements plus GST and PST | Costs on a partial indemnity basis in the amount of \$55,000 inclusive of disbursements and GST   | It was not necessary for two counsel to attend on the appeal. The issue argued by the second counsel was a very straight-forward legal issue. Most of the claim for legal research is not compensable because the appeal raised a single legal issue that had been decided by the court of appeal. The 200 hours claimed for the primary lawyer was excessive. The review of the transcript (2,816 pages) should have been delegated to an articling student or a lawyer of recent call. |
| Ground, John D.   | Canadian National Railway Corp. v. Royal and SunAlliance Insurance Co. of Canada | [2005] O.J. No. 3931, 77 O.R. (3d) 612 (S.C.J.) | Plaintiff               | Costs in the amount of \$1,261,364.00 plus GST and disbursements for a total of \$1,644,496.83.                      | Costs in the amount of \$800,000 for fees together with \$56,000 for GST and disbursements of \$294,837.35 for a total of \$1,150,837.35. | Plaintiffs, throughout trial, were represented by two or three counsel at times. The maximum counsel fee is a counsel fee of \$2,300.00 per day on the partial indemnity scale and \$4,000 per day on the substantial indemnity scale in accordance with the Costs Grid.   |
| Hackland, Charles T.  | Adult Entertainment Assn. of Canada v. Ottawa (City)                             | [2005] O.J. No. 4608 (S.C.J.)                   | Defendant               | Costs in the amount of \$99,188.50 in fees plus \$4,744 in disbursements   | Costs on a partial indemnity basis in the amount of \$61,000 for fees, plus GST \$4,270,  | There will be a 25% reduction to reflect the duplication that is involved of utilizing two counsel and two principal research lawyers and two junior lawyers.  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                     |   |                               |                         |   |  |   |
|---|---|-------------------------------|-------------------------|---|--|---|
| <b>Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))</b> |   |                               |                         |   |  |   |
| <b>Judge</b>  | <b>Case Name</b>  | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
|   |   |                               |                         |   | plus \$4,744 in disbursements  |   |
| McMahon, John B.  | National Bank of Canada v. Reed <i>et al.</i>                         | [2005] O.J. No. 2957 (S.C.J.) | Plaintiff               | Costs on a partial indemnity basis in the amount of \$302,122.73, inclusive of disbursements  | Costs in the amount of \$90,000 (inclusive of GST) against the defendant Reed Energy Co.; costs in the amount of \$90,000 (inclusive of GST) against the defendant | Defendant McCartney elected to be represented at trial by two lawyers. It was, therefore, not unreasonable for the plaintiff to be represented by two counsel called in 1996 and 1998, both billing at a partial indemnity basis of \$225 per hour, nor was the preparation time of two law clerks on a nine-day trial, totaling 108 hours, unreasonable.                               |
| Métivier, Monique   | Santini v. Thompson   | 2005                          | Defendant               | Costs in the amount of \$16,495.97  | \$10,350, plus disbursements as claimed (not disclosed), plus GST  | Some of the time spent by Defendant's counsel seems to be excessive (time spent not disclosed)  |
| Power, Denis  | Bowers v. Delegarde   | [2005] O.J. No. 3857 (S.C.J.) | Defendant               | Costs on a substantial indemnity basis in the amount of \$115,631.06, or, costs on a partial indemnity scale in the amount of \$88,707.72 | Costs on a partial indemnity basis in the amount of \$40,000, inclusive of disbursements and all fees, and GST.  | The hours worked, the hourly rate and the disbursements were not unreasonable. However, discretion must be exercised in fixing costs, and the focus must be on what is fair and reasonable. The concept of indemnification must also be considered.   |
| Power, Denis  | Menard-St. Denis v. St. Denis   | 2005                          | Plaintiff               | Costs on a partial indemnity basis in the amount of \$5,415.80 inclusive of GST.  | Costs on a partial indemnity basis in the amount of \$3,000 inclusive of GST   | The hourly rates disclosed by counsel for the plaintiff is an appropriate one (not disclosed); however, the extra \$2,000 included in the claim for counsel fee is an excessive amount. The preparation time is on the heavy side.  |
| Power, Denis  | Nandy (c.o.b. Distributed System Links) v. Attorney General of Canada | [2005] O.J. No. 4869 (S.C.J.) | Defendant               | Fees of \$31,637.37 plus disbursements of \$1,315.89 for a total of \$32,953.26   | Costs on a partial indemnity scale totaling \$15,000 (all inclusive)   | Defendant spent an excessive amount of time working on the file Mr. Gay's (counsel) hours totaled 153, and his legal clerk performed an additional 24 hours on his file. At the time of the motion for summary judgment, affidavits of documents were not yet exchanged and no examinations for discovery were held. The amount of preparation time for the summary judgment motion was |

***RULE 57 & RULE 24 (Family Law Rules) FACTORS***

***Indemnity including experience of lawyer, rates charges, hours spent (57.01(1)(0.a))***

| <b>Judge</b> | <b>Case Name</b> | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b> | <b>Costs Awarded</b> | <b>Judge's Comments</b>  |
|--------------|------------------|------------------------|-------------------------|------------------------|----------------------|--|
|              |                  |                        |                         |                        |                      | excessive. It would not be just or fair to pass on all of this expense to the Plaintiff. |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |   |                        |                         |   |  |  |
|---|---|------------------------|-------------------------|---|--|--|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |   |                        |                         |   |  |  |
| <b>Judge</b>  | <b>Case Name</b>  | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>   | <b>Judge's Comments</b>  |
| <b>Linhares De Sousa J</b>  | <b>Marchand v. MacKenzie</b>                              | <b>2019 ONSC 5062</b>  | Applicant               | Not disclosed   | \$40,000.00  | <b>Considering the bill of costs: Where a party chooses not to submit bill of costs, the court will assume the party was fully aware of the cost of litigation.</b>  |
| Smith, Robert J.  | McLean v. Knox  | 2012 ONSC 1069         | Plaintiff               | \$302,559.64 on a partial indemnity basis.<br><br>\$92,394.39 for disbursements   | \$150,000 plus HST plus disbursements of \$80,000 plus HST   | There were two offers to settle. The first was withdrawn prior to it being accepted. The second offer did not comply with Rule 49.10 as it was made only four days before the commencement of trial, and the plaintiff recovered damages after trial greater than the amount of his offer to settle.<br><br>The costs claimed do not exceed the amount an unsuccessful party would reasonably expect to pay. |
| Smith, Robert   | Ottawa Police Association v. Ottawa Police Services Board | 2012 ONSC 936          | Plaintiff               | Plaintiff: \$15,495.02 on a partial indemnity basis   | \$7,500 plus HST; \$1500 in disbursements inclusive of HST   | The matter was complex and there is very limited jurisprudence under Rule 12.08; the amount claimed is very reasonable considering the complexity of the issues; the amount claimed would be consistent with what an unsuccessful party would reasonably expect to pay.  |
| Beaudoin, R.  | Jolicoeur v Hawkesbury (Ville)                            | 2011 ONSC 3835         | mixed                   | Gowlings who represented the Woods, Parisien law firm, seeks costs of \$6,466.15 on a partial indemnity basis and costs of the action on a partial indemnity basis; they also seek costs of \$100,000 in defending the costs of both actions against them.<br><br>Borden Ladner represented Douglas Menzies, menzies and Associates and Jean Claude | For the costs of the action: \$100,000 on a partial indemnity basis to the Woods, Parisien firm as third parties in the original proceedings and as defendants in the counterclaim<br><br>Awarded to each of the parties: Woods Parisien Landry and J.J. Edmond and Woods, Parisien; Menzies & Associates, Douglas J. Menzies, Jean Claude Gélinas | Each of the moving parties should be treated in a similar fashion in assessing their claims.<br><br>The other parties have all sought costs on a partial indemnity basis in amounts which are more than reasonable and closer to the amount a losing party could have reasonably been expected to pay  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

***Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))***

| Judge           | Case Name                              | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments   |
|-----------------|--|-----------------|------------------|---|---|--|
|                 |  |                 |                  | <p>Gelinas in the counterclaim. They seek \$8049.60 for the costs of the motion on a partial indemnity basis and costs to defend the counterclaim for \$71,985.43</p> <p>The Corporation de la Ville de Hawkesbury seek costs for the motion of \$6677.00 on a partial indemnity basis and costs of the action for \$86,800.00 on a partial indemnity basis.</p> <p>Menzies and Associates have their own claim for costs for the motion to have the claim dismissed. They seek costs of the motion for \$23,529.70</p> | <p>as Defendants to the Counterclaim; Corporation de la Ville de Hawkesbury and Menzies &amp; Associates as Plaintiffs, the costs of their respective motions in the amount of \$7,500.00. For the costs of the Corporation de la Ville de Hawkesbury and for Menzies &amp; Associates Douglas G. Menzies, Jean Claude Gélinas as Defendants to the Counterclaim, those costs are fixed in the amount of \$75,000.00 each</p> |  |
| Perell, Paul M. | Healey v. Lakeridge Health Corporation | 2010 ONSC 1884  | Defendants       | Lakeridge: \$250,000<br>Defendant Doctors: \$130,495.27   | Lakeridge: \$180,000<br>Defendant Doctors: \$80,000   | <p>The motions raised complex issues of significant issues to the parties, and all parties acted appropriately. However the claim was not a test cast, nor was it a matter in the public interest.</p> <p>\$380,000 seemed to be excessive and beyond the reasonable expectations of the losing party. Although the plaintiffs had not submitted any information about costs, some indication of</p> |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |  |  |                         |   |  |  |
|---|--|--|-------------------------|---|--|--|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |  |  |                         |   |  |  |
| <b>Judge</b>  | <b>Case Name</b>                                       | <b>Citation / Date</b>                               | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>   | <b>Judge's Comments</b>  |
|   |  |  |                         |   |  | the plaintiffs' expectations could be derived from the fact that they recovered \$125,000 for the certification motions.   |
| Polowin, Heidi  | Canada (Attorney General) v. Rostrust Investments Inc. | 2010 ONSC 1106                                       | Plaintiff               | Partial Indemnity costs of \$227,858.93 consisting of fees (\$196,222.01), GST (\$9,811.10) and disbursements (\$21,825.82) | \$170,000 plus GST, plus disbursements of \$21,825.82 plus GST                         | A party's bill of costs is not the controlling factor determining what it could reasonably expect to pay if unsuccessful at trial. A sophisticated commercial entity can reasonably be expected to understand that the stakes may be higher for the other party, and that it may be prepared to invest more, perhaps significantly more, to achieve success.   |
| Beaudoin, Robert  | Bremer v. Foisy  | (2009, Ont. Sup. Ct. J) - unreported                 | Plaintiffs              | fees in the amount of \$23,345 plus disbursements of approximately \$2,100  | \$10,000 inclusive   | The costs outline submitted by the party added as a defendant included fees of \$9,455.  |
| Linhares de Sousa, Maria  | 6862829 Canada Ltd. v. Dollar It Ltd.                  | (2009, Ont. Sup. Ct. J.) Court File No.: 08-CV-41479 | Applicants              | Not disclosed   | Partial indemnity costs fixed at \$7,482.82, inclusive of GST                          | The bills of costs presented by both counsel were reasonable. The applicant was successful at the motion. Given the respondents' own bill of costs, an award to the applicants on a partial indemnity basis would be fair and reasonable to the respondents.   |
| Polowin, Heidi  | Youg v. RBC Dominion Securities                        | (2009, Ont. Sup. Ct. J.) Court File No.:05-CV-31905  | Defendants              | \$303,786.30  | Fees of \$180,000, inclusive of GST, plus disbursements of \$35,000, inclusive of GST. | <p>The emphasis in Zesta Engineering v Cloutier, (2002) 21 CCEL (3d) 161 (Ont CA) on what the court views as a fair and reasonable amount is more than a factor that must be considered among others. It is a fundamental concept in assessing costs.</p> <p>The fact that the defendants chose Toronto counsel, with higher rates and travel costs, for an "Ottawa matter" is a factor to be considered in exercising the discretion to order costs.</p> <p>However, comparison to other cases is of limited value. The cases were neither provided nor cited, so it is impossible to assess their degree of similarity. There is no basis to find that the reasonable expectations of a party in a two week civil trial should be capped at \$100,000.</p> |
| Polowin, Heidi  | Mitchell v.  | (2009, Ont. Sup.                                     | Plaintiff               | \$40,289.03, on   | \$35,000,  | Defendant's submission that costs would be inappropriate since   |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |  |  |                         |  |   |  |
|---|--|--|-------------------------|--|---|--|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |  |  |                         |  |   |  |
| <b>Judge</b>  | <b>Case Name</b>   | <b>Citation / Date</b>                               | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|   | Mitchell   | Ct. J.) Court File No.: 08-1311                      |                         | complete indemnity basis   | inclusive of GST and disbursements  | Plaintiff had paid no child support were disingenuous in circumstances where she had wrongfully taken the child from Florida, without notice, and attempted to conceal her location. The defendant cannot by her wrongful behaviour shield herself from paying costs.                  |
| Roy, Albert   | Demers v. Lévesque   | (2009 Ont. Sup. Ct. J.) Court File No.: 06-CV-033321 | Plaintiff               | \$292,770.32   | \$200,000 all inclusive   | The costs claimed were not reasonable in comparison to the defendants claimed costs of \$160,497.52, and the judgment of 173,968.89, even where a substantial indemnity rate was warranted pursuant to Rule 49.  |
| Carnwath, James   | Lafontaine-Rish Medical Group Limited v. Global TV News Inc. | 2008 CanLII 9372 (Ont. Sup. Ct. J. (Div. Ct.))       | Defendants              | Global Defendants:<br>\$67,568.55 (partial) or \$101,352.83 (substantial)<br>Thomas Bell, M.D.: \$22,180.78 (partial) or \$32,820.76 (substantial)<br>Jerry Levitan: \$13,481.08 (partial) or \$20,044.27 (substantial)<br>College of Physicians & Surgeons: \$8,295.88 (partial) or \$12,038.88 (substantial) | On a partial indemnity basis:<br><br>Global: fees of \$30,000, inclusive of GST, and disbursements of \$5,928.42, inclusive of GST, for a total award of \$35,928.42<br>Dr. Bell: fees of \$10,000, inclusive of GST, and disbursements of \$900.81, inclusive of GST, for a total award of \$10,900.81<br>Levitan: fees of \$7,500, inclusive of GST, and disbursements of \$762.92, inclusive of GST, for a total award of \$8,262.92 | The assessment was said to be "an amount that is fair and reasonable, having regard to the broad range of factors in Rule 57.01(3)."<br><br>The plaintiff's submissions were essentially ignored: his "conduct in this matter renders his counsel's submissions on costs of no value." |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |  |  |   |   |  |   |
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| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |  |  |   |   |  |   |
| <b>Judge</b>  | <b>Case Name</b>                         | <b>Citation / Date</b>                               | <b>Costs awarded to</b>                       | <b>Costs Requested</b>  | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
|   |  |  |   |   | College of Physicians & Surgeons: fees of \$4,000, inclusive of GST, and disbursements of \$759.88, inclusive of GST, for a total award of \$4,759.88  |   |
| Cusinato, Anthony   | Pouget v. Hynes                          | (2008 Ont. Sup. Ct. J.) Court File No.: 07-CV-9402CM | Plaintiff - (Respondent on motion to dismiss) | \$47,123  | \$18,803, including \$743.35 for disbursements   | The plaintiff's claim was excessive in comparison to the moving party's submission of less than \$3,800 in costs specific to the motion. Much of the time spent on legal research should properly be considered costs of the action, not of the motion.   |
| Lederman, Sidney  | Audience Communication Inc. v. Sguassero | (2008), 91 (3d O.R. 47 (Ont. Sup. Ct. J.))           | Applicants and Defendant Teplitsky            | The applicants (plaintiffs) sought a total of \$90,552.34 for partial indemnity costs.<br><br>Defendant Teplitsky sought partial indemnity costs totaling \$20,000. | The applicants were awarded \$52,000 all inclusive, to be paid by defendant Sguassero.<br><br>Defendant Teplitsky was awarded \$20,000 in partial indemnity, to be paid by defendant Sguassero, under a Sanderson order. | The quantum sought by the applicants was too high, having regard to the factors set out in Rule 57.01, and in particular what an unsuccessful party would reasonably expect to pay for a proceeding of this nature.   |
| Aitken, Catherine D.  | Heenan Blaikie LLP v. Barrick Poulsen    | 2007   | Plaintiff                                     | Costs on a full indemnity basis in the amount of \$17,756.88, inclusive of GST  | \$1,500, inclusive of disbursements and GST  | Shocking that a law firm would consider it reasonable and appropriate to spend \$15,000 in lawyer/lawclerk/student time to prepare for a hearing when the only issue for the court to decide was whether \$16,000 should remain in trust or be paid back to the clients who had initially paid it into trust; lawyers must always be mindful of the economic value associated with any steps taken in proceedings; Barrick Poulsen could never have contemplated being faced with total legal costs \$17,757 for a matter of such little significance; \$1,500 is a more than |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))**

| Judge  | Case Name   | Citation / Date                         | Costs awarded to   | Costs Requested  | Costs Awarded  | Judge's Comments  |
|--|---|---|--|--|--|---|
|  |   |   |  |  |  | reasonable amount for Heenan Blaikie as trustee to have incurred in fees and disbursements for this type of action  |
| Brockenshire, John H.  | Dinsmore v. Southwood Lakes Holding Ltd.                | [2007] O.J. No. 263 (S.C.J.)            | Plaintiff & Defendant (Ontario New Home Warranties Plan) | Plaintiff: Costs on a substantial indemnity basis in the amount of \$148,464.50 in fees, plus \$45,403.40 in disbursements plus GST of \$11,611.85, totaling \$205,479.75.<br><br>Defendant: Costs on a substantial indemnity basis in the amount of \$67,424.25 plus disbursements of \$27,027.61, plus GST of \$6,583.55, totaling \$101,035.41. | Plaintiff: Costs on a partial indemnity basis in the amount of \$38,250 (inclusive of GST) plus \$28,525.62 in disbursements.<br><br>Defendant: Costs on a partial indemnity basis in the amount of \$67,497 (\$36,080.55 for fees, \$27,027.61 in disbursements plus GST) | This action started with a claim for \$350,000 for breach of contract and negligence, and \$150,000 for punitive damages, and ended with a judgment for \$29,700 for damages against the builder.<br><br>In this case, principle of indemnity under Rule 57.01 is completely overridden by the principle of consideration of what an unsuccessful party could reasonably expect to pay. According to <i>Amherst Crane Rentals Ltd. v. Perring</i> (2004), 241 D.L.R. (4 <sup>th</sup> ) 176 (Ont. C.A.), costs must be commensurate with the value of the lawsuit to the parties. |
| Ground, John D. (delivered judgment of Court); MacDonald, Ellen M.; Hackland, Charles T. | Sears Holdings Corp. v. Ontario (Securities Commission) | [2007] O.J. No. 420 (S.C.J. – Div. Ct.) | Plaintiff Minority Shareholders                          | Costs in the amount of \$90,000  | Costs in the amount of \$75,000 for fees together with disbursements of \$14,890.94 and applicable GST   | In light of the principles enunciated in the case of <i>Boucher</i> , the costs claimed by the Plaintiff should be reduced.   |
| Hackland, Charles T.   | Riddell v. The Conservative Party of Canada             | 2007                                    | Plaintiff  | Costs on a partial indemnity basis in the amount of \$7678   | Costs on a a partial indemnity basis in the amount of \$2000 in fees, plus GST, plus \$183.24 in disbursements   | Fees claimed were excessive; submissions were less than one hour; time expended outside the four corners of the preparation for and argument of this motion are not to be included in fixing these motion costs; the fees awarded are what the defendant should reasonably have expected to pay   |
| Lax, Joan L.   | Antorisa  | [2007] O.J. No.                         | Defendant  | Costs on a full  | Costs in the   | In determining a reasonable amount for fees for the   |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |  |                               |                              |  |   |  |
|---|--|-------------------------------|------------------------------|--|---|--|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |  |                               |                              |  |   |  |
| <b>Judge</b>  | <b>Case Name</b>   | <b>Citation / Date</b>        | <b>Costs awarded to</b>      | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|   | Investments Ltd. v. 172965 Canada Ltd.                             | 195 (S.C.J.)                  |                              | indemnity scale in the sum of \$1,223,434.63, or, in the alternative, costs on a substantial indemnity scale totaling \$931,161.90 | amount of \$650,000 plus GST, plus disbursements in the sum of \$50,073.60, plus GST        | defendant's counsel, a relevant factor to be considered is the fees that the Plaintiff incurred. Plaintiff incurred significantly lower costs with regards to counsel fees. The total fees claimed by the Plaintiff were \$332,800, whereas the total fees claimed by the defendant were \$1,093,331.69.   |
| McKinnon, Colin   | Cerilli v. The Corporation of the City of Ottawa                   | 2007                          | Plaintiff                    | Costs in the amount of \$138,147.79  | Costs in the amount of \$100,000 (inclusive of GST, disbursements and submissions on costs) | Overall objective in costs continues to be to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding rather than an amount fixed by the actual costs incurred by the successful litigant; while the plaintiff's counsel is a senior and skilled lawyer, the law nonetheless required a costs award to be reasonable; several of the disbursements appeared to be hefty                 |
| Aitken, Catherine D.  | Lavinkas v. Jacques Whitford & Associates Ltd.                     | [2006] O.J. No. 2697 (S.C.J.) | Plaintiff                    | Costs on a substantial indemnity basis in the amount of \$44,134.  | Costs in the amount of \$28,000   | Simplified Procedure. Defendant would have reasonably expected the costs claimed to have been proportionate to the amount being claimed in the action.<br><br>It is reasonable to look to the costs charged to the unsuccessful party as a factor in determining what costs the unsuccessful party could reasonably be expected to pay to the successful party. Defendant would not have reasonably expected to pay an amount this high. |
| Beaudoin, R.  | Bach v. McKellar   | [2006] O.J. No. 155 (S.C.J.)  | Plaintiff                    | Costs in the amount of \$3,169 inclusive of disbursements  | Costs in the amount of \$2,777  | This is what an unsuccessful party could reasonably expect to pay  |
| Beaudoin, R.  | George S. Szeto Investments Ltd. v. Ott                            | [2006] O.J. No. 2390 (S.C.J.) | Defendant (Attorney General) | Costs in the amount of \$5,393.77 (\$523.15 of which were for disbursements)   | Costs in the amount of \$5,393.77   | Plaintiffs' counsel submitted a costs outline in excess of \$10,000. Having regard to the plaintiffs' counsel's own bill, the bill of costs submitted by the defendants is reasonable.   |
| Beaudoin, R.  | Khan v. TD Waterhouse Canada Inc. (c.o.b. TD Waterhouse Investment | [2006] O.J. No. 1177 (S.C.J.) | Defendant                    | Costs on a partial indemnity basis in the amount of \$27,805.99  | Costs in the amount of \$10,000 for fees plus disbursements of \$5,415.39 for a             | Given that the amount of costs sought for the entire action (approx. \$63,000), the amount claimed for costs of the motion alone appears excessive and in excess of what a responding party would reasonably expect to pay.  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |   |   |                         |  |   |   |
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| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |   |   |                         |  |   |   |
| <b>Judge</b>  | <b>Case Name</b>  | <b>Citation / Date</b>                            | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|   | Advice)   |   |                         |  | total of \$15,415.39.   |   |
| Beaudoin, R.  | OZ Merchandising Inc. v. Canadian Professional Soccer League Inc. | [2006] O.J. No. 3718 (S.C.J.)                     | Defendants              | Eastern Ontario District Soccer Association (Defendant) & Ontario Soccer Association (Defendant) claimed costs on a partial indemnity basis in the amount of \$5,500.87 or costs on a full indemnity basis in the amount of \$8,202.52 | Eastern Ontario District Soccer Association: Costs in the amount of \$1,500 + \$250 (excess counsel's costs) + \$1,000 (excess counsel's costs)   | Defendants submitted a revised costs outline after the result of the motion had been disclosed. Courts should be reluctant to consider revised costs outlines after the result of a motion has been disclosed. Costs outlines are a useful tool in applying Rule 57.01(1)(0.b); however, allowing a party to deliver a revised cost outline after it knows it has been successful undermines that rule. |
| Beaudoin, R.  | OZ Optics Limited v. Timbercon Inc.                               | 2006  | Defendant               | Costs on a substantial indemnity basis in the amount of \$4,665.   | Costs on a substantial indemnity basis in the amount of \$4,665. This amount was offset against the amount of \$2,000 being the Plaintiff's costs of initiating and preparing its motion record. Total costs to the defendant in the amount of \$2,665. | Given OZ's own costs submissions (Costs on a partial indemnity basis in the amount of \$11,401.22), it cannot argue the reasonableness of costs requested by the Defendant.   |
| Brockenshire, John H.   | Mustapha v. Culligan of Canada Ltd.                               | [2006] O.J. No. 1574, 39 C.C.L.T. (3d) 8 (S.C.J.) | Plaintiff               | Costs in the amount of \$117,653.78, inclusive of disbursements and GST.   | Costs in the amount of \$101,541.26, inclusive of disbursements and GST.  | A relevant consideration in fixing costs is what the losing party would reasonably have anticipated having to pay in costs. In that regard, the Defendant's draft bill for over \$136,000 is relevant.  |
| de Sousa, Maria   | Dool v. Jorge   | [2006] O.J. No.                                   | Defendant               | Not disclosed  | Costs on a partial  | Family law issue – Rule 24. Both parties' ability to pay costs is   |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |                                     |                               |                         |   |   |  |
|---|-------------------------------------|-------------------------------|-------------------------|---|---|--|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |                                     |                               |                         |   |   |  |
| <b>Judge</b>  | <b>Case Name</b>                    | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
| T. Linhares   |                                     | 4445 (S.C.J.)                 |                         |   | indemnity basis in the sum of \$8,000.  | limited. Ms. Dool acted unreasonable at times, and in conducting herself in this way, she should have reasonably anticipated that she was risking the possibility of bearing substantial costs given the nature of the dispute.  |
| Frank, E. Eva   | Goodman LLP v. Ryan                 | [2006] O.J. No. 1705 (S.C.J.) | Plaintiff               | Costs in the amount of \$95,537.17, all-inclusive   | Costs in the amount of \$25,000, inclusive of disbursements and GST.  | The plaintiff's bill is based on a total of 352.9 hours docketed by five lawyers and two students, plus disbursement of \$7,332.79. This is out of all proportion to what should have fairly been necessary to prosecute this claim. Such things as twelve hours to transfer the file to the Simplified Procedure, more than eight days of trial preparation by only one of the several people involved, and approximately \$4,000 for photocopying and binding and over \$400 for fax charges are more than the defendants could fairly and reasonably expect to pay.   |
| Frank, E. Eva   | Mascioli v. Unilux Boiler Corp.     | [2006] O.J. No. 1706 (S.C.J.) | Defendant               | Costs on a partial indemnity basis until date of offer, and on a substantial indemnity basis thereafter in the amount of \$99,265.80 plus GST | Costs in the amount of \$18,000, plus disbursements and GST   | The affidavits filed in response to the plaintiff's motion were relatively brief. The cross-examinations were concluded in two days and the argument was concluded in approximately two and a half hours. Over 250 hours for the motion is excessive. The amount of time spent exceeds reasonable expectations for a motion of this nature which was neither complex nor novel. Nor did it dispose of the action. It was the prerogative of the defendants to commit as much funding to the defense of this motion as they chose. However, they cannot expect to be indemnified if the time is in excess of reasonable expectations. |
| Frank, E. Eva   | Radvar v. Canada (Attorney General) | [2006] O.J. No. 252 (S.C.J.)  | Defendants              | Chubb: Costs in the amount of \$30,000<br><br>Attorney General: Costs in the amount of \$30,392<br><br>Signum & Rye: Not disclosed            | Chubb: \$20,000 in fees plus \$4,558 in disbursements<br><br>Attorney General: \$12,000 in fees plus \$2,280 in disbursements<br><br>Signum & Rye: \$7,000 in fees plus \$5,423.97 in disbursements | The amount to be awarded for costs must be fair and reasonable for the unsuccessful party to pay in the particular proceeding. In determining what is fair and reasonable for the Plaintiff, the nature of claim which he chose to advance must be taken into account, in addition to the fact that the approach he adopted in the litigation served to delay it and increase the costs.   |
| Hackland, Charles T.  | Keryluk v. Lamarche                 | 2006                          | Plaintiff               | Plaintiff's actual fees are \$123,538.77,   | Costs awarded on a partial indemnity scale  | Cannot simply multiply hours claimed by the hourly rates. More meaningful are the criteria set out in Rule 57 and particularly what an unsuccessful party would reasonably   |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |  |                               |                         |   |  |  |
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| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |  |                               |                         |   |  |  |
| <b>Judge</b>  | <b>Case Name</b>                                       | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>   | <b>Judge's Comments</b>  |
|   |  |                               |                         | inclusive of \$8,018.97 GST and disbursements of \$7,856.53 inclusive of \$413.14 GST   | totaling \$50,000 plus GST in addition to disbursements totaling \$7,443.38 plus GST in the sum of \$413.15.               | expect to pay in the circumstances of the case.  |
| Lalonde, Paul F.  | Imperial Brush Co. Ltd. V. Pedott <i>et al.</i>        | 2006                          | Plaintiff               | Costs in the amount of \$35,568.94  | Costs in the amount of \$20,000 inclusive of disbursements and GST   | Parties engaged in the litigation should pay the costs that they contemplated as being reasonable in the event one of them becomes an unsuccessful litigant. Following July 1, 2005, when the cost grid was eliminated, it is more important than ever to keep the cost of litigation at an affordable level for all litigants.  |
| Lalonde, Paul F.  | Denis v. Mouvement Desjardins                          | [2006] O.J. No. 5208 (S.C.J.) | Defendant               | Not disclosed   | Costs in the amount of \$4,250.19  | The amount awarded is an amount that the plaintiff could easily have expected to pay for his challenge on jurisdiction.  |
| Lalonde, Paul F.  | Higgerty v. Higgerty                                   | 2006                          | Defendant (wife)        | Not disclosed   | Costs on a partial indemnity basis in the amount of \$10,000 in fees and \$1,252.01 in disbursements, all inclusive of GST | Family law issue – Rule 24. Plaintiff should have expected to pay this amount in fees if he was unsuccessful, given that his counsel submitted roughly the same amount for fees in arguing that the plaintiff was the more successful party.   |
| Low, Wailan   | Petro-Quip International Inc. v. Kala Naft Canada Ltd. | [2006] O.J. No. 2369 (S.C.J.) | Defendant               | Costs on a partial indemnity basis in the amount of \$199,366.73, but urged court to consider costs on a substantial indemnity basis. | Costs on a partial indemnity basis in the amount of \$150,000, plus GST.   | Kala Naft has had excellent representation. Senior counsel, junior counsel and students were engaged in various aspects of the file. However, the court must consider and quantify the amount that the losing side could reasonably expect to pay in all the circumstances. While the successful defendant has had a Rolls Royce level of service, the appropriate amount to award for partial indemnity costs is a rather more modest amount than that claimed. |
| MacLeod, Helen K.   | MacMartin v. King                                      | 2006                          | Plaintiff               | Costs in the amount of \$39,335.35, inclusive of fees, disbursements and GST  | Costs in the amount of \$25,000 plus GST together with \$595.42 inclusive of GST for a total of \$27,345.42.               | Both parties were warned before the trial proceeded that the costs of the trial were likely to be well in excess of the judgment recovered (\$18,141.91). Both parties were urged to reconsider their respective positions and were given the opportunity to pursue a settlement. Both parties advised the court that no resolution was possible. The plaintiff's legal costs are not over-stated for a three-day trial.   |
| MacLeod,  | Omnia Res  | 2006                          | Plaintiff               | Costs on a  | Costs on a   | The costs submitted are only \$1,322.52 higher than the partial  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |   |                               |                         |   |   |  |
|---|---|-------------------------------|-------------------------|---|---|--|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |   |                               |                         |   |   |  |
| <b>Judge</b>  | <b>Case Name</b>  | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
| Helen K.  | Investments Inc. v. Solarc Construction Ltd.  |                               |                         | substantial indemnity basis in the amount of \$39,710.48  | substantial indemnity basis in the amount of \$39,710.48  | indemnity scale would allow and are therefore eminently reasonable. Both parties were adequately warned at the outset of the trial that the costs would be in the \$30,000 to \$40,000 range to the unsuccessful party. Both parties took the risk of the trial, knowing the likely cost consequences. These costs are within the reasonable expectation of the parties. |
| Maranger, Robert L.   | Cusson v. Quan  | [2006] O.J. No. 3186 (S.C.J.) | Plaintiff               | Costs on a partial indemnity basis in the amount of \$665,265.66 (\$582,386 in fees, plus GST of \$40,767 and disbursements of \$42,112.66) | Costs on a partial indemnity basis in the amount of \$246,512.66 (\$200,000 in counsel fees; GST of \$14,000; disbursements of \$32,512.66)       | The jury awarded \$125,000 in general damages. To award \$665,000 in costs would run contrary to the objective to fix a costs award that is fair and reasonable for the unsuccessful party to pay, rather than an amount fixed by the actual costs incurred by the successful litigant.  |
| McMahon, John B.  | E.S. Fox Ltd. v. Nordarla Enterprises Inc.  | [2006] O.J. No. 1904 (S.C.J.) | Plaintiff               | Costs on a substantial indemnity basis in the amount of \$25,105.43, or, costs on a partial indemnity basis in the amount of \$16,883.16.   | Costs on a partial indemnity basis in the amount of \$11,500  | Costs are not simply determined by calculating the number of hours expended on the particular file. The amount awarded must be an amount fair and reasonable for the unsuccessful party to pay rather than an amount fixed by the actual costs incurred by the successful litigant ( <i>Boucher</i> ).   |
| Morin, Gerald R.  | Brulé v. Brulé-Morgan   | 2006                          | Defendant               | Bill of costs for fees and disbursements inclusive of GST totaling \$57,504.96  | Costs on a partial indemnity basis fixed in the amount of \$20,000 inclusive of GST together with disbursements of \$1,041.46 plus GST of \$62.18 | The costs awarded must be a fair and reasonable amount that the unsuccessful party would expect to pay in the particular proceeding.   |
| Morin, Gerald R.  | Canadian Blood Services v. Freeman<br>* This case also involved costs to the intervenor | 2006                          | Defendant & Intervenor  | Egale: \$10,710 and disbursements of \$522.88<br><br>Defendant: \$11,375 and disbursements of   | \$10,000 to Egale and Defendant in addition to the disbursements claimed by each party  | The plaintiffs would have reasonably expected to pay costs in these amounts. They claimed similar amounts in their Bill of Costs.  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |   |                               |                         |  |   |  |
|---|---|-------------------------------|-------------------------|--|---|--|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |   |                               |                         |  |   |  |
| <b>Judge</b>  | <b>Case Name</b>  | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|   | Egale Canada Inc.   |                               |                         | \$231.44   |   |  |
| Morin, Gerald R.  | Diallo v. Benson et. al.<br>*This costs decision the Ottawa Police Services Board defendant   | 2006                          | Defendant               | Costs in the amount of \$15,690.17   | Costs in the amount of \$5,000  | The plaintiff is only 24-years old and he does not hold permanent employment. The financial position of the plaintiff and his relative impecuniosity compared to that of the defendants is a factor taken into consideration. While the costs claimed by the defendants are not unreasonable, it would be more equitable for the plaintiff to pay only a portion of those costs. |
| Polowin, Heidi  | Rowe v. Unum Life Insurance Company of America  | 2006                          | Plaintiff               | Costs on a substantial indemnity basis throughout proceeding, totaling \$212,500, plus a premium, of \$150,000, plus disbursements and GST for a total of \$412,790.22 | Costs in the amount of \$140,000, plus GST and \$2,280.66 in disbursements  | Insurer is a sophisticated client and would have been well aware of the costs that it could reasonably expect to pay in relation to these proceedings; in support of this, judge noted that the costs outline prepared by counsel for the Insurer is similar to that prepared for the Plaintiff  |
| Power, Denis  | 1259695 Ontario Inc. (c.o.b. Upper Canada Office Systems) v. Guinchard  | [2006] O.J. No. 550 (S.C.J.)  | Plaintiff               | Costs in the amount of \$10,405.98, inclusive of fees, disbursements and GST.  | Costs on a partial indemnity basis in the amount of \$5,000, all inclusive. | The claim of costs is too high for a motion for leave to appeal to the Divisional Court.   |
| Power, Denis  | Hanis v. University of Western Ontario<br>*This was a proceeding against third party insurance companies to indemnify UWO for their fees they | [2006] O.J. No. 2763 (S.C.J.) | Defendant               | Costs on a full indemnity basis totaling \$667,920.36  | Costs on a Substantial indemnity basis totaling \$554,491.54                | The costs claimed by UWO are in excess of the suggested maximum amounts on a partial indemnity basis converted to the substantial indemnification scale; The costs claimed on a substantial indemnity basis exceed what is fair and reasonable. Claim for fees should be reduced by 10% accordingly, bringing the total fees to \$616,101.72.                                    |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |   |                               |                         |   |   |   |
|---|---|-------------------------------|-------------------------|---|---|---|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |   |                               |                         |   |   |   |
| <b>Judge</b>  | <b>Case Name</b>  | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|   | incurred in defending themselves                                  |                               |                         |   |   |   |
| Power, Denis (writing for the Court); O'Driscoll, John; Gravely, R.T Patrick                          | Worthman v. Assessed Inc.   | 2006                          | Plaintiff               | Costs totaling approximately \$47,000 (Exact number not disclosed)  | Costs in the amount of \$15,000 (including fees and disbursements)  | Plaintiff's claim excessive. Considerably more work went into a previous motion (that before Martlow J.) and, for that motion, he assessed costs at \$27,000. The costs on appeal should be less than \$27,000, in the interests of consistency.  |
| Roy, Albert J.  | Lecompte v. A. Potvin Construction Ltd.                           | 2006                          | Plaintiff               | Costs and disbursements totaling \$141,736.27   | Costs in the amount of \$50,000 plus \$20,000 in disbursements  | Plaintiff only awarded damages in the range of \$30,000; large disconnect between the plaintiffs' judgment and their request for costs; defendants could not have reasonably expected to pay \$141,000 in costs and disbursements on such a judgment; defendants, in their costs outline, only requested fees of \$23,625 and disbursements of \$8,505.92   |
| Siegel, Herman J.W.   | Inscan Contractors (Ontario) Inc. v. Halton District School Board | [2006] O.J. No. 815 (S.C.J.)  | Plaintiff               | Costs in the amount of \$86,255 plus GST plus \$2,000 in respect of its costs submission  | Costs in the amount of \$72,080, plus \$5,045.60 (GST), plus \$2,000 (cost submission) plus \$3,356.38 (disbursements inclusive of GST) | Costs award exceeds amount of judgment of \$50,000. This is an appropriate instance in which costs could exceed the amount of the judgment for two reasons. First, the amount of the costs claimed results principally from the entitlement to costs on the substantial indemnity scale for a significant period. The Court should give effect to these cost consequences of Rule 49.10 even though they produce a large award. Second, in bringing the claim, the plaintiff was challenging a much stronger party, the Board, which had acted in disregard of the contractual provisions between the parties. While these facts are not being used to increase the costs otherwise payable, the costs award will not be reduced for these reasons. |
| Smith, Robert J.  | Fournier v. Burton  | [2006] O.J. No. 5053 (S.C.J.) | Plaintiff               | Plaintiff: Costs of \$12,098.67 (which amounts to 92% of the total legal costs incurred by the plaintiff of \$13,150.73)<br><br>Defendant: Costs of \$5,000 | Costs on a partial indemnity basis in the amount of \$4,000 plus GST plus disbursements of \$400 inclusive of GST                       | Family law issue – Rule 24. Defendant incurred legal costs of \$10,518. He was aware of the range of costs being incurred. A losing party would expect to pay less than \$12,098 for a two and a half hour family motion on the issues of child support and terminating spousal support (as was the case here).   |
| Smith, Robert J.  | King v. Merrill Lynch Canada Inc.                                 | [2006] O.J. No. 1257 (S.C.J.) | Defendant               | Costs on a partial indemnity scale in the amount of   | Costs on a partial indemnity basis in the amount of   | Plaintiffs sought damages of approximately \$100 million from the Defendant. They were unsuccessful on that issue at trial. Plaintiffs were aware of the length of the trial (seven weeks,  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |                      |                               |                         |   |   |   |
|---|----------------------|-------------------------------|-------------------------|---|---|---|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |                      |                               |                         |   |   |   |
| <b>Judge</b>  | <b>Case Name</b>     | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|   |                      |                               |                         | \$831,493   | \$350,000 plus GST and disbursements of \$109,431.24 plus GST   | two days) since their counsel had estimated an eight week trial. Plaintiffs' own counsel claim costs on a partial indemnity basis in the amount of \$633,010; therefore, the plaintiffs would be aware of the range of costs that would be incurred in such a proceeding. There is a concern with preserving access to justice by individuals who, if unsuccessful, may not be able to afford the costs involved. |
| Smith, Robert J.  | Morris v. Cusack     | 2006                          | Defendant               | Costs on a substantial indemnity basis in the sum of \$3,013.26 for counsel's time in preparing and attending at the motion to oppose confirmation, \$3,318.50 in fees incurred for preparing the record and factum to oppose confirmation, and disbursements of \$1,343.26, costs for the assessment hearing of \$2,000 and a further amount of \$400 for the submissions on costs | Costs not awarded for the assessment hearing. Costs in the amount of \$3,000 plus GST plus disbursements of \$1,343.26. | Client claimed that he has been billed \$6,376 for his own legal costs and would have thought the amount that the unsuccessful party would reasonably be expected to pay would be in the same range or slightly lower, if on a partial indemnity basis.   |
| Smith, Robert J.  | Nelligan v. Fontaine | [2006] O.J. No. 3699 (S.C.J.) | Plaintiff               | Plaintiff (law firm) sought their costs thrown away as a result of attending the assessment hearing and for the motion to set-aside the default   | Costs thrown away were assessed at \$10,000 plus GST and disbursements of \$371.80, inclusive of GST                    | The clients were familiar with the high costs of litigation as they received regular invoices from the plaintiff law firm.  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |                     |                               |                         |  |   |  |
|---|---------------------|-------------------------------|-------------------------|--|---|--|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |                     |                               |                         |  |   |  |
| <b>Judge</b>  | <b>Case Name</b>    | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|   |                     |                               |                         | assessment order.<br><br>Plaintiff law firm claims fees of \$22,816.68 inclusive of GST on a substantial indemnity basis, plus disbursements of \$531.36 |   |  |
| Smith, Robert J.  | Sauvé v. Merovitz   | [2006] O.J. No. 5059 (S.C.J.) | Defendant               | Not disclosed  | Merovitz Motion: Applicant ordered to pay \$8,000 + \$716.91 (disbursements) + GST<br><br>Cotes Motion: Applicant ordered to pay \$5,000 + \$431.03 (disbursements) + GST<br><br>Cotes Application: Applicant ordered to pay \$6,000 + \$729.51 (disbursements) + GST | Applicant launched a claim for a very large amount of damages (\$30 million) against these Defendants and his actions forced the defendants to engage legal counsel and incur legal costs to defend themselves. The unsuccessful party who claims damages in excess of \$30 million would be aware that substantial legal costs would be incurred by the Defendants. |
| Toscano Roccamo, Givanna  | Champion v. Guibord | [2006] O.J. No. 3197 (S.C.J.) | Plaintiff               | Costs on a full indemnity basis in the amount of \$13,617.50 in fees, plus \$1,748.89 in disbursements, plus applicable GST                              | Costs on a partial indemnity basis in the amount of \$11,098 in fees, plus \$1,748.89 in disbursements, plus applicable GST   | Respondent's own Costs outline claims partial indemnity fees of \$12,109 in contrast with the Applicants' fees at \$11,098 on a partial indemnity scale; Respondent would not be in a challenge the amount claimed by the Applicants on a partial indemnity scale pursuant to the principle of reasonable expectations   |
| Toscano   | Summers v.          | [2006] O.J. No.               | Plaintiff               | Costs in the   | Costs on a  | Although an award for fees in the amount of \$42,500 is well in  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |   |                               |                            |  |   |   |
|---|---|-------------------------------|----------------------------|--|---|---|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |   |                               |                            |  |   |   |
| <b>Judge</b>  | <b>Case Name</b>                                    | <b>Citation / Date</b>        | <b>Costs awarded to</b>    | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
| Roccamo, Giovanna   | Harrower  | 452 (S.C.J.)                  |                            | amount of \$86,238.79 in fees plus \$7,119.65 in disbursements for a total of \$94,358.44.   | substantial indemnity basis in the amount of \$42,500 plus \$5,137.23 in disbursements, plus GST  | excess of the amount recovered at trial, it very nearly approaches the amount claimed for fees in the defendant's Costs Outline and therefore mirrors the amount of costs that an unsuccessful party could reasonably expect to pay. Both parties in the proceeding were well award throughout of the serious risks in relation to costs incurred and recovered notwithstanding success in these proceedings. |
| Beaudoin, R.  | Harvey v. Leger                                     | [2005] O.J. No. 3582 (S.C.J.) | Defendants & Third Parties | Defendants:<br>Costs on a substantial indemnity basis in the amount of \$7,901.95 plus disbursements of \$628.06 inclusive of GST.<br><br>Third Parties:<br>Costs on a partial indemnity basis in the amount of \$5,061.15 inclusive of counsel fee, GST and disbursements | Defendants:<br>Costs on a partial indemnity basis in the amount of \$3,000 inclusive of GST and disbursements<br><br>Third Parties:<br>Costs on a partial indemnity basis in the amount of \$3,500 inclusive of GST and disbursements | With regards to the Third Parties' request for costs, their requested costs on a partial indemnity basis is very close to the amount that they seek on a substantial indemnity basis.<br><br>The amount claimed by the Defendant is excessive, particular in regard to the amount claimed by the Third Party. His materials were far more substantial than those prepared by counsel for the defendant.       |
| Belch, Douglas  | Millen v. Kingsway General Insurance Company        | 2005                          | Defendant                  | Costs on a partial indemnity basis in the amount of \$20,849.27 or costs on a substantial indemnity basis in the amount of \$25,225.57   | Costs on a partial indemnity basis in the amount of \$7,500, including fees and disbursements and GST where applicable  | Given the amount in issue and the relatively short duration of the trial as witnessed by the fact that the Simplified Rules applied, this is not a case where the losing party would expect to pay costs of \$20,849.27.  |
| Brennan, W.J. Lloy  | Woodcliffe Corporation, et al. v. Rotenberg, et al. | 2005                          | Third Parties              | Costs on a full indemnity basis  | Costs on a substantial indemnity basis  | The court should fix the costs on a scale that reflects its view of a fair and reasonable amount that should be paid by the unsuccessful party.<br><br>The plaintiffs must have had a reasonable expectation that the third parties as well as defendants would move to strike their claim. But that expectation would not have been that the full  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>   |  |   |                         |   |   |   |
|---|--|---|-------------------------|---|---|---|
| <b>Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))</b> |  |   |                         |   |   |   |
| <b>Judge</b>  | <b>Case Name</b>   | <b>Citation / Date</b>                          | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|   |  |   |                         |   |   | costs of those motions would be transferred to the plaintiffs.  |
| Ferguson, Donald S.   | Thomson v. S.I.A. Insurance Brokers Ltd.   | [2005] O.J. No. 4497 (S.C.J.)                   | Defendant               | Not disclosed   | Costs on a partial indemnity basis in the amount of \$55,000, inclusive of disbursements and GST  | The Plaintiff's bill of costs is significantly higher than that of the defendants' counsel, suggesting that the defendants' bill is not too high.   |
| Ground, John D.   | Canadian National Railway Corp. v. Royal and SunAlliance Insurance Co. of Canada | [2005] O.J. No. 3931, 77 O.R. (3d) 612 (S.C.J.) | Plaintiff               | Costs in the amount of \$1,261,364.00 plus GST and disbursements for a total of \$1,644,496.83.   | Costs in the amount of \$800,000 for fees together with \$56,000 for GST and disbursements of \$294,837.35 for a total of \$1,150,837.35.   | The comparison of the fees charged to the Defendants and the cost being claimed by the Plaintiffs is persuasive in determining the reasonable expectations of the losing party.   |
| Morin, Gerald R.  | Cummings v. Douglas  | 2005  | Plaintiff               | Costs on a partial indemnity basis in the amount of \$197,904.53 for fees, inclusive of GST, plus disbursements of \$52,252.81, inclusive of GST for a total amount of \$250,157.34 | Costs on a partial indemnity basis in the amount of \$184,957 plus GST of \$12,947.03 for a total of \$197,904.53 in fees, and \$48,864.36 plus GST of \$3,388.45 for a total of \$52,252.81. | In face of the plaintiff having recovered a substantial judgment notwithstanding the significant apportionment of contributory negligence, and in the absence of any Rule 49 Offers that impacted on the issue of costs, the defendant might reasonably have expected to pay the plaintiff's legal fees calculated in the range of \$150,000 to \$200,000 together with reasonable disbursements. |
| Power, Denis  | Bowers v. Delegarde  | [2005] O.J. No. 3857 (S.C.J.)                   | Defendant               | Costs on a substantial indemnity basis in the amount of \$115,631.06, or, costs on a partial indemnity scale in the amount of \$88,707.72   | Costs on a partial indemnity basis in the amount of \$40,000, inclusive of disbursements and all fees, and GST.   | The hours worked, the hourly rate and the disbursements were not unreasonable. However, discretion must be exercised in fixing costs, and the focus must be on what is fair and reasonable.   |
| Power, Denis  | Spearhead  | 2005  | Defendant               | Costs on a  | Costs in the  | The appropriate amount of costs to be awarded must reflect the  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

***Reasonable Expectations / costs that an unsuccessful party could expect to pay (57.01(1)(0.b))***

| <b>Judge</b>             | <b>Case Name</b>   | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|--------------------------|--|------------------------|-------------------------|--|---|---|
|                          | Management Canada Ltd. v. Henningsen                         |                        |                         | substantial indemnity basis in the amount of \$27,219.23, inclusive of GST.  | amount of \$12,000, inclusive of GST.   | reasonable expectations of the parties and, in particular, the party seized with the responsibility of paying the costs.  |
| Rutherford, Douglas J.A. | Inkworks Quality Printers Corporation v. Gary Baxter et. al. | 2005                   | Plaintiff               | Costs on a partial indemnity basis in the amount of \$7,110 for fees, \$497.70 for GST and \$2,212.14 for disbursements including GST. Total amount claimed is \$7,819.84. | Costs on a partial indemnity basis in the amount of \$4,000, inclusive of fees, disbursements and applicable GST. | According to <i>Boucher v. Public Accountants Council for the Province of Ontario</i> (2004), 71 O.R. (3d) 291 (C.A.), the following principles are to be adhered to in fixing costs: 1) Fixing costs is not a mechanical exercise. All of the factors in R. 57.01 must be considered; 2) Costs Grid calculation is appropriate, but judge must also step back and see if the result is fair and reasonable; and 3) the expectation of the parties is a relevant factor in deciding what is fair and reasonable |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Amount claimed and amount recovered (57.01(1)(a))**

| Judge            | Case Name  | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments   |
|------------------|--|-----------------|------------------|---|--|--|
| Conway J.        | Sandborn v. Pottruff and Malik,                  | 2011 ONSC 2819  | Defendants       | Defendants claim \$59,228.74 on a partial indemnity basis up to December 17, 2010 and substantial basis afterwards.<br><br>Plaintiffs only submitted that defendants should only be awarded partial indemnity scale.                                    | \$42,000 inclusive of disbursements and taxes.                                     | There is no basis for substantial indemnity costs. While these may have been awarded previously on a discretionary basis, under rules 49.13 and 57.01 <i>Clarington (Municipality) v. Blue Circle Canada Inc</i> 2009 ONCA 722. has superseded this. There was no reprehensible conduct by the plaintiff therefore costs on a partial indemnity basis are awarded.<br><br>Partial indemnity fees are calculated as \$44,729.25 with disbursements just under \$4000.<br><br>With the rule of proportionality, the plaintiff could reasonably expected the trial would be costly and taking into account rule 57.01 91), a fair and reasonable amount is \$42,000 inclusive of disbursements and taxes. |
| Fregeau, J.S.    | Major v York Region Children's Aid Society et al | 2011 ONSC 6695  | Defendants       | Costs outline by the defendants list fees of \$19,785.00 on a full recovery basis and \$14,831.56 on a partial indemnity basis for summary judgment motion; \$6478.00 for full recovery basis and \$3816.30 on partial indemnity basis for cross motion | \$10,000 inclusive of HST and disbursements  | The judge accepts the suggestion that the Plaintiff's action against the defendants was without merit. He was given an opportunity to agree to a dismissal without costs and was put on notice that costs would be assessed should he persist; he did not respond.<br><br>The Plaintiff was self-represented. It is reasonable to expect errors in a self-represented litigant's pleadings.<br><br>He was twice given the opportunity to consider the merit of his claim but failed to do so.  |
| Lalonde, Paul F. | Asco Construction Ltd. V Epoxy Solutions Ltd.    | 2011 ONSC 4464  | Defendant        | 56,174.00 plus HST for fees; 7944.08 plus HST for disbursements   | \$36,100 plus HST for fees; 5944.08 plus HST for disbursements<br><br>Pre-judgment | There was an offer to settle which was not accepted but was not withdrawn. Asco acted in bad faith in dismissing Epoxy without cause and in an insulting manner.<br><br>Epoxy is entitled to prejudgment interest on the Counterclaim at the rate of 4.8% per year from October 4, 2007 (\$25,678 x 4.8% x 1399 days=\$4,521.57)   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Amount claimed and amount recovered (57.01(1)(a))**

| Judge        | Case Name                                | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments   |
|--------------|--|-----------------|------------------|---|--|--|
|              |  |                 |                  |   | interest of \$4,521.57 will also be paid   | <p>The award includes the counsel's claim for fees (\$20,000 for fees before and after the offer to settle and \$15,000 for trial counsel fees) \$100 for settling the judgment and \$1000 for cost submissions;</p> <p>The travel portion of disbursements is disallowed as they could have chosen to have a Toronto counsel do the trial work.</p> <p>This is what Asco could have expected to pay, given the lack of cooperation of Asco to supply and disclose documents in a timely manner.</p>   |
| Métivier, M. | Leroux v Casselman (Village)             | 2011 ONSC 5847  | Applicants       | Applicants seek costs of \$68,237.34 on a substantial indemnity basis; or, \$47,406.10 on a partial indemnity basis.          | \$38,500 to be paid by Village of Casselman and \$1500 to be paid by Myke Racine | <p>No costs should be awarded to defendant, Myke Racine.</p> <p>The modest sums awarded are not intended to serve as a shield for the respondent to avoid paying costs. Their unsuccessful and unreasonable defense was based on a complete and deliberate denial of the rights of a holder of a right of way.</p> <p>Costs are awarded on a substantial indemnity basis.</p>  |
| Price, J.    | Punzo v. Punzo                           | 2011 ONSC 7300  | Applicant        | <p>Applicant: \$10,969.11 for the motion.</p> <p>Respondent: \$15,049.34 since his two offers to settle were not accepted</p> | \$8,790.83 including HST and disbursements                                       | <p>Rule 24(4) of the Family Law Rules gives explicit recognition that costs may be used to express the court's disapproval of a litigant's unreasonable conduct, which is applicable with the respondent's behavior in this case. He failed to make full and timely disclosures and unreasonably delayed reducing the listing price of the home. However, the evidence at motion does not support granting costs against him on a substantial indemnity basis.</p> <p>The respondent should reasonably have expected to pay costs at the time, charged on a partial indemnity scale.</p> |
| Ratushny, L. | Gordon v. North Grenville (Municipality) | 2011 ONSC 3070  | Appellant        | \$40,204.57 on a substantial indemnity basis  | \$20,000 all inclusive   | <p>This issue was one of giving reasonable notice and ignoring the Appellant's rights under the Building Code Act, plus failing to give the appellant reasonable notice and reasonable opportunity to remediate.</p> <p>There was evidence that there were other legal options available to the respondents to deal with their safety concerns</p> <p>The unsuccessful party submitted a Bill of Costs for \$23,575.25.</p>  |
| Shaw, D.C.   | Porter v                                 | 2011 ONSC       | Respondent       | \$6,000 plus HST  | \$2500 plus HST  | The starting point in settling costs in family law matters is Rule   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Amount claimed and amount recovered (57.01(1)(a))**

| Judge        | Case Name   | Citation / Date | Costs awarded to     | Costs Requested  | Costs Awarded  | Judge's Comments   |
|--------------|---|-----------------|----------------------|--|--|--|
|              | Hamilton  | 7042            |                      | on a partial indemnity scale.  |  | <p>24(1) in that there is a presumption that a successful party is entitled to costs.</p> <p>in <i>Sims-Howarth v Bilcliff</i>, [2000] O.J. No. 330 (S.C.J.), Aston J held the concept of the two traditional scales of costs is no longer the appropriate way to quantify costs under the Family Law Rules</p> <p>as noted in <i>Zestra Engineering Ltd. v Cloutier</i>, [2002] O.J. No. 4495 (Ont. C.A.), the assessment of costs should reflect what the court views a reasonable amount that should be paid by the unsuccessful party.</p>   |
| Smith, R.    | 137328 Canada Inc. Alliance Security Systems v. Economical Mutual | 2011 ONSC 2563  | Respondents          | Respondents seek: \$24,688.90 plus 3,929.13 in disbursements on a substantial indemnity basis; or, partial indemnity basis up to the date of the offer to settle and substantial afterwards for \$22,349.75 plus #3,929.13 in disbursements; or on a partial indemnity basis throughout for \$19,202.48 plus disbursements | \$17,000 inclusive of GST/HST on a partial indemnity basis plus \$3,000 in disbursements | <p>Alliance did not act reasonably by refusing to allow Economical to provide it with a defence, to provide insurance coverage and to instruct defence counsel in circumstances where Economical agreed to provide insurance coverage without a waiver of rights.</p> <p>Not prepared to award substantial indemnity costs as the offer to settle did not comply strictly with Rule 49.</p> <p>No real objection to Respondents rate of \$350/hour for senior counsel and \$160/hour for junior counsel. Since this was much less than their own counsel charged, Alliance would reasonably expect to pay the amounts in the approximate amount claimed by Economical.</p> |
| Power, Denis | Bérubé v. Rational Entertainment Ltd.                             | 2010 ONSC 894   | Respondent defendant | \$5,539.31 on partial indemnity scale, including \$457.81 in disbursements   | \$3500, inclusive of GST and disbursements   | The plaintiff had claimed \$7,200. Any award of costs on the appeal must take into consideration the amount in issue in the proceeding.  |
| Ray, Timothy | Hollingsworth Estate v. Halsall                                   | 2010 ONSC 2087  | Applicant            | \$21,148.03 on a full indemnity scale, substantial indemnity costs   | \$500 inclusive of GST and disbursements   | The litigation was ultimately settled in an agreement concerning the disposition of property worth at most a few hundred dollars. The counterclaim by the respondent gives the clear impression that it was not serious, but is an effort to cause   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Amount claimed and amount recovered (57.01(1)(a))**

| Judge                | Case Name   | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded  | Judge's Comments   |
|----------------------|---|-------------------------------|------------------|--|--|--|
|                      |   |                               |                  | at \$19,032.13 or partial indemnity costs of \$13,385.13   |  | the applicants to consider the consequences of their aggressive behaviour. The outcome was worthy of a Small Claims proceeding at most, if litigation were to have been considered necessary. Costs on a Small Claims court level might have been ordered at \$150.  |
| Ray, Timothy         | Malenfant v. Lavergne   | 2010 ONSC 3596                | defendant        | \$81,834.51 inclusive, on a partial indemnity basis  | \$76,000, all inclusive  | The defendant's costs claim was reasonable for a 9 day trial, for a claim in excess of \$2,000,000. The plaintiff can reasonably be presumed to have known that his claim was tenuous and that he might be liable for costs. The defendant had the opportunity to accept a settlement offer that would have avoided an award for costs. In these circumstances, it would not be reasonable to deny the defendant her costs.  |
| Smith, Robert        | Baird v. Botham   | 2010 ONSC 3057                | Defendant        | \$49,924.88 for fees and \$11,524.61 for disbursements, both inclusive of GST for a total of \$61,449.49 | costs of \$30,000.00 plus GST plus disbursements of \$8,500.00 plus GST                      | The amount of costs the defendants agree to pay the plaintiff's solicitor as part of a settlement is some evidence of what the parties considered reasonable at that point. But where it was not based on hourly rates or time spent, it is of little weight in settling costs as between the two defendants.<br><br>Under the circumstances of a three day jury trial of a single issue that was not overly complex, \$30,000, or approximately 60% of actual full indemnity costs, is appropriate. |
| Polowin, Heidi       | Rowe v. Unum Life Insurance Company of America (Motion to Vary) | [2007] O.J. No. 474 (S.C.J.)  | Plaintiff        | Costs in the amount of \$8,431.77, inclusive of GST  | Partial indemnity costs totaling \$1,500.  | Plaintiff claimed \$600,000 in damages, but only recovered \$30,000.   |
| Aitken, Catherine D. | Lavinskas v. Jacques Whitford & Associates Ltd.                 | [2006] O.J. No. 2697 (S.C.J.) | Plaintiff        | Costs on a substantial indemnity basis in the amount of \$44,134.  | Costs in the amount of \$28,000  | The Plaintiff claimed \$50,000 in damages. He recovered \$35,380.14 inclusive of prejudgment interest. Plaintiff was successful in regard to only one of three headings of damages claimed, but little time was spent on the two lost issues.  |
| Maranger, Robert L.  | Cusson v. Quan  | [2006] O.J. No. 3186 (S.C.J.) | Plaintiff        | Costs on a partial indemnity basis in the amount of \$665,265.66 (\$582,386 in fees, plus GST of         | Costs on a partial indemnity basis in the amount of \$246,512.66 (\$200,000 in counsel fees; | The plaintiff claimed almost \$3 million in damages. The jury awarded \$125,000 in general damages.  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Amount claimed and amount recovered (57.01(1)(a))**

| Judge                     | Case Name                               | Citation / Date               | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments   |
|---------------------------|---|-------------------------------|------------------|---|---|--|
|                           |   |                               |                  | \$40,767 and disbursements of \$42,112.66)                    | GST of \$14,000; disbursements of \$32,512.66)  |  |
| Roy, Albert J.            | Lecompte v. A. Potvin Construction Ltd. | 2006                          | Plaintiff        | Costs and disbursements totaling \$141,736.27                 | Costs in the amount of \$50,000 plus \$20,000 in disbursements  | Plaintiff only awarded damages in the range of \$30,000. Given this, plaintiffs' request for costs is totally out of line with the amount recovered in the judgment  |
| Smith, Robert J.          | King v. Merrill Lynch Canada Inc.       | [2006] O.J. No. 1257 (S.C.J.) | Defendant        | Costs on a partial indemnity scale in the amount of \$831,493 | Costs on a partial indemnity basis in the amount of \$350,000 plus GST and disbursements of \$109,431.24 plus GST   | The amount claimed by the Plaintiffs was approximately \$100 million and the amount recovered amounted to a declaration that the promissory note of \$200,000 (U.S.) was null and void, and a net recovery of \$7,411. The amount recovered was not close to the amount claimed. |
| Smith, Robert J.          | Sauvé v. Merovitz                       | [2006] O.J. No. 5059 (S.C.J.) | Defendant        | Not disclosed   | Merovitz Motion: Applicant ordered to pay \$8,000 + \$716.91 (disbursements) + GST<br><br>Cotes Motion: Applicant ordered to pay \$5,000 + \$431.03 (disbursements) + GST<br><br>Cotes Application: Applicant ordered to pay \$6,000 + \$729.51 (disbursements) + GST | Applicant's claim exceeded \$30 million against a number of defendants, and the amount recovered against these defendants was nil.   |
| Toscano Roccamo, Giovanna | Summers v. Harrower                     | [2006] O.J. No. 452 (S.C.J.)  | Plaintiff        | Costs in the amount of \$86,238.79 in fees plus \$7,119.65 in | Costs on a substantial indemnity basis in the amount of \$42,500 plus   | Amount claimed (\$20,287.42) and the amount recovered (\$18,703.82) in the proceedings warrant a costs award below the amount claimed by the plaintiffs  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Amount claimed and amount recovered (57.01(1)(a))**

| Judge            | Case Name           | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments   |
|------------------|---------------------|-----------------|------------------|---|---|--|
|                  |                     |                 |                  | disbursements for a total of \$94,358.44.   | \$5,137.23 in disbursements, plus GST   |  |
| Morin, Gerald R. | Cummings v. Douglas | 2005            | Plaintiff        | Costs on a partial indemnity basis in the amount of \$197,904.53 for fees, inclusive of GST, plus disbursements of \$52,252.81, inclusive of GST for a total amount of \$250,157.34 | Costs on a partial indemnity basis in the amount of \$184,957 plus GST of \$12,947.03 for a total of \$197,904.53 in fees, and \$48,864.36 plus GST of \$3,388.45 for a total of \$52,252.81. | This case resulted in a substantial judgment notwithstanding the significant apportionment of contributory negligence. The plaintiff was awarded \$2,910,950 in total damages by the jury. |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Apportionment of liability (57.01(1)(b))**

| Judge                | Case Name  | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments   |
|----------------------|--|-------------------------------|------------------|--|---|--|
| Healey, J.           | Despoja v. Despoja   | 2012 ONSC 765                 | Applicant        | \$2,500 for the costs of the motion;<br>\$14,856.44 to be redirected by the Family Responsibility Office to the Applicant                                    | \$2,500 for the costs of the motion;<br>\$14,856.44 to be redirected by the Family Responsibility Office to the Applicant                       | This is an agreement on costs for the motion heard on January 11, 2012 (Despoja v. Despoja, 2012 ONSC 340).<br><br>The costs of the motion paid to the Applicant will be set off against future spousal support owing the Respondent<br><br>The amount to be released by the Family Responsibility Office will satisfy paragraph 4(3) of the January 12, 2012 endorsement is \$14,856.44 |
| Aitken, Catherine D. | Lavinkas v. Jacques Whitford & Associates Ltd.                             | [2006] O.J. No. 2697 (S.C.J.) | Plaintiff        | Costs on a substantial indemnity basis in the amount of \$44,134.  | Costs in the amount of \$28,000   | The Plaintiff claimed \$50,000 in damages. He recovered \$35,380.14 inclusive of prejudgment interest. Plaintiff was successful in regard to only one of three headings of damages claimed, but little time was spent on the two lost issues.  |
| Beaudoin, R.         | Chevrier v. Patterson Hadden Limited                                       | [2006] O.J. No. 3917 (S.C.J.) | Defendants       | Costs on a partial indemnity basis in the amount of \$2,586.03; costs on a substantial indemnity basis in the amount of \$3,609.99                           | \$2,500   | Defendants were substantially successful on this motion brought by the Plaintiffs and there is no good reason why they should be deprived of their costs.  |
| Beaudoin, R.         | Khan v. TD Waterhouse Canada Inc. (c.o.b. TD Waterhouse Investment Advice) | [2006] O.J. No. 1177 (S.C.J.) | Defendant        | Costs on a partial indemnity basis in the amount of \$27,805.99  | Costs in the amount of \$10,000 for fees plus disbursements of \$5,415.39 for a total of \$15,415.39.   | Defendants were completely successful on the motion seeking security for costs.  |
| Beaudoin, R.         | OZ Merchandising Inc. v. Canadian Professional Soccer League Inc.          | [2006] O.J. No. 3718 (S.C.J.) | Defendants       | Eastern Ontario District Soccer Association (Defendant) & Ontario Soccer Association (Defendant) claimed costs on a partial indemnity basis in the amount of | Eastern Ontario District Soccer Association: Costs in the amount of \$1,500 + \$250 (excess counsel's costs) + \$1,000 (excess counsel's costs) | This was the second motion by the Plaintiffs to amend their claim and their third attempt at an amendment of pleadings. They were unsuccessful on each occasion.   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

***Apportionment of liability (57.01(1)(b))***

| <b>Judge</b> | <b>Case Name</b>                           | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|--------------|--|-------------------------------|-------------------------|--|---|--|
|              |  |                               |                         | \$5,500.87 or costs on a full indemnity basis in the amount of \$8,202.52  |   |  |
| Beaudoin, R. | OZ Optics Limited v. Timbercon Inc.        | 2006                          | Defendant               | Costs on a substantial indemnity basis in the amount of \$4,665.   | Costs on a substantial indemnity basis in the amount of \$4,665. This amount was offset against the amount of \$2,000 being the Plaintiff's costs of initiating and preparing its motion record. Total costs to the defendant in the amount of \$2,665. | While OZ may have been entitled to bring the motion on the basis of the late delivery of answers to undertakings, there is no doubt that the contested part of the motion was resolved completely in the Defendant's favour. |
| Beaudoin, R. | Shalouf v. Beaudry                         | [2006] O.J. No. 2550 (S.C.J.) | Defendants              | Costs on a partial indemnity basis in the amount of \$50,389 inclusive of GST. This amount includes \$46,864.41 for fees and taxable disbursements of \$3,525.28 | Costs on a partial indemnity basis in the amount of \$20,000, all inclusive.  | Defendant physicians were successful in their motion for summary judgment dismissing the plaintiffs' action.   |
| Beaudoin, R. | Temelini v. Canada Permanent Trust Company | [2006] O.J. No 509 (S.C.J.)   | Plaintiff               | Costs on a partial indemnity basis in the amount of \$16,933 and disbursements of \$2,345.94   | Costs in the amount of \$7,000 for fees, plus \$1,500 for disbursements. GST should be added to these sums for a total of \$595.  | The Plaintiff was successful and there is no good reason to depart from the general rule that he should be entitled to his costs at this stage of the proceedings.   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Apportionment of liability (57.01(1)(b))**

| Judge   | Case Name   | Citation / Date               | Costs awarded to   | Costs Requested  | Costs Awarded   | Judge's Comments   |
|---|---|-------------------------------|--|--|---|--|
| Charbonneau, Michel z.  | Iko Industries Ltd. v. Grant                              | [2006] O.J. No. 4068 (S.C.J.) | Plaintiff  | Not disclosed  | \$120,000, "all in"   | The plaintiffs were successful on their motion – the Court found ten separate incidents of contempt involving 13 individuals over a period of three months. Most of the contempts occurred after the motion was initiated and after the judge adjourning the motion had stressed to the defendants the seriousness of breaching the order during the term. |
| Cunningham, J. Douglas; Lane, G. Dennis; Hackland, Charles T. | Gray <i>et al.</i> v. Province of Ontario <i>et al.</i>   | 2006                          | Plaintiffs / Applicants                                    | Costs on a partial indemnity basis. Amount not disclosed | Costs on a partial indemnity basis in the amount of \$35,000 to the Ventola Applicants and costs on a partial indemnity basis in the amount of \$35,000 to the Gray Applicants  | Applicants achieved partial success on an issue that was of importance to the disposition of the proceeding.   |
| de Sousa, Maria T. Linhares                                   | Rwagasore v. Sugira                                       | 2006                          | Defendant  | Not disclosed  | \$4,200   | Defendant was successful on this motion.   |
| de Sousa, Maria T. Linhares                                   | Viertelhausen v. Burbridge                                | [2006] O.J. No. 1406 (S.C.J.) | Plaintiff  | Not disclosed  | Costs on a partial indemnity basis in the amount of \$7,000   | Plaintiff was the substantially successful party in this litigation and should be entitled to some contribution to his costs, unless his conduct in this litigation would disentitle him to such costs.  |
| Hackland, Charles T.  | Agricredit <i>et al.</i> v. Somerville Farm Supplies Ltd. | 2006                          | Plaintiff and Defendant (to be set off against each other) | Not disclosed  | Plaintiff: Costs on a partial indemnity basis in the amount of \$30,000 in fees and \$2,500 for disbursements (inclusive of GST)<br><br>Defendant: Costs in the amount of \$10,000 in fees and \$700 for disbursements (inclusive of GST) | Two-thirds of the trial time and importance was devoted to the warranty claim on which the Plaintiff succeeded and one-third to the tort claim on which the Defendant succeeded.   |
| Hackland,   | Schouten v.   | 2006                          | Defendant  | Total requested  | Total fees  | The action was dismissed; defendants were entirely   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Apportionment of liability (57.01(1)(b))**

| Judge               | Case Name   | Citation / Date               | Costs awarded to       | Costs Requested   | Costs Awarded   | Judge's Comments  |
|---------------------|---|-------------------------------|------------------------|---|---|---|
| Charles T.          | Rideau (Township)   |                               |                        | costs not disclosed   | \$97,317.87 plus \$51,329.71 in disbursements plus GST  | successful  |
| Lalonde, Paul F.    | Higgerty v. Higgerty  | 2006                          | Defendant (wife)       | Not disclosed   | Costs on a partial indemnity basis in the amount of \$10,000 in fees and \$1,252.01 in disbursements, all inclusive of GST                  | Family law issue – Rule 24. Defendant was largely the successful party on this motion.  |
| Maranger, Robert L. | Cusson v. Quan  | [2006] O.J. No. 3186 (S.C.J.) | Plaintiff              | Costs on a partial indemnity basis in the amount of \$665,265.66 (\$582,386 in fees, plus GST of \$40,767 and disbursements of \$42,112.66) | Costs on a partial indemnity basis in the amount of \$246,512.66 (\$200,000 in counsel fees; GST of \$14,000; disbursements of \$32,512.66) | The plaintiff claimed almost \$3 million in damages. The plaintiff did not succeed on many issues, including the future loss claims, punitive damage claims and on the issue of malice.<br><br>Success was divided in that the jury concluded that a great deal of what was in the articles in question was either true or not defamatory. Division of success goes to the quantum awarded and does not deprive the plaintiff of any costs. |
| Morin, Gerald R.    | Canadian Blood Services v. Freeman<br>* This case also involved costs to the intervenor Egale Canada Inc. | 2006                          | Defendant & Intervenor | Egale: \$10,710 and disbursements of \$522.88<br><br>Defendant: \$11,375 and disbursements of \$231.44                                      | \$10,000 to Egale and Defendant in addition to the disbursements claimed by each party  | Egale and Freeman were successful in opposing the appeals of the opposing parties   |
| Power, Denis        | Andison v. Cheeseman  | 2006                          | Plaintiff              | Costs in the amount of \$6,112.25   | Costs in the amount of \$4,000, all-inclusive   | Notwithstanding that success was divided, this is not a situation in which to order no costs. However, a full award will not be made in favour of the Plaintiffs.   |
| Power, Denis        | Dunklin v. Dunklin  | [2006] O.J. No. 1886 (S.C.J.) | Defendant              | Costs in the amount of \$16,500 plus GST. Counsel requests that 75% of these costs be ordered against the                                   | Costs should be awarded in the amount of 50% of the \$16,500, and not 75% of that amount. Costs were awarded in the                         | Defendant was primarily successful on most, if not all, of the issues that proceeded to trial.  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Apportionment of liability (57.01(1)(b))**

| Judge        | Case Name  | Citation / Date               | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments  |
|--------------|--|-------------------------------|------------------|---|--|---|
|              |  |                               |                  | Plaintiff (being an amount of \$12,375 plus GST and disbursements for a total costs request of \$14,651.50).  | rounded-off amount of \$8,500, inclusive of GST and disbursements.                   |   |
| Power, Denis | Gilchrist v. Oak   | 2006                          | Defendant        | Costs in the amount of \$4,667.88 (inclusive of fees, disbursements and applicable GST)   | Costs in the amount of \$2,500 (inclusive of fees, disbursements and applicable GST) | Defendant was the successful party on the motion and costs should be made in his favour. There is nothing in this case to suggest that the usual presumption with regards to costs she be rebutted. |
| Power, Denis | Hanis v. University of Western Ontario<br>*This was a proceeding against third party insurance companies to indemnify UWO for their fees they incurred in defending themselves | [2006] O.J. No. 2763 (S.C.J.) | Defendant        | Costs on a full indemnity basis totaling \$667,920.36   | Costs on a Substantial indemnity basis totaling \$554,491.54                         | While substantially successful in its claim against Guardian Insurance Company of Canada, UWO was not one hundred percent successful  |
| Power, Denis | Riddell v. Conservative Party of Canada  | [2006] O.J. No. 4141 (S.C.J.) | Plaintiff        | Costs on a partial indemnity basis in the amount of \$8,216.80 and costs on a substantial indemnity basis in the amount of \$8,805.30 (both amounts inclusive of GST and disbursements) | Costs on a partial indemnity basis in the amount of \$6,500, all inclusive.          | There is no good reason why an award of costs should not be made to the Plaintiff as the successful party on the motion.  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

***Apportionment of liability (57.01(1)(b))***

| <b>Judge</b>     | <b>Case Name</b>                            | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
|------------------|---|-------------------------------|-------------------------|---|--|---|
| Smith, Robert J. | Blackburn v. Fortin                         | [2006] O.J. No. 3228 (S.C.J.) | Defendant               | Costs on a substantial indemnity scale in the amount of \$23,553.75 plus GST plus disbursements of \$1,471.84 plus GST for a total of \$26,763.04                                       | Costs on a partial indemnity basis at \$14,500 inclusive of GST plus disbursements of \$1,471.84 plus GST of \$88.68 | Family law issue – Rule 24. Defendants were ultimately successful in their defence to the application for access by the grandmother and are, therefore, entitled to costs.  |
| Smith, Robert J. | Fournier v. Burton                          | [2006] O.J. No. 5053 (S.C.J.) | Plaintiff               | Plaintiff: Costs in the amount of \$12,098.67 (which amounts to 92% of the total legal costs incurred by the plaintiff of \$13,150.73)<br><br>Defendant: Costs in the amount of \$5,000 | Costs on a partial indemnity basis in the amount of \$4,000 plus GST plus disbursements of \$400 inclusive of GST    | Family law issue – Rule 24. Success between the parties was divided on the issues; however, the plaintiff enjoyed greater success than the defendant  |
| Smith, Robert J. | King v. Merrill Lynch Canada Inc.           | [2006] O.J. No. 1257 (S.C.J.) | Defendant               | Costs on a partial indemnity scale in the amount of \$831,493   | Costs on a partial indemnity basis in the amount of \$350,000 plus GST and disbursements of \$109,431.24 plus GST    | There was divided success between the parties but the defendant was overall more successful than the plaintiff. The Defendant was successful on the issues which occupied 90% of the time at trial, and also dealt with the largest part of the damages claimed, which were approximately \$100 million. The amounts involved in the other issues were significantly lower. |
| Smith, Robert J. | Llance Communications Ind. V. Star Web Ltd. | [2006] O.J. No. 5054 (S.C.J.) | Plaintiff               | Costs in the amount of \$10,005.75 plus GST plus disbursements of \$241.28  | Costs on a partial indemnity scale in the amount of \$4,000 plus GST plus disbursements of \$241.28                  | There was divided success between the parties; however, most of the time at the two-hour motion was spent on the Defendants motion for leave to appeal the dismissal of its motion for summary judgment, which the Plaintiff was successful in opposing.  |
| Smith, Robert J. | Morris v. Cusack                            | 2006                          | Defendant               | Costs on a substantial indemnity basis in the sum of  | Costs not awarded for the assessment hearing. Costs in   | Success in the outcome of the case was divided.   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Apportionment of liability (57.01(1)(b))**

| Judge            | Case Name         | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments   |
|------------------|-------------------|-------------------------------|------------------|--|---|--|
|                  |                   |                               |                  | \$3,013.26 for counsel's time in preparing and attending at the motion to oppose confirmation, \$3,318.50 in fees incurred for preparing the record and factum to oppose confirmation, and disbursements of \$1,343.26, costs for the assessment hearing of \$2,000 and a further amount of \$400 for the submissions on costs | the amount of \$3,000 plus GST plus disbursements of \$1,343.26.  |  |
| Smith, Robert J. | Sauvé v. Merovitz | [2006] O.J. No. 5059 (S.C.J.) | Defendant        | Not disclosed  | Merovitz Motion: Applicant ordered to pay \$8,000 + \$716.91 (disbursements) + GST<br><br>Cotes Motion: Applicant ordered to pay \$5,000 + \$431.03 (disbursements) + GST<br><br>Cotes Application: Applicant ordered to pay \$6,000 + \$729.51 | Merovitz was completely successful; Sauvé's claim was struck as disclosing no reasonable cause of action and was found to be frivolous and vexatious and an abuse of process |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

***Apportionment of liability (57.01(1)(b))***

| <b>Judge</b>                | <b>Case Name</b>       | <b>Citation / Date</b>        | <b>Costs awarded to</b>    | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|-----------------------------|------------------------|-------------------------------|----------------------------|--|---|---|
|                             |                        |                               |                            |  | (disbursements)<br>+ GST  |   |
| Trousdale, Anne C.          | Campbell v. Fappiano   | 2006                          | Plaintiff                  | Costs on a full indemnity basis in the amount of \$2,396.80  | \$500 inclusive of GST  | A large part of the Court time was taken up with the defendant's motion, which was dismissed.   |
| Trousdale, Anne C.          | Headon v. MacMillan    | 2006                          | Plaintiff                  | Costs on a full indemnity basis in the amount of \$10,000  | Costs on a partial indemnity basis in the amount of \$3,500, inclusive of GST   | Family law issue – Rule 24. Success was divided. The Plaintiff had greater success overall than the Defendant, but the Defendant was successful on two issues. This should be taken into account in awarding costs. |
| Trousdale, Anne C.          | Leonhardt v. Leonhardt | 2006                          | Plaintiff                  | Costs on a partial indemnity basis in the amount of \$10,688.92  | Costs on less than a partial indemnity basis in the amount of \$3,600, inclusive of GST   | Success was divided between the two parties. The Defendant was, overall, more successful.   |
| Aitken, Catherine D.        | Hamilton v. Hamilton   | [2005] O.J. No. 5555 (S.C.J.) | Plaintiff                  | \$45,000 + GST   | \$45,000 + GST  | Family law issue – Rule 24(1). The plaintiff was substantially successful in most of the trial matters.   |
| Beaudoin, R.                | Harvey v. Leger        | [2005] O.J. No. 3582 (S.C.J.) | Defendants & Third Parties | Defendants:<br>Costs on a substantial indemnity basis in the amount of \$7,901.95 plus disbursements of \$628.06 inclusive of GST.<br><br>Third Parties:<br>Costs on a partial indemnity basis in the amount of \$5,061.15 inclusive of counsel fee, GST and disbursements | Defendants:<br>Costs on a partial indemnity basis in the amount of \$3,000 inclusive of GST and disbursements<br><br>Third Parties:<br>Costs on a partial indemnity basis in the amount of \$3,500 inclusive of GST and disbursements | A great deal of the Third Party's argument and factum were focused on the moving party's entitlement to bring the motion, an issue that the Court ultimately decided in the moving party's favour.                  |
| de Sousa, Maria T. Linhares | Tremblay v. Scalici    | 2005                          | Defendant                  | Not disclosed  | Costs on a partial indemnity basis in the amount of   | Family law issue – custody. Substantial issue of custody was decided in favour of the defendant, as were other outstanding issues, such as the number of weeks for summer access and                                |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Apportionment of liability (57.01(1)(b))**

| Judge                | Case Name   | Citation / Date               | Costs awarded to            | Costs Requested   | Costs Awarded  | Judge's Comments   |
|----------------------|---|-------------------------------|-----------------------------|---|--|--|
|                      |   |                               |                             |   | \$10,000   | the question of a foreign passport. Final decision-making power, however, was decided in favour of the plaintiff.  |
| Gordon, Donald J.    | Lee-Chin v. Lee-Chin                                  | [2005] O.J. No. 5573 (S.C.J.) | Plaintiff                   | Costs in the amount of \$27,500<br><br>Note: Counsel for plaintiff disclosed that actual costs charged to the client were \$29,982.36 | Costs in the amount of \$13,375  | Counsel, in their submissions, attempt to "take inventory" of issues they were successful in. However, this is not a mathematical calculation. Rather, consideration must be given to the "key" issues. In this regard, the plaintiff was the successful party.  |
| McKinnon, Colin D.A. | Cada Construction Inc. v. Kinney                      | [2005] O.J. No. 5769 (S.C.J.) | Defendant                   | Not disclosed   | \$1,000, inclusive of GST and disbursements  | Defendants were successful in resisting the Plaintiffs' motion. They are entitled to their reasonable costs.   |
| Power, Denis         | Natufe v. Ottawa-Carleton Regional Transport          | [2005] O.J. No. 3769 (S.C.J.) | Barrister & Solicitor       | Costs on a substantial indemnity basis in the amount of \$18,163, inclusive of GST  | Costs in the amount of \$12,000, plus GST  | Barrister & Solicitor was substantially successful and there should be an award of costs in his favour.  |
| Power, Denis         | Maritime Life Assurance Co. v. Anderson <i>et al.</i> | [2005] O.J. No. 4911 (S.C.J.) | Defendant (by counterclaim) | Not disclosed   | Costs on a partial indemnity basis in the amount of \$618.53 for disbursements, plus GST and fees in the amount of \$4,000 plus GST. | Defendant by counterclaim was completely successful and is <i>prima facie</i> entitled to an award of costs in her favour. The record does not disclose any inappropriate conduct on the part of Defendant with respect to her defence against the counterclaim. Therefore, she is entitled to an award of costs on a partial indemnity basis. |
| Power, Denis         | 1514904 Ontario Ltd. v. Mississippi Mills (Town)      | [2005] O.J. No. 5281 (S.C.J.) | Defendant                   | Parties reached an agreement with respect to quantum of costs in the amount of \$7,500 plus GST.                                      | Costs in the amount of \$7,500 plus GST  | Defendant was the successful party.  |
| Ratushny, Lynn D.    | Fedorchuk v. Merrill Lynch, et. al.                   | 2005                          | Plaintiffs                  | Costs on a partial indemnity basis in the amount of \$2,472.88  | Costs on a partial indemnity basis in the amount of \$2,472.88   | There were four appeal issues. The plaintiffs raised three appeal issues. Each party was successful on two issues; however, the plaintiffs were successful on the second issue, which was accepted as being a significant issues vital to the disposition to the case. As such, it stands above the other                                      |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Apportionment of liability (57.01(1)(b))**

| Judge | Case Name | Citation / Date | Costs awarded to | Costs Requested | Costs Awarded | Judge's Comments   |
|-------|-----------|-----------------|------------------|-----------------|---------------|--|
|       |           |                 |                  |                 |               | <p>issues in importance and attracts costs even though on the other issues there was divided success.</p> <p>Each party will bear their own costs for the other appeal issues, due to the divided nature of success between the parties.</p> |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Complexity of the proceeding (57.01(1)(c))**

| Judge               | Case Name                         | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments   |
|---------------------|-----------------------------------|-----------------|------------------|---|---|--|
| Linhares De Sousa J | Marchand v. MacKenzie             | 2019 ONSC 5062  | Applicant        | Not disclosed   | \$40,000.00   | <b>Issues were simple but made complicated because of delays on the part of the respondent. The respondent: behaved unreasonably to substantially prolong the litigation, did not provide a bill of costs, did not respond to offers to settle (even after custody and access were no longer issues).</b>  |
| D.M. Brown J.       | D'Addario v. EnGlobe Corp.        | 2012 ONSC 4380  | Defendants       | By Englobe:<br>\$348,411.71 +<br>\$33,792.62<br>disbursements<br><br>By Tony Bussieri:<br>\$266,894.55 +<br>\$13,041.85 | To Englobe:<br>\$200,232.47 total<br><br>To Bussieri:<br>\$116,321.99 total | This was a complex "hybrid trial", whereby evidence was entered both through traditional viva voce method, and through filing a substantial written record. A lot of the written record used arose as a result of preparing for motions filed before trial. Issue: How to account for work done in prepping this written record and how to account for costs awarded at motions stage.<br><br>Some principles relied on by judge:<br><br>1)Hybrid trials are to be encouraged. If no costs awarded for evidence deduced during motions that make it into trial, (on which no costs were awarded at motions stages), "plaintiff's counsel would think hard about ever agreeing to conduct another hybrid trial"<br><br>Parameters: 1) If costs recovered at motions stage, no double recovery at trial, only incremental costs for use at trial.<br>2)To recover costs for trial record, the trial record must be material to issues placed before trial judge (cannot inflate costs by filing unnecessary materials) |
| Kent, J.            | Manary v. Dr. Martin Strban et al | 2012 ONSC 932   | Plaintiff        | \$421,574.48 for fees and \$108,074.75 for disbursements on a substantial indemnity basis                               | \$400,000 inclusive of disbursements and exclusive of appropriate taxes     | Like all medical malpractice actions, this was a complex matter.<br><br>Costs in a complex medical malpractice can equal or exceed the damages award (See Dybongco-Rimando Est. v Jackiewicz [2003], O.J. No. 534 & Hannsen v Anvari, 2002 CanLii 18680<br><br>A party who is successful against one, but not all defendants, does not necessarily obtain an award based upon prosecuting the claim as against all the defendants.   |
| Kershman, S.        | TPG                               | 2012 ONSC       | Plaintiffs       | Plaintiff seeks   | \$15,000 inclusive  | This is a decision on costs for an abandoned motion under rule   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Complexity of the proceeding (57.01(1)(c))**

| Judge            | Case Name                                       | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments  |
|------------------|---|-----------------|------------------|---|---|---|
|                  | Technology Consulting Ltd. V. Canada (Industry) | 1092            |                  | costs on a substantial indemnity basis for \$34,259.00<br>Defendant seeks costs in the amount of \$3,633.94                                   | of disbursements and HST  | 21.02(2)(a)<br><br>Actions of this nature are difficult and complex. The defendant changed its position on the motion and abandoned its rule 21.01 argument; when the defendant delivered its factum, it became clear to the Plaintiff that it no longer required or would be entitled to leave. The defendant presumably realized at this point that it was using the wrong rule, thus the Plaintiff is entitled to costs.<br><br>The Plaintiff's claim for costs is excessive, the hours charged are high and should be reduced.<br><br>The matter was reasonably complex and issues were very important. |
| Kane, J.         | Green v. Canada (Attorney General),             | 2011 ONSC 5750  | Defendants       | Defendants request \$7000 with an hourly billing rate of \$181  | \$5400.00 including all disbursements and HST to be paid within 6 months.   | \$7000 exceeded what an unsuccessful party could expect on a procedural motion.<br><br>Subparagraphs (a), (b), (c), (f), (g) and (h) of this sub-rule are inapplicable<br><br>The complexity of this case was moderate.   |
| Smith, Robert J. | Rodrigues v Toop                                | 2011 ONSC 2611  | Plaintiff        | Costs on a partial indemnity basis for \$16,560 for the motion summary judgment, plus \$13,188 in costs and disbursements to the main action. | Costs fixed in the amount of \$12,000 for the summary motion, plus \$10,000 for the costs incurred in the action, plus the applicable HST, both inclusive of disbursements. | The issues were above average complexity as the issues involved defamation and the issue of applicability of the doctrine of qualified privilege to a communications related to union matters which occurred in a public place but not during a union meeting.<br><br>Both parties submitted offers to settle but the matter proceeded to a summary motion.<br><br>There were also issues of the jurisdiction of the court to deal with a matter involving a dispute between union members; these were also complex questions.  |
| Shaw, J.         | Mondoux v. Tuchenhagen                          | 2011 ONSC 3310  | Applicant        | \$31,746.15 for fees on a partial indemnity basis plus disbursement and GST/HST for total of: \$38,524.15                                     | \$16,750 for fees on a partial indemnity basis<br><br>\$3568.68 for disbursements   | The partial indemnity rates for all counsels are reasonable given their experience<br><br>Applicant should not be liable for respondent's partial indemnity costs for the cross-examination<br><br>Damages are not permitted under section 10(1)(c) of MCIA   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Complexity of the proceeding (57.01(1)(c))**

| Judge             | Case Name   | Citation / Date              | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments  |
|-------------------|---|------------------------------|------------------|---|---|---|
|                   |   |                              |                  | \$449.77 on a substantial indemnity basis for time incurred with a draft order  | Inclusive of GST/HST  | There was a significant degree of complexity; There was an offer to settle but it didn't meet the Rule 49 requirements and should not enter into determination of costs   |
| Horkins, C.       | Toronto Community Housing Corporation v. Thyssenkrupp Elevator (Canada) Limited | 2011 ONSC 7588               | Plaintiffs       | Plaintiffs: \$792,388.14 on a substantial indemnity basis; alternatively, \$541,273.72 on a partial indemnity basis   | \$400,000 for fees plus disbursements of \$34,673.56 plus GST/HST | <p>Many of the issues that the defendants pursued added to the time and expense of the motions and were not resolved in their favour.</p> <p>The defendants do not challenge the actual disbursement amounts aside from what GST and HST is due. Regarding this, courts do not typically approach fees in a strictly mathematical approach, rather they fix an amount that is fair and reasonable.</p> <p>This was a costly and complex hearing. While the fees allowed are at the high end of costs awards for certification motions, comparing this case to others is not helpful as stated by Cullity J. in Andersen v. St. Jude Medical Inc. [2004] O.J. No. 3102</p> |
| Roy, Albert       | Madison v. Shoppers Drug Mart   | 2010 ONSC 494                | Defendant        | \$126,000 on partial indemnity basis, \$114,850 on substantial indemnity basis after offer, \$44,872.98 for disbursements and \$12,042.80 for GST, totaling \$297,771.78. | \$200,000 all-in  | <p>No costs were awarded against Family Law claimants where their claim was discontinued at the opening of trial and had very little impact on the length or complexity of the trial.</p> <p>This matter was complex. It involved a large number of experts and went on for 19 days.</p>  |
| Polowin, Heidi    | Rowe v. Unum Life Insurance Company of America (Motion to Vary)                 | [2007] O.J. No. 474 (S.C.J.) | Plaintiff        | Costs in the amount of \$8,431.77 inclusive of GST  | Partial indemnity costs totaling \$1,500.                         | This matter was novel, but not complex; the parties relied on the evidence adduced at trial and there was no need for affidavit evidence; the motion proceeded by way of written submissions which were not voluminous  |
| Métivier, Monique | Mick v. Boulder City Climbing   | 2007                         | Plaintiff        | Costs on a substantial indemnity basis  | Costs in the amount of \$14,000 inclusive                         | This case involved a non-complex nature of a proceeding   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Complexity of the proceeding (57.01(1)(c))**

| Judge                  | Case Name  | Citation / Date                 | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments  |
|------------------------|--|---------------------------------|------------------|---|--|---|
|                        | School Inc.  |                                 |                  |   | of fees, disbursements and GST   |   |
| Glithero, C. Stephen   | Suserski v. Nurse  | [2007] O.J. No. 965 (S.C.J.)    | Defendant        | Costs in the amount of \$50,000   | Costs in the amount of \$50,000, inclusive of fees, disbursements and applicable GST       | There were some complexities to these proceedings as is so often the case in actions of alleged medical malpractice. They are not run of the mill actions. On the other hand, this action was resolved following three motions relating to the unsatisfactory nature of the plaintiffs' proceedings, four days of discovery of the plaintiff, and the motion for summary judgment. In that respect it was not particularly complex in that it was terminated relatively early on in the litigation process. The complexity factor in the proceeding was increased, however, by virtue of the volume of materials produced by the plaintiffs' and required to be dealt with by the defendant. As referred to the main endorsement, they involved thousands of pages. |
| Aitken, Catherine D.   | Galpin v. Galpin   | 2007                            | Plaintiff        | Costs in the amount of \$27,205   | Costs in the amount of \$13,000  | Determination of income raised complex and difficult questions; this motion also involved currency conversion, income tax issues regarding income earned abroad; determination of bonus income and the impact of benefits paid on behalf of the Respondent  |
| Blishen, Jennifer A    | Flentje v. Nichols                                       | 2007                            | Plaintiff        | \$30,399.88 (inclusive of GST and disbursements)                          | \$28,000 (inclusive of disbursements and GST)  | The action did not deal with legal issues of particular complexity or of wider importance   |
| Charbonneau, Michel z. | Iko Industries Ltd. v. Grant                             | [2006] O.J. No. 4068 (S.C.J.)   | Plaintiff        | Not disclosed   | \$120,000, "all in"  | This proceeding was complex given the heavy onus put on the plaintiff (allegations of contempt). This would necessarily entail substantial time and special efforts to marshal the required evidence.   |
| Epstein, Gloria J.     | Niagara Neighbourhood Housing Cooperative Inc. v. Edward | [2006] O.J. No. 2924 (Div. Ct.) | Plaintiff        | Costs in the amount of \$15,100   | Costs on a substantial indemnity basis in the amount of \$6,000 plus disbursements and GST | While this was a matter of some complexity given the implications of the bankruptcy, the reality is that there was a limited amount at stake. That limitation must necessarily influence, at least to some extent, the expectation of the parties in terms of costs.  |
| Hackland, Charles T.   | Keryluk v. Lamarche                                      | 2006                            | Plaintiff        | Plaintiff's actual fees are \$123,538.77, inclusive of \$8,018.97 GST and | Costs awarded on a partial indemnity scale totaling \$50,000 plus GST in addition to       | This was a straight forward case proceeding under the Simplified Procedure (Rule 76).   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Complexity of the proceeding (57.01(1)(c))**

| Judge                | Case Name                                       | Citation / Date               | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments  |
|----------------------|---|-------------------------------|------------------|---|--|---|
|                      |   |                               |                  | disbursements of \$7,856.53 inclusive of \$413.14 GST   | disbursements totaling \$7,443.38 plus GST in the sum of \$413.15.   |   |
| Hackland, Charles T. | Schouten v. Rideau (Township)                   | 2006                          | Defendant        | Total requested costs not disclosed   | Total fees \$97,317.87 plus \$51,329.71 in disbursements plus GST  | This was a case of moderate complexity involving experts in firefighting techniques and engineering testimony on the science of fire spread |
| Maranger, Robert L.  | Cusson v. Quan                                  | [2006] O.J. No. 3186 (S.C.J.) | Plaintiff        | Costs on a partial indemnity basis in the amount of \$665,265.66 (\$582,386 in fees, plus GST of \$40,767 and disbursements of \$42,112.66) | Costs on a partial indemnity basis in the amount of \$246,512.66 (\$200,000 in counsel fees; GST of \$14,000; disbursements of \$32,512.66)  | This was a complex and hard-fought six-week jury trial involving claims of defamation against two separate defendants                       |
| Polowin, Heidi       | 3869130 Canada Inc. v. I.C.B. Distribution Inc. | 2006                          | Plaintiff        | A total of \$294,347.33 is claimed on a partial indemnity basis and \$361,858.34 on a substantial indemnity basis                           | Partial indemnity costs to June 2, 2003 Offer to Settle and substantial indemnity costs thereafter. Cyr parties to pay costs in the amount of \$280,000 plus GST and disbursements of \$14,101.04 plus GST | The issues in this case were not unduly complex, but there were three separate actions to be dealt with which led to some complexity.       |
| Polowin, Heidi       | Rowe v. Unum Life Insurance Company of America  | 2006                          | Plaintiff        | Costs on a substantial indemnity basis throughout proceeding, totaling \$212,500, plus a premium, of  | Costs in the amount of \$140,000, plus GST and \$2,280.66 in disbursements   | This matter was complex; it was of utmost importance to Mr. Rowe and it required experienced counsel  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Complexity of the proceeding (57.01(1)(c))**

| Judge            | Case Name                         | Citation / Date               | Costs awarded to            | Costs Requested   | Costs Awarded  | Judge's Comments  |
|------------------|-----------------------------------|-------------------------------|-----------------------------|---|--|---|
|                  |                                   |                               |                             | \$150,000, plus disbursements and GST for a total of \$412,790.22   |  |   |
| Power, Denis     | Campeau v. Campeau                | [2006] O.J. No. 2297 (S.C.J.) | Defendants / Moving Parties | Costs on a substantial indemnity basis is the amount of \$26,570.80; costs on a partial indemnity basis in the amount of \$21,044.25  | Costs on a partial indemnity basis in the amount of \$15,000, all inclusive. No costs should be paid unless Defendants / moving parties are successful in this litigation. | This motion was a complex one.  |
| Smith, Robert J. | Butler v. Poelstra                | [2006] O.J. No. 4969 (S.C.J.) | Plaintiff                   | Costs on a full indemnity basis in the amount of \$16,259.42  | Costs on a partial indemnity basis in the amount of \$5,000 plus GST plus \$722 in disbursements   | Family law issue – Rule 24. The issues were important to the parties and they had acquired substantial assets, but the issues were not overly complex.  |
| Smith, Robert J. | King v. Merrill Lynch Canada Inc. | [2006] O.J. No. 1257 (S.C.J.) | Defendant                   | Costs on a partial indemnity scale in the amount of \$831,493   | Costs on a partial indemnity basis in the amount of \$350,000 plus GST and disbursements of \$109,431.24 plus GST  | The trial lasted for 37 days and involved complex issues concerning the securities industry regulations and issues related to discipline for breach of securities regulations and securities trading options. This case was above average complexity. |
| Smith, Robert J. | Nelligan v. Fontaine              | [2006] O.J. No. 3699 (S.C.J.) | Plaintiff                   | Plaintiff (law firm) sought their costs thrown away as a result of attending the assessment hearing and for the motion to set-aside the default assessment order.<br><br>Plaintiff law firm | Costs thrown away were assessed at \$10,000 plus GST and disbursements of \$371.80, inclusive of GST   | The matters dealt with in this case were of slightly above average complexity, as the accounts related to four separate matters and involved shareholders of a numbered company.  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Complexity of the proceeding (57.01(1)(c))**

| Judge                     | Case Name           | Citation / Date               | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments  |
|---------------------------|---------------------|-------------------------------|------------------|---|---|---|
|                           |                     |                               |                  | claims fees of \$22,816.68 inclusive of GST on a substantial indemnity basis, plus disbursements of \$531.36                |   |   |
| Smith, Robert J.          | Sauvé v. Merovitz   | [2006] O.J. No. 5059 (S.C.J.) | Defendant        | Not disclosed   | Merovitz Motion: Applicant ordered to pay \$8,000 + \$716.91 (disbursements) + GST<br><br>Cotes Motion: Applicant ordered to pay \$5,000 + \$431.03 (disbursements) + GST<br><br>Cotes Application: Applicant ordered to pay \$6,000 + \$729.51 (disbursements) + GST | The question in this matter of absolute privilege was important, but not unduly complex. The question of finding that a person has persistently and without reasonable grounds instituted vexatious proceedings was above average complexity  |
| Toscano Roccamo, Givanna  | Champion v. Guibord | [2006] O.J. No. 3197 (S.C.J.) | Plaintiff        | Costs on a full indemnity basis in the amount of \$13,617.50 in fees, plus \$1,748.89 in disbursements, plus applicable GST | Costs on a partial indemnity basis in the amount of \$11,098 in fees, plus \$1,748.89 in disbursements, plus applicable GST   | Proceedings were not unduly complicated by a collateral attack on the Applicants' prior appointment as guardians; Applicants were already awarded costs in relation to their appointment as guardians in a prior hearing, and to do so on a full indemnity scale in these proceedings would result in an excessive award of costs |
| Toscano Roccamo, Giovanna | Summers v. Harrower | [2006] O.J. No. 452 (S.C.J.)  | Plaintiff        | Costs in the amount of \$86,238.79 in fees plus   | Costs on a substantial indemnity basis in the amount of   | The case did not involve any novel or complex questions of law  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Complexity of the proceeding (57.01(1)(c))**

| <b>Judge</b>            | <b>Case Name</b>              | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>                                      | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|-------------------------|-------------------------------|-------------------------------|-------------------------|---|---|---|
|                         |                               |                               |                         | \$7,119.65 in disbursements for a total of \$94,358.44.     | \$42,500 plus \$5,137.23 in disbursements, plus GST   |   |
| Aitken,<br>Catherine D. | [2005] O.J. No. 3087 (S.C.J.) | [2005] O.J. No. 3087 (S.C.J.) | Defendant               | Costs on a partial indemnity basis in the sum of \$8,731.63 | Costs on a partial indemnity basis in the sum of \$5,000 inclusive of disbursements and GST | The issues were not particularly complex. This was simply a question of whether Mr. Stoate's (plaintiff) return to college was a reasonable plan in light of his child support obligations. Only 15 months of child support arrears were in question. |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Importance of the issues (57.01(1)(d))**

| Judge  | Case Name   | Citation / Date               | Costs awarded to             | Costs Requested  | Costs Awarded                                | Judge's Comments  |
|--|---|-------------------------------|------------------------------|--|--|---|
| Doherty J.A.<br>Gloria Epstein J.A.<br>M. Tulloch J.A. | Sarnia (City) v. River City Vineyard Christian Fellowship of Sarnia | 2015 ONCA 732                 | Defendant                    | \$163,479.54   | \$90,000                                     | This case involved public interest litigation as defendant, who was operating a homeless shelter in the bottom half of their church. The city argued it was a violation of their by law. The church argued they deserved costs on a full indemnity basis as they won a public interest case which represented a novel legal issue. The court of appeal admitted it was a novel legal issue. However, they did not find the issue in question was of exceptional public interest. Given that this would only affect a very select small area and not the whole nation like <i>Carter v Canada</i> , there was no reason to deviate from the standard partial indemnity of costs. |
| Shaw, J.   | Kershaw v Kershaw   | 2012 ONSC 1556                | Plaintiff                    | Applicant seeks costs of the motion for \$18,000 inclusive of disbursements and HST.<br><br>Respondent says that no costs should be awarded, alternately only fixed costs of \$2500 should be awarded. | \$12,500 inclusive of disbursements and HST. | Rule 24(11) sets out the factors which must be considered in awarding costs.<br><br>Ms. Kershaw as the successful party is entitled to costs<br><br>The matter was of importance because of the significant financial consequences to Ms. Kershaw   |
| Platana, T.A.  | Starkes v. Harrison,  | 2011 ONSC 6659                | Plaintiff                    | \$3500 inclusive of disbursements and HST  | \$3500 inclusive of disbursements and HST    | This was not a complex case and while important to the parties involved, it cannot be considered one of general importance. The behavior of the defendant, who did not comply with an interim minutes of settlement, was clearly unreasonable.  |
| Aitken, Catherine D.                                   | Galpin v. Galpin  | 2007                          | Plaintiff / Applicant        | Costs in the amount of \$27,205  | Costs in the amount of \$13,000              | This motion was of great importance to both parties   |
| Aitken, Catherine D.                                   | Lavinkas v. Jacques Whitford & Associates Ltd.                      | [2006] O.J. No. 2697 (S.C.J.) | Plaintiff                    | Costs on a substantial indemnity basis in the amount of \$44,134.  | Costs in the amount of \$28,000              | This issue (wrongful dismissal) was very important to the plaintiff given that his reputation was at stake, and he was without an income for a period of months and had a household and family bills to pay. There was no evidence that this issue was of particular importance to the defendant company. There were no issues raised in the case of particular importance to other potential litigants or to the development of the law in this area.  |
| Beaudoin, R.   | George S. Szeto Investments Ltd. v. Ott                             | [2006] O.J. No. 2390 (S.C.J.) | Defendant (Attorney General) | Costs in the amount of \$5,393.77 (\$523.15 of which were for  | Costs in the amount of \$5,393.77            | This motion was of importance to all parties. This action could not proceed any further without having this issue being decided.  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Importance of the issues (57.01(1)(d))**

| Judge   | Case Name   | Citation / Date               | Costs awarded to        | Costs Requested   | Costs Awarded  | Judge's Comments  |
|---|---|-------------------------------|-------------------------|---|--|---|
| Charbonneau, Michel z.  | Iko Industries Ltd. v. Grant  | [2006] O.J. No. 4068 (S.C.J.) | Plaintiff               | Not disclosed   | \$120,000, "all in"  | This issue was important for all concerned. The plaintiff had to ensure the continued peaceful operation of its plant.  |
| Cunningham, J. Douglas; Lane, G. Dennis; Hackland, Charles T. | Gray <i>et al.</i> v. Province of Ontario <i>et al.</i>   | 2006                          | Plaintiffs / Applicants | Costs on a partial indemnity basis. Amount not disclosed  | Costs on a partial indemnity basis in the amount of \$35,000 to the Ventola Applicants and costs on a partial indemnity basis in the amount of \$35,000 to the Gray Applicants | The fundamental interests of approximately 1000 severely disabled adults will be affected by the decision of the Court in this action. This matter was an important contribution on behalf of a large group of disadvantaged adults.  |
| Hackland, Charles T.  | Schouten v. Rideau (Township)   | 2006                          | Defendant               | Total requested costs not disclosed   | Total fees \$97,317.87 plus \$51,329.71 in disbursements plus GST  | The allegations of negligence against the volunteer fire department in a small rural community were of importance to the community  |
| Low, Wailan   | Petro-Quip International Inc. v. Kala Naft Canada Ltd.  | [2006] O.J. No. 2369 (S.C.J.) | Defendant               | Costs on a partial indemnity basis in the amount of \$199,366.73, but urged court to consider costs on a substantial indemnity basis. | Costs on a partial indemnity basis in the amount of \$150,000, plus GST.   | While the matter was of some importance to the parties, the issues were not of general or public importance and the facts were not particularly complicated or technical.   |
| Morin, Gerald R.  | Canadian Blood Services v. Freeman<br>* This case also involved costs to the intervenor Egale Canada Inc. | 2006                          | Defendant & Intervenor  | Egale: \$10,710 and disbursements of \$522.88<br><br>Defendant: \$11,375 and disbursements of \$231.44                                | \$10,000 to Egale and Defendant in addition to the disbursements claimed by each party   | While the issues raised on appeal were of moderate complexity, they were important in determining the appropriate standard of review on this appeal. As well, Egale's intervention in the counterclaim will likely have an important impact on the determination of the issues raised in that counterclaim. |
| Morin, Gerald R.  | Brulé v. Brulé-Morgan   | 2006                          | Defendant               | Bill of costs for fees and disbursements inclusive of GST totaling \$57,504.96  | Costs on a partial indemnity basis fixed in the amount of \$20,000 inclusive of GST together with disbursements of \$1,041.46 plus GST of \$62.18                              | Family issue – Rule 24(11). This was an important matter for the mother and the interests of the children.  |
| Power, Denis  | Campeau v.  | [2006] O.J. No.               | Defendants /            | Costs on a  | Costs on a partial   | This motion was a complex one, the importance of which went   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Importance of the issues (57.01(1)(d))**

| Judge                     | Case Name                         | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments   |
|---------------------------|-----------------------------------|-------------------------------|------------------|--|---|--|
|                           | Campeau                           | 2297 (S.C.J.)                 | Moving Parties   | substantial indemnity basis is the amount of \$26,570.80; costs on a partial indemnity basis in the amount of \$21,044.25    | indemnity basis in the amount of \$15,000, all inclusive. No costs should be paid unless Defendants / moving parties are successful in this litigation. | beyond the dispute involving the parties to this litigation.   |
| Smith, Robert J.          | Butler v. Poelstra                | [2006] O.J. No. 4969 (S.C.J.) | Plaintiff        | Costs on a full indemnity basis in the amount of \$16,259.42   | Costs on a partial indemnity basis in the amount of \$5,000 plus GST plus \$722 in disbursements  | Family law issue – Rule 24. The issues were important to the parties and they had acquired substantial assets, but the issues were not overly complex.   |
| Smith, Robert J.          | King v. Merrill Lynch Canada Inc. | [2006] O.J. No. 1257 (S.C.J.) | Defendant        | Costs on a partial indemnity scale in the amount of \$831,493  | Costs on a partial indemnity basis in the amount of \$350,000 plus GST and disbursements of \$109,431.24 plus GST                                       | The court, in this case, had to decide if the financial consultant who is paid on a commission basis was an employee or an independent contractor, and whether the financial consultant or the investment broker had a proprietary interest in the client's file and the client's information contained therein. This issue was very important to the investment broker and to the financial consultants who are employed and work in this area. |
| Toscano Roccamo, Givanna  | Champion v. Guibord               | [2006] O.J. No. 3197 (S.C.J.) | Plaintiff        | Costs on a full indemnity basis in the amount of \$13,617.50 in fees, plus \$1,748.89 in disbursements, plus applicable GST  | Costs on a partial indemnity basis in the amount of \$11,098 in fees, plus \$1,748.89 in disbursements, plus applicable GST                             | A number of novel issues were involved in this case  |
| Toscano Roccamo, Giovanna | Summers v. Harrower               | [2006] O.J. No. 452 (S.C.J.)  | Plaintiff        | Costs in the amount of \$86,238.79 in fees plus \$7,119.65 in disbursements for a total of \$94,358.44.                      | Costs on a substantial indemnity basis in the amount of \$42,500 plus \$5,137.23 in disbursements, plus GST   | The case did not involve any important questions of principle that would warrant driving up an award of costs  |
| Aitken, Catherine D.      | Cameron v. MacGillivray           | [2005] O.J. No. 1757 (S.C.J.) | No costs awarded | Costs requested by plaintiff: \$225,880 or, in the alternative, costs up to the date of her offer in the amount of \$89,718, | No costs awarded – each party to bear their own costs   | Family law issue – Rule 24(11). The issues of custody and access are important to parents. These issues carried special importance in this case as a result of the fractious relationship between the parents, the inordinate amount of energy each had devoted to their dispute, and the special needs of the child.  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Importance of the issues (57.01(1)(d))**

| Judge | Case Name | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded | Judge's Comments |
|-------|-----------|-----------------|------------------|---|---------------|------------------|
|       |           |                 |                  | and full recovery thereafter in the amount of \$119,146<br><br>Costs requested by defendant: No costs should be awarded |               |                  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                 |   |                 |                  |  |   |   |
|---|---|-----------------|------------------|--|---|---|
| <b>Conduct of the party that tended to shorten or lengthen proceeding (57.01(1)(e))</b> |   |                 |                  |  |   |   |
| Judge   | Case Name   | Citation / Date | Costs awarded to | Costs Requested  | Costs Awarded                                       | Judge's Comments  |
| Linhares De Sousa J   | Marchand v. MacKenzie                             | 2019 ONSC 5062  | Applicant        | Not disclosed  | \$40,000.00   | <b>Issues were simple but made complicated because of delays on the part of the respondent. The respondent: behaved unreasonably to substantially prolong the litigation, did not provide a bill of costs, did not respond to offers to settle (even after custody and access were no longer issues).</b>   |
| Mr. Justice Douglas M. Belch  | 2145850 Ontario Limited v. Student Transportation | 2014 ONSC 7401  | Plaintiff        | Costs in the amount of \$196,334. As well as not having to pay costs relating to their request for funding which was part of the same motion | \$150,000 to plaintiff                              | This was a motion to amend the statement of claim and to add the Crown as a defendant. The Crown heavily contested being added and the judge noted they used this motion as a "mini trial". The judge further notes "this was not the usual motion to add a party. Normally, adding a party is often consented to, particularly if there is no prejudice." The plaintiff's lawyers were forced to expend time researching and answering the Crown's questions.  |
| Hackland R.S.J.   | Guergis v. Novak et al                            | 2013 ONSC 1130  | Defendants       | \$205,969.68 – partial indemnity<br><br>\$20,286.61 - disbursements  | \$108,000 – for costs<br><br>\$10,560 disbursements | A plaintiff naming 5 defendants. Issue is cost consequence of defendants' decision to each be represented by separate counsel resulting in repetitive arguments being presented and prolonging the proceedings (motion).<br><br>The court is entitled to consider the duplication of the time and legal costs which flow from this choice. This is contemplated by Rule 57.01(1)(h)(ii).<br><br>When a plaintiff chooses to sue a wide variety of defendants on the basis of accusations of conspiracy and bad faith, the expectation must be that the claims will be vigorously defended and those defendants with different interests will be separately represented and those with similar interests may or may not be separately represented. In any event, the plaintiff's expectation here must have been that the defendants would be incurring substantial costs in the defence of this action. At the same time, there should be a reasonable expectation that costs would not be payable to multiple counsel putting forward an identical position. |
| T.D.Ray, J.   | J. v. M.  | 2012 ONSC 7342  | Applicant        | \$23,216.15, partial indemnity up to Nov 7, 2012 and full after  | \$1,000   | Judges order as favourable as respondent's Nov 7 <sup>th</sup> offer.<br><br>90% of the problems that I heard evidence about would have been resolved had the parents been able to put their own selfish interests behind them and put the children's interests first.  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Conduct of the party that tended to shorten or lengthen proceeding (57.01(1)(e))**

| Judge                 | Case Name  | Citation / Date | Costs awarded to | Costs Requested                        | Costs Awarded | Judge's Comments   |
|-----------------------|--|-----------------|------------------|--|---------------|--|
|                       |  |                 |                  |  |               | <p>No costs awarded prior to period up to November 7<sup>th</sup> because, the tactical steps taken by the by the applicant so he could gain an advantage before the litigation commenced would have been more productively targeted at communicating with the respondent so as to resolve the issues for the benefit of the children.</p> <p>The respondent is of modest means and currently unemployed; has been ordered to pay child support. Any costs order will necessarily diminish her ability to pay child support. That would be counter-productive.</p> |
| Mackinnon, J.         | Newell v. Allen  | 2012 ONSC 7194  | Respondent       | \$7,725                                | \$3,000       | <p>A family law dispute where the respondent made no offer to settle and applicant did make an offer which "called for a reply." The judge further holds that "[t]he importance of offers in family law cases is well known, not only as an important factor with respects to costs; but in addition, as an important tool in narrowing and settling issues."</p> <p>Refusing to entertain offers in a Family Law context can lead to cost consequences.</p>   |
| Healey, J.            | McNeill v Sun Life Assurance Company of Canada         | 2012 ONSC 884   | Defendants       | Not specified                          | \$1,600       | <p>This motion was necessitated by the fact that the plaintiff was erroneously complicating the action by pursuing elements that were irrelevant and were likely to extend the discovery process and prolong the action.</p> <p>The defendant is not entitled to the full amount sought as they sought to strike significantly more portions of the claim than was allowed by the ruling.</p>  |
| de Sousa, M. Linhares | Ford v. Shuter,  | 2011 ONSC 5051  | Defendant        | not specified                          | \$1500.00     | <p>Both parties were representing themselves; however the judge wrote that the trial took four days but should only have taken one, which he attributed to the disorganized manner in which the plaintiff conducted her case and tardiness of presenting evidence. The judge gave the plaintiff 30 days to pay the costs otherwise it would be deducted from the child support arrears the defendant is paying the plaintiff.</p>  |
| Healey, J.            | South Simcoe Railway Heritage Corporation v. Wakeford, | 2011 ONSC 2427  | Defendant        | \$9048.03 on a partial indemnity basis | \$5,133.11    | <p>It was plain and obvious that the tort claims put forth in the case were statute barred which must be considered under rule 57.1(1)(e). The plaintiffs should have conceded the defendants motion regarding the limitation period. Not having done so added to the length and complexity of the</p>   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Conduct of the party that tended to shorten or lengthen proceeding (57.01(1)(e))**

| Judge           | Case Name                      | Citation / Date                                      | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments  |
|-----------------|--------------------------------|--|------------------|---|--|---|
|                 |                                |  |                  |   |  | <p>motion.</p> <p>While the hourly rates listed by the defendants are appropriate, the time charged is higher than could reasonably expect.</p> <p>Costs awarded are \$3500 plus HST and \$1178.11 in disbursements.</p>  |
| Smith, Robert   | Milone v. Delorme              | 2010 ONSC 4162                                       | Plaintiff        | Plaintiff: costs thrown away of \$13,066.83 as well as an additional \$2,282.75 for the costs of the motion<br>Defendants: \$2,887.00 on a partial indemnity basis for the motion | for costs thrown away: \$3,000.00 plus GST plus disbursements of \$426.35<br>No costs for the motion | <p>Both parties were partially responsible for the costs thrown away. The defendants had failed to move to set aside the noting of default, notwithstanding several notices of intent to move for default judgment. The fact that Mr. Delorme was ill in the hospital and unable to provide instructions, while reasonable, was not communicated to the plaintiff.</p> <p>However the plaintiff knew the defendant intended to defend the action. He had received a copy of the statement of defence. The plaintiff should have consented to setting aside the noting in default.</p>                                 |
| Ray, Timothy D. | Boyd v. Taj Mahal Stables Inc. | [2009] O.J. No. 2595 (Ont. Sup. Ct. J.)              | Defendant        | Partial indemnity at at rate of 70%, amounting to \$12,632.75   | \$5,000, plus \$1,000 for this motion  | <p>Partial indemnity rates were said to be generally measured at 55% of the reasonable solicitor client account, not 70% as claimed by the defendants. However a further reduction was warranted where the defendants were responsible for a number of delays in the proceedings.</p> <p>Justice Power had dismissed their motion for security for costs in part because the defendants had failed to satisfy him that they had cooperated in supplying all relevant documentation. Further, more than a year elapsed between the end of examinations for discovery and the defendants' application to the WSIAT.</p> |
| Polowin, Heidi  | Désir v. Care Canada           | (2009 Ont. Sup. Ct. J.) Court File No.: 04-CV-028853 | Defendant        | Costs for of \$8,327.55 (full indemnity) plus costs for the preparation of costs submissions of \$5,425.14 (full  | Costs of \$8,000 total, of which \$5,000 to be paid by the plaintiff's former counsel, personally.   | <p>The record showed that throughout the proceedings the Plaintiff had failed to take steps to move the action along. Correspondence routinely went unanswered. Counsel failed to provide acceptable reasons for requesting adjournments, and ultimately failed to even appear at the motion hearing, instead sending as agent a lawyer who shared office space with him, who admitted to knowing nothing about the</p>   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Conduct of the party that tended to shorten or lengthen proceeding (57.01(1)(e))**

| Judge                  | Case Name  | Citation / Date   | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments   |
|------------------------|--|---|------------------|--|---|--|
|                        |  |   |                  | indemnity) and \$7,371 (full indemnity) for costs thrown away.   |   | proceedings. Substantial indemnity costs were warranted in these circumstances.<br><br>However the court must also consider the Rule 57.01 factors. In the context of a motion for adjournment and these costs submissions, which were not complex matters, the costs claimed were not amounts an unsuccessful party could reasonably expect to pay.   |
| Brennan, W. J. Lloyd   | Magas v. Canada (Attorney General); Magas v. Monette; Magas v. Pasanen | (2009 Ont. Sup. Ct. J.) Court File No.: 01-CV-16939; 00-CV-13064; 00-CV-12194 | Defendants       | Unreported in the Pasanen and Monette Actions; \$130,079.70 in the Crown action                                      | On the combined Pasanen and Monette actions, \$97,000 plus GST; on the Crown action \$100,000 plus GST  | The plaintiff was a lawyer who conducted her own case. Although the trial consequently lasted longer than it would have had she had counsel, she conducted herself competently. This did not amount to conduct tending to lengthen the proceedings unnecessarily, under Rule 57.01(1)(e).  |
| Roccamo, Giovanna      | Crete v. Carleton Condominium Corporation #47 (Chateau Vanier Towers)  | (2008, Ont. Sup. Ct. J.) Court File No.: 06-CV-33385                          | Defendant        | \$123,558.90 plus disbursements of \$28,333.47, for a total of \$151,892.37 (inclusive of GST)                       | Partial indemnity fees of \$63,435.3 plus \$24,934.92 for disbursements, 3, inclusive of GST, less offsets for costs to plaintiff for motions, totalling \$11,342.96. | The Plaintiff's refusal to respond to Requests to Admit Facts did not cause any delay at trial. Only the first of five Requests sets out the facts for which the defendants sought admissions. At least 48 of the 99 facts for which the defence sought admissions were not capable of admission without exploring the evidence at trial, as they were the subject of competing expert opinion, or related to statements of witnesses whose testimony required cross-examination. The remaining four of the five Requests related to the authenticity of documents whose admission was the subject of agreement at trial, and did not cause any delay. |
| Polowin, Heidi         | Garcia v. Normore  | (2008, Ont. Sup. Ct. J.) Court File No.: 05-FL-1557                           | Applicant        | \$48,089.50 for fees, \$6,471.30 in disbursements, \$4,000 pursuant to an earlier order, plus GST: total \$61,488.84 | \$20,000 inclusive, plus \$4,000 under the earlier order  | Family Law issue - Rule 24(11)(d): The Applicant's failure to plead the repayment of loans as a separate claim required the trial to be reopened. This resulted in a further half day of trial and additional preparation costs.   |
| Harvison Young, Alison | Mega Wraps BC Inc. v. Mega Wraps Holdings Inc.                         | (2008), 169 A.C.W.S. (3d) 41, [2008] O.J. No. 2947                            | Plaintiff        | \$68,252 on partial indemnity basis to \$98,802 on substantial indemnity basis for the trial, plus                   | \$158,252 consisting of partial indemnity costs up to plaintiff's offer to settle, and substantial  | The extension of the trial from 10 days to 14 days because the plaintiff was self-represented is not reason to apply a cost penalty. The defendant's repeated requests for adjournments indicate attempts to delay the trial on its part   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Conduct of the party that tended to shorten or lengthen proceeding (57.01(1)(e))**

| Judge                  | Case Name  | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded  | Judge's Comments  |
|------------------------|--|-------------------------------|------------------|--|--|---|
|                        |  |                               |                  | \$152,494 on full indemnity basis for work done by counsel during earlier stages.  | indemnity from that point on.  |   |
| Blishen, Jennifer A    | Flentje v. Nichols                               | 2007                          | Plaintiff        | \$30,399.88 (inclusive of GST and disbursements)   | \$28,000 (inclusive of disbursements and GST)                                | Once the Statement of Claim was served, there were no unnecessary delays by either party  |
| Métivier, Monique      | Mick v. Boulder City Climbing School Inc.        | 2007                          | Plaintiff        | Costs on a substantial indemnity basis   | Costs in the amount of \$14,000 inclusive of fees, disbursements and GST     | The proceeding was unduly lengthened and made complicated by the stance taken by the defendants   |
| Aitken, Catherine D.   | Lavinkas v. Jacques Whitford & Associates Ltd.   | [2006] O.J. No. 2697 (S.C.J.) | Plaintiff        | Costs on a substantial indemnity basis in the amount of \$44,134.  | Costs in the amount of \$28,000  | The defendant chose to take hard-line positions at trial that were contradictory in nature – i.e. Defendant acknowledged that it had no just cause to terminate the plaintiff, but that it had good reason to treat him in the way it had so that the plaintiff would have no alternative but to consider his employment relationship with the defendant at an end.<br><br>Defendant's counsel requested an adjournment of the pre-trial because he was scheduled to be at another trial on the same day. This added to the length of time. |
| Beaudoin, R.           | Shalouf v. Beaudry                               | [2006] O.J. No. 2550          | Defendants       | Costs on a partial indemnity basis in the amount of \$50,389 inclusive of GST. This amount includes \$46,864.41 for fees and taxable disbursements of \$3,525.28 | Costs on a partial indemnity basis in the amount of \$20,000, all inclusive. | Plaintiffs were, for the most part, in breach of all of the timetables that were ordered for case conferences. Plaintiffs' draft affidavit of documents was not received by defendant physicians until almost four years after the statement of claim was issued. Plaintiffs provided an expert report just weeks before the motions for summary judgment were scheduled to be heard. As a result there were significant delays that further required the adjournment of the defendant physicians' motions.                                 |
| Charbonneau, Michel Z. | Rioux v. Rhodenizer                              | 2006                          | Plaintiff        | Not disclosed  | Costs on a full indemnity scale in the sum of \$33,206.63                    | The litigation had been ongoing for 4.5 years as a result of the defendant's uncooperative attitude. The defendant did not have any substantive position to put forward which would have justified the numerous motions and other interim proceedings, which were required to finally bring this to trial.  |
| DiTomaso, Guy P.       | Lanty v. Ontario (Ministry of Natural Resources) | [2006] O.J. No. 859 (S.C.J.)  | Defendant        | Costs on a partial indemnity basis in the amount of \$241,633.31   | Costs on a partial indemnity basis in the amount of \$133,800                | Proceeding was lengthy and labour intensive due to the Plaintiff's unreasonable and uncooperative behaviour. Statement of claim was amended three times. The Plaintiff attempted to assert a right under every conceivable legal theory, thus lengthening substantially the trial of this matter.   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Conduct of the party that tended to shorten or lengthen proceeding (57.01(1)(e))**

| Judge                    | Case Name  | Citation / Date               | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments   |
|--------------------------|--|-------------------------------|------------------|---|--|--|
|                          |  |                               |                  |   |  | The Plaintiff was uncooperative in her cross-examination and also in respect of production of certain documents.   |
| Hackland, Charles T.     | Whitton v. Whitton   | 2006                          | Plaintiff        | Not disclosed   | Costs on a partial indemnity basis in the amount of \$750 (costs of the motion) plus \$250 (costs of preparation and of the costs submission) for a total amount of \$1,000                                | Family law issue. The prior order of Lalonde J. required adjustment because he did not have the benefit of the defendant's participation with the result that the issues had to be re-visited again in this motion. The husband should bear the costs of this motion in the circumstances. |
| Panet, A. deLotbinière   | Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc. | [2006] O.J. No. 4032 (S.C.J.) | Defendant        | Costs on a partial indemnity basis until time of offer to settle and costs on a substantial indemnity basis thereafter; total requested costs: \$405,636.94 | Costs in the amount of \$265,000, plus \$47,010 in disbursements, totaling \$312,010 + GST   | The trial was lengthened and made more complex due to the failure by witnesses called by the plaintiff to fully disclose relevant documents prior to trial; trial was lengthened considerably due to this  |
| Polowin, Heidi           | 3869130 Canada Inc. v. I.C.B. Distribution Inc.                              | 2006                          | Plaintiff        | Costs on a partial indemnity basis in the amount of \$294,347; costs on a substantial indemnity basis in the amount of \$361,858.34                         | Partial indemnity costs to June 2, 2003 Offer to Settle and substantial indemnity costs thereafter. Cyr parties to pay costs in the amount of \$280,000 plus GST and disbursements of \$14,101.04 plus GST | The Chenier parties did not do anything that unduly lengthened or complicated the litigation. The Chenier parties actually made a concerted effort to settle the litigation throughout, even during the trial.   |
| Rutherford, Douglas J.A. | Svencicki v. Latreille   | 2006                          | Plaintiff        | Costs in the amount of \$5,955.93 payable to Legal Aid Ontario  | Costs in the amount of \$1,200 payable to Legal Aid Ontario  | There was much more of an effort on the part of the plaintiff in her offers to bring about a ceasefire in the dispute. Her efforts in this regard should be rewarded.  |
| Stewart, Elizabeth M.    | Norbar Insurance Agencies Inc. v. Freeman                                    | [2006] O.J. No. 709 (S.C.J.)  | Plaintiff        | Costs on a substantial indemnity basis – amount not disclosed.  | Costs on a partial indemnity basis in the amount of \$58,690, plus disbursements in the  | Defendants continually failed to make full and proper disclosure, forcing the Plaintiff to bring a series of motions to compel production.   |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                 |   |                               |                         |   |   |   |
|---|---|-------------------------------|-------------------------|---|---|---|
| <b>Conduct of the party that tended to shorten or lengthen proceeding (57.01(1)(e))</b> |   |                               |                         |   |   |   |
| <b>Judge</b>  | <b>Case Name</b>  | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|   |   |                               |                         |   | amount of \$3,518.52, plus applicable taxes.  |   |
| Toscano Roccamo, Givanna  | Champion v. Guibord   | [2006] O.J. No. 3197 (S.C.J.) | Plaintiff               | Costs on a full indemnity basis in the amount of \$13,617.50 in fees, plus \$1,748.89 in disbursements, plus applicable GST | Costs on a partial indemnity basis in the amount of \$11,098 in fees, plus \$1,748.89 in disbursements, plus applicable GST | Applicants submitted that the conduct of Guibord unnecessarily lengthened the trial and pointed to the Respondent's breach of a prior Court Order and his collateral attack on the appointment of the Applicants as guardians as a basis for the award of full indemnity costs; Applicants were already awarded costs in relation to their appointment as guardians in a prior hearing, and to do so on a full indemnity scale in these proceedings would result in an excessive award of costs; Guibord has already been ordered to pay contempt damages and costs for his breach of Court Order to re-visit that conduct in a Ruling on Costs would result in an excessive award of costs to the Applicants; given the complexity of the issues, the protracted nature of the litigation cannot be a criticism solely visited upon the Respondent |
| Whitten, Alan C.R.  | Leschyna v. CIBC World Markets Inc.   | [2006] O.J. No. 1266 (S.C.J.) | Defendants              | Not disclosed   | Costs on a partial indemnity basis in the amount of \$9,000, inclusive of disbursements.                                    | The plaintiff's Statement of Claim contained inadequacies. It prevented a timely response by the defendants. Time which could have been better spent in the exchange of pleadings and the discovery process, was instead dissipated in an application essentially for clarification.  |
| Beaudoin, R.  | DB Marketing Inc. (c.o.b. as Brinker, Ink) v. Gary Gurmukh Sales Ltd. (c.o.b. GGS Ltd.) | [2005] O.J. No. 4684 (S.C.J.) | Plaintiff               | Costs in the amount of \$5,585.16 inclusive of GST  | Costs in the amount of \$3,640 plus GST (\$254.80), plus disbursements in the amount of \$112.11 for a total of \$4,006.91. | Defendants' counsel chose to deal with the merits of the action at great length and the motion materials were poorly organized. Defendants had initially requested an adjournment of the motion to allow them to prepare and submit further materials. As a result, additional costs were incurred by the Plaintiffs for the preparation required to attend on both dates.  |
| de Sousa, Maria T. Linhares   | Sterling v. Sterling  | 2005                          | Plaintiff               | Not disclosed   | \$30,000  | Family law issue – Rule 24. The conduct of Ms. Sterling (defendant) was unreasonable at times. This resulted in unnecessary an longer court proceedings. Her decision to represent herself often resulted in prolonging the litigation and the trial itself. She must take responsibility for this. A litigant that undertakes the challenge of representing himself/herself is not automatically shielded from the possibility of a costs award against him/her if such an order is justified.   |
| Ferguson, Donald S.   | Thomson v. S.I.A. Insurance Brokers Ltd.  | [2005] O.J. No. 4497 (S.C.J.) | Defendant               | Not disclosed   | Costs on a partial indemnity basis in the amount of   | The conduct of both parties tended to lengthen the duration of the trial unnecessarily.   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Conduct of the party that tended to shorten or lengthen proceeding (57.01(1)(e))**

| Judge         | Case Name                           | Citation / Date              | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments  |
|---------------|-------------------------------------|------------------------------|------------------|---|---|---|
|               |                                     |                              |                  |   | \$55,000, inclusive of disbursements and GST  |   |
| Frank, E. Eva | Radvar v. Canada (Attorney General) | [2005] O.J. No 5239 (S.C.J.) | Defendants       | Parties seek costs on a partial indemnity basis as follows:<br><br>Signum & Rye: \$19,620.23<br><br>Costs requested by Chubb and the Attorney General not disclosed | Costs on a partial indemnity basis in the amounts of:<br>Chubb: \$12,000<br>Signum & Rye: \$10,000<br>Attorney General: \$7,000 | The Plaintiff unduly prolonged the proceedings by compelling the Defendants to bring motions which should have been unnecessary and then contesting those motions.<br><br>The Plaintiff caused further delay and unnecessary costs to be incurred by contesting a motion to compel his former solicitor of record to withdraw from the case, only to have that counsel withdraw before the scheduled hearing of the motion. |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

***Improper, vexatious, unnecessary steps; steps taken through negligence, mistake or excessive caution (57.01(1)(f))***

| Judge               | Case Name          | Citation / Date | Costs awarded to      | Costs Requested  | Costs Awarded  | Judge's Comments   |
|---------------------|--------------------|-----------------|-----------------------|--|--|--|
| Goudge, J.A.        | Marcus v. Cochrane | 2014 ONCA 207   | Defendant/ Respondent | \$160,706.99   | \$60,000   | <p>Trial Judge found no evidence of negligence. The Court of Appeal did not interfere with this judgment, as it was open to the Trial Judge on the evidence provided.</p> <p>Court of Appeal agreed with Trial Judge that the appellant suffered no actual damages.</p> <p>Trial Judge found “reprehensible” conduct by appellant, leading Trial Judge to award full indemnity to the respondent. Court of Appeal found that these charges were unsustainable.</p> <p>Set aside full indemnity, and awarded partial indemnity instead.</p>   |
| R. J. Smith J.      | Kandolo v. Kabelu  | 2013 ONSC 73    | Applicant             | <p>Applicants: \$138,220.38 on premium basis, alternatively \$125,108.20 on substantial indemnity basis</p> <p>or</p> <p>\$91,785 on partial indemnity basis</p> | \$65,000 + HST and \$7000 disbursements on partial indemnity scale | <p>Applicant (Kandolo Group) brought application to determine whether respondents could unilaterally revoke their resignations as directors of the Group (a charity) after having resigned. Court found they could not. The respondents also relied on self-help by appropriating assets of the Group following their resignation.</p> <p>Kabelus' conduct was unreasonable as they had no authority to revoke their resignations as Directors of the Foundation after they had delivered their resignations and they had been accepted by the Board. The Kabelus' conduct of taking control of the Foundation, completing the sale of the Foundation's building, and removing articles from the Foundation's building also constitute unreasonable conduct by the Kabelus.</p> <p>Costs on a partial indemnity scale at the highest level because of the unreasonable conduct of the Kabelus.</p> |
| B. R. Warkentin, J. | Marcus v. Cochrane | 2012 ONSC 2331  | Defendant             | \$160,706.99 on full indemnity basis   | \$160,706.99 on full indemnity basis                               | <p>Costs calculated on partial indemnity basis would have technically amounted to \$172,645.55, but because deal struck between defendant's insurer (LawPro) and her lawyer, the charges were below published rates (lawyer negligence case).</p> <p>The fixing of costs does not begin nor end with the calculation of hours multiplied by rates. The overall objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular circumstances of the case.</p> <p>In fixing partial indemnity costs, the court does not look at the actual fee arrangement between solicitor and client and discount</p>  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

***Improper, vexatious, unnecessary steps; steps taken through negligence, mistake or excessive caution (57.01(1)(f))***

| Judge        | Case Name      | Citation / Date | Costs awarded to | Costs Requested  | Costs Awarded  | Judge's Comments   |
|--------------|----------------|-----------------|------------------|--|--|--|
|              |                |                 |                  |  |  | <p>that arrangement to ensure that recovery is "partial". Rather, the court considers the pertinent factors laid down in the rules in fixing the amount of recovery appropriate on a partial indemnity basis.</p> <p>The accusations (of negligence) taken together with the manner in which the plaintiff's case was conducted put an award of costs into the range of exceptional circumstances where full indemnity costs should be awarded. The plaintiff's conduct of the trial was reprehensible.</p> <p>The plaintiff is fortunate that the costs claimed by the defendants are in the range of partial indemnity costs, and so will receive that benefit.</p> <p>Plaintiff ordered to pay the costs of the defendants on a full indemnity scale.</p> |
| Ratushny, J. | Murray v. Lesk | 2011 ONSC 1144  | Defendants       | <p>Brenda Durham (plaintiff) requested orally at the motion hearing \$10,000</p> <p>Karen Murray claims \$2,000 on a substantial indemnity basis</p> <p>Darcy Lesk, Estate Trustee, claims \$4,135,93 on a full indemnity basis, and this be deducted from Brenda Durham's share in the Estate</p> <p>Estate Solicitors: \$4,998.50 on a full indemnity basis or \$4,500</p> | <p>-Darcy Lesk as the Estate Trustee: \$4,145.93 all inclusive</p> <p>-Karen Murray: \$2,000 all-inclusive</p> <p>-Estate Solicitors: \$5,853.01 all-inclusive</p> | <p>The counterclaim was improper, vexatious and unnecessary—rule 57.01(1)(f)</p> <p>The unsupported allegations of dishonesty, breach of fiduciary duty and breach of professional duties justify an award of elevated costs</p> <p>It is fair and reasonable in all the circumstances for Brenda Durham to pay costs on a substantial indemnity scale, except for the Estate Trustee, which are to be paid on a full indemnity basis.</p>   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

***Improper, vexatious, unnecessary steps; steps taken through negligence, mistake or excessive caution (57.01(1)(f))***

| Judge                | Case Name  | Citation / Date                | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments  |
|----------------------|--|--------------------------------|------------------|---|---|---|
|                      |  |                                |                  | on a substantial basis plus disbursements and taxes   |   |   |
| Glithero, C. Stephen | Suserski v. Nurse                                  | [2007] O.J. No. 965 (S.C.J.)   | Defendant        | Costs in the amount of \$50,000   | Costs in the amount of \$50,000, inclusive of fees, disbursements and applicable GST              | The pleadings of the plaintiff were improper and inadequate and resulted in three motions, all of which were successful in requiring substantial changes to be made. Despite the fact that such motions led to orders striking out various allegations, the plaintiff went on to repeat these allegations in further pleadings, and to advance the same arguments, even though previously struck out, in the argument on the motion for summary judgment. Many of these same arguments are again advanced in the plaintiffs' voluminous submissions on costs. |
| D. Brown J.          | Sunview Doors Ltd. v. Academy Doors & Windows Ltd. | 2007 WL 1898677 (Ont. S.C.J.), | Defendant        | Costs in the amount of \$14,075.41 plus GST.  | Costs in the amount of \$2,500.   | While Rule 57.01(1)(f) talks in terms of steps taken that are improper or vexatious, in my view of equal relevance to a consideration of costs is whether a party omitted to do something that it was required to do in the proceeding. The defendants' failure to comply with their production obligations constituted such an omission. Due to such conduct, it is appropriate to reduce the costs to which the defendants would otherwise be entitled.   |
| Power, Denis         | Roscoe v. Roscoe                                   | [2006] O.J. No. 259 (S.C.J.)   | Defendant        | Costs on a full indemnity basis in the amount of \$10,611.71, inclusive of disbursements and GST. | Costs on a full indemnity basis in the amount of \$10,611.71, inclusive of disbursements and GST. | Plaintiff was self-represented. He was found to be a vexatious litigator. There was no merit in any of his arguments. Throughout the litigation, he exhibited a contemptuous attitude towards court orders and procedures. His motion was frivolous, vexatious and an abuse of the procedures of this court.  |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>                                   |  |                               |                         |   |   |   |
|---|--|-------------------------------|-------------------------|---|---|---|
| <b>Party's denial of or refusal to admit what should have been admitted (57.01(1)(g))</b> |  |                               |                         |   |   |   |
| <b>Judge</b>  | <b>Case Name</b>                               | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
| <b>Linhares De Sousa J</b>  | <b>Marchand v. MacKenzie</b>                   | <b>2019 ONSC 5062</b>         | Applicant               | Not disclosed   | \$40,000.00   | <b>The respondent refused to provide their bill of costs. Accordingly, the Court assumed that the respondent reasonably ought to have known the cost of 4 years of litigation.</b>  |
| Belch, Douglas M.   | McCaw v. McCaw                                 | [2007] O.J. No. 853 (S.C.J.)  | Plaintiff               | Costs in the amount of \$51,390.50, GST on fees of \$3,038.43, disbursements of \$12,790.41 and GST on disbursements of \$767.42 for a total of \$67,968.76 | Costs in the amount of \$25,000 in fees plus \$10,000 in disbursements plus applicable GST  | Defendant did not make timely financial disclosure and his disclosure led to the need to engage financial professionals to help construct his property statement and therefore equalization All of the wife's disbursements resulted from this untimely disclosure. |
| Aitken, Catherine D.  | Lavinkas v. Jacques Whitford & Associates Ltd. | [2006] O.J. No. 2697 (S.C.J.) | Plaintiff               | Costs on a substantial indemnity basis in the amount of \$44,134.   | Costs in the amount of \$28,000   | Defendant denied that any steps, interventions or communications taken or made by any of its management team were unsupportive of the plaintiff of would have conveyed the message to him that he was being sidelined.  |
| Charbonneau, Michel Z.  | Rioux v. Rhodenizer                            | 2006                          | Plaintiff               | Not disclosed   | Costs on a full indemnity scale in the sum of \$33,206.63   | The defendant provided disclosure in a piecemeal fashion during the trial and has yet to fully comply with the various disclosure orders.   |
| Hackland, Charles T.  | Whitton v. Whitton                             | 2006                          | Plaintiff               | Not disclosed   | Costs on a partial indemnity basis in the amount of \$750 (costs of the motion) plus \$250 (costs of preparation and of the costs submission) for a total amount of \$1,000 | Family law issue. The defendant's financial disclosure did not comply with the <i>Family Law Rules</i> , and occurred a few days prior to the motion, which resulted in what may have been an unnecessary motion.   |
| Métivier, Monique   | Glass Block Solutions Ltd. v. Pickles          | 2006                          | Plaintiff               | Costs on a substantial indemnity basis in the amount of \$15,627.78   | Costs in the amount of \$7,000 plus GST and disbursements   | The defendants admitted certain facts only at trial, which they ought reasonably to have admitted before.   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Party's denial of or refusal to admit what should have been admitted (57.01(1)(g))**

| Judge            | Case Name             | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments   |
|------------------|-----------------------|-------------------------------|------------------|--|---|--|
|                  |                       |                               |                  |  | of \$1,655.21   |  |
| Morin, Gerald R. | Brulé v. Brulé-Morgan | 2006                          | Defendant        | Bill of costs for fees and disbursements inclusive of GST totaling \$57,504.96 | Costs on a partial indemnity basis fixed in the amount of \$20,000 inclusive of GST together with disbursements of \$1,041.46 plus GST of \$62.18 | Father's (plaintiff) behaviour with respect to financial disclosure was not always reasonable. There was difficulty in obtaining accurate financial disclosure from him.   |
| Smith, Robert J. | Butler v. Poelstra    | [2006] O.J. No. 4969 (S.C.J.) | Plaintiff        | Costs on a full indemnity basis in the amount of \$16,259.42                   | Costs on a partial indemnity basis in the amount of \$5,000 plus GST plus \$722 in disbursements  | Family law issue – Rule 24. While success on the motion was divided, the husband (defendant) did not provide full financial disclosure until shortly before the motion was heard. The defendant should have made financial disclosure more promptly than he did. |

| <b>RULE 57 &amp; RULE 24 (Family Law Rules) FACTORS</b>  |   |                        |                         |  |  |   |
|--|---|------------------------|-------------------------|--|--|---|
| <b><i>Award of costs or more than one set of costs (separate proceedings) (57.01(1) (h))</i></b> |   |                        |                         |  |  |   |
| <b>Judge</b>   | <b>Case name</b>                              | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
| Pope, M.   | Raymond v. 1495669 Ontario Ltd.,              | 2011 ONSC 4265         | Plaintiffs              |  | \$12,300 plus interest from August 22, 2006 to July 6, 2011 at a rate of 4.5% against Ontario Ltd.<br><br>\$2000 against Sood, all-inclusive                         | Plaintiffs are entitled to partial indemnity costs.<br><br>Reasons for separate costs decisions are: defendants filed separate statements of defence, each defendant was represented separately, plaintiffs agreed to dismiss action against Sood with costs awarded.   |
| Laskin, John I.; Rouleau, Paul S.; Epstein, Gloria J.  | St. Elizabeth Home Society v. Hamilton (City) | 2010 ONCA 280          | Defendant               | Trial judge awarded costs of \$2,317,000 to the City and \$1,945,000 to the Region.  | Fee portion of post-amalgamation costs (after adjustment to partial indemnity) reduced by additional 25% to account for duplication. No adjustment of disbursements. | <b>The City and Regional Municipality of Hamilton had amalgamated during the course of the litigation. The trial judge erred in treating them as continuing separate entities after amalgamation. However it would be unreasonable to expect the amalgamated city to immediately dismiss one of the two law firms involved without a transition period. The trial judge should have assessed the need for the continued involvement of counsel for both firms working on the case, in awarding costs for the period after amalgamation.</b><br><br><b>On the record, only a rough estimate of duplication that could reasonably have been avoided was possible, however the interests of the parties would not be served by sending the matter for an assessment. The award was adjusted by applying a 25% reduction to the fee portion of the post-amalgamation costs. There was no adjustment of disbursements, as duplication there seemed unlikely.</b> |
| Hackland, Charles T.   | Leclair v. Ontario (Attorney General)         | 2010 ONSC 3147         |                         | Plaintiffs: \$212,224 on partial indemnity basis or \$306,785 on a substantial indemnity basis<br>Defendant Aitken: \$67,606 | Para. 18:<br>(a) The defendant Dr. Ayroud shall pay to the plaintiffs their costs of the motion fixed in the sum of  | Assessment of costs were complicated in this matter because all counsel agreed that the cross-examinations for the summary judgment motions would also serve as examinations for discovery for trial.<br><br>The examinations went beyond what was required for the summary judgment motions. Consequently half of the costs of these examinations was deferred to be dealt with by the trial judge.  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
***Award of costs or more than one set of costs (separate proceedings) (57.01(1) (h))***

| Judge | Case name | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments |
|-------|-----------|-----------------|------------------|---|--|------------------|
|       |           |                 |                  | on a partial indemnity basis, for successful motion for summary dismissal | \$150,600.00 plus disbursements in the sum of \$21,786.00;<br>(b) The plaintiffs shall pay the costs of Dr. Susan Aitken for the action, fixed in the sum of \$67,606.00;<br>(c) As the defendants Dr. Ayroud and Dr. Aitken are represented by the same counsel, the said defendants may set off the costs due to Dr. Aitken in (b) above, against costs payable by Dr. Ayroud in (a) above.<br>(d) The defendants OPSD and Detective Monette shall pay the plaintiffs their costs of this motion fixed in the sum of |                  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

***Award of costs or more than one set of costs (separate proceedings) (57.01(1) (h))***

| <b>Judge</b> | <b>Case name</b>                        | <b>Citation / Date</b>        | <b>Costs awarded to</b>      | <b>Costs Requested</b>   | <b>Costs Awarded</b>              | <b>Judge's Comments</b>   |
|--------------|---|-------------------------------|------------------------------|--|-----------------------------------|---|
|              |   |                               |                              |  | \$81,390.00.                      |   |
| Beaudoin, R. | George S. Szeto Investments Ltd. v. Ott | [2006] O.J. No. 2390 (S.C.J.) | Defendant (Attorney General) | Costs in the amount of \$5,393.77 (\$523.15 of which were for disbursements) | Costs in the amount of \$5,393.77 | Although it was reasonable for the CCRA defendants to join in on the motion, they did not succeed on their own. For that reason, they are not awarded with costs as they could have relied on the presentations of the Attorney General. As their motion was not unreasonable and since the plaintiffs argue that it was merely a duplication of the successful arguments of the Attorney General, plaintiffs will not awarded costs. |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**  
**Other matters relevant to costs (57.01(1)(i))**

| Judge            | Case Name   | Citation / Date | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments   |
|------------------|---|-----------------|------------------|---|---|--|
| Warkentin, B. R. | McCue v. Gerhards,                                  | 2012 ONSC 661   | Plaintiff        | \$9,000 on a full recovery basis  | \$150   | While Rule 24 (11) allows for a successful party to be entitled to costs, the principle of reasonableness and access to justice must always be considered. Rule 24(11) combined with s. 131 of the Courts of Justice Act, gives the court wide discretion when deciding costs. Given the continuing changes with the child's residency and the mother's financial status, only nominal costs were awarded.   |
| Kane, J.         | de la Sablonniere v. Castagner                      | 2012 ONSC 1565  | Applicant        | Applicant seeks costs of \$56,448<br><br>Respondent seeks costs of \$31,545 plus \$2250 for the cost of a consultation fee with a lawyer and parking and meals to attend court.   | \$7,500 inclusive of disbursements and tax  | Family Law Rules O. Reg. 114/99 indicates that the success of a party at trial is very important to an award of costs.<br><br>The court determined that the respondent by his actions alienated the two youngest children from their mother. This issue consumed a majority of time during the 10 day trial.<br><br>Aside from the alienation issue, the success by each party on the other issues was divided. Were it not for the alienation issue, no costs would be awarded. |
| Mulligan, J      | Cohlmeyer v Ffrench                                 | 2012 ONSC 929   | Respondents      | Applicants: \$197,313.90 on a partial indemnity basis (including previously recovered costs of \$27,000)<br><br>Respondents: \$104,253.29 on a substantial indemnity basis or \$69,495.24 on a partial indemnity basis. | \$4,000 all inclusive with respect to only the Statements of Claims brought against the defendants. Aside from that, each party will bear its own costs | The parties arrived at a settlement; this settlement did not determine which party was entitled to costs. One of the principles of modern costs rules is to encourage settlements, and when they do so, should not be penalized by a costs order. It is fair and reasonable in these circumstances that each party bear their own costs, aside from the Statements of Claims.  |
| McKinnon, J.     | Friends of the Greenspace Alliance v. Ottawa (City) | 2011 ONSC 472   | None             | Respondent claims \$40,000 in legal fees  | Counsel to agree on costs of this motion within 20 days otherwise   | Costs of an abandoned motion for leave to appeal to the Divisional Court are governed by Rules 37.09<br><br>It has become generally accepted principle in Canadian courts of law that individuals or groups who pursue litigation in the public  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Other matters relevant to costs (57.01(1)(i))**

| Judge          | Case Name                           | Citation / Date  | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments  |
|----------------|-------------------------------------|--|------------------|---|--|---|
|                |                                     |  |                  |   | submissions will be entertained for costs  | <p>interest are subject to a unique costs regime.</p> <p>Public interest litigation must be pursued responsibly not recreationally. In this case, the claim was unreasonable, therefore, there will be no order excusing FGA from paying costs as a consequence of this appeal.</p> <p>If counsel cannot agree on costs within 20 days, costs submissions will be entertained.</p>  |
| Fregeau, J.S.  | McKay v. Kinrade                    | 2011 ONSC 2521   | Respondents      | <p>BMO costs: \$15,786.48 on a full recovery basis and \$11,211.42 on a partial recovery basis.</p> <p>For TD: \$21,591.80 on a full recovery basis and \$14,466.61 on a partial recovery basis</p> | <p>The Applicant is to pay to BMO, \$2,250 in costs up to the withdrawal date and to TD, \$1750.</p> <p>For the costs of the hearing, the Applicant shall pay to BMO \$7,000 and to TD, \$5,000.</p> | <p>BMO docketed time of 47.40 hours at a rate of \$400/hour. TD shows 108.6 hours by various counsel</p> <p>Family Law Rule 12(3) creates a presumption that a withdrawing party shall pay the costs of every other party up to the date of the withdrawal, unless the court orders otherwise. As a result, the Applicant is liable for the costs of TD and BMO to November 9, 2010, along with a reasonable amount for this hearing.</p>                                   |
| Polowin, Heidi | Garcia v. Normore                   | (2008, Ont. Sup. Ct. J.)<br>Court File No.: 05-FL-1557 | Applicant        | \$48,089.50 for fees, \$6,471.30 in disbursements, \$4,000 pursuant to an earlier order, plus GST: total \$61,488.84  | \$20,000 inclusive, plus \$4,000 under the earlier order   | Family Law issue - Rule 24(8): intemperate statements made while self-represented may have inflamed matters and were ill-advised. However, this did not amount to "bad faith".  |
| R.D. Reilly J. | Jomar Cattle Feeders Inc. v. Murphy | [2007] O.J. No. 1646                                   | Defendant        | Costs on partial and substantial indemnity basis in the amount of \$95,641.50   | Costs in the amount of \$58,000, inclusive of disbursements and GST  | Defendant located in Alberta claimed travel expenses for Alberta-based counsel. Defendant should have known when entering into a contract in Ontario that any disputes arising from contract would be settled in an Ontario court and subject to simplified rules. Defendants' claim for disbursements related to the decision to retain Alberta counsel (i.e. travel) are discounted from overall cost award. They could have retained Ontario counsel at a lower expense. |
| D.C. Shaw J.   | Bowman v. Rainy River (Town)        | [2007] O.J. No. 1844                                   |                  | Costs on a substantial indemnity basis  | Costs on a partial indemnity basis   | Full partial indemnity costs for 4.3 hours spent waiting for a motion should not be awarded. That time should have been spent doing other work.   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Other matters relevant to costs (57.01(1)(i))**

| Judge               | Case Name                                       | Citation / Date              | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments  |
|---------------------|---|------------------------------|------------------|--|---|---|
|                     |   |                              |                  | in the amount of \$6,000 plus disbursements and GST.   | in the amount of \$3,794.51 plus GST.   |   |
| Power , Denis       | Riddell v. The Conservative Party of Canada     | [2007]                       | Applicant        | Full indemnity in the amount of \$396,947.71.  | Partial indemnity in the amount of \$118,109.50.  | Rule 57.01(4)(e) specifically authorizes a court to award costs to an unrepresented party. However, it does not specify the criteria to be considered, and legal precedents have failed to set clear guidelines. Mr. Riddell is a litigant who is also a practicing lawyer. The novel issue here is whether he is able to claim for his own legal work performed in advancement of his cause. As a partner in his law firm, Mr. Riddell's loss for the amount claimed is equal to his share of the firm's profits estimated to be 40%. Mr. Riddell therefore has a right to claim 40% of the amount of the work claimed on a substantial indemnity scale, and 60% of that amount on a partial indemnity scale. It would be helpful if parties in similar circumstances were to provide evidence of loss to avoid too much speculation in the future..   |
| Blishen, Jennifer A | Flentje v. Nichols                              | 2007                         | Plaintiff        | \$30,399.88 (inclusive of GST and disbursements)   | \$28,000 (inclusive of disbursements and GST)   | Respondents did not serve an affidavit of documents nor a mediation brief; trial took three days and 14 witnesses were called   |
| Lax, Joan L.        | Antorisa Investments Ltd. v. 172965 Canada Ltd. | [2007] O.J. No. 195 (S.C.J.) | Defendant        | Costs on a full indemnity scale in the sum of \$1,223,434.63, or, in the alternative, costs on a substantial indemnity scale totaling \$931,161.90 | Costs in the amount of \$650,000 plus GST, plus disbursements in the sum of \$50,073.60, plus GST | <p>An indemnity agreement existed between the plaintiff and defendant; however, the court may use its discretion to refuse to enforce that contractual right, such as where circumstances of inequitable conduct or unconscionability exist. No agreement can exclude the court's discretion to determine by whom and to what extent legal costs shall be paid.</p> <p>In this case, Antorisa advanced no reasons not to enforce the contract. There was no conduct by the defendant to disentitle it to an indemnity, nor would it be unfair or unduly onerous to require the Plaintiff to perform the contract.</p> <p>When claims for full indemnity costs based on an indemnity agreement arise, evidence of the amount of fees invoiced should be produced to support the claim.</p> <p>Because the costs to be awarded in this case arise from a contract, the starting point is the Agreement. In agreeing to indemnify Imperial for its reasonable fees, the Court must establish what the Plaintiff could reasonably expect to pay if it was required to fully indemnify the Defendant for the litigation.</p> |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Other matters relevant to costs (57.01(1)(i))**

| Judge                | Case Name   | Citation / Date              | Costs awarded to      | Costs Requested  | Costs Awarded  | Judge's Comments  |
|----------------------|---|------------------------------|-----------------------|--|--|---|
|                      |   |                              |                       |  |  | Proportionality between the damages awarded and the costs sought is a costs principle.  |
| Aitken, Catherine D. | Galpin v. Galpin  | 2007                         | Plaintiff / Applicant | Costs in the amount of \$27,205  | Costs in the amount of \$13,000  | Respondent did not provide complete and frank disclosure in his presentation of his financial affairs; income was presented as much less than it was found to be; Respondent's financial statement provided meaningful information about his actual expenses in Saudi Arabia; Respondent did not fully comply with the financial disclosure order made by Hackland J. at the time of the case conference; Respondent did not provide all of his bank statements and did not produce certain copies of his Visa statements |
| Métivier, Monique    | Mick v. Boulder City Climbing School Inc.                       | 2007                         | Plaintiff             | Costs on a substantial indemnity basis   | Costs in the amount of \$14,000 inclusive of fees, disbursements and GST | This matter did not require the involvement of more than one counsel to the extent shown in the Bill of Costs; legal fees should be reduced on that account   |
| Polowin, Heidi       | Rowe v. Unum Life Insurance Company of America (Motion to Vary) | [2007] O.J. No. 474 (S.C.J.) | Plaintiff             | Costs in the amount of \$8,431.77, inclusive of GST  | Partial indemnity costs totaling \$1,500.                                | Defendant was largely successful on the motion; Defendant provided a formal Offer to Settle and that offer exceeded what was ordered by the Court; however, the offer was only made after a substantial portion of the plaintiff's costs had already been incurred  |
| Aitken, Catherine D. | Chenier v. Hôpital Général de Hawkesbury                        | 2006                         | Plaintiff             | Plaintiff : Costs on a partial indemnity basis in the amount of \$2,657; costs on a substantial indemnity basis in the amount of \$3,932<br><br>Defendant: Costs on a partial indemnity basis in the amount of \$2,576 | Costs on a partial indemnity basis in the amount of \$1,500              | This motion unnecessarily added expense to the conduct of this action. For this reason, a costs award is called for against the Defendants.   |
| Beaudoin, R.         | Shalouf v. Beaudry  | [2006] O.J. No. 2550         | Defendants            | Costs on a partial indemnity basis in the amount of  | Costs on a partial indemnity basis                                       | In exercising discretion on issue of costs, must also have regard to the fact that the plaintiff probably has very limited means. There is no point in making an award of costs that has no likelihood of ever  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Other matters relevant to costs (57.01(1)(i))**

| Judge                  | Case Name   | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded   | Judge's Comments   |
|------------------------|---|-------------------------------|------------------|--|---|--|
|                        |   |                               |                  | \$50,389 inclusive of GST. This amount includes \$46,864.41 for fees and taxable disbursements of \$3,525.28   | in the amount of \$20,000, all inclusive.   | being paid. The plaintiff will bear the burden of raising a son without his mother, but those facts do not provide him with a complete immunity from costs.  |
| Beaudoin, R.           | Temelini v. Canada Permanent Trust Company                        | [2006] O.J. No 509 (S.C.J.)   | Plaintiff        | Costs on a partial indemnity basis in the amount of \$16,933 and disbursements of \$2,345.94   | Costs in the amount of \$7,000 for fees, plus \$1,500 for disbursements. GST should be added to these sums for a total of \$595.                | Costs to the Plaintiff should be reduced due to the Plaintiff's failure to seek relief from the deemed undertaking rule at an earlier point. Had the Plaintiff done so, the involvement of the RCMP (defendant) would have been flagged sooner and the time spent before Justice Kealey would have been avoided. There must also be an adjustment having regard to the Plaintiff's failed attempt to file a supplementary affidavit. |
| Beaudoin, R.           | OZ Merchandising Inc. v. Canadian Professional Soccer League Inc. | [2006] O.J. No. 3718 (S.C.J.) | Defendants       | Eastern Ontario District Soccer Association (Defendant) & Ontario Soccer Association (Defendant) claimed costs on a partial indemnity basis in the amount of \$5,500.87 or costs on a full indemnity basis in the amount of \$8,202.52 | Eastern Ontario District Soccer Association: Costs in the amount of \$1,500 + \$250 (excess counsel's costs) + \$1,000 (excess counsel's costs) | In this case, none of the responding parties filed any new materials. They relied on materials that had been submitted on a previous motion. For this reason, their costs should be limited to their time spent in reviewing the pleadings and for their appearance at the motion.   |
| Belch, Douglas M.      | Langille v. Limestone District School Board                       | 2006                          | Defendant        | \$12,000 + GST and disbursements   | \$5,000 + GST and disbursements   | Plaintiff was only 21 years old, had no assets, owed educational loans of \$25,000 and had yet to graduate; financial hardship, or the reverse, is not a sound basis for exercising discretion on the matter of costs  |
| Charbonneau, Michel Z. | Rioux v. Rhodenizer   | 2006                          | Plaintiff        | Not disclosed  | Costs on a full indemnity scale in the sum of \$33,206.63   | The defendant played intimidated and harassed the plaintiff throughout the proceeding in order to get her to stop asking for what were very legitimate claims.   |
| de Sousa,              | Chetty v Payet  | 2006                          | Plaintiff        | Not disclosed  | Costs on a full   | Family law issue – Rule 24. Parties have limited financial means   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Other matters relevant to costs (57.01(1)(i))**

| Judge                | Case Name                     | Citation / Date               | Costs awarded to | Costs Requested   | Costs Awarded  | Judge's Comments   |
|----------------------|-------------------------------|-------------------------------|------------------|---|--|--|
| Maria T. Linares     |                               |                               |                  |   | indemnity basis in the amount of \$9,000   | and the order for costs should not interfere with their ability to care for the children and to have access to the children in the best interests of the children.   |
| Ducharme, Todd       | Calgar v. Moore               | [2006] O.J. No. 445 (S.C.J.)  | Defendant        | Costs on a partial indemnity basis in the amount of \$99,991.00, plus disbursements of \$8,937.79 for a total, with G.S.T. where applicable, of \$116,258.10. | Costs on a partial indemnity basis in the amount of \$52,980, in legal fees, plus G.S.T. and disbursements in the amount of \$8,937.79, inclusive of tax | Plaintiff's limited financial resources were not one of the reasons taken into account in reducing the appropriate costs award. The fact that the plaintiff is in financial difficulty is that much more reason for him to have carefully considered the wisdom of pursuing this litigation. Given that it was clearly statute-barred, his decision was somewhat foolhardy. The fact that he has limited resources cannot be used to immunize him from the reasonable cost consequences of pursuing unwise litigation. |
| Hackland, Charles T. | Schouten v. Rideau (Township) | 2006                          | Defendant        | Total requested costs not disclosed   | Total fees \$97,317.87 plus \$51,329.71 in disbursements plus GST  | There is an absence of any factor requiring a costs sanction, as the trial was conducted in an exemplary fashion by both counsel   |
| Lalonde, Paul F.     | Higgerty v. Higgerty          | 2006                          | Defendant (wife) | Not disclosed   | Costs on a partial indemnity basis in the amount of \$10,000 in fees and \$1,252.01 in disbursements, all inclusive of GST                               | Family law issue – Rule 24. There is no bad faith on the part of the plaintiff in serving his cross-motion materials late. There is a lack of civility in serving documents late on one's opponents. Plaintiff should have avoided putting the defendant's counsel in a position to have to produce her reply on such short notice as he was in possession of the defendant's motion materials weeks before the hearing date.  |
| Maranger, Robert L.  | Cusson v. Quan                | [2006] O.J. No. 3186 (S.C.J.) | Plaintiff        | Costs on a partial indemnity basis in the amount of \$665,265.66 (\$582,386 in fees, plus GST of \$40,767 and disbursements of \$42,112.66)                   | Costs on a partial indemnity basis in the amount of \$246,512.66 (\$200,000 in counsel fees; GST of \$14,000; disbursements of \$32,512.66)              | Although the plaintiff's credibility was suspect in this case, it does not disentitle him to some costs.   |
| Métivier, Monique    | Dix v. Thomas                 | 2006                          | Plaintiff        | Both parties sought costs for   | Costs of \$2,000   | Family law matter – Rule 24 – unreasonable behaviour alleged on the part of the plaintiff. Defendant contended that plaintiff behaved  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Other matters relevant to costs (57.01(1)(i))**

| Judge            | Case Name   | Citation / Date               | Costs awarded to            | Costs Requested  | Costs Awarded  | Judge's Comments   |
|------------------|---|-------------------------------|-----------------------------|--|--|--|
|                  |   |                               |                             | the change of venue motion<br><br>Costs sought not disclosed   |  | unreasonably in that 1) her response to the motion was served two days prior to the hearing; 2) affidavit was deficient in that it was never truly "served"; 3) a factum was served only after hours on the day before the hearing and no authorities were given; and 4) Plaintiff's counsel failed to consent to other relief claimed until two days before<br><br>None of this is sufficient to indicate unreasonableness such as to rebut the presumption of costs to the unsuccessful party as set out in Rule 24(1) |
| Morin, Gerald R. | Brulé v. Brulé-Morgan   | 2006                          | Defendant                   | Bill of costs for fees and disbursements inclusive of GST totaling \$57,504.96   | Costs on a partial indemnity basis fixed in the amount of \$20,000 inclusive of GST together with disbursements of \$1,041.46 plus GST of \$62.18      | Father (plaintiff) has limited ability to pay an award of costs.   |
| Morin, Gerald R. | Diallo v. Benson et. al.<br>*This costs decision concerned the Ottawa Police Services Board defendant | 2006                          | Defendant                   | Costs totaling \$15,690.17   | Costs in the amount of \$5,000   | The plaintiff is only 24-years old and he does not hold permanent employment. The financial position of the plaintiff and his relative impecuniosity compared to that of the defendants is a factor taken into consideration.  |
| Power, Denis     | Campeau v. Campeau  | [2006] O.J. No. 2297 (S.C.J.) | Defendants / Moving Parties | Costs on a substantial indemnity basis is the amount of \$26,570.80; costs on a partial indemnity basis in the amount of \$21,044.25 | Costs on a partial indemnity basis in the amount of \$15,000, all inclusive. No costs should be paid unless Defendants / moving parties are successful | Plaintiff argued that he is bereft of funds and it would be inappropriate to saddle him with costs of a motion in which he only sought to preserve his right to counsel. There is merit to this argument. No costs should be paid at this time and no costs should be paid unless Defendants / moving parties are successful.  |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Other matters relevant to costs (57.01(1)(i))**

| Judge   | Case Name                  | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded  | Judge's Comments   |
|---|----------------------------|-------------------------------|------------------|--|--|--|
|   |                            |                               |                  |  | in this litigation.  |  |
| Power, Denis  | Gilchrist v. Oak           | 2006                          | Defendant        | Costs in the amount of \$4,667.88 (inclusive of fees, disbursements and applicable GST)  | Costs in the amount of \$2,500 (inclusive of fees, disbursements and applicable GST)                 | This order will cause financial hardship to the Plaintiff. However, the Plaintiff should not have acted unilaterally given the agreement between the parties. It was the conduct of the Plaintiff that necessitated this motion.   |
| Power, Denis  | McLean v. Vallance         | [2006] O.J. No. 3393 (S.C.J.) | Defendant        | Costs in the amount of \$4,870   | Costs in the amount of \$1,000   | Frequently, where parties are unrepresented, they claim, as costs, the amount of lost earnings caused by the litigation. However, in situations where parties are represented by legal counsel, such claims are seldom made and, if made, are seldom allowed. There is no logical reason for treating unrepresented litigants different from legally represented litigants with respect to loss of earnings.   |
| Power, Denis (writing for the Court);<br>O'Driscoll, John; Gravely, R.T Patrick | Worthman v. Assessmed Inc. | 2006                          | Plaintiff        | Costs in the amount of \$47,000 (approx. Exact number not disclosed)   | Costs in the amount of \$15,000 (including fees and disbursements)                                   | There is something to the "novelty" argument in this case, and the amount of costs will be reduced by one-third to account for the "novelty" element.  |
| Smith, Robert J.  | Lampron v. Lampron         | 2006                          | Plaintiff        | Not disclosed  | \$500 + disbursements of \$400   | Neither party retained a lawyer. As a result, a modest amount of costs should be awarded.  |
| Smith, Robert J.  | Nelligan v. Fontaine       | [2006] O.J. No. 3699 (S.C.J.) | Plaintiff        | Plaintiff (law firm) sought their costs thrown away as a result of attending the assessment hearing and for the motion to set-aside the default assessment order.<br><br>Plaintiff law firm claims fees of \$22,816.68 inclusive of GST on a substantial | Costs thrown away were assessed at \$10,000 plus GST and disbursements of \$371.80, inclusive of GST | Although the clients' conduct was not reprehensible or unconscionable, they were not considerate of the court process or the opposing party in failing to take any steps to advise of the injury or to request an adjournment.<br><br>One client in particular was injured, and did not attend at the hearing or advise the Court of the opposing party that he was unable to attend, or that an adjournment would be sought. Such conduct wasted the Court's time and caused unnecessary expense. |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Other matters relevant to costs (57.01(1)(i))**

| Judge                | Case Name               | Citation / Date               | Costs awarded to | Costs Requested   | Costs Awarded   | Judge's Comments  |
|----------------------|-------------------------|-------------------------------|------------------|---|---|---|
|                      |                         |                               |                  | indemnity basis, plus disbursements of \$531.36   |   |   |
| Spence, James M.     | Baldwin v. Daunbey      | [2006] O.J. No. 3919 (S.C.J.) | Defendant        | Costs in the amount of \$1,141,000.   | Costs in the amount of \$440,000, all-inclusive.                    | <p>If the unsuccessful party says that he or she should be relieved from the costs rule because a novel issue was raised, it is not clear why that should be a relevant reason unless that element of novelty goes to the reasonable expectations of the party about the litigation. It is appropriate to regard the "novel issue" factor in respect of a costs award not as a rule requiring rejection of a costs award, but rather as a consideration to be taken into account in determining whether there should be a costs award and if so, in what amount.</p> <p>Impecuniosities of the losing parties is in the discretion of the judge to take into account. In this case, there would be a hardship for the plaintiffs if they were ordered to pay costs in the amounts sought by the defendants. The award would likely go largely unsatisfied. It is reasonable to suppose that an award in the magnitude indicated by the defendants' claims would also have a chilling effect upon the plaintiffs' ability to pursue their claims against the other remaining defendants.</p> |
| Wood, Thomas M.      | Grant v. Grant          | [2006] O.J. No. 23 (S.C.J.)   | Defendant        | Costs on a substantial indemnity basis in the amount of \$50,076.   | Costs in the amount of \$7,500, inclusive of disbursements and tax. | Family law issue – Rule 24(11). Regular access to the mother was in the child's best interests, and would be impeded by an order for costs of the magnitude sought by the father.   |
| Aitken, Catherine D. | Cameron v. MacGillivray | [2005] O.J. No. 1757 (S.C.J.) | No costs awarded | Costs requested by plaintiff: \$225,880 or, in the alternative, costs up to the date of her offer in the amount of \$89,718, and full recovery thereafter in the amount of \$119,146<br><br>Costs requested | No costs awarded – each party to bear their own costs               | <p>Family law issue – Rule 24 – reasonableness of each party's behaviour. Both parties behaved unreasonably at time.</p> <p>The plaintiff was inflexible with timesharing of the child and she was critical of the defendant with the child. This escalated the conflict between the parents. The plaintiffs approach to the financial issues outstanding between the parties was not reasonable.</p> <p>The defendant domineering, aggressive and abusive while the two parties lived together. He was often unreasonable in response to requests for timesharing, and put his desire for equal timesharing ahead of the needs of the child. His behaviour created an environment where joint custody was unrealistic. The defendant put up roadblocks to the plaintiff obtaining information or</p>   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Other matters relevant to costs (57.01(1)(i))**

| Judge                      | Case Name                                    | Citation / Date               | Costs awarded to | Costs Requested  | Costs Awarded  | Judge's Comments   |
|----------------------------|--|-------------------------------|------------------|--|--|--|
|                            |  |                               |                  | by defendant: No costs should be awarded   |  | documentation to which she was entitled. The financial statements he provided the plaintiff with understated his current earnings by \$12,000 annually. The defendant did not file 2003 and 2004 corporate income tax returns, despite these being required prior to trial.  |
| Aitken, Catherine D.       | Stoate v. Stoate                             | [2005] O.J. No. 3087 (S.C.J.) | Defendant        | Costs on a partial indemnity basis in the sum of \$8,731.63  | Costs on a partial indemnity basis in the sum of \$5,000 inclusive of disbursements and GST                            | Legal fees and disbursements charged have to have some relationship to the recovery to the client. Unjustifiable to place the burden on the plaintiff of paying \$8,732 in legal fees, when the amount of dispute as of trial was \$9,495.   |
| Belch, Douglas             | Millen v. Kingsway General Insurance Company | 2005                          | Defendant        | Costs on a partial indemnity basis in the amount of \$20,849.27 or costs on a substantial indemnity basis in the amount of \$25,225.57 | Costs on a partial indemnity basis in the amount of \$7,500, including fees and disbursements and GST where applicable | Costs should be modified because of the novelty and the confusion in the case law which sees the Appeal Courts in two provinces reaching different conclusions.  |
| de Sousa, Maria T Linhares | Sterling v. Sterling                         | 2005                          | Plaintiff        | Not disclosed  | \$30,000   | Family law issue – Rule 24. Financial circumstances of the parties is to be considered under Rule 24(11)(f). An award of costs should not prevent a parent from meeting their parental obligations to the detriment of the children. In this case, neither parent can afford this litigation. An award of costs of \$30,000 is fair and reasonable for both parties. |
| Métivier, Monique          | Santini v. Thompson                          | 2005                          | Defendant        | Costs in the amount of \$16,495.97   | \$10,350, plus disbursements as claimed (not disclosed), plus GST  | Defendant was found to be contributorily negligent – costs should be reduced.  |
| Power, Denis               | Bowers v. Delegarde                          | [2005] O.J. No. 3857 (S.C.J.) | Defendant        | Costs on a substantial indemnity basis in the amount of \$115,631.06, or, costs on a partial indemnity scale in the amount of          | Costs on a partial indemnity basis in the amount of \$40,000, inclusive of disbursements and all fees, and             | Nothing is to be awarded for the Defendant's personal expenses incurred. These losses do not fall within the ambit of "costs".   |

**RULE 57 & RULE 24 (Family Law Rules) FACTORS**

**Other matters relevant to costs (57.01(1)(i))**

| Judge                       | Case Name  | Citation / Date | Costs awarded to | Costs Requested | Costs Awarded   | Judge's Comments  |
|-----------------------------|--|-----------------|------------------|-----------------|---|---|
|                             |  |                 |                  | \$88,707.72     | GST.  |   |
| Ratushny,<br>Lynn D.        | Cipolla v.<br>Leblanc, et. al.                                       | 2005            | Defendants       | Not disclosed   | Defendants<br>Leblanc &<br>Beaudoin :<br>\$3,981<br>inclusive of<br>counsel fee ,<br>GST,<br>disbursements<br>and counsel's<br>driving time<br>(\$100/hr)<br><br>Defendant<br>Kenjgewin Teg<br>Educational<br>Institute:<br>\$1,500<br>inclusive of<br>fees, GST and<br>disbursements | The defendants' motion was within the jurisdiction of the Case Management Master and could have been dealt with by him by way of a telephone conference call with the parties. However, the defendants chose to argue the issues under Rule 13.1 in person before this Court after a reasoned request to change the venue on consent had been summarily rejected by the plaintiff without reasons. In these circumstances, the defendants should not be significantly penalized for exercising their right to a motion hearing before the Court and claiming modest travel expenses in that regard. |
| Rutherford,<br>Douglas J.A. | Blenkhorn<br>Sayers<br>Structural Steel<br>Corp. v. Webb,<br>et. al. | 2005            | Plaintiff        | Not disclosed   | Costs on a<br>partial<br>indemnity basis<br>in the amount<br>of \$1,000   | Although the defendant's motion failed, it would have, if successful, made the trial somewhat simpler and shorter. Both parties resided outside of Ottawa, as did defendant's counsel. Only the plaintiff's counsel resided in Ottawa. Additional costs were incurred by the defendant in that his counsel had to come to Ottawa overnight in February only to have the motion adjourned due to the illness of plaintiff's counsel.   |

***COSTS AGAINST SUCCESSFUL PARTY (RULE 57.01(2))***

| <b>Judge</b>         | <b>Case name</b>                        | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>                                       | <b>Judge's Comments</b>  |
|----------------------|---|------------------------|-------------------------|---|--|--|
| Goudge, J.A. (ONCA)  | Marcus v Cochrane                       | 2014 ONCA 207          | Respondent              | Appellant:<br>\$375,000<br><br>Respondent:<br>\$49,001.53   | \$20,000 to respondent                                     | While the appellant succeeded on one issue, she was unsuccessful on two of the three issues in this court.<br><br>Appellant's costs on appeal were unreasonably high (\$375,000), as compared to the defendants much more modest partial indemnity costs (\$49,001.53).  |
| Beaudoin J.          | Goulding v. Street Motor Sales          | 2013 ONSC 1904         | Defendant               | Plaintiff seeks \$23,200.89 on partial indemnity basis<br><br>Defendant seeks \$10,000 on partial indemnity basis | \$10,000 plus HST of \$1,300 and disbursements of \$271.12 | Wrongful dismissal claim to which was added vague allegations of conspiracy and of inducement. These allegations were made recklessly without any factual or legal basis. Plaintiff named three Defendants where no clear cause of action was pleaded against two of them.<br><br>The Defendants were dragged to Ottawa when this action could have easily been commenced in Lanark County. Because the action was commenced in Superior Court, they were forced to hire counsel for the corporate defendants and had to bear the costs of discoveries and of a referral to mediation.<br><br>Rule 57.01(2) allows for an award of costs against a successful party "in a proper case". This is such a case. |
| Aitken, Catherine D. | Hartman Estate v. Hartfam Holdings Ltd. | 2005                   | Defendant               | Costs in the amount of \$6,000  | Costs in the amount of \$4,000                             | The plaintiffs' motion for leave to amend pleadings was not brought in a timely fashion. As a result, the motion for leave was argued on the eve of trial, placing the trial itself in jeopardy. Although the plaintiffs were successful on the motion, the motion would not have been required had the plaintiffs' case been fully and properly pleaded in the first instance.  |

**PROPORTIONALITY**

| Judge   | Case name   | Citation       | Costs awarded to | Costs Requested  | Costs Awarded   | Comments  |
|---|---|----------------|------------------|--|---|---|
| Gomery J.   | Charlesfort Developments Ltd v. The Corporation of the City of Ottawa | 2019 ONSC 4460 | Plaintiff        | \$1,771,069  | \$1,169,495   | Plaintiff's costs requested were held to be excessive because they were not obligated to retain expensive Toronto lawyers, and this extra cost should not be absorbed by the city. The judge found that the plaintiff's legal fees were unreasonable, and that senior counsel did a lot of work that could have been delegated to reduce costs. At the same time, the city's choice of representation should not mean that the plaintiff recovers less or that costs should be calibrated to the losing party.  |
| Strathy CJO, Hoy ACJO, Feldman, Brown, Paciocco JJA | Cadieux v. Cloutier   | 2019 ONCA 241  | Plaintiff        | \$100,000.00 plus disbursements and HST of \$98,798.00                       | \$25,000.00   | <b>The parties both engaged in a long and lengthy legal dispute and a 7 week jury trial. Each incurred at least \$500,000.00 of legal costs, for a judgement of \$340,000.00 to \$380,000.00. The costs claimed by both parties are disproportionate to the result.</b>   |
| Epstein, van Rensburg and Brown JJA                 | Lavender v. Miller Bernstein LLP                                      | 2018 ONCA 955  | Plaintiff        | Summary judgement motion: \$1,009,063.32<br>Appeal: \$159, 463.29            | Summary judgement motion: \$1,009,063.32<br>Appeal: \$159, 463.29<br><b>Both inclusive of disbursements and HST</b> | <b>The court will consider whether the quantum of costs are reasonable and proportionate. This court noted, "the issues were complex and important, the record voluminous, and the parties provided lengthy submissions".</b>   |
| Harper J.   | Stevens v. Stevens  | 2012 ONSC 6881 | Defendants       | \$950,624.47   | \$924,057.70<br>Plus \$55,189.04 for prejudgment interest   | The judge ruled that the plaintiff adopted a "catch me if you can" approach which resulted in the length of the trial being extended. This untimely and improper disclosure which constituted bad faith led to the judge awarding full costs from the beginning of trial. Costs were reduced following a case management conference because costs were neither set nor were they on the record. Given that Justice Harper was not presiding he was unable to rule on costs of these case management hearings and had to deduct those costs to follow with the precedent set by the court of appeal in <i>Islam v Rahman</i> . |
| Hackland C.T.                                       | Corbett v. Odorico  | 2016 ONSC2961  | Plaintiffs       | \$242,521.50 for substantial indemnity or \$159,249.90 for partial indemnity | \$159,249.90  | There was an argument that given the amount awarded by the jury in this case was only \$141,500. The costs should have been reduced for proportionality under Rule 49.13. The judge rejected this and declined to reduce costs. The judge said a reduction would only be warranted where there was a "near miss" offer pretrial but given that no such offer in this case the costs were acceptable. The defendant pushed the plaintiff to trial and as a result was subject to the high costs.   |

**PROPORTIONALITY**

| Judge         | Case name                     | Citation       | Costs awarded to | Costs Requested                               | Costs Awarded                                 | Comments   |
|---------------|-------------------------------|----------------|------------------|---|---|--|
| Peppall, JA   | Bank of Nova Scotia v Diemer  | 2014 ONCA 851  | Receiver         | \$294,000                                     | \$157,500                                     | Size of receivership should have bearing on hourly rates. Amount of BLG counsel's effort and work disproportionate to size of receivership. In particular, excessive work was done by senior counsel on routine matters. Much of the work could have been done at a lower hourly rate.<br><br>Value provided should predominate over mathematical calculation  |
| Belch, J      | 2145850 Ontario Inc. v STEO   | 2014 ONSC 7401 | Plaintiff, Crown | P: \$196,334<br>C: \$61,950<br>STEO: \$93,326 | P: \$150,000<br>C: \$61,950<br>STEO: \$93,326 | Motion with divided success, Plaintiff mostly successful.<br><br>Reduction in Plaintiff's award based on hours the Court felt was reasonable rather than hourly rates.<br><br>Costs awarded to Crown, despite novelty of the funding issue, as the Court found that the case was primarily about private economic interests.<br><br>Court felt STEO's claim for costs had some merit, but felt that the work done by STEO's counsel was usable at trial or judicial review. The Court declined to award partial costs, as it felt that it may create a risk that in calculating the costs at trial for something to be counted twice or missed altogether. |
| Gillese, J.A. | McLean v. Knox                | 2013 ONCA 357  | Plaintiff        | \$250,000                                     | \$250,000                                     | 15 day jury trial; plaintiff recovered judgment for ~\$70,000, less deductible, less 15% for contributory negligence for a net recovery of ~\$30,000; Ont. C.A. upheld trial judge's award of costs of \$250,000 (\$150,000 legal costs + \$80 disbursements + HST); notwithstanding defendant's offer to settle of \$150,000 + partial indemnity costs + PST made 4 days before trial, and minimal recovery by plaintiff; conduct of defence counsel was a factor.  |
| James, J      | Oakwood Designers v. Da Silva | 2013 ONSC 2638 | Plaintiff        | \$192,000                                     | \$34,000 + \$5459.81 disbursements            | 18 day trial; Judgment of \$8,900 was awarded; plaintiff spent \$236k in legal costs; defendant spend \$156k in legal costs; Judge awarded \$34k in legal costs + \$5459.81 in disbursements + HST.<br><br>Costs significantly exceed damage award, but defendants brought several unmeritorious claims, lengthening trial unnecessarily.  |
| McCarthy, J.  | Rochon v.                     | 2014 ONSC 591  | Plaintiff        | Partial Indemnity                             | \$635,500, half of                            | Costs awarded equally against commercial host and  |

**PROPORTIONALITY**

| Judge                | Case name                  | Citation       | Costs awarded to | Costs Requested  | Costs Awarded   | Comments   |
|----------------------|----------------------------|----------------|------------------|--|---|--|
|                      | MacDonald                  |                |                  |  |   | <p>which is to be paid by each defendant insurer, despite the fact that the driver was 70% liable and the commercial host only 5%. Volatile and unpredictable legal landscape in case. All sides acted reasonably and efficiently. Not fair to saddle one side with excessive costs. Not appropriate for a joint tortfeasor found minimally responsible for an accident to pay costs strictly with in accordance with its liability to pay damages.</p> <p>Mr. Oatley's fees were \$990/hour, but he was working on contingency, and it was unrealistic that the plaintiff was going to pay that rate for Mr. Oatley's time. \$450/hour considered fair partial indemnity rate.</p> <p>Defendants should not be expected to fund the costs of focus groups or experts not called at trial.</p>   |
| Hackland, Charles T. | Guergis v. Novak et al     | 2013 ONSC 1130 | Defendants       | <p>\$58,702.20 to Giorno, Novak, Harper, Glover, Raitt</p> <p>\$23,811.36 to Pellerin</p> <p>\$36,973.00 to Hamilton/Cassels, Brock &amp; Blackwell</p> <p>\$35,841.54 to the Conservative Party of Canada</p> | <p>\$40,000 to Giorno, Novak, Harper, Glover, Raitt to be apportioned between them</p> <p>\$18,000 to Pellerin</p> <p>\$25,000 to Hamilton/Cassels, Brock &amp; Blackwell</p> <p>\$25,000 to the Conservative Party of Canada</p> | <p>Failure to concede the application of the CHRC's ruling in advance of the argument of this motion should not attract costs consequences under Rule 57.</p> <p>Courts may take unnecessary duplication of effort or unnecessary separation of counsel into consideration when fixing costs. Awarded one set of costs to two defendants with significant duplication to be apportioned between them. Other defendants with markedly different interests involving substantially different legal arguments warranted separate costs.</p> <p>What constitutes an appropriate hourly rate for any claim for costs is determined by referring to the criteria in Rule 57.01 and not by terms of the retainer, subject to the proviso that costs must not be awarded in excess of counsel's hourly rate in non-contingency fee situations.</p> |
| Newbould, J.         | GB/Plasman v. APP Holdings | 2013 ONSC 6401 | Applicant        | \$100,821.08   | \$100,000   | <p>Claim that judgment (information on a foregoing basis) not more favourable than offer to settle because offer to settle did not contain a confidentiality undertaking as was ordered in judgment. This argument was denied. The confidentiality agreement was ordered not because it was required, but because it was offered by the applicant. It was not a contested issue.</p> <p>The element of compromise is not necessary to an offer to settle but absence of such can be considered.</p>  |

**PROPORTIONALITY**

| Judge            | Case name                    | Citation       | Costs awarded to      | Costs Requested  | Costs Awarded   | Comments  |
|------------------|------------------------------|----------------|-----------------------|--|---|---|
|                  |                              |                |                       |  |   | <p>The applicant argued that costs should only be paid by the general partner and not the limited partnership, as the applicant is a substantial limited partner, and would therefore, in effect, be paying their own costs. This submission was accepted by the judge. The applicant should not be required to partially fund the costs ordered to be paid to it.</p> <p>It is normal for the work done by a plaintiff to build a case to be far more than the work needed to be done.</p> |
| McMunagle, J.    | Wesley v. Sunday             | 2012 ONSC 1557 | Plaintiff             | <p>Plaintiff: \$80,000 on a partial indemnity basis</p> <p>Defendants: no costs should be awarded</p>  | \$20,000 plus HST and disbursements   | <p>This issue came down to essentially a neighbors' dispute over parking and easement rights. I am frankly shocked at the amount of money that the Plaintiff and Ms. Eisenhower have spent.</p> <p>The hours expended were excessive and not proportional. Spending over 125 hours on this matter is not proportional to the importance and complexity of the issue involved.</p>   |
| Smith, Robert    | Vance v. 337737 Ontario Ltd. | 2011 ONSC 505  | Plaintiff             | \$28,380.20 on a substantial indemnity basis, or alternatively on a solicitor and client basis of \$33,147.59, or \$18,845.42 on a partial indemnity basis, inclusive of disbursements and HST | \$14,000 plus HST plus disbursements of \$1,364.99, including the applicable HST                                    | The original claim was for \$9,000, of which \$8,500 was recovered. Although the issues were of above average complexity and were important to the parties, the time spent was out of proportion to the importance and amount of the claim. However, the parties could have reasonably foreseen that the action under the Construction Lien Act, involving a two and half day trial in Superior Court would be substantial.   |
| Price, David     | Van Blankers v. Stewart      | 2010 ONSC 3978 | Applicant (Defendant) | \$9,219.89   | as requested  | The case involves a claim for \$3,400,000 in damages. The plaintiffs had not submitted a costs outline. In the circumstances, it was not possible to find the claim to be disproportionate.   |
| Short, Donald E. | Jian Ya Li v. Fo Ling Li     | 2010 ONSC 4716 |                       |  | <p>Plaintiff to post security for costs of \$7,500</p> <p>Costs of the motion assessed at \$10,500 in the cause</p> | <p>The plaintiff resided in New York City. However he claimed to be impecunious, as a result of the non-payment at issue in the action, and that any order for costs would effectively end the litigation.</p> <p>In the circumstances, proportionality required a consideration of access to justice when determining whether to order security for costs.</p>   |

**PROPORTIONALITY**

| Judge          | Case name   | Citation       | Costs awarded to                    | Costs Requested   | Costs Awarded   | Comments   |
|----------------|---|----------------|-------------------------------------|---|---|--|
|                |   |                |                                     |   |   | Security was ordered, largely because the plaintiff had failed to prove his financial situation.<br>However, if the plaintiff was forced to abandon the claim, proportionality required that the plaintiff have an opportunity to resurrect the claim should funds become available.   |
| Price, David   | Mawji v. AXA Insurance                                  | 2010 ONSC 2146 | Plaintiff                           | \$23,371.91   | as requested  | The plaintiffs were resisting a motion to dismiss a claim for damages of \$200,000. The defendants have not disclosed what they spent in bringing the motion. In such circumstances, it could not be said that the plaintiff's expenditures were disproportionate.   |
| Gray, Douglas  | Cimmaster v. Piccione                                   | 2010 ONSC 846  | Plaintiff                           | \$67,446.38   | \$60,000, all inclusive   | "[I]n my view, the principle of proportionality should not normally result in reduced costs where the unsuccessful party has forced a long and expensive trial. [...] [T]he concept of proportionality appropriately applies where a successful party has over-resourced a case having regard to what is at stake, but it should not result in a reduction of the costs otherwise payable in these circumstances."   |
| Polika, Julian | SIPGP No.1 Inc. v. Eastern Construction Company Limited | 2010 ONSC 2695 |                                     | in the lien action:<br>\$296,685.89<br>in the performance bond action:<br>\$11,479.22 | in the lien action:<br>\$225,000<br>in performance bond action: \$9,500 | The Rules of Civil Procedure and Courts of Justice Act apply to lien actions to the extent that they are not inconsistent with the Construction Lien Act. Rule 57 is non-mandatory, and therefore not inconsistent. Subrule 1.04(1.1), to the extent that it is mandatory, is inconsistent because it impinges on the discretion provided by s. 86 of the Construction Lien Act. However, the principle of proportionality is still a non-binding factor that can be considered by the court in exercising its discretion.<br><br>In lien actions, costs frequently exceed the amounts at stake. In this case, the costs were less than 50% of the total value of claim. |
| Price, David   | Tucci v. Pugliese, Aviva and Pilot                      | 2010 ONSC 2144 | Respondents<br>(Defendant insurers) | \$9,546.28  | \$3,500.00  | The principle of proportionality was applied in assessing costs before it was explicitly adopted in the Rules. Generally, the principle had been applied where there has been over-resourcing. The principle cannot be applied to limit a party's expectations as to costs on the basis that another party had only spent a modest amount on an earlier step in the proceeding.  |

**PROPORTIONALITY**

| <b>Judge</b>             | <b>Case name</b>                             | <b>Citation</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>                                      | <b>Costs Awarded</b>   | <b>Comments</b>  |
|--------------------------|--|-----------------|-------------------------|---|--|--|
|                          |  |                 |                         |   |  | However, it was disproportionate for the defendant insurers to claim "more than twice the costs normally awarded to a successful party on a standard motion for leave to appeal." There was no improper or unnecessary conduct on the part of the plaintiffs to justify an elevated award.   |
| Albert, Carol            | JV Mechanical v. Steelcase                   | 2010 ONSC 2274  | Applicant (Defendant)   | \$36,860.64   | \$25,935.00  | The Court overturned its previous decision dismissing an application for security for costs, holding that the plaintiff had misled the Court as to its financial situation.<br><br>"Total success" would be worth more than \$450,000 to the defendant. In such circumstance, it was justifiable for the defendant to spend "significant legal fees" to rectify the result of the 2008 motion.   |
| Karakatsanis, Andromache | Polywheels Inc. (Re)                         | 2010 ONSC 2445  | Applicant               | \$103,023.18  | \$80,000   | Given the respondent's stated intention of proceeding with a multi-million dollar breach of contract claim, the issues in the case went beyond the \$250,000 deposit at issue on the motion. The applicant's response was appropriate.   |
| Short, Donald            | Moosa v. Hill Property Management Group Inc. | 2010 ONSC 13    |                         | Security for costs exceeding \$123,000, for both defendants | Security for costs of \$10,725 plus GST for each defendant. No costs for the motion. | Security for costs sought in an suit relating to an insurance claim in respect of a fire in a residential property. The plaintiff had moved overseas.<br><br>The general aim of the proportionality rule was to improve access to justice, and to promote certainty.<br><br>A total claim for security for costs exceeding \$113,000 was out of proportion to a total policy value of only \$168,000. Such an order would make the justice system "more accessible and affordable for Ontarians."<br><br>The proper approach to security for costs for discovery is to adopt the prima facie durations provided for by subrule 31.05.1(1). |
| Weiler, Karen            | Van de Vrande v.                             | 2010 ONCA 400   | Appellant               | On a substantial  | For the Small Claims   | The appellant was entitled to costs in the appeal.   |

**PROPORTIONALITY**

| Judge  | Case name  | Citation                              | Costs awarded to | Costs Requested  | Costs Awarded  | Comments   |
|--|--|---------------------------------------|------------------|--|--|--|
| M.; Blair,<br>Robert A.;<br>Rouleau, Paul S. | Butkowsky  |                                       | (Defendant)      | indemnity basis:<br>\$17,075.92 for the<br>application for leave<br>to appeal and<br>\$22,479.12 for the<br>appeal   | case: \$1,150<br>For the appeal to the<br>Divisional Court:<br>\$1,200<br>For the appeal to the<br>Court of Appeal:<br>\$2,500<br>All sums inclusive of<br>disbursements and<br>GST  | However in light of the novelty and importance of<br>the issues raised, and the fact that the original claim<br>was a Small Claims case involving a modest sum, the<br>costs award should itself be modest.  |
| Polowin, Heidi                               | Kaymar<br>Rehabilitation Inc. v.<br>Champlain<br>Community Care<br>Access Centre, et al. | 2010 ONSC 6614                        | Defendants       | Defendant COTA:<br>\$45,310 for fees,<br>\$2,265 for GST and<br>\$2,178.34 for<br>disbursements, for a<br>total amount of<br>\$49,753.34<br>Defendant Carefor:<br>On a substantial<br>indemnity basis:<br>\$187,487.63<br>Plaintiff Kaymar from<br>all defendants, jointly<br>and severally:<br>On a partial indemnity<br>basis, \$82,914.70 plus<br>GST and<br>disbursements of<br>\$8,973.67 (for a total<br>of \$96,034.11) | Defendant COTA<br>from plaintiff Kaymar:<br>\$20,000 plus GST and<br>\$2,178.34 including<br>GST for<br>disbursements<br>Defendant Carefor<br>from plaintiff Kaymar:<br>\$126,600 plus GST<br>less \$13,794.73, plus<br>disbursements of<br>\$21,744.08 inclusive<br>of GST<br>Plaintiff Kaymar from<br>defendant OCCAC:<br>\$48,000 including<br>GST and<br>disbursements in the<br>amount of \$7,178.94. | Three separate motions for summary judgment and/or<br>dismissal were brought by the three defendants. Two<br>defendants (COTA and Carefor) were successful,<br>leaving the third (OCCAC) as the only remaining<br>defendant in the action.<br><br>With regard to the COTA motion:<br>COTA did not behave unreasonably. Kaymar's offers to<br>COTA "missed their mark", and should not trigger any<br>costs consequences. However the hours claimed by<br>COTA were excessive.<br><br>(See entry under Criteria for Scale of Costs for the<br>Carefor motion.)<br><br>With regard to the OCCAC motion:<br>There is no question that partial indemnity is the<br>appropriate scale, however the defendants object to the<br>number of hours claimed. The fairness and<br>reasonableness of the award are "overriding concerns".<br>Furthermore, there were concerns that the plaintiffs had<br>not allocated costs appropriately between the various<br>motions.<br>Additionally, it was not appropriate to order joint and<br>several liability for costs where Carefor played a limited<br>role in the motion and OCCAC did the "heavy lifting".<br>Instead, an 80%/20% apportionment of the award was<br>ordered. |
| Archibald,<br>Thomas L                       | Empire Life<br>Insurance Company   | (2009 Ont. Sup.<br>Ct. J.) Court File | Plaintiff        | Unreported costs on a<br>substantial indemnity   | \$440,008.32 inclusive<br>for the G.B. accounts,   | An joint and several costs order would be inappropriate.<br>It would create an unfair, disproportionate burden on  |

**PROPORTIONALITY**

| <b>Judge</b> | <b>Case name</b>         | <b>Citation</b>                                      | <b>Costs awarded to</b> | <b>Costs Requested</b>                                | <b>Costs Awarded</b>   | <b>Comments</b>   |
|--------------|--------------------------|--|-------------------------|---|--|---|
|              | v. Krystal Holdings Inc. | No.: 02-CV-222931CM4                                 |                         | basis   | \$10,000 inclusive for the B.S accounts, and \$4,000 inclusive for the costs submissions, all on a partial indemnity basis | the defendants, in contravention of the principle of proportionality. A joint and several order would expose each limited partner to a costs liability roughly 20 times their share of the claims against them. To make such an order would create a significant impediment to the consolidation of proceedings with common issues. |
| Ray, Timothy | Pankhurst v. Kulikovsky  | (2009, Ont. Sup. Ct. J.) Court File No.: 02-CV-20759 | Plaintiffs              | \$105,836.68, including disbursements of \$27,698.03. | Partial indemnity fees of \$50,000 plus GST, plus disbursements of \$23,000 plus GST                                       | Proportionality is "an essential factor - if not an overarching consideration."<br><br>Assessment pursuant to a settlement on the eve of trial set at \$255,000 plus costs.   |

| <b>HOURLY RATES</b>           |  |                        |                         |  |  |  |
|-------------------------------|--|------------------------|-------------------------|--|--|--|
| <b>Judge</b>                  | <b>Case Name</b>   | <b>Citation / Date</b> | <b>Costs Awarded To</b> | <b>Actual Rates</b>  | <b>Rates Awarded</b>   | <b>Judge's Comments</b>  |
| Rouleau, Trotter, Zarnett JJA | Benarroch v. Fred Tayar & Associates PC                                  | 2019 ONCA 228          | Appellants              |  | \$20,000 inclusive of disbursements and HST, an additional \$10,000 for the cost of appeal | At trial, the self-represented plaintiffs received \$60,583.05 in costs. On appeal the court reduced this amount because lost opportunity costs can only be awarded for, "the work done by the self-represented litigant over and above the normal involvement of a client, and provided it concerns work that would ordinarily be accomplished by a lawyer. The self-represented litigant must also show that an opportunity cost was incurred because some remunerative activity was forgone."   |
| R. Smith J.                   | St-Lewis v. Rancourt   | 2013 ONSC 6118         | Plaintiff               | \$900/hour (full indemnity)<br><br>\$540 (partial indemnity)   | \$450/hour   | Partial indemnity rate of \$450/hour; maximum guideline amount is \$350/hour; increased because of lawyer's exceptional reputation and 50 years at the bar.  |
| Aitken, J.                    | Geographic Resources Integrated Data Solutions Ltd v. Peterson           | 2013 ONSC 1041         | Appellants              |  | \$350/hour, \$275/hour   | Maximum partial indemnity rate increased for inflation to \$396/hour as of 2012 and \$339.54 for a lawyer with 10 to 19 years' experience.   |
| R. Smith, J.                  | First Capital (Canholdings) Corporation v. North American Property Group | 2012 ONSC 1359         | Appellant               | Lawyer 1: \$610.00 (regular billing rate) \$455 (partial)<br><br>Lawyer 2: \$415 (regular) \$309 (partial) | Lawyer 1: \$335<br><br>Lawyer 2: \$200   | Dispute over \$31M shopping centre; Successful Toronto counsel was a lawyer with 9 years' experience was awarded partial indemnity costs at \$335/hour; above the maximum rate of \$225/hour; his regular billing rate was \$610/hour; increased to account for inflation, complexity, amount involved and reasonable expectation of parties.  |
| McCarthy, J.                  | Rochon v. MacDonald  | 2014 ONSC 591          | Plaintiff               | \$990/hour   | \$450/hour   | Costs awarded equally against commercial host and insurer, despite the fact that the driver was 70% liable and the commercial host only 5%. Volatile and unpredictable legal landscape in case. All sides acted reasonably and efficiently. Not fair to saddle one side with excessive costs. Not appropriate for a joint tortfeasor found minimally responsible for an accident to pay costs strictly with its liability to pay the damages.<br><br>Lawyer's fees were \$990/hour, but was working on contingency, and it was unrealistic that the plaintiff was going to pay that rate for the lawyer's time. \$450/hour considered fair partial indemnity rate. |
| Thomson,                      | 680195 Ontario   | 2010 ONSC              | Applicant               | previous counsel:  | \$210  | Justice Thomson took issue with the fact that counsel did not  |

**HOURLY RATES**

| <b>Judge</b>    | <b>Case Name</b>   | <b>Citation / Date</b> | <b>Costs Awarded To</b> | <b>Actual Rates</b>  | <b>Rates Awarded</b>  | <b>Judge's Comments</b>  |
|-----------------|--|------------------------|-------------------------|--|---|--|
| Gordon I. A.    | Ltd. v. 2169728 Ontario Limited o/a Stoneybrook Auto Service | 4064                   |                         | \$370 - over 20 years experience present counsel reported only the LawPro partial indemnity rate of \$350 as both actual and partial indemnity |   | include actual rates in the cost outline.<br><br>The LawPro rate of \$350 was not a reasonable partial indemnity rate, considering the application of the Rule 57.01 factors. The case was important and of moderate complexity, and there was no basis for criticism of anyone's conduct.   |
| Short, Donald   | Moosa v. Hill Property Management Group Inc.                 | 2010 ONSC 13           |                         | Ranging from \$200-\$375   | Partial indemnity calculated at 66.6%   | Counsel for both defendants attempted to claim partial indemnity rates higher than actual rates. Counsel suggested these rates reflected the low end of the (now discontinued) Cost Grid.<br><br>Partial indemnity rates must be proportional to the actual rates charged. A low actual rate does not provide any basis for a cost premium.  |
| Polowin, Heidi  | Canada (Attorney General) v. Rostrust Investments Inc.       | 2010 ONSC 1106         | Plaintiff               |  | Partial indemnity rates at 65%:<br>2006 call: \$123.50/hr<br>1992 call: \$247.00/hr | Maximum rates should be reserved for maximum cases. Here, the case was legally complex, involving novel legal questions that had to be addressed by application of first principles of contract law, and could be characterized as a "maximum case". A partial indemnity rate set at 65% of the full indemnity rate was reasonable and appropriate, particularly where the defendant's counsel's actual billing rate was higher than the plaintiff's.  |
| Power, Denis J. | OGT Holdings Ltd. v. Startek Canada Services Ltd. et al      | 2010 ONSC 1090         | Respondents             | Senior counsel: \$650/hr, more than 20 years experience (1987 call)<br><br>Junior counsel: \$375/hr, 2001 call                                 | Partial indemnity at 60%:<br>Senior counsel: \$390/hr<br>Junior counsel: \$225/hr   | 75% of full indemnity is too high for the partial indemnity rate. If the substantial indemnity rate is calculated at 1.5 times the partial indemnity rate, this would result in a rate greater than (112.5%) full indemnity. A partial indemnity rate of 60% is appropriate (with a corresponding substantial indemnity rate of 90%).<br><br>In this case, 60% of full indemnity yields rates that are consistent with the grid rates from the 2005 Information for the Profession, allowing a slight increase for inflation. These rates are therefore appropriate. |
| Smith, Robert   | Baird v. Botham  | 2010 ONSC 3057         | Defendant               | \$225-\$350  | Reduced by ~60% to compute partial indemnity  | The costs claimed would have exceeded full indemnity. Partial indemnity must be substantially less than full indemnity. Partial indemnity is 2/3 of substantial indemnity, which must itself be ~10% less than full indemnity. Partial   |

**HOURLY RATES**

| <b>Judge</b>   | <b>Case Name</b>                      | <b>Citation / Date</b>                              | <b>Costs Awarded To</b> | <b>Actual Rates</b>  | <b>Rates Awarded</b>   | <b>Judge's Comments</b>   |
|--|---------------------------------------|---|-------------------------|--|--|---|
|  |                                       |   |                         |  |  | <p>indemnity is therefore approximately 60% of full indemnity.</p> <p>This was not a case to justify maximum partial indemnity rates, in any event.</p>   |
| Beaudoin, Robert   | Bremer v. Foisy                       | (2009, Ont. Sup. Ct. J) - unreported                | Plaintiffs              | set by LawPro: \$315-\$335   |  | The appropriate hourly rate for costs was not to be determined by the retainer between counsel and his or her client.   |
| McNamara, James  | Barkley v. Vogel                      | (2009, Ont. Sup. Ct. J.) Court File No.: 05-0083    | Plaintiffs              | partial indemnity rate of \$225, less than 10 yrs experience                     | partial indemnity rate of \$180;   | Rates must be reasonable in the area where the case was tried. \$300 per hour as a full indemnity rate for a lawyer of less than 10 years experience is not only reasonable, but generous. \$375 was not reasonable.  |
| Polowin, Heidi   | Young v. RBC Dominion Securities      | (2009, Ont. Sup. Ct. J.) Court File No.:05-CV-31905 | Defendants              | \$660-\$700/hr - 1983 call<br>\$310-\$420/hr - 2003 call<br>\$180/hr - 2007 call | \$300/hr - 1983 call<br>\$175/hr - 2003 call<br>\$140/hr - 2007 call<br>\$75/hr - senior law clerk<br>\$55/hr - law students | <p>The case was not complex and raised no new issues of law. It was not a "maximum" case, and did not warrant maximum rates.</p> <p>60% of actual rates charged would be in the range of \$396-\$420, above the maximum of \$350 permitted by the Guidelines. The partial indemnity rate in this case should be \$300.</p> <p>Although the defendants had an understandable desire to avoid a negative precedent, the number of hours expended were unreasonably high. In addition to reducing the rates, the amount of hours claimed were reduced by approximately one third.</p>  |
| Rosenberg, Marc;<br>Cronk, Eleanore;<br>MacFarland, Jean | Magnussen Furniture Inc v. Mylex Ltd. | (2008), 89 O.R. 401 (Ont. C.A.)                     | Plaintiff               |  |  | <p><b>It was not an error in principle for the trial judge to make use of the costs grid after it had been revoked. He had not applied it automatically or by rote. Rather, he regarded the provisions as a useful guide to an appropriate award. It was within the trial judge's discretion to determine the grid amounts were appropriate in the circumstances.</b></p> <p><b>Nor did the trial judge err in considering the case of Celanese Canada Inc v Canadian National Railway Co, [2005] OJ No 1122, 196 OAC 60 (CA). The trial judge recognized that, as a grid case, it was no longer binding on him after the grid was revoked. He specifically adverted to the cautionary words in that case referring</b></p> |

**HOURLY RATES**

| <b>Judge</b>           | <b>Case Name</b>   | <b>Citation / Date</b>                               | <b>Costs Awarded To</b>                       | <b>Actual Rates</b>  | <b>Rates Awarded</b>  | <b>Judge's Comments</b>  |
|------------------------|--|--|---|--|---|--|
|                        |  |  |   |  |   | <b>to Boucher and noting that the final analysis must consider the overriding principle of reasonableness.</b>   |
| Beaudoin, Robert       | Thomas C. Assaly Charitable Foundation v. BMO Nesbitt Burns Inc. | 2008 CanLII 13786                                    | Defendants                                    | Counsel for Jacques Alexanian: \$260<br>Counsel for BMO Nesbitt Burns Inc and John Berryman: \$300                 | \$260   | Defendant Alexanian was permitted to recover the actual rate of \$260, although costs were assessable on a partial indemnity basis. The plaintiff should not benefit from the negotiated reduction of rates between counsel and client. The hours assessed were reduced to 16, in light of the co-defendants' claim for 13.5 hours in total.   |
| Harvison Young, Alison | Mega Wraps BC Inc. v. Mega Wraps Holdings Inc.                   | (2008), 169 A.C.W.S. (3d) 41, [2008] O.J. No. 2947   | Plaintiff                                     |  | \$50/hour for non-lawyer  | A self-represented plaintiff need not necessarily prove that he forwent any specific remunerative activity.<br><br>Although there is no indication that he gave up employment income per se to pursue the litigation it is "absolutely clear that [he] could not have pursued other remunerative activities at the same time, and it is also clear that he has previously done so as a businessman with considerable success." |
| Cusinato, Anthony      | Pouget v. Hynes  | (2008 Ont. Sup. Ct. J.) Court File No.: 07-CV-9402CM | Plaintiff - (Respondent on motion to dismiss) |  | \$300/hr - said to be appropriate even for the most senior counsel in a case that is not of extreme difficulty or complexity  | A rate of \$350/hr on the partial indemnity scale for senior counsel is only appropriate in cases of extreme difficulty or complexity. In average cases a partial indemnity rate of \$300/hr is more appropriate even for the most senior counsel.   |
| Aitken, Catherine D.   | Doherty v. Wilcox  | [2007] O.J. No. 738 (S.C.J.)                         | Plaintiff                                     | Plaintiff's lawyer :   | \$210   | Lawyer had been practicing for 15 years; rate within the reasonable range  |
| Aitken, Catherine D.   | Galpin v. Galpin   | 2007   | Plaintiff                                     | Counsel (24 years at Bar): \$300/hr<br>Associate (1 year at Bar): \$150/hr<br>Student: \$100/hr<br>Clerk: \$100/hr | Not disclosed   | These are reasonable rates in the context of this case   |
| Power, Denis           | Rivington v. Rivington   | 2007   | Plaintiff                                     | Plaintiff's counsel: \$175/hr as a partial indemnity rate<br>\$225/hr as a substantial indemnity rate              | Partial indemnity rate = \$175/hr<br>Substantial indemnity rate = \$220/hr<br>Bulk of the hours were performed at the higher rate (actual number of hours not disclosed). | Substantial indemnity rate claimed by counsel is less than 1.5 times the partial indemnity rate; counsel indicated he usually charges an hourly billing rate of \$225/hr and it is assumed he is claiming a substantial indemnity rate equal to the full indemnity rate; this is not appropriate; substantial indemnity rate should be approximately 90% of \$225, rounded to \$200 an hour.                                   |

### HOURLY RATES

| Judge                | Case Name                                       | Citation / Date               | Costs Awarded To | Actual Rates  | Rates Awarded   | Judge's Comments  |
|----------------------|---|-------------------------------|------------------|---|---|---|
|                      |   |                               |                  |   | Fee portion of the claim is \$10,500 + \$290.24 (disbursements) for a total of \$10,790.24 (inclusive of GST) |   |
| Power, Denis         | Ward v. Manulife Financial                      | [2007] O.J. No. 37 (S.C.J.)   | Plaintiff        | Not disclosed   | Substantial Indemnity rates:<br>Senior lawyer: \$350<br>Associate: \$150                                      | Substantial indemnity rates should be approximately 90% of full indemnity rates   |
| Aitken, Catherine D. | Lavinskas v. Jacques Whitford & Associates Ltd. | [2006] O.J. No. 2697 (S.C.J.) | Plaintiff        | Senior counsel (1971 call): \$350/hr<br><br>Associate (2000 call): \$185/hr (actual); \$200/hr (substantial indemnity rate)<br><br>Articling student: \$85/hr | The rates charged are reasonable, except for associate's substantial indemnity rate.                          | Costs in a Simplified Procedure action should not be based on an hourly rate higher than what is charged to the client.   |
| Beaudoin, R.         | Bach v. McKellar                                | [2006] O.J. No. 155 (S.C.J.)  | Plaintiff        | Associate: \$140/hr (partial indemnity rate)  | \$120/hr (partial indemnity rate)   | Associate is a four-year call. A rate of \$120/hr is appropriate.   |
| Beaudoin, R.         | Shalouf v. Beaudry                              | [2006] O.J. No. 2550          | Defendants       | Senior counsel (1967 call): \$300/hr<br><br>Associate 1 (2001 call): \$135/hr<br><br>Associate 2 (2001 call): \$150/hr  | Not disclosed   | Senior counsel has over 35 years of experience. Counsel fees requested are reasonable.  |
| Beaudoin, R.         | Windanson Holdings Ltd. v. Smith                | [2006] O.J. No. 3728 (S.C.J.) | Defendants       | Counsel: \$260/hr (partial indemnity rate)  | \$260/hr  | Counsel claims an hourly rate that is \$40 below the allowable partial indemnity rate (\$300/hr) for lawyers between 10 and 20 years of service. The rate claimed is reasonable and should be paid without any further reduction. |
| Hackland, Charles T. | Basilevska v. Seto                              | 2006                          | Defendant        | Counsel (1996 call): \$225/hr   | Not disclosed   | This is a reasonable rate for a lawyer of a 1996 call in a case such as this of average complexity.   |
| Hackland, Charles T. | Bater v. Bater                                  | 2006                          | Plaintiff        | Plaintiff's counsel (1979 call): \$290/hr   | These rates are reasonable. On a partial indemnity basis, \$6,000   | No comments provided.   |

**HOURLY RATES**

| Judge                | Case Name                     | Citation / Date | Costs Awarded To        | Actual Rates  | Rates Awarded   | Judge's Comments   |
|----------------------|-------------------------------|-----------------|-------------------------|---|---|--|
|                      |                               |                 |                         | Docketed 30 hours. Total charged to client: \$8,700   | plus disbursements and GST was awarded.   |  |
| Hackland, Charles T. | Bond v. Bond                  | 2006            | Plaintiff               | Plaintiff's counsel: Senior Counsel (32 years at the Bar) billed \$19,000.  | \$19,000 was reasonable   | Plaintiff's counsel is a family specialist with 32 years at the bar. His accounts are demonstrably reasonable.   |
| Hackland, Charles T. | Harvey v. Leger               | 2006            | Third party respondents | Partial indemnity rates: Counsel (1974 call): \$275/hr  | Partial indemnity rate of \$275/hr permitted  | Counsel is a specialist in civil litigation. Rates claimed are entirely reasonable.  |
| Hackland, Charles T. | Schouten v. Rideau (Township) | 2006            | Defendant               | <p>Defendant's counsel is a senior and highly experienced civil litigation counsel (1972 call to the Bar); handled the entire case himself without assistance from a junior associate or student</p> <p>Hourly rates charged:<br/>Up to and including examinations for discovery - \$215/hr</p> <p>Period when two settlement conferences were held - \$235/hr</p> <p>Prior to preparation for trial - \$250/hr</p> <p>Partial indemnity rates sought are 75% of the actual rates charged – i.e. \$161.25, \$176.25</p> | The rates claimed by defendant counsel are reasonable, notwithstanding that they amount to 75% of the rates actually billed to the client | Rates charged are well below market for counsel of this lawyer's seniority; when fixing costs, Courts should look at the actual rates being charged to the client as an important factor; A commonly used guideline is that partial indemnity rates are in the range of 60% of substantial indemnity rates; the substantial indemnity rate is often the rate actually charged to the client, but not always, as when the rates charged are well above rates which would be awarded on a substantial indemnity basis; good rule of thumb is the 60%, 90%, 100% guidelines established by Power J. in <i>Hanis</i> (see case below); the principle of indemnity is always an operative consideration in awarding costs; accordingly, fees awarded on a substantial indemnity scale must not exceed fees actually charged to the client by the party claiming the costs; also, partial indemnity costs must bear an appropriate relationship to the fees actually charged by the claimant in all the circumstances; the reference in the definition of substantial indemnity costs under s. 1.03 of the <i>Rules of Civil Procedure</i> to being an amount 1.5 times what would otherwise be awarded is a guideline, not an absolute requirement; the overriding criteria in awarding costs are the principle of indemnity and the amount an unsuccessful party can reasonably expect to pay (Rule 57.01(1)(0.a) and (0.b)) |

**HOURLY RATES**

| <b>Judge</b>           | <b>Case Name</b>  | <b>Citation / Date</b>        | <b>Costs Awarded To</b> | <b>Actual Rates</b>  | <b>Rates Awarded</b>  | <b>Judge's Comments</b>  |
|------------------------|---|-------------------------------|-------------------------|--|---|--|
|                        |   |                               |                         | and \$187.50<br><br>Total of 225.8 hours are claimed, for total fees of \$113,655  |   |  |
| Panet, A. deLotbinière | Spirent Communications of Ottawa Ltd. v. Quake Technologies (Canada) Inc. | [2006] O.J. No. 4032 (S.C.J.) | Defendant               | Hourly rates proposed by Defendant vary from a low of \$300/hr at commencement of action to \$500/hr at the time of trial  | Partial indemnity rates would be:<br>SV – 442 hrs x \$300/hr<br>DC – 420 hrs x \$150/hr<br>PG – 11.2 hrs x \$125/hr<br>AH – 1.5 hrs x \$125/hr<br>TP – 1 hr x \$100/hr<br>Student – 37 hrs x \$60/hr<br>Clerk – 27 hrs x \$75/hr<br>Total: \$201,532<br>In these circumstances, award of costs should be greater than on a partial indemnity basis<br>Total fees awarded: \$265,000 | Substantial indemnity costs means costs which are 1.5 times what would otherwise be awarded as partial indemnity costs; substantial indemnity costs are slightly less than the rates actually charged to the clients; two counsel appeared on behalf of defendant and this was appropriate given the level of complexity of and the length of the trial; counsel fees at trial for both counsel for 11 full days and six half days are claimed on a substantial indemnity basis in a total amount of \$94,400, but under the new costs provision it is more appropriate to allow for trial attendance of 8 hours for each counsel for each full day, and of 4 hours for each counsel for each half day |
| Polowin, Heidi         | 3869130 Canada Inc. v. I.C.B. Distribution Inc.                           | 2006                          | Plaintiff               | Partial indemnity rates:<br>Senior counsel (1982 call): \$250/hr<br>Associate 1 (1990 call): \$160/hr<br>Associate 2: \$125/hr<br>Associate 3 (as a lawyer): \$100/hr<br>Associate 4 (1983 call): \$200/hr<br>Associate 5 (1998 call): \$200/hr<br>Associate 6 (2002 call): \$100/hr<br>Articling Students: \$60/hr<br>Law Clerks: \$75/hr | Requested rates were awarded accordingly  | Rates claimed for counsel are within the Costs Grid and are reasonable and appropriate.  |

**HOURLY RATES**

| Judge          | Case Name  | Citation / Date              | Costs Awarded To | Actual Rates   | Rates Awarded | Judge's Comments  |
|----------------|--|------------------------------|------------------|--|---------------|---|
|                |  |                              |                  | Substantial indemnity rates:<br>Senior Counsel (1982 call): \$350/hr<br>Associate 1 (1990 call): \$185/hr<br>Associate 2 (lawyer): \$150/hr<br>Associate 3 (as a lawyer): \$150/hr<br>Associate 4 (1983 call): \$250/hr<br>Associate 5 (1998 call): \$250/hr<br>Associate 6 (2002 call): \$150/hr<br>Articling Students: \$90/hr<br>Law Clerks: \$100/hr |               |   |
| Polowin, Heidi | Rowe v. Unum Life Insurance Company of America                         | 2006                         | Plaintiff        | Plaintiff's Senior counsel: Rates ranged from \$220 (inception) to \$295<br><br>Lawyer 2 (junior counsel): Ranged from \$125-165   | Not disclosed | These are reasonable rates charged; Substantial indemnity rates are 1.5 times the partial indemnity rate; partial indemnity rates should be in the range of 60% of the rate charged, substantial indemnity rates would be 90% of the actual rate charged, and full indemnity rates would be 100% of the actual rates charged ( <i>Hanis v. University of Western Ontario</i> ). There should be a reduction in costs for the duplication of efforts between the original counsel in this matter and the plaintiff's current counsel; there should be a further deduction for fees incurred in respect of a pretrial motion where the success was divided.<br><br>Where a plaintiff negotiates a lower hourly rate with his solicitor, the plaintiff is not entitled to an award of costs on a full indemnity basis, even if this amount would be less than the Defendant would expect to pay on a partial indemnity basis ( <i>Wasserman, Arsenault Ltd. v. Stone</i> , [2002] O.J. No. 3772 (C.A.)). |
| Power, Denis   | 1259695 Ontario Inc. (c.o.b. Upper Canada Office Systems) v. Guinchard | [2006] O.J. No. 550 (S.C.J.) | Plaintiff        | Counsel: \$200/hr - \$220/hr (partial indemnity rate)<br><br>Law Clerk: \$50/hr  | Not disclosed | The rates charged are reasonable  |

**HOURLY RATES**

| Judge        | Case Name  | Citation / Date               | Costs Awarded To | Actual Rates   | Rates Awarded   | Judge's Comments  |
|--------------|--|-------------------------------|------------------|--|---|---|
| Power, Denis | Hanis v. University of Western Ontario<br>*This was a proceeding against third party insurance companies to indemnify UWO for their fees they incurred in defending themselves | [2006] O.J. No. 2763 (S.C.J.) | Defendant        | <p>Actual rates:</p> <p>Lawyer 1 (call to Bar 1973): \$355-\$650</p> <p>Lawyer 2 (call to Bar 1983): \$330-\$575</p> <p>Lawyer 3 (call to Bar 1981): \$270-\$410</p> <p>Lawyer 4 (call to Bar 1989): \$190-255</p> <p>Lawyer 5 (call to Bar 1997): \$300-430</p> <p>Lawyer 6 (call to Bar 2002): \$290-400</p> <p>Law Clerk: \$210</p> <p>Partial indemnity rates:</p> <p>Lawyer 1 (call to Bar 1973): \$300-\$350</p> <p>Lawyer 2 (call to Bar 1983): \$250-\$350</p> <p>Lawyer 3 (call to Bar 1981): \$200-\$300</p> <p>Lawyer 4 (call to Bar 1989): \$150</p> <p>Lawyer 5 (call to Bar 1997): \$225</p> <p>Lawyer 6 (call to Bar 2002): \$175</p> <p>Law Clerk: \$80</p> <p>Substantial indemnity rates:</p> <p>Lawyer 1 (call to Bar 1973): \$400-</p> | Calculated in accordance with the 60%-90%-100% rule-of-thumb explained under "Judge's Comments" | Rates claimed on the substantial indemnity scale are too high. Rule 1 defines substantial indemnity costs as meaning 1.5 times the partial indemnity rate. Substantial indemnity is less than full indemnity. If the actual rate of a lawyer is accepted as reasonable, the partial indemnity rate should be 60% of the actual rate. The substantial indemnity rate should be 1.5 times the partial indemnity rate, while full indemnity rates are the equivalent to the actual rates charged to the client. These percentages – 60%, 90% and 100% - should be employed as a rough rule of thumb. |

**HOURLY RATES**

| Judge        | Case Name                                 | Citation / Date  | Costs Awarded To            | Actual Rates  | Rates Awarded  | Judge's Comments  |
|--------------|---|--|-----------------------------|---|--|---|
|              |   |  |                             | \$525<br>Lawyer 2 (call to Bar 1983): \$330-\$450<br>Lawyer 3 (call to Bar 1981): \$300-\$410<br>Lawyer 4 (call to Bar 1989): \$225<br>Lawyer 5 (call to Bar 1997): \$338<br>Lawyer 6 (call to Bar 2002): \$263<br>Law Clerk: \$120 |  |   |
| Power, Denis | Campeau v. Campeau                        | [2006] O.J. No. 2297 (S.C.J.)                                    | Defendants / Moving Parties | Senior Counsel: \$350/hr<br>Associate: \$160/hr   | Not disclosed  | The rates charged by counsel and his associate are reasonable.  |
| Power, Denis | Riddell v. Conservative Party of Canada   | [2006] O.J. No. 4141 (S.C.J.)                                    | Plaintiff                   | Actual rates:<br>Senior Counsel: \$390/hr<br>Student: \$110/hr<br><br>Partial indemnity rate:<br>Senior Counsel: \$280/hr<br><br>Substantial indemnity rate:<br>Senior Counsel: \$300/hr  | Partial indemnity rate:<br>Senior counsel: \$230/hr<br><br>Substantial indemnity rate:<br>Senior Counsel: \$345/hr<br><br>Student: \$60 (partial indemnity) and \$80 (substantial indemnity rates)                         | The substantial indemnity rate should be one and one-half times the partial indemnity rate. Such a calculation using the plaintiff's counsel quoted rates would result in \$420 per hour, which is \$30 more than the actual billing rate of senior counsel.  |
| Power, Denis | Rodriguez Holding Corp. v. Vaughan (city) | [2006] O.J. No. 4779, 28 M.P.L.R. (4 <sup>th</sup> ) 96 (S.C.J.) | Defendant                   | Lawyer: \$305/hr<br>Junior lawyer: \$150/hr<br>Total: \$54,000  | Defendant rates are reasonable hourly rates.<br><br>Partial indemnity rate is roughly 60% of \$54,000 for a total of \$32,000.<br><br>Substantial indemnity rates are 1.5 this total for a cost award for fees of \$48,000 | If a Court chooses to award costs on a partial indemnity basis, the court must do so in accordance with Part I of Tariff A; if a decision to award costs on a substantial indemnity scale, the Court must fix them on a partial indemnity scale and then multiply the results by 1.5; the Court possess the jurisdiction to adjust this arithmetic result in appropriate circumstances; fixing costs on a full indemnity basis excludes any consideration of the partial and substantial indemnity scales<br><br>Actual rates charged by the solicitor to his/her client are important. Since, when fixing costs on a partial indemnity |

**HOURLY RATES**

| Judge                | Case Name                                  | Citation / Date               | Costs Awarded To                | Actual Rates  | Rates Awarded   | Judge's Comments   |
|----------------------|--|-------------------------------|---------------------------------|---|---|--|
|                      |  |                               |                                 |   |   | scale, the Court must determine what hourly rate is appropriate, it cannot fairly do this, given the indemnity and reasonable expectation factors in particular, without regard to the actual rates being charged to the litigant. Courts should be guided by the rule of thumb of 60%, 90% and 100% - partial indemnity rates should be about 60% of the actual rate charged (provided the rate is deemed reasonable), substantial indemnity rates should be 90% of the partial indemnity rate, while full indemnity is 100% of the actual rate charged to the client.  |
| Quinn, Joseph W.     | Whaley v. Dennis                           | [2006] O.J. No. 683 (S.C.J.)  | Plaintiff                       | Hourly rates not disclosed, but "fees including counsel fee at trial" claimed amounted to \$21,030.00. That is, only \$1,245.00 higher than the partial indemnity fees. | Costs in the amount of \$17,200, all-inclusive.   | Counsel was called to the bar in 1996 and has been a specialist in civil litigation since 1985. He is allowed may be up to \$350/hr. Here, the sum claimed by the plaintiff is almost complete indemnity for counsel fees. Partial indemnity rates are not absolute values determined in isolation. They must bear a proportional relationship to the actual rates charged to the client. Where the partial indemnity rate is essentially identical to the complete indemnity rate (which is the case where partial indemnity costs are equal to the actual costs charged to the client), partial indemnity costs should only be a portion of the actual costs. It is to be remembered that there are three distinct scales of indemnity: partial, substantial and complete. |
| Smith, Robert J.     | King v. Merrill Lynch Canada Inc.          | [2006] O.J. No. 1257 (S.C.J.) | Defendant                       | Lawyer 1: \$260-\$300 (partial indemnity rate)<br>Lawyer 2: \$205-\$230<br>Lawyer 3 (junior lawyer) \$135-\$155   | Defendant's counsel's rates were awarded  | Based on the defendants' lawyers' years of experience, and their abilities which were demonstrated during the trial, the fact that the case was complex and the amount involved were very large, the hourly rates claimed are reasonable.  |
| Speigel, Gertrude F. | Milne v. Ontario (Securities Commission)   | [2006] O.J. No. 1573 (S.C.J.) | Defendant                       | Counsel: \$350/hr (partial indemnity rate charged)  | Counsel: \$350/hr (partial indemnity)   | The issues were serious and the motion was crucial to stop an unmeritorious case at an early stage. As a result, there is no reason to use a rate of \$225 per hour for a 3-year call whose normal hourly rate is \$260.   |
| Spies, Nancy J.      | Resch v. Canadian Tire Corp. <i>et al.</i> | [2006] O.J. No. 2906 (S.C.J.) | Plaintiff & Mills-Roy Defendant | Senior counsel: Actual rates charged varied from \$350/hr in 1999 to \$425/hr in 2004 and \$500/hr thereafter; \$350/hr (partial indemnity rate                         | Senior counsel: Partial indemnity rates of \$250/hr in 1999 to 2001; \$275/hr in 2002 to 2004; \$350/hr thereafter to date of Offer to Settle; Substantial indemnity rate of \$525/hr | Lawyer for plaintiff is a senior counsel and very experienced in personal injury litigation. His rate is consistent with the rates of Toronto counsel. In the case at bar, the financial stakes were high. This case was complicated, involving difficult liability and damages issues and the monetary amount in issue was significant. Counsel did an outstanding job for his clients. Skill of counsel and manner in which he presented the plaintiffs' case and conducted the defence put the plaintiffs' case in the best light possible. While the   |

**HOURLY RATES**

| <b>Judge</b>              | <b>Case Name</b>  | <b>Citation / Date</b>        | <b>Costs Awarded To</b>   | <b>Actual Rates</b>  | <b>Rates Awarded</b>   | <b>Judge's Comments</b>  |
|---------------------------|---|-------------------------------|---------------------------|--|--|--|
|                           |   |                               |                           | <p>claimed throughout);<br/>\$500/hr<br/>(substantial indemnity rates)</p> <p>Second counsel:<br/>\$225/hr (partial indemnity rate charged);<br/>\$325/hr<br/>(substantial indemnity rate)</p> | <p>Second counsel:<br/>\$200/hr (partial indemnity rate);<br/>\$300/hr (substantial indemnity rate)</p>  | <p>"maximum" rate in the Costs Guideline is not binding, if senior counsel in the circumstances of this case could not command this "maximum" rate, there would be few cases that could justify it.</p> <p>Second counsel has 10 years of experience. Senior counsel heavily relied on second counsel's assistance.</p>  |
| Toscano Roccamo, Giavanna | Summers v. Harrower   | [2006] O.J. No. 452 (S.C.J.)  | Plaintiff                 | <p>Lawyer 1 : \$225/hr<br/>Clerk 1 : \$90/hr<br/>Clerk 2: \$50/hr</p>  | <p>Substantial indemnity rates awarded:<br/>Lawyer 1: \$195/hr (87% of actual)<br/>Clerk 1: \$80/hr (89% of actual)<br/>Clerk 2: \$45/hr (89% of actual)<br/>Total costs awarded: \$42,500</p> | <p>Hourly rates requested by plaintiff do not reflect the three scales of costs; substantial indemnity costs must represent 1.5 times the amount that would be awarded as partial indemnity costs</p>  |
| Corbett, David L.         | Mantella v. Mantella  | (2006) 27 R.F.L. (6th) 76     | Applicant and Third Party | unreported   | \$225 and \$350  | <p>The third party claim against opposing counsel was tactical, and an abuse of process. Application of a trite proposition to facts that have not appeared in a reported case does not involve a "novel" point of law.</p> <p>The actual rates charged by counsel are not the starting point for a costs analysis. "There is no reason why the client's fee recovery ought to be reduced because she has negotiated a favourable rate with counsel, so long as the total of the indemnity does not exceed the fees actually charged."</p> |
| Beaudoin, R.              | DB Marketing Inc. (c.o.b. as Brinker, Ink) v. Gary Gurmukh Sales Ltd. (c.o.b. GGS Ltd.) | [2005] O.J. No. 4684 (S.C.J.) | Plaintiff                 | Counsel: \$275/hr  | \$200/hr   | Counsel has practiced law for 14 years.  |

**HOURLY RATES**

| <b>Judge</b>          | <b>Case Name</b>                                     | <b>Citation / Date</b>                           | <b>Costs Awarded To</b> | <b>Actual Rates</b>  | <b>Rates Awarded</b>   | <b>Judge's Comments</b>   |
|-----------------------|--|--|-------------------------|--|--|---|
| Flynn, Patrick Joseph | Skyline Equities V Inc. v. Stocco                    | [2005] O.J. No. 5607 (S.C.J.)                    | Plaintiff               | Senior Counsel: \$325/hr (actual rate)<br>\$300/hr (rate submitted in costs submission)  | \$235/hr (partial indemnity rate)                                      | Plaintiff's counsel was called to the bar in 1978 and is a certified specialist in special litigation. He has been practicing civil litigation for over 40 years. But an award of costs on a partial indemnity scale, by definition, is not to mean full indemnity, nor anything very close to it.  |
| Hackland, Charles T.  | Adult Entertainment Assn. of Canada v. Ottawa (City) | [2005] O.J. No. 4608 (S.C.J.)                    | Defendant               | Two senior counsel (both of 1987 call): \$250/hr   | \$200/hr (partial indemnity rate)                                      | The evidence reflects that the City established a maximum solicitor-client rate of \$250/hr. To award \$250/hr as claimed would, in the circumstances, constitute a substantial indemnity award, whereas the scale intended herein is partial indemnity.  |
| Polowin, Heidi        | Sommerard v. I.B.M. Canada Ltd.                      | [2005] O.T.C. 944; 32 C.C.L.I. (4th) 57 (S.C.J.) | Plaintiff               | Plaintiff's senior counsel (40 years at the Bar) seeks an hourly rate of \$350/hr on a partial indemnity basis (the maximum under the Costs Grid)                                  | Appropriate partial indemnity rate is \$300/hr                         | While counsel has 40 years at the Bar, that is not the sole determining factor. This was not a "Grand Prix case, requiring a Grand Prix counsel". Maximum rates should be reserved for maximum cases. The hourly rate is not to be arithmetically pro-rated according to the actual years of experience within each class of experience on the grid.  |
| Stinson, David G.     | Solway v. Lloyd's Underwriters                       | [2005] O.J. No. 5465 (S.C.J.)                    | Plaintiff               | Counsel 1: \$370/hr<br>Counsel 2: \$400/hr   | Partial indemnity rates:<br>Counsel 1: \$225/hr<br>Counsel 2: \$325/hr | With regards to Counsel 1, the Guidelines indicate that a lawyer less than 10 years at the bar should be charged at no more than \$225 per hour when fixing partial indemnity costs. Similarly, the hourly rate charged by Counsel 2 is too high, given the \$350 hourly maximum that is permitted for senior counsel under the Guidelines. The maximum rate should be reserved for the most senior counsel in the most challenging case, neither of which descriptor is apt in the present case. |
| Aitken, Catherine D.  | Cameron v. MacGillivray                              | [2005] O.J. No. 1757 (S.C.J.)                    | No costs awarded        | Plaintiff's counsel:<br>Senior Counsel (1974 call): \$300-\$400/hr<br>Lawyer 2: \$125-\$150/hr<br><br>Defendant's counsel:<br>Lawyer 1: \$300-\$325/hr<br>Lawyer 2: \$285-\$300/hr | No rates awarded; each party to bear their own costs                   | Plaintiff's senior counsel has practiced in the area of family law throughout his legal career. He is a certified specialist in family law by the Law Society of Upper Canada. His rates are appropriate, given his experience.<br><br>Plaintiff's second lawyer's hourly rates are appropriate, given her limited experience.<br><br>Both of the defendant's lawyers are senior family law practitioners, and the hourly rates they charge are reasonable.                                       |
| Aitken,               | Hartman Estate                                       | 2005   | Defendant               | Defendant's  | Rates awarded not  | The rates charged by defendant's counsel are reasonable and   |

**HOURLY RATES**

| <b>Judge</b>         | <b>Case Name</b>                         | <b>Citation / Date</b>  | <b>Costs Awarded To</b> | <b>Actual Rates</b>   | <b>Rates Awarded</b>  | <b>Judge's Comments</b>   |
|----------------------|--|---|-------------------------|---|---|---|
| Catherine D.         | v. Hartfam Holdings Ltd.                 |   |                         | counsel:<br>\$394/hr (actual rate); \$290/hr (partial indemnity rate); \$350/hr (substantial indemnity rate)                | disclosed   | within an acceptable range.   |
| Aitken, Catherine D. | Stoate v. Stoate                         | [2005] O.J. No. 3087 (S.C.J.)   | Defendant               | Associate (6 years' experience in family law):<br>\$135/hr on a partial indemnity basis                                     | Associate: 135/hr (partial indemnity)<br><br>Junior counsel (3 years' experience): \$100/hr   | Associate's partial indemnity rate is reasonable considering her experience in family law.  |
| Hackland, Charles T. | Lajoie v. Lajoie                         | 2005  | Defendant               | Not disclosed   | \$225/hr after the date of the offer to settle (substantial indemnity)                        | This is an appropriate rate for a counsel of 8 years' experience who specializes in family law in a case of average complexity, with a successful result.   |
| Lalonde, Paul F.     | Monks v. ING Insurance company of Canada | [2005] 80 O.R. (3d) 609; O.T.C. 758; 30 C.C.L.I. (4th) 55 (Ont. S.C.J.) | Plaintiff               | Counsel (involved in civil litigation for last 26 years):<br>\$240/hr (partial indemnity) and \$300 (substantial indemnity) | Requested rates were awarded  | Given counsel's experience, these rates are reasonable and represent an amount an unsuccessful party could reasonably expect to pay.<br><br>Fees for counsel attending at trial are not governed by the hourly rate, but by "counsel fees at trial". It can look at what the grid allowed prior to July 1, 2005 and allow up to \$4,000 per day or \$17,500 per week for substantial indemnity costs. The tariff does not disallow a second counsel; instead, it limits the total amount available to be awarded for fees. The court can allow a fee to second counsel where that expense is warranted by the nature of the case, subject to the maximum total counsel fee set out in the grid. |
| Hackland, Charles T. | Lauzon v. Lauzon                         | 2005  | Plaintiff               | Plaintiff's counsel:<br>Senior counsel:<br>\$250/hr (on a substantial indemnity basis)                                      | Senior Counsel:<br>\$200/hr (partial indemnity)<br><br>Law Clerk: \$50/hr (partial indemnity) | Plaintiff's lawyer is a senior counsel specializing in family law. Her rate is reasonable.  |

**DISBURSEMENTS**

| <b>Judge</b>  | <b>Citation</b>       | <b>Citation / Date</b>                 | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|---------------|-----------------------|--|-------------------------|--|---|---|
| Smith, Robert | Baird v. Botham       | 2010 ONSC 3057                         | Defendant               | \$49,924.88 for fees and \$11,524.61 for disbursements, both inclusive of GST for a total of \$61,449.49 | costs of \$30,000.00 plus GST plus disbursements of \$8,500.00 plus GST | Disbursements for the law clerk's accommodation, for expert reports that were never provided and for no-show fees charged by a doctor were objected to.   |
| Cyr, T. E.    | Bourgoin v. Ouellette | (2009), 343 N.B.R. (2d) 58 (N.B. Q.B.) | Plaintiff               | \$52,214.77, including \$6,950 in fees, \$903.50 in HST and \$44,361.27 in disbursements                 | Disbursements awarded as \$22,340.04                                    | <p>Expenses for investigators were not "reasonable expenses necessarily incurred" within the meaning of Rule 59 of the Rules of Court of New Brunswick where there was no evidence they were actually necessary. The witnesses were generally not difficult to locate. Their names appeared in the police reports, and they lived in the area where the accident occurred. The possibility that a witness might have been declared hostile would not have created a conflict for the plaintiff's counsel, so there was no need to hire independent investigators to avoid such a conflict.</p> <p>In considering whether actuarial services are "reasonable", the assessing officer must consider whether the invoice covers services of the "Cadillac" kind--services that go beyond what is necessary. The assessing officer must review the expert's report in order to find that it was necessary and reasonable.</p> <p>Although the fees for the actuarial report in this case were dramatically higher than fees charged by other actuaries for reports in similar circumstances (more than \$17,000, as compared to a range from around \$1,000 to around \$3,250), they were justified in the circumstances. The actuary in question was one of at most two bilingual actuaries in the region. He had a very successful track record, with settlements having been achieved without litigation in 10 of 14 other cases. His reports had been accepted without the defendants considering that second opinions would be necessary, avoiding long trials and saving both time and money. The hourly rates involved were comparable to the rates charged by other actuaries.</p> <p>Interest of 2.4%, compounded monthly, on private financing to cover legal costs and disbursements was reasonable where the plaintiff saw no other option to have access to justice. The rate was high, but so was the risk. The Bank of Nova Scotia did not want to take on the</p> |

**DISBURSEMENTS**

| Judge                 | Citation                                 | Citation / Date   | Costs awarded to   | Costs Requested  | Costs Awarded  | Judge's Comments  |
|-----------------------|--|---|--|--|--|---|
|                       |  |   |  |  |  | risk for a lesser amount.   |
| Ray, Timothy          | Pankhurst v. Kulikovsky                  | (2009, Ont. Sup. Ct. J.)<br>Court File No.: 02-CV-20759 | Plaintiffs   | \$105,836.68, including disbursements of \$27,698.03.  | Partial indemnity fees of \$50,000 plus GST, plus disbursements of \$23,000 plus GST   | The disbursements were "troublesome". The claim included 22,000 copies at \$0.25 per page, with no explanation of why such a large volume of copies would be necessary. Expert fees of over \$11,000 were claimed for an accounting firm with no explanation.   |
| Brockenshire, John H. | Dinsmore v. Southwood Lakes Holding Ltd. | [2007] O.J. No. 263 (S.C.J.)                            | Plaintiff & Defendant (Ontario New Home Warranties Plan) | Plaintiff: Costs on a substantial indemnity basis in the amount of \$148,464.50 in fees, plus \$45,403.40 in disbursements plus GST of \$11,611.85, totaling \$205,479.75.<br><br>Defendant: Costs on a substantial indemnity basis in the amount of \$67,424.25 plus disbursements of \$27,027.61, plus GST of \$6,583.55, totaling \$101,035.41. | Plaintiff: Costs on a partial indemnity basis in the amount of \$38,250 (inclusive of GST) plus \$28,525.62 in disbursements.<br><br>Defendant: Costs on a partial indemnity basis in the amount of \$67,497 (\$36,080.55 for fees, \$27,027.61 in disbursements plus GST) | Some of the disbursements claimed by plaintiffs are overhead expenses of the law office. Computer legal searches, lunches, "miscellaneous expenditures during trial" and the charges for clerical assistance at trial were disallowed. Also disallowed were fax charges, courier charges and long distance telephone charges. For the purposes of fixing costs, \$1,000 of the \$2,147.50 bill for photocopies was also disallowed.                     |
| Dambrot, Michael R.   | Cain v. Peterson                         | [2006] O.J. No. 188 (S.C.J.)                            | Defendant  | Total amount of costs requested not disclosed  | Costs in the amount of \$45,000.00 together with disbursements in the amount of \$1,504.76, plus GST.  | Defendant was self-represented. She requested to be reimbursed for the \$1,270.83 she incurred in costs for accommodations during the trial. Plaintiff argued that she was within driving distance. Costs for this expense allowed. Defendant does not drive, and would have had to spend an amount of time on the bus each day that would have interfered with her trial preparation, and might have interfered with the orderly conduct of the trial. |
| Lalonde, Paul         | Lockhard v.                              | [2006] O.J. No.   | Defendant  | CAA requested  | Costs on a   | Disbursements awarded were reduced by \$6,630.55, for the cost of   |

**DISBURSEMENTS**

| <b>Judge</b>     | <b>Citation</b>  | <b>Citation / Date</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
|------------------|--|------------------------|-------------------------|---|--|---|
| F.               | Quiroz and CAA Insurance Company (Ontario)<br>*Note: This costs decision involved the CAA claiming costs from Quiroz | 5220 (S.C.J.)          | (CAA)                   | from Quiroz its costs of the action on a partial indemnity basis from the commencement of the action until the settlement (\$64,896.93), and costs on a substantial indemnity basis thereafter (\$30,228.57). CAA submitted that Quiroz should reimburse the CAA for the settlement monies paid to Plaintiff, as well as costs of defending these actions | partial indemnity basis to the date of settlement totaling \$36,350 (72.7% of the amount outlined in the CAA bill of costs) plus costs for its summary judgment motion in the sum of \$20,000 plus all disbursements, except for the sum of \$6,630.55, being the costs of travel to Ottawa for the various court appearances.<br><br>Settlement monies are to be reimbursed by Quiroz to the CAA as well. | travel to Ottawa for the various court appearances.   |
| Lalonde, Paul F. | St. Amand v. Brookshell Pontic Buick GMC Ltd.  | 2006                   |                         | Costs on a partial indemnity basis until first offer totaling \$4,519.68 and costs on a substantial indemnity scale thereafter totaling \$74,469.74 for a total of \$79,469.74  | Costs on a substantial indemnity basis totaling \$60,000 plus GST + \$1,637.66 (disbursements) plus GST  | The \$300 paid to photocopy a file, as well as the mileage and meals incurred during trial were disallowed, for a total deduction of \$448.47 |

**DISBURSEMENTS**

| <b>Judge</b>        | <b>Citation</b>  | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|---------------------|--|-------------------------------|-------------------------|--|---|--|
| Maranger, Robert L. | Cusson v. Quan   | [2006] O.J. No. 3186 (S.C.J.) | Plaintiff               | Costs on a partial indemnity basis in the amount of \$665,265.66 (\$582,386 in fees, plus GST of \$40,767 and disbursements of \$42,112.66)  | Costs on a partial indemnity basis in the amount of \$246,512.66 (\$200,000 in counsel fees; GST of \$14,000; disbursements of \$32,512.66) | \$9,600 was deducted from the amount claimed for disbursements because it was work performed by the actuarial consultant.  |
| Ratushny, Lynn D.   | Access Health Care Services v. Ontario Nurses' Association | 2006                          | Defendant               | Costs on a partial indemnity basis in the amount of \$14,031.35 inclusive of fees and GST and disbursements (\$3,701.57)   | Costs on a partial indemnity basis in the amount of \$14,031.35 inclusive of fees and GST and disbursements (\$3,701.57)                    | Although somewhat high, the defendant's costs request of disbursements incurred by the travel between Toronto and Ottawa and for one day of cross examinations was awarded and deemed reasonable.              |
| Roy, Albert J       | Lecompte v. A. Potvin Construction Ltd                     | 2006                          | Plaintiff               | Costs and disbursements totaling \$141,736.27  | Costs in the amount of \$50,000 plus \$20,000 in disbursements  | In reviewing the disbursements, invoices from two experts alone totaled \$53,779.24; in this case, these disbursements are unjustifiable   |
| Smith, Robert J.    | Nelligan v. Fontaine                                       | [2006] O.J. No. 3699 (S.C.J.) | Plaintiff               | Plaintiff (law firm) sought their costs thrown away as a result of attending the assessment hearing and for the motion to set-aside the default assessment order.<br><br>Plaintiff law firm claims fees of \$22,816.68 inclusive of GST on a | Costs thrown away were assessed at \$10,000 plus GST and disbursements of \$371.80, inclusive of GST  | \$359.56 was claimed in disbursements for computer research. There was an absence of evidence of the subject of the computer research. An amount of \$200 was awarded for disbursements for computer research. |

**DISBURSEMENTS**

| <b>Judge</b>                 | <b>Citation</b>     | <b>Citation / Date</b>        | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|------------------------------|---------------------|-------------------------------|-------------------------|---|---|---|
|                              |                     |                               |                         | substantial indemnity basis, plus disbursements of \$531.36   |   |   |
| Toscano Roccamo, Giovanna J. | Summers v. Harrower | [2006] O.J. No. 452 (S.C.J.)  | Plaintiff               | Costs in the amount of \$86,238.79 in fees plus \$7,119.65 in disbursements for a total of \$94,358.44. | Costs on a substantial indemnity basis in the amount of \$42,500 plus \$5,137.23 in disbursements, plus GST | Photocopy amount claimed excessive; no justification for long distance facsimile charges since both counsel practice in same local; photocopy amount reduced by 50%                                       |
| Wilson, Janet                | Crosby v. Wharton   | [2006] O.J. No. 1192 (S.C.J.) | Defendant               | Costs on a partial indemnity basis in the amount of \$91,556.12 inclusive of GST                        | Costs on a partial indemnity basis in the amount of \$42,314  | The defendants seek to recoup costs for flying the defendants back from Mexico or the Bahamas as they were on vacation. They request disbursements of \$5,634.14. This is not a recoverable disbursement. |

**CONTINGENCY FEES AND CLASS ACTIONS**

| Judge                               | Case name                                  | Citation      | Costs awarded to | Costs Requested  | Costs Awarded   | Comments   |
|-------------------------------------|--|---------------|------------------|--|---|--|
| Epstein, van Rensburg and Brown JJA | Lavender v. Miller Bernstein LLP           | 2018 ONCA 955 | Plaintiff        | Summary judgement motion:<br>\$1,009,063.32<br>Appeal: \$159, 463.29 | Summary judgement motion:<br>\$1,009,063.32<br>Appeal: \$159, 463.29<br>Both inclusive of disbursements and HST | Costs for a class action proceeding, settled on summary judgement:<br>S. 31(1) of the <i>Class Proceeding Act</i> will not be engaged where there is not any novel question of law or matter of public interest.<br>Where a party asserts that costs should be reduced because of delays in admitting certain facts, the party should be able to point to specific amounts of costs that could have been avoided if admissions had been made at an earlier stage. The court can also consider whether the asserting party created delays by refusing to admit facts.<br>The court will consider whether the quantum of costs are reasonable and proportionate. This court noted, “the issues were complex and important, the record voluminous, and the parties provided lengthy submissions”. |
| Gillease, Lauwers, D.M. Brown       | Evans Sweeny Bordin LLP v. Zawadzki et al. | 2015 ONCA 756 | Solicitors       | \$500,000 contingency fee  | \$500,000   | The solicitors won and successfully represented their clients in a dispute which was resolved for \$20 million. As a result under their contract they were owed a \$500,000 contingency fee. ONCA upheld the trial judge’s ruling that it was reasonable. ONCA also ruled that an assessment offer does not have jurisdiction to rule if a contingency fee was unreasonable. They can only be referred to explain the quantum of the contingency fee.  |
| MacPherson, J (ONCA)                | Smith v. Inco Limited                      | 2013 ONCA 724 | Defendant        | \$5,340,563  | \$1,766,000   | Appeal by defendant from \$3.6MM shortfall in costs award. Appeal dismissed. Appellate court should set aside costs award only if Trial Judge made error in principle or clearly wrong.<br><br>SCC denying leave does not automatically mean a case is not of national importance.<br><br>Not always a bright line between novel and settled points of law. Novelty exists on a continuum. The fact that a claim is grounded in a well-established cause of action does not remove the possibility that the claim raises a novel point of law.<br><br>S31(1) discounts apply to whole claim, including disbursements.  |

**CONTINGENCY FEES AND CLASS ACTIONS**

| Judge               | Case name                                    | Citation       | Costs awarded to | Costs Requested   | Costs Awarded   | Comments   |
|---------------------|--|----------------|------------------|---|---|--|
|                     |  |                |                  |   |   | <b>Absent a R. 49.10 finding, enhanced costs should be awarded only on a clear finding of reprehensible conduct on the part of the party against which the costs award is being made.</b>  |
| Winkler, CJO (ONCA) | McCracken v. CNR                             | 2012 ONCA 797  | Defendant        | \$300,000 + \$13,293.49 disbursements (1/3 of actual costs incurred)  | \$60,000  | Substantial amount of work done arises in connection with the Divisional Court proceedings, which were resolved on consent on a no costs basis. However, CN reduced the amount of its alleged actual costs on a partial indemnity basis by approximately \$180,000, which neutralizes the concern.<br><br>Engaging serious, novel legal issues a factor. Public interest concerns. Access to justice issues for plaintiffs in class proceedings. Costs reduced accordingly.  |
| Strathy, G.R.       | Re*Collections Inc. v. Toronto-Dominion Bank | 2011 ONSC 3477 | Defendants       | For all three defendants, who were represented by the same counsel: \$809,756.42 for fees and \$46,764.23 for disbursements | \$175,000 all-inclusive to be shared amongst the defendants   | The most important question is whether this is a case in which the court should exercise its jurisdiction under s.31(1) of the C.P.A.; the more compelling reason to treating it under s.31 is it involved a matter of considerable public interest.<br><br>In class proceedings in Ontario, the ordinary rule is that costs will follow the event. There needs to be a balance between encouraging class actions that have potential merit and discouraging those which may be frivolous or vexatious.<br><br>This action involved a matter of public interest and served a useful public purpose in scrutinizing a practice that affects many Canadians. |
| Beaudoin, Robert    | Laushway Law Office v Simpson                | 2011 ONSC 5759 | Solicitors       | \$100,259.30 on a partial indemnity rate to Feb 3, 2010 and substantial indemnity rate afterwards                           | \$67,637.00 (\$8,000 for attendance on motion before Justice MacLeod-Beliveau; \$35,000 for prep and attendance at first 3 days of trial; \$12,000 for last 3 days of trial; disbursements for \$12,637.00) | The solicitors could not be expected to be treated as a plaintiff who is advancing a claim.<br><br>There was some complexity to the legal question, but was made more complex by the behavior of the client at trial, whose conduct required continuous interventions on the judge's part.<br><br>There were also mid-trial costs awarded which were taken into account when fixing these costs awarded.   |
| Horkins, C.         | Turner v. York University,                   | 2011 ONSC 7146 | Defendant        | Defendant was seeking \$21,476.25 in partial indemnity costs for fees and \$637.60 for                                      | \$5,000 inclusive of all disbursements and HST  | This included an amendment to a previous statement of claim. This amendment was dismissed as the cause of action was not viable and contrary to appellate authority. ( <i>Gauthier v. Saint-German</i> , 2010 ONCA 309 and <i>Jaffer v. York</i>   |

**CONTINGENCY FEES AND CLASS ACTIONS**

| Judge                | Case name         | Citation                             | Costs awarded to                              | Costs Requested  | Costs Awarded  | Comments  |
|----------------------|-------------------|--------------------------------------|---|--|--|---|
|                      |                   |                                      |   | disbursements.   |  | <p><i>University</i>, 2010 ONCA 654). These cases also clarified when claims can be brought against Universities.</p> <p>The hourly rates submitted were reasonable however the partial indemnity amount sought was excessive for a half day motion.</p>  |
| Fuerst, Michelle     | Choi v. Choi      | 2010 ONSC 4800, [2010] O.J. No. 3684 | contingency agreement                         | \$2,600,000, pursuant to contingency agreement   | \$2,000,000  | <p>In approving the settlement, the Court must ensure that the whole settlement including the amount charged for legal fees, is in the infant plaintiff's best interests.</p> <p>In this case:<br/>                     there was minimal risk that the action would be unsuccessful;<br/>                     the case was not complex;<br/>                     the amount of disbursements was not large;<br/>                     the size of the settlement was somewhat fortuitous, since substantial insurance coverage happened to be available;<br/>                     the time spent by the firm was not fully docketed; and, the fees claimed might encroach on the amount needed to cover the child's needs.</p> <p>There is a real prospect that the child will have to contribute more than the amount provided for in the settlement towards the purchase of a new house. In these circumstances, some reduction of the legal fees payable under the contingency agreement is appropriate. The amount to be held in trust to the child's credit, pending approval of the management plan, will be increased by \$600,000</p> |
| Hackland, Charles T. | J Arther Cogan QC | 2010 ONSC 915                        | Applicant solicitor (contingency fee hearing) | 33 1/3 % contingency fee amounting to \$2,833,050, plus disbursements of \$65,177.52 and \$45,000 of GST | Sum of \$1,840,625 (representing 25% of the settlement net of the party and party costs, and the parents' section 51 Family Law Act settlement), plus disbursements of \$65,177.52 and applicable GST. | <p>The factors to be considered in approving an agreement for contingency fees are:</p> <ol style="list-style-type: none"> <li>1) the financial risk assumed by the lawyer;</li> <li>2) the likelihood of success;</li> <li>3) the nature and complexity of the claim;</li> <li>4) the results achieved and the amount recovered;</li> <li>5) the expectations of the party;</li> <li>6) who is to receive an award of costs; and</li> <li>7) the achievement of the social objective of providing access to justice.</li> </ol>  |

**CONTINGENCY FEES AND CLASS ACTIONS**

| Judge  | Case name                          | Citation      | Costs awarded to | Costs Requested | Costs Awarded | Comments   |
|--|------------------------------------|---------------|------------------|-----------------|---------------|--|
|  |                                    |               |                  |                 |               | <p>Here the financial risk was substantial but the likelihood of success was quite high. The plaintiffs had a strong case which was settled in 1 day of mediation after 8 days of discovery. The results achieved are excellent for the minor defendant in all respects: the fee claimed by the solicitor does not encroach at all on the amounts needed to cover the defendant's present or future needs.</p> <p>There were no "exceptional circumstances" to justify the solicitor to receive any of the party and party costs as part of the contingency fee. In evaluating what should be viewed as qualifying circumstances, the court must focus on the need to balance counsel's claim for adequate compensation with the future needs of the disabled party. Here, given the medium risk nature of the case, the contingency fee itself represented adequate compensation. Therefore the costs recovered as part of the settlement (amounting to \$800,000) should be excluded.</p> <p>In the circumstances, a contingency fee in the amount of 25% of the settlement attributable to damages would provide fair compensation to the solicitor. This was estimated to represent a 400% premium on the accrued hourly billings, which was sufficient to promote the goal of access to justice.</p> <p>Hackland RSJ directed the solicitor to consult with the parents on the best use of the funds that would consequently be re-directed from the contingency fee to the benefit of the minor defendant and present a plan to the court. The solicitor would be entitled to compensation on a full indemnity basis out of this fund for reasonable additional work required to complete the settlement</p> |
| Weiler, Karen;<br>Juriansz, Russel;<br>MacFarland Jean | Jean Estate v. Wires<br>Jolley LLP | 2009 ONCA 339 |                  |                 |               | Parties are entitled to agree to resolve disputes about lawyers' fees through arbitration. But any such assessment by an arbitrator must uphold the substantive rights provided by the Solicitors Act, R.S.O. 1990, c. S.15.   |

**CONTINGENCY FEES AND CLASS ACTIONS**

| <b>Judge</b>                                      | <b>Case name</b>   | <b>Citation</b> | <b>Costs awarded to</b>    | <b>Costs Requested</b>  | <b>Costs Awarded</b>   | <b>Comments</b>   |
|---|--|-----------------|----------------------------|---|--|---|
| MacFarland, Jean; Doherty, David; Rosenberg, Marc | Sutts, Strosberg LLP v. Atlas Cold Storage Holdings Inc. | 2009 ONCA 690   | Appellants (Class Counsel) | Appeal of order fixing Class Counsel's fees at \$6,300,000, plus \$315,000 GST; Class Counsel had sought \$12,000,000 | Appeal dismissed; costs of \$10,000 inclusive of disbursements and GST for Objector Respondents ordered for the appeal | <p>An order approving an agreement respecting fees and disbursements under s. 32 of the Class Proceedings Act, or fixing a multiplier under s. 33, is a final order of a Superior Court judge from which an appeal lies by virtue of s. 6(1)(b) of the Courts of Justice Act. It is not an order with respect to costs payable by one party to litigation to another party, for which leave to appeal would be required.</p> <p>The motions judge applied the proper test by considering the following factors in assessing the reasonableness of the fees:</p> <ul style="list-style-type: none"> <li>(a) the time expended;</li> <li>(b) the factual and legal complexities of the matters to be dealt with;</li> <li>(c) the degree of responsibility assumed by the lawyer;</li> <li>(d) the monetary value of the matters in issue;</li> <li>(e) the importance of the matter to the client;</li> <li>(f) the degree of skill and competence demonstrated by the lawyer;</li> <li>(g) the results achieved;</li> <li>(h) the ability of the client to pay; and</li> <li>(i) the expectations of the client as to the amount of the fee.</li> </ul> <p>The conclusion that the base fees were not reasonable and that it should be reduced by 25%, was warranted. No palpable and overriding error had been demonstrated. The fees represented 7,400 hours of docketed time for a three day pleadings motion, preparation for a certification motion that was never argued, which included 12 days of cross-examination, and a three-day mediation.</p> <p>The motions judge was also justified in concluding that the multiplier was unreasonable where it "offends the principle of proportionality" in that it could represent 52% of the net recovery.</p> <p>The motions judge was not obliged to accept the fee</p> |

**CONTINGENCY FEES AND CLASS ACTIONS**

| Judge         | Case name                         | Citation                | Costs awarded to | Costs Requested   | Costs Awarded  | Comments  |
|---------------|-----------------------------------|-------------------------|------------------|---|--|---|
|               |                                   |                         |                  |   |  | <p>agreement; it was merely one factor which "can" be considered to assess what is fair and reasonable. Neither the risks nor the complexities of the action were as great as counsel contended. The settlement was funded by a contribution from insurers, and the risks were spread across three law firms.</p> <p>The approved fee represented nearly twice the fully docketed fee. This was said to be more than adequate incentive to solicitors to take on an prosecute an action of this nature.</p> <p>Costs of \$112,976.79 and \$89,464.73 on a full indemnity scale claimed by the Objector Respondents in the appeal were excessive and unreasonable. Their interests were those of the class. They should not have been entitled to claim separate fees.</p> <p>Further, there can only be one set of costs for a party. "Costs cannot be claimed both on behalf of a corporation and on behalf of the directors and/or officers individually unless they are parties in their personal capacity."</p> |
| Aston, David  | Du Vernet v. 1017682 Ontario Ltd. | [2009] O.J. No. 2373    | Plaintiff        | Totality of client's \$418,676.55 settlement, pursuant to a contingency fee agreement | \$255,000 plus GST for fees on a <i>quantum meruit</i> basis, plus disbursements of \$29,262.54, \$1,500 in costs previously ordered, and interest on security they paid for costs | <p>The contingency agreement was void where it did not comply with the requirements of the Solicitors Act and the Regulations pertaining to s. 28.1 of the Act. It also did not represent a true meeting of the minds.</p> <p>The solicitors were entitled to the majority of the settlement due to the time they invested, the financial risk they assumed, including posting substantial security for costs they might never recover. However the clients should nonetheless receive a significant share as well, as recognition of the facts that their case had some merit and that this was the only reason the solicitors would receive anything.</p>   |
| Smith, Robert | Cogan (Re)                        | (2007), 88 O.R. (3d) 38 |                  | \$4,174,928.45, pursuant to contingency agreement granting fees equal to 33 1/2 %     | As requested   | In approving the settlement, the Court must ensure that the whole settlement including the amount charged for legal fees, is in the infant plaintiff's best interests. Here, the plaintiff's future needs will be provided for, even after the fees provided for in the contingency agreement   |

**CONTINGENCY FEES AND CLASS ACTIONS**

| <b>Judge</b> | <b>Case name</b> | <b>Citation</b> | <b>Costs awarded to</b> | <b>Costs Requested</b> | <b>Costs Awarded</b> | <b>Comments</b>   |
|--------------|------------------|-----------------|-------------------------|------------------------|----------------------|---|
|              |                  |                 |                         | of recovery            |                      | <p>are paid. This must be considered in the context where any recovery at all was far from certain.</p> <p>The fact that a contingency fee entered into by a litigation guardian on behalf of a child is not binding unless approved by a judge does not mean that the agreement should be disregarded by the court when assessing its fairness and reasonableness.</p> <p>The factors to be considered in approving a contingency fee arrangement are:<br/> a) the financial risk assumed by the lawyer;<br/> b) the results achieved and the amount recovered;<br/> c) the expectations of the party;<br/> d) who is to receive an award of costs; and<br/> e) the social objective of providing access to justice.<br/> These factors must be accorded much more weight than the time spent by the lawyer.</p> <p>In this case, the financial risk was high because there was a significant causation issue, so the likelihood of success was very uncertain. The results achieved were "very impressive"--the child's future needs will be well provided for. The recovery was approximately double the expectations of the parties. The contingency agreement provided that any costs awards would be included in the recovery, and not paid to the solicitor in addition to the percentage. All these factors support a higher contingency fee.</p> <p>The contingency agreement was obtained in a fair way. The litigation guardian was financially sophisticated and experienced. The agreement was understood and accepted by the litigation guardian; the parents and litigation guardian support approving the agreement.</p> <p>Access to justice requires that an injured child should have the right to enter into contingency fee arrangement, provided that it is fair and reasonable. "Substantial weight should be given to a contingency agreement entered into by a sophisticated party who</p> |

***CONTINGENCY FEES AND CLASS ACTIONS***

| <b>Judge</b> | <b>Case name</b> | <b>Citation</b> | <b>Costs awarded to</b> | <b>Costs Requested</b> | <b>Costs Awarded</b> | <b>Comments</b>  |
|--------------|------------------|-----------------|-------------------------|------------------------|----------------------|--|
|              |                  |                 |                         |                        |                      | considered and weighed the risks involved and acted in the best interests of the child."<br><br>The question of whether the legal fees are simply "too high" does not reflect a principled approach. Where the percentage is reasonable and the agreement was fairly entered into, the agreement should be approved even if the recovery by the law firm is very high. |

**PREMIUMS**

| <b>Judge</b>         | <b>Case Name</b>                                      | <b>Citation / Date</b>                            | <b>Premium Awarded To</b> | <b>Premium Requested</b>  | <b>Premium Awarded</b>  | <b>Judge's Comments</b>  |
|----------------------|---|---|---------------------------|---|---|--|
| Swinton, Katherine   | Ontario (Natural Resources) v. 555816 Ontario Inc.    | (2009) 94 O.R. (3d) 344, 246 O.A.C. 32 (Div. Ct.) | Respondent (Licensee)     | The Board awarded full indemnity costs of \$604,956.46 plus a premium of \$60,000.  | The order for the premium was set aside.  | <p>The Ontario Municipal Board had no authority to order a costs premium.</p> <p>The Board had grounded its decision on the Ontario Court of Appeal's decision in Walker v. Ritchie, which was subsequently overturned by the Supreme Court of Canada.</p> <p>The OMB rules do not contain any authority to award a costs premium. The OMB Act and rules do not provide any ground other than the conduct of a party for an award of costs. The Board's decision was not based on the conduct of the parties.</p>  |
| Allan, M. J.         | 380876 British Columbia Ltd. v. Ron Perrick Law Corp. | 2009 BCSC 1209                                    | Plaintiff                 | "The plaintiff now seeks an order for special costs of this action pursuant to Rule 57(3) of the Rules of Court or, in the alternative, an order for costs assessed at Scale C of Appendix B of the Rules and increased costs, pursuant to s. 2(4.1) of Appendix B of the Rules." | "The plaintiff is entitled to an award of increased costs assessed at Scale C. Unless the parties can agree to the amount of those costs, they are to be taxed by the Registrar." | <p>Special costs--something that goes beyond indemnity and enters the realm of punishment--may be awarded for pre-litigation misconduct that is reprehensible and warrants rebuke. However they were not warranted in this case, where the majority of the defendant's misconduct was in relation to matters that had already been resolved.</p> <p>Increased costs were warranted where the plaintiff incurred extra expenses due to the defendant's misconduct, and where "the result of the trial was of significant importance to the legal profession and consumers of legal services."</p> |
| Henderson, Joseph R. | Perri v. Thind  | (2009), 98 O.R. (3d) 74 (Ont. Sup. Ct. J.)        | Defendant                 | Costs on a substantial indemnity basis of \$2,713   | Referred to Divisional Court on appeal  | <p>Motion for leave to appeal costs order of \$10,000, well in excess of costs actually incurred or requested. The Motions Judge was apparently motivated by disapproval of the conduct of counsel for the plaintiff.</p> <p>Leave to appeal granted under Rule 62.02(4)(a): Use of the judge's discretion as to costs to punish or deter the unsuccessful party said to conflict with case law indicating that the appropriate order in such a case is costs on a substantial indemnity basis. No case was referred</p>   |

**PREMIUMS**

| Judge  | Case Name  | Citation / Date                               | Premium Awarded To            | Premium Requested  | Premium Awarded   | Judge's Comments  |
|--|--|---|-------------------------------|--|---|---|
|  |  |   |                               |  |   | to the court in which a cost premium was awarded because of disapproval of the conduct of the unsuccessful party. Where no appellate court has determined whether such a premium could be ordered, it was appropriate to seek clarification.  |
| <b>Cronk, Eleanore; Gillese, Eileen; Watt, David</b>   | <b>Monks v. ING Insurance Co. of Canada</b>      | <b>2008 ONCA 269, (2008) 90 O.R. (3d) 689</b> | <b>Respondent (Plaintiff)</b> |  | <b>The \$75,000 risk premium awarded at trial was set aside. However costs of the appeal were awarded at \$35,000 on partial indemnity scale.</b> | <b>The SCC's decision in Walker v Ritchie (2006 SCC 45) and the ON CA's decision in The Manufacturers Life Insurance Co v Ward ([2007] OJ No 4882) hold that a risk premium may not be passed on to an unsuccessful defendant. Risk of non-payment is not a relevant factor under Rule 57.01.</b>                         |
| <b>Weiler, Karen M., Rosenberg, M., Rouleau, Paul.</b> | <b>Manlife Financial v. Ward</b>                 | <b>2007 ONCA 881</b>                          | <b>None</b>                   | <b>Premium of 15% of total legal fees (before GST) totalling \$111,786.64</b>  | <b>None</b>   | <b>The amended rule 57.01 does not allow for risk premiums. Risk premiums are not neutral as they are only levied against a defendant. Further, since a risk premium is a private agreement between a plaintiff and counsel, the defendant cannot reasonably know what they might have to pay.</b>                        |
| McKinnon, Colin  | Cerilli v. The Corporation of the City of Ottawa | 2007  | No premium awarded            | Plaintiff's lawyer incurred \$40,203.13 in out-of-pocket expenses  | No premium awarded  | Followed the Supreme Court of Canada's ruling in <i>Walker v. Ritchie</i> , [2006] S.C.J. No. 45, in that defendants are not liable to pay premiums on costs because they have no way of assessing such a premium and are unable to include the risk of incurring premiums into a decision of whether or not to settle    |
| Backouse, Nancy L.                                     | LeVan v. LeVan                                   | [2006] O.J. No. 4599 (S.C.J.)                 | Plaintiff                     | Costs on a partial indemnity basis until date of offer and costs on a full indemnity basis thereafter in the total amount of \$900,000 (this includes a \$160,000 premium) | Costs in the amount of \$646,602.20, inclusive of disbursements and GST.  | Counsel was at some financial risk if the proceeding failed. However, there were no elements of bad faith and misconduct that existed where complete recovery of costs of the entire action was awarded. The amount claimed produces a fee that is reasonable and fair in all the circumstances without adding a premium. |

**PREMIUMS**

| Judge            | Case Name                                      | Citation / Date  | Premium Awarded To | Premium Requested  | Premium Awarded   | Judge's Comments   |
|------------------|--|--|--------------------|--|---|--|
| Polowin, Heidi   | Rowe v. Unum Life Insurance Company of America | 2006   | No premium awarded | Plaintiff requested premium of \$150,000                               | No premium awarded                                      | A premium can only be awarded on substantial indemnity costs; in the case at hand, the plaintiff funded his own litigation until sometime during the trial. The result that was achieved was not exceptional or outstanding. The plaintiff's counsel cannot be said to have financed the litigation. Counsel did not assume a financial risk to provide a plaintiff with access to justice; a premium is not warranted in this matter  |
| Power, Denis     | Ward v. Manlife Financial                      | [2006] O.J. No. 23 (S.C.J.)                              | Plaintiff          | Premium of 15% of total legal fees (before GST) totalling \$111,786.64 | \$50,000  | The 2005 changes to rule 57.01 permit a judge to allow a claim for a risk premium; must take aging of hourly rates into account  |
| Spies, Nancy J.  | Resch v. Canadian Tire Corp. <i>et al.</i>     | [2006] O.J. No. 2906 (S.C.J.)                            | Plaintiff          | \$125,000  | \$106,000   | Although a premium should only be awarded rarely, it is open to a trial judge to award a premium on substantial indemnity costs because of the risk assumed by counsel <i>and</i> where counsel have achieved an outstanding result. Both conditions must be present. In terms of risk assumed, the plaintiff need not be impecunious, but to justify the award of a premium the risk must be based on evidence that the plaintiff lacked the financial resources to fund lengthy and complex litigation, plaintiff's counsel financed the litigation, the defendant contested liability and plaintiff's counsel assumed the risk not only of delayed but possible non-payment of fees.  |
| Horkins, Carolyn | Sandhu v. Wellington Place Apartments          | (2006, Ont. Sup. Ct. J.) Court File No.: 99-CV-163711CM4 | Plaintiff          | Solicitor-client premium of \$650,000.                                 | The solicitor-client premium of \$650,000 was approved. | <p>The amount of costs and premium to be paid by defendant had to be known before the solicitor-client premium could be determined. However, the solicitor-client premium itself was of no concern to the defendant.</p> <p>Criteria supporting a premium:</p> <p>Result: The fact that no amount was awarded for nervous shock or past and future services "does not take away from the truly outstanding result achieved by plaintiff's counsel on every other aspect of the claim."</p> <p>Risk: Plaintiff's counsel carried the full risk of an unsuccessful result for over eight years. The plaintiff's family could not afford to fund the action. The litigation was both lengthy and complex.</p> <p>Plaintiff's counsel is not required to show that she faced a "real and substantial risk", merely a "possibility" of losing. The risk existed that the jury would find the aunt solely to blame for the plaintiff's</p> |

**PREMIUMS**

| Judge            | Case Name                                | Citation / Date   | Premium Awarded To | Premium Requested | Premium Awarded | Judge's Comments   |
|------------------|--|---|--------------------|-------------------|-----------------|--|
|                  |  |   |                    |                   |                 | <p>injury.</p> <p>Expectations: The retainer agreement provided for no money retainer, but for payment of approximately 15% of total recovery, on top of fees paid by the defendants. The amount sought (\$1 M) is significantly less than the \$2.1 M that would yield.</p> <p>The plaintiff is a minor, and is not bound by the retainer agreement signed by his father. However a solicitor client premium is justified by a balance of the need to promote access to justice with the overriding principle of reasonableness.</p> <p>A quantum driven by a mathematical approach based on billings would place undue emphasis on one factor: the time spent.</p> <p>"The cases demonstrate that there is no consistency in how courts determine what a reasonable fee is." Reasonableness is often tested by reference to various benchmarks. If the amount sought is reasonable in that sense, there is no reason to deny it.</p> <p>Counsel seeks an amount less than was provided for in the retainer agreement, and less than the retainer agreement would have provided for if the plaintiff's last offer to settle was accepted. The total payment to counsel is substantially less as a fraction total recovery to the award in <i>Desmoulin (Committee of) v Blair</i> (1994), 21 OR (3d) 217 (CA). The premium as a percentage of counsel's base fee (58%) is in line with the premium approved in <i>Christian Brothers of Ireland in Canada (Re)</i> (2003), 68 OR (3d) 1 (58%). The premium will not erode the plaintiff's future care award.</p> <p>Where counsel has requested a reasonable amount, fairness dictates that it should be approved. Counsel needs to have the assurance that courts will not adjust the premium when a reasonable amount is requested.</p> |
| Lalonde, Paul F. | Monks v. ING Insurance company of Canada | [2005] 80 O.R. (3d) 609; O.T.C. 758; 30 C.C.L.I. (4th) 55 (Ont. | Plaintiff          | \$150,000         | \$75,000        | Plaintiff was not financially well off. There is a need to encourage lawyers to take on complex cases for indigenous litigants. Such counsel accepts the risk of delayed payment as well as non-payment and law firms have to support disbursements for a long period of time.   |

**PREMIUMS**

| Judge          | Case Name                       | Citation / Date                                  | Premium Awarded To | Premium Requested  | Premium Awarded    | Judge's Comments   |
|----------------|---------------------------------|--|--------------------|--|--------------------|--|
|                |                                 | S.C.J.)  |                    |  |                    | There are seven principles that justify premium awards (all satisfied in this case); legal complexity, responsibility assumed, monetary value, importance of matter to client, degree of skill and competence, results achieved and ability to pay ( <i>International Corona Resources Ltd. v. Lac Minerals Ltd.</i> , [1989] O.J. No. 1324 (S.C.))  |
| Polowin, Heidi | Sommerard v. I.B.M. Canada Ltd. | [2005] O.T.C. 944; 32 C.C.L.I. (4th) 57 (S.C.J.) | No premium awarded | Plaintiff requested premium, details of which were not disclosed | No premium awarded | Plaintiff could not afford in his circumstances to bring the litigation to court; however, in this case, counsel did not carry substantial disbursements (\$3,369.72), this case was not a complex one, the issues were not difficult (cause and reasonable notice), and the result achieved by the plaintiff was not an outstanding result. Given these circumstances, the plaintiff should not be awarded a premium. Also, a premium cannot be awarded to the plaintiff given that the plaintiff is not entitled to substantial indemnity costs. |

***COSTS IN ESTATE LITIGATION***

| <b>Judge</b>              | <b>Case Name</b>                               | <b>Citation / Date</b> | <b>Costs awarded to</b>                     | <b>Costs Requested</b>                    | <b>Costs Awarded</b>                    | <b>Judge's Comments</b>   |
|---------------------------|--|------------------------|---|---|---|---|
| Master MacLeod            | Spiteri Estste v. Canada<br>(Attorney General) | 2014 ONSC 6167         | Plaintiff                                   | \$59,839.26                               | \$49,162.11                             | There was a contingency fee payment scale which would have driven the actual cost payment up to the client but the master rejected this higher amount as it was a "risk premium" which would be unreasonable to enforce on the defendant. The master did however award slightly above 60% for partial indemnity award. He made this ruling based on the fact that if he had calculated using the mini grid from 2005 and adding inflation it would have left the award significantly higher, so the slightly elevated partial indemnity was ruled reasonable.   |
| <b>Gillese, JA (ONCA)</b> | <b>Sawdon Estate v Sawdon</b>                  | <b>2014 ONCA 101</b>   | <b>Estate Trustee</b>                       | <b>\$193,000 in substantial indemnity</b> | <b>\$75,000 + HST and disbursements</b> | <b>Blended costs order (with losing party liable for partial indemnity and balance of costs paid by Estate) is permissible to be made on appeal</b>   |
| James, J.                 | Gasman v. Gasman                               | 2012 ONSC 4364         | A number of individuals for various reasons |   |   | <p>A dispute between a number of beneficiaries to a will. Dispute arose about the size of the debt owed by one of the beneficiaries to the testatrix, and how his inheritance was to be discounted on account of that debt. This required testimony and affidavits to help interpret the intentions of the testatrix. With respect to costs, the issue arose as to the beneficiaries and the estate should cover the costs.</p> <p>The judge awarded the following:</p> <ul style="list-style-type: none"> <li>i. Merill as beneficiary and Michael Gassman (the one with the outstanding debt) will each be responsible for their own costs</li> <li>ii. The costs of Merill and Mr. DuManoir as estate trustees will be paid out of the estate on a full indemnity basis</li> <li>iii. Mr. Dewar's costs will be paid by the estate of Mrs. Gasman and Michael Gasman on a full indemnity basis, each as to 50% jointly and severally</li> <li>iv. Merill shall pay to Michael the sum of \$5,000 plus HST in accordance with the provisions of paragraph 25(c)</li> </ul> <p>In reaching conclusion judge considered that Mr. Johnson (who drafted will) had to testify, but was not considered a factor against him, his full costs borne by estate. Michael's offer to settle "not to be ignored" and results in a \$5000 cost award in part iv above. Merrill's</p> |

**COSTS IN ESTATE LITIGATION**

| <b>Judge</b>      | <b>Case Name</b>                                | <b>Citation / Date</b>                           | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
|-------------------|---|--|-------------------------|--|--|---|
|                   |   |  |                         |  |  | fraud allegations “did little to advance the resolution of the issues” but no cost penalty ultimately. Mr. Dewear (an estate trustee with no personal interest) did not need to retain counsel “but I do not criticize his decision for doing so” (costs awarded in point iii). Estate has already paid heavy price due to litigation, largely to detriment of Mallory “in large part a bystander in dispute between his siblings”, therefore Michael and Merrill responsible for own costs (point i).  |
| Ray, Timothy      | MacDougall v. Trust Company of Bank of Montreal | (2009, Ont. Sup. Ct. J.) Court File No.: 05/0631 | Respondents             | Applicant: \$46,000.00 plus disbursements and GST to be paid out of the estate, or alternatively that parties should bear their own costs<br>Respondents: costs throughout, payable by applicant, personally | On a partial indemnity basis, \$74,000.00 inclusive of disbursements and GST   | The Respondents are residual beneficiaries. An award of costs payable by the estate would result in the Respondents paying themselves.<br><br>There is no basis in law for asserting that the Respondents should fund the costs of this proceeding unless it can be demonstrated that the Applicant’s application was patently unreasonable.<br><br>The Respondents, as the successful parties, bettered a Rule 49 offer. However Rule 49 precludes an award of substantial indemnity costs to a successful respondent.                             |
| Ratushny, Lynn    | Re: Bankruptcy of Richard Patrick Marcotte      | 2007   | No costs awarded        | Not disclosed  | No costs awarded   | This appeal had the status of a test case. The appeal was granted due to the Deputy Registrar’s error of law in making findings of fact not supported by the evidence and unable to be made within the statutory regime of the <i>Bankruptcy and Insolvency Act</i> . For these reasons, each party will bears its own costs. Costs will not be payable from the Estate of the Bankrupt Richard Patrick Marcotte  |
| Robertson, Cheryl | Webster v. Webster Estate                       | [2007] O.J. No. 371 (S.C.J.)                     | No costs awarded        | Costs on a full indemnity basis in the amount of \$176,006.89.   | Each party shall bear their own costs. Applicant shall pay her own legal costs while the Respondent’s legal costs and disbursements plus the costs and disbursements | Respondents’ legal costs and disbursements are reasonable and should be paid from the residue of the Estate; both parties acted in good faith; no offers to settle were made but offers are not always an important tool in measuring success; success on individual points was divided; the matter progressed without delay; amount claimed was balanced with the necessary considerations, including the complexity and importance of the legal issue; bill of costs is reasonable; would not be appropriate to award costs against the plaintiff |

**COSTS IN ESTATE LITIGATION**

| Judge                  | Case Name   | Citation / Date              | Costs awarded to                             | Costs Requested  | Costs Awarded   | Judge's Comments  |
|------------------------|---|------------------------------|--|--|---|---|
|                        |   |                              |  |  | of the written costs submissions shall be paid from the residue of the Estate.  |   |
| Panet, A. deLotbinière | Madore-Ogilvie (Litigation Guardian of) v. Ogilvie Estate | [2006] O.J. No. 703 (S.C.J.) | All parties' costs were paid from the Estate | Plaintiff: \$39,014.71 (full indemnity); \$33,504.18 (substantial indemnity); \$30,413.51 (partial indemnity)<br><br>Defendants' requested costs not disclosed | Plaintiff: \$15,000 plus GST, plus disbursements as claimed in the amount of \$2,143.14<br><br>Defendant 1: \$7,500 plus GST plus disbursements as claimed in the amount of \$820.97<br><br>Defendant 2: \$7,500 plus GST plus disbursements as claimed in the amount of \$274.66 | In estate litigation, it is not unusual for the costs of all parties to be paid out of the estate. In the present proceedings, it was essential that each of the parties involved have independent legal representation. There were different interests involved. There was a somewhat novel issue of law raised which required consideration and preparation. Two of the parties were infants, one of whom resided out of the country. The second Cross-Application was brought by the widow of the deceased, whose position with respect to the estate and proceeds thereof was understandable. In these circumstances, it is reasonable that the costs fixed should be paid by the estate.   |
| Blishen, Jennifer A.   | Royal Trust Corporation of Canada v. Saunders             | 2006                         | Plaintiffs & Defendants                      | Plaintiffs: Costs from the estate on a full indemnity basis<br><br>Defendants: Costs from the estate on a full indemnity basis                                 | Plaintiffs: Costs from the estate on a full indemnity basis<br><br>Defendants: Costs from the estate on a full indemnity basis  | Full indemnity costs will be paid to the Plaintiffs/Applicants, in accordance with normal practice in estate litigation. They were the winning parties.<br><br>Traditionally, the courts have ordered that all, or most, of the costs of all parties to estate litigation be paid by the estate. There are policy considerations for this (Court cited from Brian A. Schnurr & sender B. Tator, <i>Estate Litigation</i> (Toronto: Carswell, 2005)): 1) Often in estate litigation, the difficulties or ambiguities that give rise to the litigation are in whole or in part caused by the testator. It would seem appropriate to make the testator "pay" for the litigation; 2) the courts have a responsibility to ensure that wills under which estates are distributed are valid wills and that the provisions are accurately |

***COSTS IN ESTATE LITIGATION***

| <b>Judge</b>  | <b>Case Name</b>              | <b>Citation / Date</b>                   | <b>Costs awarded to</b> | <b>Costs Requested</b> | <b>Costs Awarded</b>   | <b>Judge's Comments</b>  |
|---|-------------------------------|--|-------------------------|------------------------|--|--|
|   |                               |  |                         |                        |  | <p>understood and put into effect by the personal representatives of the estate.</p> <p>These policy considerations must be balanced with concerns regarding fruitless or unfounded estate litigation. The factors in Rule 57 must also be taken into account. The factors listed in (c) through (i) should be considered in determining whether or not to follow the traditional approach of paying all parties out of the estate.</p> <p>Courts have imposed some liability for costs on an unsuccessful party in circumstances where: 1) there were unfounded, baseless allegations of fraud or undue influence resulting in unjustified litigation; 2) reasonable offers of settlement were rejected; 3) the conduct of a party was particularly unreasonable and/or intransigent and; 4) there was high emotional, as well as financial, costs to the successful beneficiaries.</p> <p>None of these circumstances existed in this case. It is therefore appropriate to follow the traditional approach in estate litigation.</p> |
| Gillease, Eileen.E. (delivered judgment of the Court)<br>Cronk, Eleanore A.;<br>MacFarland, Jean L. | McDougald Estate v. Gooderham | (2005), 255 D.L.R. (4th) 435 (Ont. C.A.) | Respondent              | Not disclosed          | Costs in the amount of \$17,000 inclusive of GST and disbursements | <p><b>Practice of English courts in estate litigation, which is generally followed by Canadian courts, is to order costs of all parties to be paid out of the estate where the litigation arose as a result of the actions of the testator, or those with an interest in the residue of the estate, or where the litigation was reasonably necessary to ensure the proper administration of the estate.</b></p> <p><b>The traditional approach has been displaced. The modern approach to fixing costs in estate litigation is to carefully scrutinize the litigation and, unless the court finds public policy considerations for awarding costs from the estate, to follow the costs rules that apply in civil litigation.</b></p>   |

***COST CONSEQUENCES UNDER THE SIMPLIFIED PROCEDURE (RULE 76.13)***

| <b>Judge</b>                                   | <b>Case Name</b>  | <b>Citation / Date</b>               | <b>Costs Awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>   | <b>Judge's Comments</b>   |
|--|---|--------------------------------------|-------------------------|--|--|---|
| Lalonde, Paul                                  | Frank & Sons Painting & Decorating Ltd v. M/2 Group Inc. et al. | 2010 ONSC 4525                       | Plaintiff               | Partial indemnity fees of \$13,775 prior to the offer and substantial indemnity fees of \$14,877.45 after the offer, plus disbursements                    | \$25,000 in fees plus disbursements, excluding disbursements relating to the lien claim which had expired before registration. | <p>The combination of subrules 76.13(2) and (3) creates a presumption that plaintiffs awarded less than \$50,000, exclusive of interests and costs, shall be denied all costs if they did not use the simplified procedure. This presumption operates despite Rule 49.10.</p> <p>The court retains discretion to award costs if it is satisfied that it was reasonable for the plaintiff: to have commenced or continued the action under the ordinary procedure; or to have allowed the action to be continued under the ordinary procedure, but not abandoning claims or parts of claims that do not comply with subrules 76.02(1), (2) or (2.1).</p> <p>The judgment in this matter deals with many issues, and was probably too complex to be resolved under the simplified procedure. The Plaintiff's conduct was reasonable in any event because the court's decision was required to determine the validity of the lien.</p> |
| Flynn, Patrick J.                              | Southworks Outlet Mall Inc. v. Bradley                          | (2009), 97 O.R. 796                  | Plaintiff               | total costs on a substantial indemnity basis in the amount of \$121,965.00; or failing that, it seeks partial indemnity costs of \$83,610.00               | Total costs of \$50,000, all-inclusive   | <p>The plaintiff was entirely successful in the actions and was entitled to costs.</p> <p>A substantial indemnity award was justified, because of the plaintiff's offer to settle. However, the costs claimed were excessive. They were about 50% more than the judgment. An action under the Simplified Rules should reasonably lower the expectations of parties as to costs which might be awarded.</p>  |
| Sharpe, Robert; Gillese, Eileen; Blair, Robert | Garisto v. Wang   | (2008), 91 O.R. (3d) 298 (Ont. C.A.) | Appellant (plaintiff)   | Appeal of an order denying costs pursuant to Rule 76.13. The trial judge had assessed the costs at \$26,639.50 in fees, plus \$20,519.44 in disbursements. | Appeal allowed; costs awarded as assessed by the trial judge, plus \$7,500 inclusive for the appeal.                           | <p><b>The trial judge's conclusion that it was not reasonable to bring the action under the ordinary procedure was not consistent with his pre-verdict assessment of the case. The plaintiff prevailed on the threshold motion under the Insurance Act suggesting that he had not suffered a permanent serious injury, and the judge's instructions to the jury noted that damages in the range of \$25,000 to \$70,000 would be appropriate if they accepted the plaintiff's view of the case. There was a realistic prospect of an award in excess of \$50,000. Jury rulings are notoriously difficult to predict.</b></p>  |

***COST CONSEQUENCES UNDER THE SIMPLIFIED PROCEDURE (RULE 76.13)***

| <b>Judge</b>   | <b>Case Name</b>                              | <b>Citation / Date</b>                      | <b>Costs Awarded to</b>                                  | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>   |
|--|---|---|--|---|---|---|
| Whalen, Larry  | Dennie v. Hamilton                            | (2008), 89 O.R. (3d) 542 (Ont. Sup. Ct. J.) | Plaintiff  | partial indemnity costs of \$135,357.85, inclusive  | \$106,255.12, plus GST  | <p>It was reasonable for the plaintiff to conduct the action under the regular procedure. This is so whether the final award is considered to be \$40,000 or \$20,000, i.e. whether or not the pecuniary damage threshold was met.</p> <p>The injury was complex. Multiple experts were required to assess it. Testimony from those experts was required to assess damages. It would likely have been professionally negligent for the plaintiff's counsel to bring the action under the simplified procedure.</p>  |
| <b>Rosenberg, Marc; MacPherson, James C.; Rouleau, Paul S.</b> | <b>Aristorenas v. Comcare Health Services</b> | <b>[2007] O.J. No. 522 (C.A.)</b>           | <b>Plaintiff / Respondent</b>                            |   | <b>Costs in the amount of \$115,000</b>   | <b>The respondent was successful at trial, and it was reasonable for her to have brought the claim under the ordinary procedure. She was successful in being awarded an amount beyond the Small Claims court jurisdiction. Therefore, the costs consequences under rules 57.05(1) and 76.13(3) will not be applied.</b>   |
| Brockenshire, John H.  | Dinsmore v. Southwood Lakes Holding Ltd.      | [2007] O.J. No. 263 (S.C.J.)                | Plaintiff & Defendant (Ontario New Home Warranties Plan) | <p>Plaintiff: Costs on a substantial indemnity basis in the amount of \$148,464.50 in fees, plus \$45,403.40 in disbursements plus GST of \$11,611.85, totaling \$205,479.75.</p> <p>Defendant: Costs on a substantial indemnity basis in the amount of \$67,424.25 plus disbursements of \$27,027.61, plus GST of \$6,583.55, totaling \$101,035.41.</p> | <p>Plaintiff: Costs on a partial indemnity basis in the amount of \$38,250 (inclusive of GST) plus \$28,525.62 in disbursements.</p> <p>Defendant: Costs on a partial indemnity basis in the amount of \$67,497 (\$36,080.55 for fees, \$27,027.61 in disbursements plus GST)</p> | <p>Damages awarded to plaintiff at trial were \$29,700. This action proceeded to trial under the ordinary procedure, but the monetary judgment was less than \$50,000. Under Rule 76.13(3), the plaintiff should not recover any costs unless the court is satisfied that it was reasonable for the plaintiff to have commenced and continued the action under the ordinary procedure.</p> <p>This was an action seeking general damages, including the cost of remedying an admitted problem, with a townhouse basement, which the plaintiffs' experts put at well over \$50,000, plus general, aggravated and punitive damages. The issue of Rule 76 was not raised at trial. It was not unreasonable for the plaintiffs' counsel to have commenced and continued this as an ordinary action.</p> |
| Smith, Robert  | Newman v. TD Securities Inc.                  | [2007] O.J. No. 1260 (S.C.J.)               | Plaintiffs   | Costs on a partial indemnity basis in the amount of \$79,246 plus   | No costs awarded.   | Plaintiffs recovered \$47,283 at trial. Although the amount recovered was less than \$50,000, in view of the complexity of the claim advanced and the nature of the evidence which was reasonably called, it was reasonable for the Plaintiff to proceed under the ordinary   |

***COST CONSEQUENCES UNDER THE SIMPLIFIED PROCEDURE (RULE 76.13)***

| <b>Judge</b>         | <b>Case Name</b>  | <b>Citation / Date</b>        | <b>Costs Awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|----------------------|---|-------------------------------|-------------------------|--|---|--|
|                      |   |                               |                         | GST plus disbursements of \$10,876 plus GST.   |   | procedure as opposed to under the simplified rules.  |
| Aitken, Catherine D. | Lavinkas v. Jacques Whitford & Associates Ltd.                    | [2006] O.J. No. 2697 (S.C.J.) | Plaintiff               | Costs on a substantial indemnity basis in the amount of \$44,134.                        | Costs in the amount of \$28,000   | This action proceeded under R. 76. The Simplified Procedure Rule was introduced to promote affordable access to justice. Costs awards in Simplified Procedure actions are normally significantly lower than they would be under the ordinary procedure. Costs incurred in Simplified Procedure actions must be reasonable and proportionate to the amount recovered. When fixing costs in a Simplified Procedure action, the court must bear in mind that one of the objectives of the Simplified Procedure is to curb the crippling cost of litigating small claims. Rule 57.01(1) continues to apply. An Offer to Settle under r. 49 is an important factor, but it is not determinative in the fixing of costs in Simplified Procedure actions. The reasonable expectations of both the successful party and the unsuccessful party in regard to costs must be taken into account |
| Forget, Jean A.      | Handa Travel Services Ltd. v. 1091873 Ontario Inc.                | 2006                          | Plaintiff               | \$21,193.80, inclusive of costs and disbursements  | \$13,500, inclusive of disbursements and GST  | This action was brought under the simplified procedure. Costs under Rule 76 proceedings have historically been lower than they would be under the ordinary procedure and must be reasonable and proportionate to the amount recovered (in this case, \$23,222.24)  |
| Roy, Albert J.       | Lecompte v. A. Potvin Construction Ltd.                           | 2006                          | Plaintiff               | Costs and disbursements totaling \$141,736.27  | Costs in the amount of \$50,000 plus \$20,000 in disbursements  | Judgment to the plaintiff was below \$50,000; argument that, under Rule 76.13(3), plaintiffs should be penalized for not following the simplified procedure and should not be allowed to recover costs and defendants should recover costs from plaintiffs; Court exercised its discretion to award costs to plaintiffs under Rule 76.13(3)(b); this trial lasted 8 days and involved issues of liability and quantum of damages, a large number of experts were heard from; this was a relatively complex case; based on the evidence of their expert, it was reasonable for the plaintiffs to conclude that the stability of their homes were at risk; Defendants at no time advised the plaintiffs that they should be proceeding under the Simplified Rules  |
| Siegel, Herman J.W.  | Inscan Contractors (Ontario) Inc. v. Halton District School Board | [2006] O.J. No. 815 (S.C.J.)  | Plaintiff               | Costs in the amount of \$86,255 plus GST plus \$2,000 in respect of its costs submission | Costs in the amount of \$72,080, plus \$5,045.60 (GST), plus \$2,000 (cost submission) plus \$3,356.38 (disbursements inclusive of GST) | It is disingenuous to suggest that cost consequences must be measured in terms of the limit under Rule 76 actions when it was the plaintiff who continued the action under Rule 76 and the defendant who gained the benefit of that decision, even if the amount of the benefit was not substantial.   |

***COST CONSEQUENCES UNDER THE SIMPLIFIED PROCEDURE (RULE 76.13)***

| <b>Judge</b>         | <b>Case Name</b>  | <b>Citation / Date</b>           | <b>Costs Awarded to</b> | <b>Costs Requested</b>                   | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|----------------------|---|----------------------------------|-------------------------|--|---|--|
| Smith,<br>Robert J.  | Danis v.<br>1292024<br>Ontario Inc.<br>(c.o.b. as<br>Rendez-Vous<br>Nissan) | [2006] O.J. No.<br>2495 (S.C.J.) | Plaintiff               | Not disclosed                            | Costs on a<br>partial<br>indemnity basis<br>in the amount<br>of \$10,000 plus<br>GST plus<br>disbursements<br>of \$1,332.96 | This case was not brought under the simplified procedure rules. The amount the plaintiff recovered at trial was substantially less than the simplified rule level of \$50,000. The simplified procedure rule should have been considered. In this case, however, the Court was required to decide whether a bonus agreement had been changed by oral agreement. Also, given the financial statement involved, substantial disclosure was required and the time savings under the simplified rules would not have been very large. Costs should be reduced because of the lack of success on the general damages, and because the amount recovered was less than the simplified procedure amount. |
| Métivier,<br>Monique | Santini v.<br>Thompson  | 2005                             | Defendant               | Costs in the<br>amount of<br>\$16,495.97 | \$10,350, plus<br>disbursements<br>as claimed (not<br>disclosed), plus<br>GST   | This trial was a simplified procedure matter. Costs claimed are not entirely reasonable given this factor.   |

| <b>NO COSTS AWARDED</b> |   |                        |   |
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| <b>Judge</b>            | <b>Case Name</b>                                      | <b>Citation / Date</b> | <b>Judge's Comments</b>   |
| Beaudoin J.             | Papineau v. Romero-Sierra                             | 2019 ONSC 4315         | Defendants succeeded in getting costs thrown away on a partial indemnity basis, however, costs were to be revisited at the end of the trial. This was a motion to have their costs thrown away due to a last-minute adjournment by the plaintiff. Plaintiff modified their witness list to include many more witnesses than originally planned as well. Costs are thrown away in 3 scenarios (1) when a party is at fault (2) adjournment due to court scheduling problems and (3) when parties without fault seek adjournments. The plaintiff did not follow the timetable orders. This case fell under the first criterion. At the end the judge ruled that the were able to throw away \$100,000 of costs.   |
| G. M. Mulligan J.       | Cohlmeyer v. Ffrench                                  | 2012 ONSC 929          | The parties arrived at a settlement; this settlement did not determine which party was entitled to costs. One of the principles of modern costs rules is to encourage settlements, and when they do so, should not be penalized by a costs order. It is fair and reasonable in these circumstances that each party bear their own costs, aside from the Statements of Claims.   |
| Mackinnon, J.           | MacDonald v. Robinson                                 | 2013 ONSC 876          | Both parties sought recovery of full costs for the 7 day trial of this action (family law). Neither party was awarded costs due to their conduct. The applicant raised the issue of relocating the couple's child a week before trial "a last minute request with very serious consequences" and unsupported by the kind of evidence that would suggest even a reasonable likelihood of success. The judge comments that "lack of success on the mobility issue and her timing in raising that issue about one week before trial are central to her claim for costs."<br><br>The respondent on the other hand failed to paid child support after a certain point, "egregious having regard to his level of income in that year". Furthermore he failed to make requested financial disclosures and prove the value of certain properties and sources of income. Judge also comments that some of his evidence on financial matters "ranged from vague to deceptive".<br><br>Due to the respective parties' conduct neither was awarded costs. |
| Gordon, R.D.            | CAS v N.  | 2012 ONSC 1412         | It is clear that the court retains the discretion to award costs in child protection cases. Whether the discretion will be used will depend on the reasonableness of the behavior of the parties. It doesn't appear that any step by either party was improper, vexatious or unnecessary. A children's aid society which acts reasonably and fairly in the conduct of its statutory obligation should not be exposed to costs.  |
| Power, Denis            | Spiral Aviation Co., LLC v. (Canada) Attorney General | 2011 ONSC 239          | Rule 57 provides wide discretion with respect to costs awards on motions. The Court must attempt to achieve a result that is fair and reasonable, not only in respect of the quantum but as to liability for costs and when costs should be payable.<br><br>The 2010 amendments to Rule 20 were designed to permit the Court to enter into various forms of case management. The judge's hands should not be tied when he or she attempts to determin what is fair and reasonable with respect to the disposition of costs on a summary judgment motion.<br><br>In this case, nothing in the conduct of the Plaintiff requires any sanction. The outcome of the motion was not a foregone conclusion. There are substantial issues that require determination. In these circumstances it would not be fair and reasonable to require the Plaintiff to pay costs at this time.   |
| Smith, Robert           | O'Dea v. Real Estate Council of Ontario               | 2011 ONSC 507          | No costs were warranted where:<br>1) Although they were successful on the application, almost half the costs sought were incurred on a preliminary motion on jurisdiction on which the respondents were unsuccessful; and<br>2) the application raised a novel and interesting issue of law, which had not previously been decided by the Courts of Ontario.  |
| McKinnon, Colin D.A.    | Clarke v. Clarke                                      | 2011 ONSC 418          | In the context of a civil action with a companion family law case, where there was profound suspicion on both sides as to the good faith of the other side, neither side was in a position to accept an offer until the evidence that was presented had been  |

**NO COSTS AWARDED**

| <b>Judge</b>   | <b>Case Name</b>   | <b>Citation / Date</b>                               | <b>Judge's Comments</b>   |
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|  |  |  | heard. The hearing was necessary to permit the parties to reach a settlement. It would not be appropriate to find one side more blameworthy than the other.   |
| HAINES, J.   | Toronto Party for a Better City v. Toronto (City),   | 2011 ONSC 5300                                       | Although the defendants were successful in the motion, the plaintiff was successful on three points within the application. The plaintiff requested that since they were successful in the three points that they should be awarded \$15,000. Alternatively, no costs should be awarded to either side as this application involved matters of public interest. Exercising discretion from within section 131(1) of the <i>Courts of Justice Act</i> and Rule 57.01 of the Rules of Civil Procedure, it would be fair and reasonable to award no costs as this was a matter of public importance.   |
| Fragomeni J.   | Caresani v. Foster,  | 2011 ONSC 7309                                       | Allegations being made by both parties are serious, conflicting and untested. An independent third party trustee is necessary to ensure the plaintiff's interests are dealt with.<br><br>Success at this motion was divided, as such, each party shall bear their own costs.  |
| Ray, Timothy   | Les Equipements de Ferme Curran Ltee/Curran Farm Equipment Ltd. v. John Deere Limited              | 2010 ONSC 4125                                       | Costs for the motions for leave and for stay will be reserved to the Divisional Court, pending the result of the appeal. However Ray J noted that, had counsel submitted cost outlines, he could have resolved the disagreement as to quantum, and left the decision on entitlement to the Divisional Court.  |
| <b>Weiler, Karen M.; Cronk, Eleanore A; Blair, Robert A.</b> | <b>GEA Group AG v. Ventra Group Co.</b>  | <b>2009 ONCA 878, [2009] O.J. No. 5303</b>           | <b>No trial costs were allowed where:</b><br><b>1) the successful third party's decision to become actively involved in the litigation, rather than assisting the existing parties in their pending similar motion necessarily delayed and prolonged the proceedings;</b><br><b>2) the matters raised on appeal represented a significant shift of the appellants' positions, and most of the evidential record from the proceedings below became essentially irrelevant for the purposes of the appeal; and</b><br><b>3) the legal issue at play in the appeal was novel, and was not considered or developed before the motions judge.</b>  |
| Roccamo, Giovanna  | The School of Dance (Ottawa) Pre-Professional Programme Inc. v. Crichton Cultural Community Centre | (2009, Ont. Sup. Ct. J.) Court File No.: 04-CV-29629 | While there were offers to settle made on both sides, no party met the burden under Rule 49.10(3) to prove that the judgment was as favourable as the terms of the offer.<br><br>The result of the trial was mixed. It was not a finding in favour of one party and against another. But a trial decision was necessary to resolve the dispute. There was no questionable conduct during the trial, but the conduct on both sides leading up to the trial "defied a negotiated agreement".<br><br>The litigation also raised important issues involving public funds and access to a heritage building that was the subject of significant public interest. The CCCC came into existence precisely in order to preserve the building. In the circumstances, an award of costs against the CCCC would be unfair. |
| Polowin,   | Dunn v. Dunn   | (2008, Ont.  | Family Law issue. The applicant was the successful party, but the presumption in favour of costs is subject to the court's  |

**NO COSTS AWARDED**

| Judge                  | Case Name                               | Citation / Date   | Judge's Comments  |
|------------------------|---|---|---|
| Heidi                  |   | Sup. Ct. J.)<br>Court File<br>No.: 03-FL-<br>3316-02                | overriding discretion.<br><br>A costs order against the respondent would cause significant hardship to her household and would impact very negatively on her ability to care for the children.  |
| Roccamo,<br>Giovanna   | Isildar v.<br>Rideau Diving<br>Supply   | (2008, Ont.<br>Sup. Ct. J.),<br>Court File<br>No.: 04-CV-<br>027264 | This was not a case in which the court should exercise its discretion not to award costs to the defendants. The issues of liability were vigorously advanced and resisted, and required the time and attention required to deal with them. A failure to do so might have rendered the need to consider the legal effect of the waiver moot. Furthermore, the waiver issue occupied relatively little time in the trial or final arguments. The law in that area was well settled, and the case turned on the application of the law to the facts.   |
| Brennan,<br>W.J. Lloyd | Rider v.<br>Dydyk                       | 2007  | Court should encourage litigants to make and to accept reasonable offers to settle; cost awards are discretionary; Rule 58.06(1)(h) provides for consideration of any other matter relevant to the assessment of costs; in this case, motorist protection provisions of the <i>Insurance Act</i> is such a matter   |
| Robertson,<br>Cheryl   | Webster v.<br>Webster<br>Estate         | [2007] O.J.<br>No. 371<br>(S.C.J.)                                  | Each party will bear their own costs; Rule 24 presumes that the successful party is entitled to costs but although the outcome is a significant factor in awarding costs, consideration of other factors must carefully be weighed; the use of the word "presumes" in Rule 24 means it is not always the case; success on individual points in this case was divided; ability to pay a cost order is not a factor in determining liability or quantum pursuant to the cost rules, but both parties here have the means to satisfy any order made; both parties acted in good faith; both lawyers were well prepared; the matter progressed without delay; no offers to settle were made here, despite a paragraph in the Will encouraging alternative dispute resolution and discouraging litigation; offers are usually but not always an important tool in measuring success; the bill of costs is reasonable; Applicant shall pay her own legal costs while the Respondent's legal costs and disbursements plus the costs and disbursements of the written costs submissions shall be paid from the residue of the Estate  |
| Sheffield,<br>Alan D.  | Harynuk v.<br>Schneider                 | 2007  | Family law issue – Rule 24. Success on the motion was divided. Each party received favourable consideration on the issues they brought before the court. The financial disparity between the two parties and the effect of an award of costs would have on each party's abilities to provide adequately for the child was taken into account. No costs awarded.   |
| Smith,<br>Robert       | Vallée v.<br>Pickard                    | [2007] O.J.<br>No. 1265<br>(S.C.J.)                                 | Neither party was found more blameworthy than the other. Neither party was completely successful and success was divided. Since the assistance of the Court was required for both parties to resolve a deadlocked situation, there will be no order as to costs.  |
| Lane J.                | Walsh v.<br>1124660<br>Ontario Ltd.     | 59 C.C.E.L.<br>(3d) 238,<br>(2007) (Ont.<br>S.C.J.)                 | Issue was whether ability to pay should be factor in the awarding of costs. In the judge's opinion, impecuniosity falls within Rule 57.01: "any other matter relevant to the question of costs." Defendant Tim Horton's sought substantial indemnity costs against plaintiff, a single mother, in the amount of \$170,000. In normal circumstances the defendant would be awarded substantial indemnity costs on the basis of the refusal of a reasonable offer and the unproven allegations of fraud. However, notwithstanding the reasonableness of the figures, there is no award of costs. The plaintiff is unable to pay and will likely remain so as she lacks both skills and the time and money to acquire them so long as she must care for her children on public support. She incurred this potential liability in the pursuit of the restoration of her employment and her reputation after being dismissed. She has been unsuccessful after a proceeding which no one could have imagined would cost what it did. A costs order against her in the amounts sought, or indeed in any lesser, but significant amount, would have no practical utility to the defendants, but would send a message which would deter others, who may have better cases, from pursuing a remedy because of the disastrous impact of costs if they lose the case. The courts exist to hear the complaints of the people. It is not in the public interest to deter the people from using their own courts for fear of the costs consequences if they lose the case. |
| Smith,<br>Robert J.    | AG Canada v.<br>Rostrust<br>Investments | [2007]  | In view of the shared responsibility for the drafting of the option agreement, the divided success, even though Rostrust was more successful, and the use of a Rule 21 motion by the Crown, which saved both parties time and expense, no costs will be awarded to either party.  |

**NO COSTS AWARDED**

| <b>Judge</b>           | <b>Case Name</b>  | <b>Citation / Date</b>                            | <b>Judge's Comments</b>   |
|------------------------|---|---|---|
|                        | Inc.  |   |   |
| Beaudoin, R.           | Roche Palo Alto LLC v. Apotex                                 | [2006] O.J. No. 3929 (S.C.J.)                     | Defendant was successful in obtaining a transfer of the proceeding; however, they failed to bring the motion properly, and this necessitated four hearings for the relief sought and the expenditure of additional time and resources. No costs disposition was made in favour of the Plaintiffs with regard to their success in resisting the original motion, and this needs to be taken into consideration in deciding whether to award the Defendant with costs. Plaintiffs were never properly compensated for their costs on the transfer issue, and for that reason there should be no costs order in this case. |
| Belobaba, Edward P.    | Cassels Brock & Blackwell LLP v. Young Island Timeshares Inc. | [2006] O.J. No. 1567 (S.C.J.)                     | Defendant was substantially successful, but success was divided between the parties. Each party to bear their own costs.  |
| Belch, Douglas M.      | Denley v. Denley  | [2006] O.J. No. 162 (S.C.J.)                      | The court has the discretion to order and fix costs at a settlement conference. Neither party's entitlement to costs has been established.  |
| Belch, Douglas M.      | Kincl v. Malkova  | 2006  | Family law issue – Rule 24. This was a complex action involving custody and access, property issues of ownership and trust claims, restraining orders and child and spousal support. The time expended by counsel on both sides was reasonable. Success was divided, and neither party was such a clear cut winner as to earn payment of costs from the other on the basis of success. In the parties' rush to convince each other and the court of his/her position, they both behaved badly. Each party is to pay his/her own costs.  |
| Charbonneau, Michel Z. | Hanna v. Hanna  | [2006] O.J. No. 4407 (S.C.J.)                     | Family law issue. Mr. Hanna failed to abide by existing support orders. Mrs. Hanna was the victim of Mr. Hanna's default and is paying a steep financial hardship for his attitude. To award costs against Mrs. Hanna would compound an obvious injustice.  |
| Hackland, Charles T.   | Capello v. Bateman  | 2006  | New trial was ordered. Generally speaking, where a new trial is ordered because the true merits of the matter were not addressed at first instance, then the costs of the initial proceeding is best determined by the judge presiding over the new trial.  |
| MacDonald, Ellen M.    | Jedfro Investments (U.S.A.) Ltd. v. Jacyk Estate              | [2006] O.J. No. 3974, 21 B.L.R. (4th) 39 (S.C.J.) | Defendants were the successful party. This was not an exceptional case. All parties were sophisticated. They were well experienced and were aware of the consequences of their business decisions. The parties entered into the joint venture agreement and made calculated business decisions thereafter. The plaintiffs lost at least \$1.4 million in contributions to the advancements of the purposes of the joint venture. Based on these considerations, this is a case for no award of costs.   |
| Morin, Gerald R.       | Seinsch v. Biggs  | 2006  | Although Rule 24(1) of the <i>Family Law Rules</i> provides that there is a presumption that a successful party is entitled to the costs of a motion, the success in this case was divided. Judge exercised his discretion to award no costs.   |
| Panet, A. deLotbinière | Cormier v. Cormier  | 2006  | Family law matter. Success between the parties was divided. Having regard to the factors referred to in Rule 24(11) of the Family Law Rules, there shall be no order as to costs (there was no detailed discussion regarding the Rule 24(11) factors).  |
| Power, Denis           | Dhanjal v. Bhoi   | [2006] O.J. No. 3694 (S.C.J.)                     | Success was divided in this case. Respondent failed to provide certain financial particulars on a timely basis. Neither party has persuaded the Court that he or she should receive an award of costs at the expense of the other.  |
| Siegel, Herman J.W.    | Adelaide Capital Corp. v. Ragusa                              | [2006] O.J. No. 4538 (S.C.J.)                     | Success between the parties was divided, and neither party was successful in respect o the relief sought by them respectively. Each party should bear their own costs of the motion.  |
| Smith, Robert          | Lampron v. Lampron  | [2006] O.J. No. 3233 (S.C.J.)                     | Family law issue. Mr. Lampron sought costs for the trial. Success, however, was divided at trial and neither party obtained a final result after trial that exceeded their offer. Both parties were self-represented and while this does not preclude a Court from ordering costs, the Court was not prepared to award costs in such a situation of divided success.  |
| Aitken,                | Cameron v.  | [2005] O.J.                                       | Success on the issues was divided between the parties. Each party should bear its own costs.  |

**NO COSTS AWARDED**

| <b>Judge</b>                      | <b>Case Name</b>  | <b>Citation / Date</b>              | <b>Judge's Comments</b>  |
|-----------------------------------|---|-------------------------------------|--|
| Catherine D.                      | MacGillvray   | No. 1757<br>(S.C.J.)                |  |
| Belch,<br>Douglas M.              | Racicot v.<br>Racicot   | 2005                                | Neither party was a clear cut winner. The legal fees far exceeded perhaps not the issue but the amount in issue, and surpass what a losing party would expect to pay the winning side.   |
| Hackland,<br>Charles T.           | Chase v.<br>Truelove  | 2005                                | There was mixed and essentially divided success between the two parties at trial. There was an absence of any determinative rule 49 offers.  |
| Lafrance-<br>Cardinal,<br>Johanne | Galarneau v.<br>Hay   | 2005                                | Family law issue: custody of child. Both parties should bear their own costs. Neither of the parties acted in bad faith or unreasonably. Both parties struggled to do what was best for the child involved in the custody dispute. This was not a complex case. Applicant will have significant costs in exercising access to the child. The applicant has to support other children. The Respondent is in a much better financial situation than the Applicant. If the Applicant is made to pay costs, the result will be that he will not be able to exercise access to the child. If costs are ordered, the child will be the one who suffers. The Court Order fell between the two offers of the parties. An award of costs solely because the court ordered one visit less than what the father was seeking, and one visit more than what the mother was offering would not be equitable. |
| Morin,<br>Gerald R.               | Pankhurst v.<br>Canadian<br>Institute for<br>Conflict<br>Resolution | 2005                                | The subject matter of this case was novel, and the applicable law was uncertain. There was merit to each side of the argument.   |
| Morin,<br>Gerald R.               | Whelan v.<br>Whelan   | 2005                                | Family law issue. The plaintiff's offer was more favourable to the defendant than the judgment awarded at trial. Defendant would not be in a financial position to be able to pay the costs requested by the plaintiff. Plaintiff is a dependent of her father. This case is not a realistic one to impose on the defendant, in addition to his obligation to pay a net equalization payment of \$78,742.84, the additional obligation to pay an additional two-thirds of that amount (approximately) on account of prejudgment interest and costs. He would be incapable of doing so. To require him to do so would impose a hardship on him which would most likely reflect adversely on the best interests of the plaintiff and the children.   |
| Power, Denis                      | Poirier v.<br>Poirier   | 2005                                | Success was somewhat divided. Neither party "beat" his/her offer. It would not be appropriate to make an award of costs in favour of either party.   |
| Rutherford,<br>Douglas J.A.       | Bell v. Lloyd-<br>Bell  | [2005] O.J.<br>No. 4610<br>(S.C.J.) | Family law issue. Applicant moved to adjust the child support retroactively and prospectively. Court adjusted child support. No order as to costs. Each party was to accept responsibility for this simple problem having to be dealt with in Family Court.  |

**ACCESS TO JUSTICE/INTERIM COSTS AND DISBURSEMENTS**

| Judge  | Case name           | Citation      | Costs awarded to | Costs Requested  | Costs Awarded | Comments   |
|--|---------------------|---------------|------------------|--|---------------|--|
| Strathy CJO,<br>Hoy ACJO,<br>Feldman,<br>Brown, Paciocco<br>JJA  | Cadieux v. Cloutier | 2019 ONCA 241 | Plaintiff        | \$100,000.00 plus disbursements and HST of \$98,798.00               | \$25,000.00   | Plaintiffs total net compensation did not result in overcompensation. He has permanent, serious and disabling, injuries. The outcome of the proceeding was clearly not what he and his lawyer expected, given an offer to settle of \$900,000.00.  |
| Winkler, CJO<br>(ONCA)   | McCracken v. CNR    | 2012 ONCA 797 | Defendant        | \$300,000 + \$13,293.49 disbursements (1/3 of actual costs incurred) | \$60,000      | Substantial amount of work done arises in connection with the Divisional Court proceedings, which were resolved on consent on a no costs basis. However, CN reduced the amount of its alleged actual costs on a partial indemnity basis by approximately \$180,000, which neutralizes the concern.<br><br>Engaging serious, novel legal issues a factor. Public interest concerns. Access to justice issues for plaintiffs in class proceedings. Costs reduced accordingly.  |
| Binnie, William<br>(delivered judgment of the Court);<br>McLachlin,<br>Beverley; LeBel,<br>Louis;<br>Deschamps,<br>Marie; Fish,<br>Morris;<br>Charron,<br>Louise;<br>Rothstein,<br>Marshall;<br>Cromwell,<br>Thomas;<br>concurring reasons from<br>Abella, Rosalie | R. v. Caron         | 2011 SCC 5    |                  |  |               | Superior courts may, in some circumstances, issue interim costs orders to fund the defence of regulatory prosecutions in provincial courts. The authority to do so derives from the Superior court's inherent jurisdiction to "render assistance to inferior courts to enable them to administer justice fully and effectively."<br><br>This intervention must be exercised cautiously, and is only available where:<br>the inferior tribunal is powerless to act;<br>the intervention is essential to prevent a serious injustice in derogation of the public interest; and,<br>the intervention has not been barred by statute.<br><br>The criteria formulated in British Columbia (Minister of Forests) v. Okanagan Indian Band and Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue) (No. 2) are helpful to assess whether intervention is essential. These criteria are:<br>(1) the litigation would be unable to proceed if the order were not made;<br>(2) the claim to be adjudicated is prima facie meritorious;<br>(3) the issues raised transcend the individual |

**ACCESS TO JUSTICE/INTERIM COSTS AND DISBURSEMENTS**

| Judge                | Case name   | Citation                           | Costs awarded to | Costs Requested | Costs Awarded | Comments  |
|----------------------|---|------------------------------------|------------------|-----------------|---------------|---|
|                      |   |                                    |                  |                 |               | <p>interest of the particular litigant, are of public importance, and have not been resolved in previous cases.</p> <p><b>The superior court must decide whether, considering all the circumstances, the case is sufficiently special that it would be contrary to the interests of justice to deny the funding application, or whether it should consider other methods to facilitate the hearing of the case.</b></p>   |
| McKinnon, Colin D.A. | The Friends of the Greenspace Alliance v. Ottawa (City) | 2011 ONSC 472, [2011] O.J. No. 274 |                  |                 |               | <p>The applicant sought to be relieved from a cost order arising from their abandonment of an appeal of a decision of the Ontario municipal board. McKinnon J applied the analysis of <i>St. James Preservation Society v. Toronto (City)</i>, [2006] O.J. No. 2726 (S.C.J.), despite acknowledging that this decision had been overturned on appeal.</p> <p>Although the applicants could be assumed to be public interest litigants, the respondents included private actors who had done nothing illegal, and who were forced to participate in ill-advised litigation. There was no public benefit to the litigation; the Board had no jurisdiction over the issues raised.</p> <p>Public interest litigation must be pursued responsibly and not recreationally. There was no justification in this case to excuse the applicants from the cost order.</p> |

**ACCESS TO JUSTICE/INTERIM COSTS AND DISBURSEMENTS**

| <b>Judge</b>  | <b>Case name</b>              | <b>Citation</b>                            | <b>Costs awarded to</b> | <b>Costs Requested</b>   | <b>Costs Awarded</b>  | <b>Comments</b>  |
|---|-------------------------------|--|-------------------------|--|---|--|
| Sachs, Harriet E.   | Berry v. Scotia Capital Inc.  | 2010 ONSC 1948                             | Appellant (Defendant)   |  | for the cross motion, which was dismissed: \$4,000<br>costs of the motion for leave reserved pending the appeal                       | Leave to appeal a costs award of \$345,733 for a two day summary judgment motion was granted. The defendant's cost outline had claimed total costs of \$36,739.98.<br><br>Size of the award alone is not enough to warrant appellate review. However it does justify careful scrutiny of the principles applied.<br><br>Per Boucher, the overall reasonableness of the award must be assessed. The trial judge stated that she did this, but provided no real details as to how. The fairness of the award in light of the fundamental principle of access to justice is open to "very serious debate".  |
| Doherty J.A.,<br>E.A. Cronk J.A.,<br>and M.<br>Rosenberg J.A. | Walsh v. 1124660 Ontario Ltd. | 2008 CarswellOnt 3809<br>2008 ONCA 522     | Respondent              |  | Costs to Police in the amount of \$4,000 and costs to Tim Horton's in the amount of \$7,000; both inclusive of disbursements and GST. | <b>The appellant chose to pursue an appeal. Once again, the respondents have been totally successful. The respondents have incurred further legal costs. They should not be deprived of their costs a second time. Costs to the "police" respondents in the amount of \$4,000. Costs to the "Tim Horton's" respondents in the amount of \$7,000. Costs are inclusive of disbursements and GST. The respondents will no doubt have regard to the appellant's financial circumstances when determining what steps, if any, should be taken to enforce this order.</b>  |
| Lane J.   | Walsh v. 1124660 Ontario Ltd. | 59 C.C.E.L. (3d) 238, (2007) (Ont. S.C.J.) | None                    | Police: partial indemnity in the amount of \$113,000.<br>Tim Horton's: substantial indemnity in the amount of \$170,000. | None  | Issue was whether ability to pay should be factor in the awarding of costs. In the judge's opinion, impecuniosity falls within Rule 57.01: "any other matter relevant to the question of costs." In normal circumstances the defendant would be awarded substantial indemnity costs on the basis of the refusal of a reasonable offer and the unproven allegations of fraud. However, notwithstanding the reasonableness of the figures, there is no award of costs. The plaintiff is unable to pay and will likely remain so as she lacks both skills and the time and money to acquire them so long as she must care for her children on public support. She incurred this potential liability in the pursuit of the restoration of her employment and her reputation after being dismissed. She has been unsuccessful after a proceeding which no one could |

**ACCESS TO JUSTICE/INTERIM COSTS AND DISBURSEMENTS**

| <b>Judge</b>                      | <b>Case name</b>                               | <b>Citation</b>                                     | <b>Costs awarded to</b> | <b>Costs Requested</b>                                | <b>Costs Awarded</b>                              | <b>Comments</b>   |
|-----------------------------------|--|---|-------------------------|---|---|---|
|                                   |  |   |                         |   |   | have imagined would cost what it did. A costs order against her in the amounts sought, or indeed in any lesser, but significant amount, would have no practical utility to the defendants, but would send a message which would deter others, who may have better cases, from pursuing a remedy because of the disastrous impact of costs if they lose the case. The courts exist to hear the complaints of the people. It is not in the public interest to deter the people from using their own courts for fear of the costs consequences if they lose the case.  |
| Rutherford J.                     | Bray v. Ottawa Police Services Board           | [2007] O.J. No. 1874                                | Defendant               | Partial indemnity basis in the amount of \$10,382.62. | Partial indemnity basis in the amount of \$5,000. | There are costs rulings in which courts have given special consideration to a litigant who, although unsuccessful, has pursued a matter of public importance. In exercising the discretion given to the Court in assessing costs, I have concluded that the costs discipline implicit in the normal rule that the unsuccessful litigant pays costs to the successful party should be relaxed in this case.  |
| Panet, Jean-Antoine de Lotbinière | Denis v. Bertrand & Frère Construction Company | [2007] C.C.S. No. 1412, 2006 CanLII 40225 (ON S.C.) | Plaintiffs              | Interim disbursements in the amount of \$855,000.     | Interim disbursements in the amount of \$855,000. | <p>The case was a class action arising from foundations defects allegedly resulting from the substitution of fly ash for cement powder in the concrete used. The plaintiffs had expended over \$1 M in disbursements, mostly in fees to engineering companies, and anticipated a further \$300 K in disbursements. The class members had contributed almost \$400 K, and the defendants had voluntarily contributed a further \$100 K, leaving a \$855 K shortfall, which the plaintiffs asserted they could not fund.</p> <p>Panet J. applied British Columbia (Minister of Forests) v. Okanagan Indian Band, 2003 SCC 71 (CanLII), [2003] 3 S.C.R. 371, to hold that it was "neither realistic nor reasonable in the present circumstances to require the Plaintiffs, at this stage, to contribute the necessary funds in order to achieve settlement or resolution of their claims." The defendants had conceded liability with respect to 150 of the 176 properties, and it was clear that the defendants would be liable for damages of at least \$8 - \$10 M.</p> <p>The overriding obligation of the court was to see that</p> |

***ACCESS TO JUSTICE/INTERIM COSTS AND DISBURSEMENTS***

| <b>Judge</b>  | <b>Case name</b>                             | <b>Citation</b>      | <b>Costs awarded to</b> | <b>Costs Requested</b>                      | <b>Costs Awarded</b>                        | <b>Comments</b>   |
|---------------|--|----------------------|-------------------------|---|---|---|
|               |  |                      |                         |   |   | justice was done. In the extraordinary circumstances of this case, it was appropriate to exercise the jurisdiction of the court to order an interim award to cover anticipated disbursements. However this was not to be seen as creating any entitlement to further amounts if costs increased.  |
| Feldman, K.N. | 1465778 Ontario Inc. v. 1122077 Ontario Ltd. | [2006] O.J. No. 4248 | Applicant               | Partial indemnity in the amount of \$4,500. | Partial indemnity in the amount of \$4,500. | The Respondent objected to an award of costs on the basis that counsel for the Applicant acted pro bono. However, it is not inappropriate, nor does it derogate from the charitable purpose for pro bono counsel to receive some reimbursement through an award of costs. Allowing such awards would ensure parties knew they were not free to abuse the system without fear of costs sanctions, and would encourage more lawyers to work pro bono. |

**MISCELLANEOUS**

| Judge       | Case name                       | Citation       | Costs awarded to                                | Costs Requested  | Costs Awarded   | Comments   |
|-------------|---------------------------------|----------------|---|--|---|--|
| Corthorn J. | Connolly and Connolly Obagi LLP | 2019 ONSC 1693 | Applicants                                      | The approval of a fee agreement after a claimant changed representation.   | The agreement was approved.   | <p><b>This application was to close a civil suit where a child was incapacitated in a car accident. During this suit, the child's representation changed, and the court was asked whether the agreement between the two lawyers was reasonable. Usually lawyers' contingency fees are not included together with costs unless exceptional circumstances apply. (s.28 of Solicitor's Act)</b></p> <p><b>The lawyers successfully showed that exceptional circumstances applied, and the judge referred to the factors in the <i>Amalki</i> case to make this determination. The factors are:</b> factual and legal complexity, financial risk, importance of litigation to public, resources expended by counsel in achieving good result. These are meant to balance lawyers' fees from becoming too excessive while still attempting to fairly compensate lawyers when a contingency fee is not enough.</p> |
| Cothorn J.  | Connolly v. Riopelle            | 2019 ONSC 3988 | Plaintiff and 3 <sup>rd</sup> parties (lawyers) | <p>Connolly Obagi requests \$570,000 and HST of \$74,100</p> <p>Moore requests \$190,000 and HST of \$24,700</p> | <p>\$539,533.65 for the main action (Connolly Obagi and plaintiff)</p> <p>\$109,301.76 for Moore (previous lawyer).</p> | <p><b>This case involved the lawyers in <i>Connolly and Connolly Obagi LLP</i> asking the court to enforce the terms of the contingency fee agreement they got approved by the court.</b></p> <p><b>Here, the reasonableness of the fees charged are being assessed. The court used the factors set out in <i>Raphael Partners v Lam</i> to assess reasonableness. They are:</b> legal complexity, risk assumed by lawyer, time expended by lawyer, results achieved. It was found that the costs in the contingency agreement and costs for the main action and third party claim were awarded.</p>   |
| Roberts JA  | Newell v. Sax                   | 2019 ONCA 445  | Appellants                                      |  | \$10,000.00   | <p><b>Court applied <i>quantum meruit</i> to determined costs where there are no time records of the solicitors work, no retainer agreement, and the sale of the property was for \$14 million. Court also considered that while there was no retainer, the solicitor did "good work" on a complicated transaction.</b></p> <p><b>In assessing costs on a <i>quantum meruit</i> basis, the court should not conduct a mathematical analysis. The analysis is a nuanced, contextual approach.</b></p>   |

**MISCELLANEOUS**

| Judge   | Case name                                  | Citation       | Costs awarded to   | Costs Requested  | Costs Awarded | Comments  |
|---|--|----------------|--|--|---------------|---|
|   |  |                |  |  |               | <p>The court should consider the following factors:</p> <ol style="list-style-type: none"> <li>1. The time expended by the solicitor;</li> <li>2. The legal complexity of the matter dealt with;</li> <li>3. The degree of responsibility assumed by the solicitor;</li> <li>4. The monetary value of the matters in issue;</li> <li>5. The importance of the matter to the client;</li> <li>6. The degree of skill and competence demonstrated by the solicitor;</li> <li>7. The results achieved;</li> <li>8. The ability of the client to pay; and</li> <li>9. The reasonable expectation of the client as to the amount of fees.</li> </ol> |
| Strathy CJO,<br>Hoy ACJO,<br>Feldman,<br>Brown, Paciocco<br>JJA | Cadieux v. Cloutier                        | 2019 ONCA 241  | Plaintiff  | \$100,000.00 plus disbursements and HST of \$98,798.00 | \$25,000.00   | Appellant challenged the method of deducting SABS from the jury's award. This is a complicated and unsettled area of law. The appeal establishes principles and practices that have effects beyond this particular case.  |
| S. F. Dunphy, J.  | Gilbert's LLP v. Dixon Inc.                | 2016 ONSC 753  |  |  |               | In this case, the plaintiffs were owed some outstanding fees. There was no dispute about these fees and the plaintiffs simply wanted to move the process along. They recognized the delay which would take place if they used s.3 of the Solicitors Act and attempted to have their accounts assessed. Instead they attempted to go through s.23 and s.24, which allows the process be done through application. As there was no dispute as to the reasonableness this was not the proper avenue and the judge denied the application.  |
| Shelston J.   | McNaught v. McNaught                       | 2015 ONSC 5010 | Plaintiff  | \$38,935.05  | \$17,500      | This was a divorce dispute and all matters were settled in the minutes of settlement. The judge ruled that the "winner or loser" approach was not appropriate and instead applied the divided success approach when awarding some costs to the plaintiff. The judge noted that the plaintiff offered an offer to settle which was close to the final resolution. That mixed with the actions of the defendant which prolonged the procedure were enough for the judge to award some costs even though everything resolved on consent and there was no clear winner.   |
| Master C. MacLeod   | Hession v. Black Construction Services Inc | 2015 ONSC 7047 | Defendant as well as the plaintiff in their role as defendant of cross claim and third party claim | Left to be assessed                                    |               | The plaintiffs discontinued their claim. The defendants however continued their counter claim and third party claim following the discontinuation of the main claim for some time until they ultimately discontinued it as well. The master awarded costs to the original   |

**MISCELLANEOUS**

| <b>Judge</b>                | <b>Case name</b>            | <b>Citation</b> | <b>Costs awarded to</b> | <b>Costs Requested</b>                        | <b>Costs Awarded</b>                          | <b>Comments</b>  |
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|                             |                             |                 |                         |   |   | defendant until the point the main claim was discontinued. From then forward he awarded costs to the plaintiff of the original action for having to continue to defend the counterclaim and third party claim. Their master did not assess costs and made note that this is a role that neither judges nor masters can take. It is set aside solely for assessment officers. Masters and judges can fix and award costs but do not have the power to assess costs.   |
| Belch, J                    | Robins v Wagar              | 2014 ONSC 6989  | Ontario                 | \$6300  | \$6000  | Rates suggested in "Information to the Profession" found to be substantially reasonable and correct  |
| Smith, J                    | Cantave v Cantave           | 2014 ONSC 5999  | Wife                    | \$41,259.43                                   | \$13,500                                      | Applicant wife experienced DoJ lawyer. She was more successful and husband engaged in reprehensible conduct. However, no family law specialty, and respondent husband incurred only \$15,000 in legal costs.   |
| Belch, J                    | 2145850 Ontario Inc. v STEO | 2014 ONSC 7401  | Plaintiff, Crown        | P: \$196,334<br>C: \$61.950<br>STEO: \$93,326 | P: \$150,000<br>C: \$61.950<br>STEO: \$93,326 | Motion with divided success, Plaintiff mostly successful.<br><br>Reduction in Plaintiff's award based on hours the Court felt was reasonable rather than hourly rates.<br><br>Costs awarded to Crown, despite novelty of the funding issue, as the Court found that the case was primarily about private economic interests.<br><br>Court felt STEO's claim for costs had some merit, but felt that the work done by STEO's counsel was usable at trial or judicial review. The Court declined to award partial costs, as it felt that it may create a risk that in calculating the costs at trial for something to be counted twice or missed altogether. |
| Laskin JA, Cronk JA, Hoy JA | Bales Beall, LLP v. Fingrut | 2013 ONCA 266   | Plaintiff               |   | \$202,822.28                                  | Client appeals from motion judge's decision declining to confirm the report and certificate of the assessment officer and varying the recoverable quantum of costs.<br><br>Appeal Dismissed: Trial Judge made four findings of error in the assessment of costs that hold up on appeal. Justified in declining to confirm Assessment Officer's report.<br><br>- Assessment Officer erred in evaluation of the skill and competence of solicitors, as findings were not   |

**MISCELLANEOUS**

| Judge  | Case name                                       | Citation                     | Costs awarded to | Costs Requested | Costs Awarded  | Comments   |
|--|---|------------------------------|------------------|-----------------|--|--|
|  |   |                              |                  |                 |  | <p>supported by evidence.</p> <p>-Expert evidence on standard of skill/competence of lawyer is not always a prerequisite to a consideration of quality of legal services, but evidentiary support is required for a claim of incompetent assistance when matter resolved by way of voluntary settlement.</p> <p>- Assessment Officer used old grid rather than retainer rates for no good reason.</p> <p>-“Team approach” to case management disclosed in retainer agreement and not inherently objectionable.</p>   |
| Cunningham, J.<br>Douglas; Ferrier,<br>Lee K.;<br>Lederman,<br>Sidney N. | Karamzadeh v.<br>Pierre                         | 2010 ONSC 1319<br>(Div. Ct.) |                  |                 |  | <p>The trial judge applied statutory deductions which had the effect of nullifying the jury's damage award to the plaintiff. At the conclusion of the trial, he stated that the defendants were completely successful and were therefore entitled to their costs. He then invited written costs submissions. The plaintiff did not make submissions, because his only objection was to entitlement, not to quantum, and he thought the trial judge had rendered his decision on that issue.</p> <p>On appeal, the Divisional Court agreed that the trial judge had determined the issue of entitlement before hearing submissions. This was a breach of the principles of procedural fairness.</p> <p>The plaintiff argued that the statutory deductions were not relevant to costs considerations, under Rule 49 or otherwise. As this was a novel issue that ought to be determined by a trial judge, the matter was remitted for reconsideration.</p> |
| Price, David   | Cindy Jahn-<br>Cartwright v. John<br>Cartwright | 2010 ONSC 2263               | Applicant        | \$20,000.00f    | \$9,038, plus HST, and<br>disbursements of<br>\$616.56 | Price J. considered principles applicable to assessing costs for self-represented litigants. He held that a trial judge's discretion in awarding costs should be exercised with regard to give principles:<br>indemnity;<br>encouragement of settlement;<br>discouragement of frivolous claims;<br>discouragement of unnecessary litigation steps; and<br>improvement of access to justice.  |

**MISCELLANEOUS**

| <b>Judge</b>       | <b>Case name</b>                                | <b>Citation</b>                                      | <b>Costs awarded to</b> | <b>Costs Requested</b>  | <b>Costs Awarded</b> | <b>Comments</b>  |
|--------------------|---|--|-------------------------|---|----------------------|--|
|                    |   |  |                         |   |                      | <p>Awarding costs to self-represented litigants encourages settlement and improves access to justice by removing a party's sense of immunity from a costs award when facing an unrepresented individual. However costs are an indemnity and should not be a source of profit for the successful party.</p> <p>Although self-represented parties are not entitled to the same pay scale as lawyers, an hourly rate was an appropriate way to assess costs. The work done that was the key factor in quantifying costs, not who did it.</p> <p>The applicant faced an experienced lawyer. The calibre of the documents she produced and her conduct throughout the proceedings justified a rate of \$200, calculated as 2/3 of the reasonable partial indemnity rate for opposing counsel. Any excess time spent due to the applicants inexperience was "more than offset by the lower hourly rate applied to her time."</p> |
| Matheson, Barry H. | Daimler Chrysler v. 1377738 Ontario Inc. et al  | 2010 ONSC 931  | Plaintiff               |   | \$19,793.80          | The case was decided under the old subrule 20.06(1). Matheson J. recognized that the new amendment allowed additional latitude, but held that it was not retroactive.  |
| Price, David       | Wright v. Wal-Mart et al                        | 2010 ONSC 2936                                       | Plaintiff               | in the third party claim: \$4,575.00 in fees and \$9,880.00 from third party defendant Cari-All |                      | <p>Where a third party submits a statement of defence in the main action, it opens itself up to liability for costs in the main action. The plaintiff was entitled to reasonable costs for responding to third-party Cari-All's defence in the main action.</p> <p>However the third party's defence was reasonably attributable to Wal-Mart's third-party claim for indemnification. Cari-All was successful in defending that claim. Consequently Wal-Mart rather than Cari-All, was required to pay the plaintiff's costs in relation to that defence.</p>  |
| Ratushny, Lynn     | Dubuc v. 1663066 Ontario Inc. (Laurier Optical) | (2009, Ont. Sup. Ct. J.) Court File No.: 08-CV-40526 |                         |   |                      | Plaintiffs sued for defamation based on letters that were privileged on their face, and an inaccurate assumption as to their publication. They did so without first ascertaining whether there was any evidence that publication had in fact occurred. Their   |

**MISCELLANEOUS**

| Judge                                       | Case name   | Citation   | Costs awarded to                  | Costs Requested   | Costs Awarded   | Comments   |
|---|---|--|-----------------------------------|---|---|--|
|   |   |  |                                   |   |   | request for "dismissal" is actually seeking a discontinuance subject to Rule 23.01(1)(a). The defendants are presumptively entitled to costs under Rule 23.05(a).  |
| Power, Denis                                | Casa Luna Furniture v. Ottawa (City)                                    | (2009, Ont. Sup. Ct. J.) Court File No.: 06-CV-34423 | Third Party (Graydex Ottawa Inc ) | \$8,113.34, on a partial indemnity basis  | \$4,000, all-in   | Rule 29.05(2) includes the possibility that a third party may be entitled to an award of costs.<br><br>"[W]here two separately represented parties proceed in tandem to seek orders to dismiss the plaintiff's claim, even where they agree to a division of labour, an award of a full set of costs to each would be unreasonable."   |
| Sharpe, Robert; LaForme, Harry; Watt, David | Inforica Inc. v. CGI Information Systems and Management Consultants Inc | 2009 ONCA 642  | Appellant (Respondent)            |   | \$15,000 for the appeal and \$25,000 for the motion in the superior court.<br><br>The original order for posting \$750,000 security for costs was restored. | An arbitrator's order of security for costs was not a ruling on the arbitrator's own jurisdiction to conduct the arbitration. Therefore the applications judge had no authority to review it or set it aside under s. 17(8) of the Arbitration Act, 1991, S.O. 1991, c. 17. Neither was the order an "award" within the meaning of s. 46(1). Consequently the applications judge had no jurisdiction to set aside the order for security for costs.              |
| Polowin, Heidi                              | Désir v. Care Canada  | (2009 Ont. Sup. Ct. J.) Court File No.: 04-CV-028853 | Defendant                         | Costs for of \$8,327.55 (full indemnity) plus costs for the preparation of costs submissions of \$5,425.14 (full indemnity) and \$7,371 (full indemnity) for costs thrown away. | Costs of \$8,000 total, of which \$5,000 to be paid by the plaintiff's former counsel, personally.  | In the context at hand it was impossible to determine how much of the work claimed in preparation for the trial had truly been wasted. In these circumstances it was appropriate to estimate an amount to be ordered for costs thrown away, however this was not intended to be a final determination. It was left open to the trial judge to revisit the issue of costs thrown away when it became more apparent how much of the work claimed was truly wasted. |
| Glustein, Benjamin T.                       | Hakim Optical Laboratory Ltd. v. Phillips                               | (2009), 98 O.R. (3d) 798 (Ont. Sup. Ct. J.)          | Defendant                         | Not disclosed   | \$8,500 inclusive of GST and disbursements, on a partial indemnity scale  | Failure to request costs in a notice of motion does not bar a cost order, provided they are requested at the hearing. Rule 57.03(1) requires the court hearing a contested motion to order costs unless it is satisfied that a different order would be more just.   |
| Graham, Andrew                              | Ortepi v. Pozzuoli et al.   | (2008), 89 O.R. (3d) 452 (Ont. Sup. Ct. J.)          | n/a                               | n/a   | n/a   | Neither rule 57.03(2) nor rule 60.12 enable a party to move for dismissal or stay of one proceeding because of a failure to pay a costs order made in another action. Both rules refer to the "proceeding" in the singular. This limits their application to the proceeding in which   |

**MISCELLANEOUS**

| <b>Judge</b>        | <b>Case name</b>                               | <b>Citation</b>                                   | <b>Costs awarded to</b>               | <b>Costs Requested</b>   | <b>Costs Awarded</b>   | <b>Comments</b>  |
|---------------------|--|---|---------------------------------------|--|--|--|
|                     |  |   |                                       |  |  | <p>the order was made.</p> <p>This interpretation is reinforced by the wording of rule 56.01(1)(c), which explicitly refers to "the same or another proceeding".</p> <p>The defendants are not left without a remedy for the plaintiff's failure of comply with the order in another action. They can move for security for costs under rule 56.01(c). They also have recourse to all of the enforcement remedies available under rule 60.</p>                       |
| Lederman,<br>Sidney | Audience<br>Communication Inc.<br>v. Sguassero | (2008), 91 O.R.<br>(3d) 47 (Ont.<br>Sup. Ct. J.)  | Applicants and<br>Defendant Teplitsky | <p>The applicants (plaintiffs) sought a total of \$90,552.34 for partial indemnity costs.</p> <p>Defendant Teplitsky sought partial indemnity costs totaling \$20,000.</p> | <p>The applicants were awarded \$52,000 all inclusive, to be paid by defendant Sguassero.</p> <p>Defendant Teplitsky was awarded \$20,000 in partial indemnity, to be paid by defendant Sguassero, under a Sanderson order.</p>  | <p>The applicants were substantially successful against defendant Sguassero, but not against defendant Teplitsky. Defendant Teplitsky was entirely successful, and was entitled to partial indemnity costs. The circumstances justify a Sanderson order: the claims were not independent and did overlap; the same series of events was relevant to consider the liability of each; it was reasonable for the applicants to proceed as against both respondents.</p> |
| Taylor, Gerald      | H. L. Staebler<br>Company Limited v.<br>Allan  | (2008), 92 O.R.<br>(3d) 788 (Ont.<br>Sup. Ct. J.) | Defendant                             | Substantial indemnity costs  | <p>\$558,232.50, consisting of:</p> <p>Partial indemnity fees to May 2, 2005: \$8,650</p> <p>Substantial indemnity fees after May 2, 2005: \$462,000</p> <p>Disbursements: \$46,000</p> <p>GST: \$25,832.50</p> <p>costs for submissions on costs on the partial indemnity scale: \$15,000 plus \$750 GST, inclusive of disbursements.</p> | <p>It was not open to the trial judge to revisit costs awards to the plaintiff, issued by another judge in relation to an interlocutory injunction. Potentially those costs could be dealt with as damages to the defendant as a result of the interim and interlocutory injunctions, but that would have to be addressed in assessing those damages (if any).</p>   |

**MISCELLANEOUS**

| <b>Judge</b> | <b>Case name</b>                         | <b>Citation</b>                              | <b>Costs awarded to</b>   | <b>Costs Requested</b>   | <b>Costs Awarded</b>   | <b>Comments</b>   |
|--------------|--|--|---|--|--|---|
| Dash, Ronald | Noah v. Desjardins<br>Financial Security | [2008] O.J. No.<br>437 (Ont. Sup.<br>Ct. J.) | Plaintiff for costs for<br>the motion; Defendant<br>for costs for the costs<br>submission | Plaintiff requested<br>\$3,554.53; Defendant<br>requested \$1,078.20 | \$1,420 to plaintiffs on<br>a partial indemnity<br>basis; \$915 to the<br>defendants. Setting<br>one off against the<br>other, the net award is<br>\$505 to the plaintiffs | <p>The plaintiffs wished to argue for costs of a motion, but did not submit a Costs Outline (Form 57B) as per Rule 57.01(6), and were not prepared to make oral submissions on costs at the hearing. That Rule has two requirements, the prescribed form (Form 57B) and the time of its delivery (at the hearing). Both of these are mandatory. Parties who fail to comply risk having their requests rejected.</p> <p>The defendants were prepared to make oral submissions on costs, and objected to being subjected to the unnecessary expense of preparing written submissions. The defendants were therefore entitled to be compensated on a partial indemnity basis for these expenses, with a 20% reduction for the plaintiff's partial success.</p> <p>The plaintiff never submitted a Form 57B Costs Outline, though they did supply a list of hours incurred and rates. In the absence of any information to the contrary, the rates specified must be assumed to be full indemnity rates.</p> <p>The motion was not complex, nor were the issues involved particularly important to the key issues in the action. However it could not be said to be unnecessary. Service of the motion to compel the defendant to answer questions prompted the delivery of further answers on the same day, as well as subsequent amended answers. The plaintiffs are entitled to partial indemnity costs up to that second response. However the time spent reviewing the answers cannot all be allocated to the motion. It is more properly part of the costs of the action.</p> |

**LIABILITY OF SOLICITOR FOR COSTS (RULE 57.07)**

| Judge                               | Case Name   | Citation / Date                     | Costs Awarded To | Costs Requested  | Costs Awarded   | Judge's Comments  |
|-------------------------------------|---|-------------------------------------|------------------|--|---|---|
| Weiler JA.<br>Sharpe JA<br>Blair JA | Galganov v. Russell<br>(Township)                                       | 2012 ONCA 410, 350 D.L.R. (4th) 679 | Appellant        |  | \$25,000 on partial indemnity basis, inclusive        | <p>A judge's decision to award costs is a discretionary one, and a high degree of deference is owed by a reviewing court. It can be set aside only if the judge "made an error in principle or was plainly wrong".</p> <p>Application judge failed to differentiate between the solicitor's own conduct ("acting in his personal capacity") and solicitor's actions based on client instructions ("acting as agent for his clients"). The failure of the client to waive privilege and allow the solicitor to reveal their instructions in mounting his defence to misconduct allegations also factor that must be considered.</p> <p>With respect to an expert witness who was proposed and then rejected by the judge, judge awarding costs cannot rely on "hindsight" to evaluate whether proposing that expert in the first place was reasonable and use a negative conclusion as basis to award costs against solicitor.</p> <p>These two errors were "errors in principle" and cost awards against solicitor personally must be set aside; costs awarded to solicitor for motion before application judge, motion for leave to appeal, and for appeal, all payable by Township.</p> |
| Métivier, M.                        | Galganov v. Russell<br>(Township)                                       | 2011 ONSC 5609                      | Respondent       | Respondent seeks: \$20,800<br><br>Solicitor's position is that \$10,000 is appropriate   | \$10,000 in costs along with \$2,300 in disbursements | <p>This is the costs decision relating to the May 30, 2011 motion for the solicitor, Kenneth Bickley, to pay 40% of the costs awarded personally.</p> <p>Having already ordered most substantial costs against the solicitor, discretion must be exercised again in a reasonable and fair fashion</p>   |
| McKinnon, Colin D.A.                | Cana International Distributing Inc. v. Standard Innovation Corporation | 2011 ONSC 752, [2011] O.J. No. 461  | Defendant        | \$30,839.54 on a partial indemnity scale   | as requested  | <p>Costs for an unsuccessful application for an interlocutory injunction were ordered payable forthwith, in any event of the cause.</p> <p>[at para 7:] "In my opinion, absent extraordinary circumstances, costs on an unsuccessful interlocutory injunction should be payable forthwith. An application for an injunction is a discrete legal remedy involving substantial costs. There is no reason that costs should not follow the event where the application is unsuccessful."</p>   |
| Polowin, Heidi                      | Kaymar Rehabilitation Inc. v. Champlain Community                       | 2011 ONSC 953                       | Defendants       | \$57,240.40, plus applicable taxes of \$3,582.63 and disbursements of \$14,312.07, for a | \$55,000, inclusive                                   | <p>COTA is not entitled to costs in relation to Kaymar's motion for discoveries. These were fixed at \$3,000 against COTA, payable in the cause. A party cannot recover costs in respect of an interlocutory proceeding where costs have been awarded to the opposite party as "payable in the cause", even if they are awarded</p>   |

**LIABILITY OF SOLICITOR FOR COSTS (RULE 57.07)**

| Judge  | Case Name                  | Citation / Date                                      | Costs Awarded To | Costs Requested   | Costs Awarded   | Judge's Comments   |
|--|----------------------------|--|------------------|---|---|--|
|  | Care Access Centre, et al. |  |                  | total of \$75,135.10  |   | costs of the action at trial.  |
| Horkins, Carolyn J.  | Covriga v. Covriga         | 2010 ONSC 3030                                       | Respondent       | Full indemnity costs totaling \$111,632 or in the alternative, partial indemnity costs up to the offer date and substantial indemnity thereafter, totaling \$98,478.74. | Applicant: \$66,139.28<br>Counsel: \$39,734.17                    | <p>Costs were assessed against counsel, personally. Justice Horkins held that the "inexcusable misconduct" standard requiring a finding of bad faith, as endorsed by the Supreme Court of Canada in <i>Young v. Young</i>, [1993] 4 S.C.R. 3, was not applicable in the context of Family Law Act proceedings. <i>Young</i> was decided before the Family Law Rules came into effect.</p> <p>Subrule 24(9) permits costs against a lawyer where the lawyer or agent "has run up costs without reasonable cause or has wasted costs." There is no requirement of bad faith.</p> <p>Counsel's conduct in this case was described as "shocking". She caused extensive delay, unnecessary costs, made it virtually impossible to settle, and was partially responsible for the applicant's failure to respect her obligations under the Family Law Rules and court orders. Justice Horkins noted that "If [counsel's] conduct does not attract a costs order it is difficult to imagine what conduct would."</p> |
| Cunningham, J. Douglas; Hackland, Charles T.; Taliano, Donald J. | Carleton v Beaverton Hotel | (2009), 98 O.R. (3d) 391 (Ont. Sup. Ct. J. Div. Ct.) | Defendant        | Motions judge awarded costs of \$15,000 of which \$10,000 was to be paid by the plaintiff's solicitor under Rule 57.07.   | On appeal, the order against solicitor personally was overturned. | <p>Rule 57.07 orders must only be made sparingly, in clear cases and not simply because the conduct of a solicitor may appear to fall within the scope of the rule. The solicitor's comments, while unfortunate and discourteous, were not egregious and were directed to matters in issue on the motion.</p> <p>The legal test for Rule 57.07 is concerned with costs unreasonably incurred and not with professional conduct generally. It is a two step test:</p> <ol style="list-style-type: none"> <li>1) Did the lawyer's conduct cause costs to be incurred unnecessarily; and</li> <li>2) In the circumstances, is the imposition of costs against the lawyer personally warranted?</li> </ol> <p>A judge awarding costs under Rule 57.07 must provide sufficiently detailed reasons to enable a party and counsel to know why costs were awarded against him or her and to allow meaningful review. It was "not clear" this had occurred in this case.</p>  |
| Polowin, Heidi   | Désir v. Care Canada       | (2009 Ont. Sup. Ct. J.)                              | Defendant        | Costs for of \$8,327.55 (full   | Costs of \$8,000 total, of which                                  | There is no requirement of "bad faith" for an order under Rule 57.07. The conduct of the lawyer in repeatedly failing to respond to  |

**LIABILITY OF SOLICITOR FOR COSTS (RULE 57.07)**

| <b>Judge</b>     | <b>Case Name</b>                                       | <b>Citation / Date</b>                                     | <b>Costs Awarded To</b>   | <b>Costs Requested</b>  | <b>Costs Awarded</b>  | <b>Judge's Comments</b>  |
|------------------|--|--|---|---|---|--|
|                  |  | Court File No.: 04-CV-028853                               |   | indemnity) plus costs for the preparation of costs submissions of \$5,425.14 (full indemnity) and \$7,371 (full indemnity) for costs thrown away. | \$5,000 to be paid by the plaintiff's former counsel, personally.                                     | communication in a timely fashion, or at all, in failing to advise opposing counsel of his suspension by the Law Society of Upper Canada, in failing to attend the Settlement Conference without satisfactory excuse, in misrepresenting that he would not be available for the trial because he was in a hearing with the Law Society that would in fact have been over by the scheduled time, and if failing to move for an adjournment in a timely fashion was unacceptable and wrong. This conduct was not inadvertent. It amounts to a clear dereliction of the lawyer's duty as an officer of the court.   |
| Quigley, Michael | Grenville College Management Corp v. 1745038 Ont. Ltd. | (2009 Ont. Sup. Ct. J.) Brockville Court File No.: 09-0198 | Defendant   | Not disclosed   | \$1,200 to be paid personally to lawyer   | Once the defendant decided to pursue costs personally against the plaintiff's lawyer, it cannot then take the position that that lawyer should not be compensated personally where that claim was without merit. These costs are independent of the main action.   |
| Smith, Robert    | Forsyth v. Li  | (2009, Ont. Sup. Ct. J.) Court File No.: 06-CV-35128       |   | Full indemnification in the amount of \$78,408.52.  | On a partial indemnity basis, \$50,000.00 plus GST plus disbursements of \$2,966.02 inclusive of GST. | Inappropriate criticisms of opposing counsel's competence and conduct, and false attribution of improper motives made in response to the defendant's motion for summary judgment did not cause costs to be incurred. Consequently they did not fall within Rule 57.07(1).<br><br>While the allegations did not comply with the rules of civility, they were "not of the most egregious type which would require a solicitor to pay costs personally."  |
| Molloy, A.M.     | Standard Life Assurance Co. v. Elliot                  | [2007] O.J. No. 2031 (S.C.J.)                              | Plaintiff.  | Not disclosed.  | Not disclosed.  | Counsel was using the Rules as a weapon in his war against the insurer, rather than as a mechanism for obtaining a fair and just result for his client. He deliberately caused excessive costs to be incurred without reasonable cause in order to put pressure on the insurance company. Although his client approved what he did, she was following her counsel's advice. The likelihood of recovering the costs against the defendant are remote. Given that counsel was the instigator of the action and that he took the steps he did for an improper purpose, as well as the fact that his conduct excessively drove up costs, it is appropriate that he pay the costs personally. |
| Roy, Albert J.   | Anderson v. Kehler                                     | [2005] O.J. No. 1658 (S.C.J.)                              | Solicitor for plaintiff must reimburse the client for all costs that the client had been ordered to | Not disclosed   | Not disclosed   | Counsel on his own initiative asked for an adjournment; it is not an act of courage or good faith to request refusal of a judge for the sole reason that there is a perception that things may not be going well in the client's Application; Courts cannot condone such conduct otherwise respect for the process will be greatly undermined  |

***LIABILITY OF SOLICITOR FOR COSTS (RULE 57.07)***

| <b>Judge</b> | <b>Case Name</b> | <b>Citation /<br/>Date</b> | <b>Costs Awarded<br/>To</b> | <b>Costs Requested</b> | <b>Costs Awarded</b> | <b>Judge's Comments</b> |
|--------------|------------------|----------------------------|-----------------------------|------------------------|----------------------|-------------------------|
|              |                  |                            | pay to the other<br>parties |                        |                      |                         |