



## **COSTS COMPENDIUM**

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SECTION 1 - LEADING COSTS CASES	
CASE NAME, CITATION AND JUDGE	CASE SUMMARY
<p>Boucher v. Public Accountants Council for the Province of Ontario</p> <p>(2004), 71 O.R. (3d) 291 (C.A.).</p> <p>Abella, Cronk and Armstrong JJ.A</p>	<p>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.</p>
<p>Zesta Engineering Ltd. v. Cloutier</p> <p>(2002), 164 O.A.C. 234.</p> <p>Finlayson, Charron, Simmons JJ.A.</p>	<p>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.</p>
<p>Moon v. Sher</p> <p>(2004), 246 D.L.R. (4<sup>th</sup>) 440 (Ont. C.A.).</p> <p>Borins, Lang, Juriansz JJ.A.</p>	<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. 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>

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<p>Cogan v. M.F. (2007), 88 O.R. (3d) 38.  Smith, Robert J.</p>	<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:</p> <ul style="list-style-type: none"> <li>a) the financial risk assumed by the lawyer;</li> <li>b) the results achieved and the amount recovered;</li> <li>c) the expectations of the party;</li> <li>d) who is to receive an award of costs; and</li> <li>e) the social objective of providing access to justice.</li> </ul> <p>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 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>

SECTION 1 - LEADING COSTS CASES	
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<p>Cogan (Re)</p> <p>2010 ONSC 915.</p> <p>Hackland R.S.J.</p>	<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>
<p>Celanese Canada Inc. v. Canadian National Railway Co., (2005), 196 O.A.C. 60 (C.A.).</p> <p>Borins, Feldman, Simmons JJ.A.</p>	<p>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 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.</p>

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CASE NAME, CITATION AND JUDGE	CASE SUMMARY
<p>Walker v. Ritchie</p> <p>[2006] S.C.R. 428.</p> <p>Rothstein J. (McLachlin C.J., Bastarache, Binnie, LeBel, Deschamps, Fish, Abella, Charron JJ. concurring).</p>	<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>
<p>St Elizabeth Home Society v. Hamilton (City)</p> <p>2010 ONCA 280.</p> <p>Laskin, Rouleau, Epstein, JJ.A.</p>	<p>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.</p>
<p>Ksiazek v. Halton (Police Services Board)</p> <p>2010 ONCA 341.</p> <p>Doherty, Feldman, Cronk JJ.A.</p>	<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>

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<p>Carleton v. Beaverton Hotel</p> <p>(2009), 98 O.R. (3d) 391 (Ont. Sup. Ct. J. Div. Ct.).</p> <p>Cunningham A.C.J., Hackland R.S.J. Taliano J.</p>	<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? The motions judge erred in not addressing the second step.</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>
<p>Jean Estate v. WiresJolley LLP</p> <p>2009 ONCA 339.</p> <p>Weiler, Juriansz, MacFarland JJ.A.</p>	<p>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.</p>
<p>Clarington (Municipality) v. Blue Circle Canada Inc.</p> <p>2009 ONCA 722, 100 O.R. (3d) 66.</p> <p>Goudge, Sharpe, Epstein JJ.A.</p>	<p>Substantial indemnity costs are only expressly authorized in two circumstances:</p> <ol style="list-style-type: none"> <li>1) offers to settle under Rule 49; and</li> <li>2) when a party has engaged in "reprehensible, scandalous or outrageous" conduct, worthy of sanction.</li> </ol> <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>

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<p>R. v. Caron</p> <p>2011 SCC 5.</p> <p>Binnie J. (McLachlin C.J., LeBel, Deschamps, Fish, Charron, Rothstein, Cromwell JJ, concurring reasons from Abella J)</p>	<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: the inferior tribunal is powerless to act; the intervention is essential to prevent a serious injustice in derogation of the public interest; and, 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:</p> <ul style="list-style-type: none"> <li>(1) the litigation would be unable to proceed if the order were not made;</li> <li>(2) the claim to be adjudicated is prima facie meritorious;</li> <li>(3) the issues raised transcend the individual interest of the particular litigant, are of public importance, and have not been resolved in previous cases.</li> </ul> <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>
<p>Hamilton v. Open Window Bakery Ltd.</p> <p>[2004] 1 SCR 303.</p> <p>Arbour J. (McLachlin C.J., Major, Bastarache, Binnie, LeBel and Deschamps JJ.)</p>	<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>

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CASE NAME, CITATION AND JUDGE	CASE SUMMARY
<p>Lavender v. Miller Bernstein LLP</p> <p>2018 ONCA 955.</p> <p>Epstein, van Rensburg, Brown JJ.A.</p>	<p>Costs for a class action proceeding, settled on summary judgement: 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. 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> <p>5</p>
<p>Benarroch v. Fred Tayar &amp; Associates PC</p> <p>2019 ONCA 228.</p> <p>Rouleau, Trotter, Zarnett JJ.A.</p>	<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>
<p>Cadieux v. Cloutier</p> <p>2019 ONCA 241.</p> <p>Strathy CJ, Hoy, Feldman, Brown, Paciocco JJ.A.</p>	<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>
<p>Newell v. Sax</p> <p>2019 ONCA 455.</p> <p>Feldman, Roberts, Fairburn JJ.A.</p>	<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> </ol> <p>The reasonable expectation of the client as to the amount of fees.</p>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
790668 Ontario Inc. v. D'Andrea Management Inc.  2015 ONCA 557.  Lauwers, MacFarland, Huscroft JJ.A.			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 1/3 of amount charged for partial indemnity.
Marcus v. Cochrane  2014 ONCA 207.  Goudge, J.A.	Defendant/ Respondent.	\$60,000.	OVERTURNED.  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.  Court of Appeal agreed with Trial Judge that the appellant suffered no actual damages.  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.  Set aside full indemnity, and awarded partial indemnity instead.
Alden v. Thomas  2012 ONSC 422.  Mackinnon J.	Respondent.	\$19,650.	This is not a case where substantial indemnity costs are applicable.  Settlement is encouraged but is not required and a trial is not always an unreasonable process.  The court may consider the financial ability of the respondent in terms of the quantification of the award of costs  The total costs awarded were \$27,650; however the \$8000 portion of the property settlement owed to respondent shall be put against balance owing.

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Lawson v. Viersen</p> <p>2012 ONCA 25.</p> <p>Rouleau, Sharpe, Armstrong, JJ.A.</p>	Mixed.	<p>The Viersens are to pay 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;</p> <p>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.</p> <p>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>	<p>The appeal concerns the costs 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>
<p>Smith Estate v. Rotstein,</p> <p>2011 ONCA 833.</p> <p>Armstrong, Epstein, Karakatsanis JJ.A.</p>	Respondent.	<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>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Sandborn v. Pottruff and Malik</p> <p>2011 ONSC 2819.</p> <p>Conway J.</p>	Defendant.	\$42,000.	<p>There is no basis for substantial indemnity 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>
<p>Toronto Star Newspapers Ltd. v. Fraleigh</p> <p>2011 ONCA 555.</p> <p>LaForme, Feldman, Blair JJ.A.</p>	Respondent.	\$28,000 inclusive of disbursements and taxes.	<p>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.</p> <p>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 be the responsibility of the Star. 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.</p>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
Pearsell v. Welsh 2011 ONSC 4582. MacKinnon, J.	Plaintiff.	\$84,750 inclusive of HST. Disbursements set at \$32,574.47 inclusive of HST. \$500 for the work performed in the cost fixing itself.	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.  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.
Wielgomas v. Anglocom Inc. 2011 ONCA 490. MacPherson, J., Juriansz, Karakatsanis JJ.A.	Respondent.	Reduction of the original costs award by 50% to \$12,750.  \$5,000 inclusive of disbursements and HST for the costs of the appeal.	Court agrees that the appellant had not met his burden of establishing that his action had a real and substantial connection with Ontario.  Court cannot see any basis for a large discrepancy (4:1 proportion) in the costs sought by the two parties.
Lobo v. Carleton University 2011 ONSC 5798. Toscano-Roccamo J.	Defendants.	\$18,400.87 plus taxes.	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.
Cimmaster Inc. v. Piccione (Manufacturing Technologies Company) 2011 ONCA 486. Rosenberg, Feldman, Juriansz JJ.A.	Respondent.	Reduction of the original costs award from substantial to partial indemnity for \$40,000 inclusive of disbursements and taxes.  \$6,000 inclusive of disbursements and taxes for the costs of the appeal.	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.

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Bot Construction v. Dumoulin</p> <p>2011 ONSC 2887.</p> <p>Shaw, J.</p>	Plaintiff.	\$15,000 inclusive of HST and disbursements.	<p>Costs are to be determined on a summary basis.</p> <p>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:</p> <ul style="list-style-type: none"> <li>(1) to partially indemnify successful litigants for the costs of litigation;</li> <li>(2) to encourage settlement; and</li> <li>(3) to discourage and sanction inappropriate behaviour.</li> </ul> <p>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 \$7,500 to Bot.</p>
<p>MCAP Leasing v. Lind Furniture</p> <p>2010 ONSC 4308.</p> <p>Price, J.</p>	Respondent (Defendant).	\$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>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Keam v. Caddey</p> <p>2010 ONCA 565.</p> <p>Rosenberg, Goudge, Feldman JJ.A.</p>	Appellant (Plaintiff).	\$40,000.	<p>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 <i>Insurance Act</i>. The insurer's position was that the damages did not meet the statutory threshold.</p> <p>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.</p> <p>The Court held that the insurer's conduct warranted a costs sanction, but did not rise to the level of justifying substantial indemnity.</p>
<p>Empire Life Insurance Company v. Krystal Holdings Inc.</p> <p>2009 CanLII 11217 (ONSC)</p> <p>Archibald J.</p>	Plaintiff.	<p>\$440,008.32 inclusive for the G.B. accounts,</p> <p>\$10,000 inclusive for the B.S. accounts, and \$4,000 inclusive for the costs submissions.</p>	<p>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.</p>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Magas v. Canada (Attorney General); Magas v. Monette; Magas v. Pasanen</p> <p>2009 – citation unavailable</p> <p>Brennan J.</p>	Defendants.	<p>Costs in relation to the dismissal motion and appeal ought not to be included in the order.</p> <p>Neither should costs in relation to air fare for one defendant to return from China on one occasion.</p>	<p>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).</p> <p>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.</p>
<p>Forsyth v. Li</p> <p>2009 CanLII 24637 (ONSC)</p> <p>Smith, Robert J.</p>		<p>\$50,000.00 plus GST plus disbursements of \$2,966.02 inclusive of GST.</p>	<p>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."</p> <p>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.</p>
<p>Keam v. Caddey</p> <p>2009 CanLII 51262 (ONSC).</p> <p>Whitten J.</p>	Plaintiff.	<p>\$110,000.</p>	<p>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."</p>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Crete v. Carleton Condominium Corporation #47</p> <p>2008 CanLII 475 (Ont.S.C.J.).</p> <p>Toscano-Roccamo J.</p>	Defendant.	\$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.
<p>Dinsmore v. Southwood Lakes Holding Ltd.</p> <p>[2007] O.J. No. 263 (S.C.J.).</p> <p>Brockenshire J.</p>	Plaintiff & Defendant (Ontario New Home Warranties Plan).	<p>Plaintiff: \$38,250 (inclusive of GST) plus \$28,525.62 in disbursements.</p> <p>Defendant: \$67,497 (\$36,080.55 for fees, \$27,027.61 in disbursements plus GST)</p>	The general entitlement of a defendant who succeeds at trial is to costs on a partial indemnity basis.
<p>Co-founders Inc. &amp; Tom Johnson v. GMC Guardian Mobility Corporation, Jean Carr &amp; Johannes Hill</p> <p>2007 – citation unavailable</p> <p>Hackland J.</p>	Defendant.	\$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.
<p>Bouchard et al. v. Ayotte et al.</p> <p>2007 – citation unavailable</p> <p>Sedgwick J.</p>	Defendants.	\$3,000 with \$504.74 in disbursements (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.

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Chrusz v. CheadleJohnson Shanks MacIvor</p> <p>54 C.C.L.I. (4th) 183 (2007). Shaw J.</p>	Applicant.	\$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 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.
<p>Dunstan v. Flying JTravel Plaza</p> <p>2007 WL 3127365 (Ont.S.C.J.).</p> <p>Smith, Robert J.</p>	Defendant.	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.
<p>Chenier v. Hôpital Général de Hawkesbury</p> <p>2006 – citation unavailable</p> <p>Aitken J.</p>	Plaintiff.	\$1,500.	No reasons were suggested by the Plaintiff as to why substantial indemnity costs should be awarded. Plaintiff made no Offers to Settle.
<p>Plester v. Wawanesa Mutual Insurance Co.</p> <p>(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.</p> <p>Armstrong, Cronk, Lang J.J.A.</p>	Cross-appeal on costs by plaintiff.	Trial judge did not err in principle in his discretion in awarding costs.	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.

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CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
Barker v. Montfort Hospital, et al.  [2006] O.J. No. 39 (S.C.J.).  Charbonneau J.	Plaintiff.	\$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 fact that the defendants were unsuccessful does not constitute grounds for 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.
Laurin v. Martin  2006 – citation unavailable  Charbonneau J.	Plaintiff.	\$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.
Petro-Quip International Inc. v. Kala Naft Canada Ltd.  [2006] O.J. No. 2369 (S.C.J.).  Low J.	Defendant.	\$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.
Price Waterhouse Coopers Inc. v. Rohwedder Automated Systems Inc.  [2006] O.J. No. 1245 (S.C.J.).  Pepall J.	Plaintiff.	\$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.

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
Riddell v. Conservative Party of Canada  [2006] O.J. No. 4141 (S.C.J.).  Power J.	Plaintiff.	\$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.
Johnston v. Karpova,  2006 – citation unavailable  Sedgwick J.	Defendant.	\$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.
Armenia Rugs - Tapis Ltd. v. Axor Construction Canada Inc.  [2006] O.J. No. 1566 (S.C.J.).  Smith, Robert J.	Plaintiff.	\$30,000 plus GST plus disbursements of \$3,648.82 inclusive of GST.	Plaintiff was largely successful in this claim and 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.
Danis v. 1292024 Ontario Inc. (c.o.b. as Rendez-Vous Nissan)  [2006] O.J. No. 2495 (S.C.J.).  Smith, Robert J.	Plaintiff.	\$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.

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
Llance Communications Ind. v. Star Web Ltd.  [2006] O.J. No. 5054 (S.C.J.)  Smith, Robert J.	Plaintiff.	\$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.
Nelligan v. Fontaine  [2006] O.J. No. 3699 (S.C.J.).  Smith, Robert J.	Plaintiff.	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.
Milne v. Ontario (Securities Commission)  [2006] O.J. No. 1573 (S.C.J.).  Speige J.	Defendant.	\$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.
Norbar Insurance Agencies Inc. v. Freeman  [2006] O.J. No. 709 (S.C.J.).  Stewart J.	Plaintiff.	\$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.
Champion v. Guibord,  [2006] O.J. No. 3197 (S.C.J.).  Toscano-Roccamo J.	Plaintiff.	\$11,098 in fees, plus \$1,748.89 in disbursements, plus applicable GST.	No valid offer to settle under Rule 49.13

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CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
Harvey v. Leger [2005] O.J. No. 3582 (S.C.J.). Beaudoin J.	Defendants & Third Parties.	Defendants: \$3,000 inclusive of GST and disbursements.  Third Parties: \$3,500 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. The motion here was held to be reasonable. As a result, costs on a partial indemnity basis were awarded.
Millen v. Kingsway General Insurance Company  2005 – citation unavailable Belch J.	Defendant.	\$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.
Arenas v. Longmire  2005 – citation unavailable Polowin J.	Defendant.	\$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.

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### PARTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Sommerard v. I.B.M. Canada Ltd.</p> <p>[2005] O.T.C. 944; 32 C.C.L.I. (4th)57 (S.C.J.)</p> <p>Polowin J.</p>	Plaintiff.	\$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>
<p>Nandy (c.o.b. Distributed SystemLinks) v. Attorney General of Canada</p> <p>[2005] O.J. No. 4869 (S.C.J.).</p> <p>Power J.</p>	Defendant.	\$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 than that of partial indemnity.
<p>Spearhead Management Canada Ltd. v. Henningsen</p> <p>2005 – citation unavailable</p> <p>Power J.</p>	Defendant.	\$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.

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CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
Conroy v. CCC. No.169  [2005] O.J. No. 4600 (S.C.J.).  Rutherford J.	Plaintiff.	\$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.
Solway v. Lloyd's Underwriters  [2005] O.J. No. 5465 (S.C.J.).  Stinson J.	Plaintiff.	\$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.
Canadians for Language Fairness v. City of Ottawa  2007 – citation unavailable  Métivier J.	Defendant.	\$50,000.	Requests costs on a partial indemnity basis in the amount of \$149,349.46.  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 involves a risk.

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### SUBSTANTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Bell Expressvu Limited Partnership v. Pieckenhagen</p> <p>2013 ONSC 195.</p> <p>Cumming J.</p>	Plaintiff.	\$363,488.01.	<p>Defendants fraudulently concealed facts through misrepresentations in a way that was designed to mislead investigators and conceal evidence.</p> <p>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.</p>
<p>Victoria Order of Nurses v. Greater Hamilton Wellness Foundation</p> <p>2012 ONSC 1527.</p> <p>Beaudoin J.</p>	Applicants.	\$454,686.19.	<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 the offers to settle did not comply with rule 49.</p>

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### SUBSTANTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
Vigna v. Levant 2011 ONSC 629. Smith, Robert J.	Plaintiff.	\$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: <ol style="list-style-type: none"> <li>(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.</li> <li>(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.</li> </ol>
Sandra Bonaiuto v. Pilot Insurance Company 2010 ONSC 1248. Young J.	Plaintiff.	\$75,932.23 (including GST and disbursements), as requested.	The plaintiff was entitled to substantial indemnity costs for several reasons. <ol style="list-style-type: none"> <li>(1) The defendant vigorously asserted a fraud claim against the plaintiff, with very little evidence to support it.</li> <li>(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.</li> <li>(3) The mere fact that costs exceed damages awarded does not alone make an order inappropriate.</li> <li>(4) The plaintiff had a case which the jury could reasonably have believed warranted an award above the small claims or simplified procedure thresholds.</li> <li>(5) The defendant did not submit a Bill of Costs, making it impossible to assess what their reasonable expectations would have been.</li> </ol>

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CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Kaymar Rehabilitation Inc. v. Champlain Community Care Access Centre, et al.</p> <p>2010 ONSC 6614.</p> <p>Polowin J.</p>	Defendants.	\$126,000 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: "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 participation.</p>

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CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Clarington (Municipality) v. BlueCircle Canada Inc.,</p> <p>2009 ONCA 722, 100 O.R. (3d) 66.</p> <p>Goudge, Sharpe, Epstein JJ.A.</p>	Defendants.	<p>Costs award to defendants reduced to \$300,000.</p> <p>Costs for the appeal to the settling defendants awarded at \$10,000, all-in.</p>	<p>The trial judge erred in awarding full indemnity costs without a finding of sanction-worthy conduct.</p> <p>Substantial indemnity costs are only expressly authorized in two circumstances:</p> <ol style="list-style-type: none"> <li>1) offers to settle under Rule 49; and</li> <li>2) when a party has engaged in "reprehensible, scandalous or outrageous" conduct, worthy of sanction.</li> </ol> <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>
<p>Simpson v. Laushway Law Office</p> <p>(2009 Ont. Sup. Ct. J.) Court File No.: CV- 09-45516.</p> <p>Power J.</p>	Respondent.	\$16,920, all inclusive.	<p>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.</p>

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CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>McNaughton Automotive Ltd. v. Co-Operators General Insurance Co., 2008 ONCA 597, 95 O.R. 365 (Ont.C.A.).</p> <p>Laskin, Simmons, Armstrong JJ.A.</p>	Defendants.	Leave to appeal cost orders 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>
<p>United States of America v. Yemec</p> <p>[2007] O.J. No. 2066.</p> <p>de Sousa J.</p>	Respondents (Defendants).	\$384,385.	<p>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>.</p>

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CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
1175777 Ontario Ltd. v. Magna International Inc.  (2007) 61 R.P.R. (4th) 68.  Horkins J.	Defendant.	\$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 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.
Antorisa Investments Ltd. v. 172965 Canada Ltd.  [2007] O.J. No. 195 (S.C.J.).  Lax J.	Defendant.	\$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.  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.
Pandi v. FieldOfWebs.com,  2007 WL 2407344 (Ont. S.C.J.).  Low 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.
Vie Holdings Inc. v. Imperial Oil Ltd.  2007 CarswellOnt 1578 (Ont. S.C.J.).  Panet J.	Plaintiff/ third party.	\$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.

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### SUBSTANTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
Charlton v. Canada Post Corporation  2007 – citation unavailable  Power J.	Plaintiff.	\$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.
Ward v. Manulife Financial  [2007] O.J. No. 37 (S.C.J.).  Power J.	Plaintiff.	\$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.
Basilevska v. Seto  2006 – citation unavailable  Hackland J.	Defendant.	\$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.
Hawley v. Bapoo et al.  [2006] O.J. No. 2938 (S.C.J.).  Ducharme J.	Defendants (Crown and Bapoo).	Defendant Bapoo: \$69,721.91, inclusive of disbursements and GST.  Defendant (Crown): \$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.	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.  Grave allegations that are completely without merit are a basis on which to award substantial indemnity costs.

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### SUBSTANTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Greenlight Capital, Inc et al. v. Stronach</p> <p>(2008), 91 O.R. (3d) 241 (Ont. Sup. Ct. J.(Div. Ct.)).</p> <p>Kitely, Molloy and Swinton JJ.</p>	Respondent.	<p>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.</p> <p>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".</p>	<p>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.</p> <p>He concluded this was such a case on the basis of three factors:</p> <ol style="list-style-type: none"> <li>1) none of the many allegations made were substantiated;</li> <li>2) serious allegations of misconduct were made against individuals, and were unfounded; and</li> <li>3) the court's process was abused for business purposes, and this should not be condoned.</li> </ol>
<p>St. Amand v. Brookshell Pontiac Buick GMC Ltd.</p> <p>2006 – citation unavailable</p> <p>Lalonde J.</p>	Plaintiff.	<p>\$60,000 plus GST + \$1,637.66 (disbursements) plus GST.</p>	<p>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.</p>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### SUBSTANTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Spirent Communications of Ottawa Limited v. Quake Technologies(Canada) Inc.</p> <p>[2006] O.J. No. 4032 (S.C.J.).</p> <p>Panet J.</p>	Defendant.	\$265,000, plus \$47,010 in disbursements, totaling \$312,010 + GST.	<p>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.</p>
<p>3869130 Canada Inc. v. I.C.B. Distribution Inc.</p> <p>2006 – citation unavailable</p> <p>Polowin J.</p>	Plaintiff.	<p>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>	<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 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.</p>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### SUBSTANTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Hanis v. University of Western Ontario</p> <p>[2006] O.J. No. 2763 (S.C.J.).</p> <p>Power J.</p>	Defendant.	\$554,491.54.	<p>*This was a proceeding against third party insurance companies to indemnify UWO for the fees they incurred in defending themselves.</p> <p>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 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.</p>
<p>Manstan v. Faktor</p> <p>2006 – citation unavailable</p> <p>Power J.</p>	Plaintiff.	\$11,060.54 for fees, GST and disbursements (which is 80% of the solicitor and client account of \$13,825.68).	<p>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.</p>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### SUBSTANTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Rodriguez Holding Corp. v. Vaughan (City)</p> <p>[2006] O.J. No. 4779, 28 M.P.L.R. (4<sup>th</sup>) 96 (S.C.J.).</p> <p>Power J.</p>	Defendant.	\$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 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.
<p>Sauvé v. Merovitz</p> <p>[2006] O.J. No. 5059 (S.C.J.).</p> <p>Smith, Robert J.</p>	Defendant.	<p>Merovitz Motion: Applicant ordered to pay \$8,000 + \$716.91 (disbursements) + GST</p> <p>Cotes Motion: Applicant ordered to pay \$5,000 + \$431.03 (disbursements) + GST.</p> <p>Cotes Application: Applicant ordered to pay \$6,000 + \$729.51 (disbursements) + GST.</p>	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.
<p>Brooks v. Morand</p> <p>[2005] O.J. No. 3579 (S.C.J.).</p> <p>Beaudoin J.</p>	Plaintiff.	\$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.

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### SUBSTANTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
Woodcliffe Corporation, et al. v. Rotenberg et al.  2005 – citation unavailable  Brennan J.	Third Parties.	Amount not disclosed.	<p>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.</p> <p>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.</p> <p>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.</p>
Taylor v. Guindon  [2005] O.J. No. 4634 (S.C.J.).  McKinnon J.	Defendant.	\$125,000 inclusive of GST and disbursements.	Substantial indemnity costs should be awarded. Plaintiff did not disclose a proposal in bankruptcy that she had made, despite being explicitly asked by Defendant - this constituted bad faith.
Mick v. Boulder City Climbing School Inc.  2007 – citation unavailable  Métivier J.	Plaintiff.	Costs in the amount of \$14,000 inclusive of fees, disbursements, and GST.	<p>Requested costs on a substantial indemnity basis. Plaintiff should be indemnified for costs incurred throughout the litigation in light of following circumstances:</p> <ul style="list-style-type: none"> <li>a) the plaintiff made several offers;</li> <li>b) the sum of \$28,814 was recovered at trial;</li> <li>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; and</li> <li>d) the defendants made 3 offers.</li> </ul>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### SUBSTANTIAL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Rowe v. Unum Life Insurance Company of America</p> <p>2006 – citation unavailable</p> <p>Polowin J.</p>	Plaintiff.	<p>Substantial indemnity costs after Sept 26, 2005 Offer to Settle but only partial indemnity costs prior to this date.</p> <p>Total costs: \$140,000 + GST in costs and \$32,280.66.</p>	<p>Costs requested on a substantial indemnity basis throughout the proceeding in the amount of \$212,500, plus a premium of \$150,000 and disbursements and GST for total of \$412,790.22.</p> <p>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.</p>
<p>Gutbir v. University Health Network</p> <p>2011 ONSC 7635</p> <p>Wilson J.</p>	Plaintiffs.	<p>Partial indemnity costs of \$500,000, substantial indemnity costs of \$684,440 plus taxes, and \$250,000 in disbursements plus taxes.</p>	<p>Requested \$2,021,933.30 including both partial and substantial indemnity costs and HST and \$383,290.61 in disbursements.</p> <p>The magnitude of the fees submitted are out of the realm as to what is fair and reasonable. Under Rule 57.01, fees of \$500,000 on a partial indemnity scale up to Oct 1, 2020 are reasonable. The fact that an expert was not called as a witness does not mean their fees are not recoverable.</p>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### FULL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
Carleton Condominium Corporation No. 396 v. Burdet  2015 ONSC 1361.  Kane J.	Plaintiff.	\$790,914.63 total with \$491,388 for fees and the remaining \$299,526.63 for disbursements.	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.
Ontario Community Housing Corporation v. Foustanelas (Argos Carpets) (No. 2)  2013 ONSC 5443.  Rutherford, J.	Plaintiff.	\$630,475.47.	Full indemnity costs awarded of ~\$630,000 to plaintiff; finding of fraud by defendant.
Pirbhai v. Singh et al.,  2011 ONSC 1366.  Quinn J.	Plaintiff.	\$131,211.74, all-inclusive, plus \$2,000 plus HST for the costs hearing.	Full indemnity costs were justified where: "(1) he added, perhaps, 25 days or more to the evidence in the trial and years to its length; (2) he was not forthright with his documentary disclosure; (3) he fraudulently created documents; (4) he repeatedly lied under oath; and, (5) he attempted to perpetrate a fraud upon the plaintiff and upon the court."  "Equity requires that the plaintiff not be put to one penny of expense in his pursuit of justice."

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### FULL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>GasTOPS Ltd. v. Forsyth</p> <p>2010 ONSC 7068.</p> <p>Granger J.</p>	Plaintiff.	\$4,252,920.24, the total amount billed to the client.	<p>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.</p> <p>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.</p> <p>No misconduct was attributed to the defendants' counsel.</p>
<p>Milone v. Delorme</p> <p>2010 ONSC 4162.</p> <p>Smith, Robert J.</p>	Plaintiff.	<p>\$3,000.00 plus GST plus disbursements of \$426.35.</p> <p>No costs for the motion.</p>	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.
<p>j2 Global Communications, Inc. v. Protus IP Solutions, Inc.</p> <p>(2009 Ont. Sup.Ct. J.) Court File No.: CV- 09-387586.</p> <p>Ray, J.</p>	Respondent.	\$32,877.23.	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.

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### FULL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Margo Willmot v. Julie D. Willmot</p> <p>2007 CarswellOnt 4199, 34 E.T.R. (3d) 276 (Ont. S.C.J. Jun 28, 2007).</p> <p>Power J.</p>	Applicant.	\$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.
<p>Birtch v. Diffin</p> <p>2006 – citation unavailable</p> <p>Brennan J.</p>	Plaintiff.	\$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.
<p>Afseth v. Maracle</p> <p>2005 – citation unavailable</p> <p>MacLeod J.</p>	Defendant.	\$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.

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### FULL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
<p>Murray v. Lesk</p> <p>2011 ONSC 1144</p> <p>Ratushny J.</p>	<p>Defendant/Plaintiff by counterclaim.</p>	<p>Estate Trustee: \$4,135.93 all-inclusive, to be deducted from the counterclaimant's share in the estate (full indemnity). Karen Murray: \$2,000 (substantial indemnity).</p> <p>Estate Solicitors: \$5,853.01 all-inclusive.</p>	<p>Costs requested:</p> <ul style="list-style-type: none"> <li>- Estate Trustee: \$4,135.93 on a full indemnity basis, or alternatively, \$3,807.33 on a substantial indemnity basis.</li> <li>- Karen Murray: \$2,000 on a substantial indemnity basis.</li> <li>- 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.</li> </ul> <p>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.</p>
<p>Boily v. Carleton Condominium 145</p> <p>2012 ONSC 1324</p> <p>Beaudoin J.</p>	<p>Applicants.</p>	<p>Interlocutory injunction: \$9,711.49.</p> <p>Motion to enforce settlement: \$13,560.00.</p> <p>Application: \$9,435.50.</p> <p>Disbursements: \$3,995.57.</p> <p>All of the above inclusive of HST.</p> <p>The motion to enforce settlement to be paid by the Board with the remainder paid by the Condominium Corporation.</p>	<p>Costs requested:</p> <ul style="list-style-type: none"> <li>- Applicants: \$48,538.48 on a full indemnity basis.</li> <li>- Respondent: No costs, alternatively, costs be fixed on a partial indemnity basis and be payable by the Condominium Corporation, not the Board personally.</li> </ul> <p>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.</p> <p>There was legitimate dispute whether alterations and repairs to the courtyard constituted a substantial change within the meaning of the Act. As a result, the Applicant's costs should be paid by the Condominium Corporation, with the exception of the fees incurred to enforce the settlement, which are to be paid by the Board.</p>

## SECTION 2 - CRITERIA FOR CHOICE OF SCALE OF COSTS

### FULL INDEMNITY AWARDED

CASE NAME, CITATION AND JUDGE	PARTY AWARDED COSTS	QUANTUM	CASE SUMMARY
Savage v. Belecque et al.  2011 ONSC 5771  Ellies J.	Plaintiffs.	Plaintiffs: \$180,168.29.  Allstate shall pay to CSU/Aviva: \$79,220.84.	<p>Costs requested:</p> <ul style="list-style-type: none"> <li>- CGU/Aviva: \$91,749.00.</li> <li>- Belecque: Not specified.</li> </ul> <p>The costs associated with defending the main action ought to be rewarded on a full indemnity basis. 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 <i>Insurance Act</i> were important to both of them but also to other insurers as a result of the dearth of jurisprudence on this issue.</p>

### SECTION 3 - RULE 49 OFFERS TO SETTLE

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Donleavy v. Ultramar Ltd.</p> <p>2019 ONSC 2985</p> <p>Corthorn J.</p>	Plaintiff	<p>Costs Requested: \$306,832.45</p> <p>Costs Awarded: \$175,000.00</p>	<p>The offer fell within the scope of Rule 49.10(1).</p>
<p>König v. Hobza</p> <p>2015 ONCA 885</p> <p>Cronk, Epstein and Huscroft JJ.A.</p>	Respondent	<p>Costs Requested: \$127,616.56</p> <p>Costs Awarded: \$127,616.56</p>	<p>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 days 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 costs were still allowed due to a judge's discretion in Rule 49.13.</p>
<p>GB/Plasman v. APP Holdings</p> <p>2013 ONSC 6401</p> <p>Newbould, J.</p>	Plaintiff	<p>Costs Requested: \$100,821.08</p> <p>Costs Awarded: \$100,000.00</p>	<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>

SECTION 3 - RULE 49 OFFERS TO SETTLE			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Elbakhiet v. Palmer</p> <p>2014 ONCA 544</p> <p>Rosenberg, J.A.</p>	Plaintiff	<p>Costs Requested: \$500,000.00</p> <p>Costs Awarded: \$100,000.00</p>	<p>Offer by Plaintiff: \$600,000.00</p> <p>Offers by Defendant: 1st - \$120,000.00 2nd - \$145,000.00</p> <p>A civil trial commences on the day that evidence is heard.</p> <p>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.</p> <p>Judgment and offer were so close that appellants could not meet burden of proof imposed by 49.10 that the offer exceeded the judgment.</p> <p>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.</p>

SECTION 3 - RULE 49 OFFERS TO SETTLE			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Elbakhiet v. Palmer</p> <p>2012 ONSC 3666</p> <p>Toscano-Roccamo, J.</p>	Plaintiff	<p>Costs Requested by Plaintiff: \$578,742.29</p> <p>Costs Requested by Defendant: \$313,964.61</p> <p>Costs Awarded: \$578,742.29 to Plaintiffs</p>	<p>Trial Judge erred in principle in approach to 57.01(1)(a).</p> <p>Recognized that jury preferred defence theory of case, but instead relied upon own view of what case was worth.</p> <p>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 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>Plaintiffs were awarded \$144,013.07 at trial.</p> <p>Issue arose as to whether the Plaintiffs' second offer matched or exceeded what was offered. Court finds that it did not; Defendant's offer was a lump sum.</p> <p>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>

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McLean v. Knox  2012 ONSC 1069  Smith, Robert J.	Plaintiff		<p>Offer by Plaintiff: \$302,559.64 on a partial indemnity basis + \$92,394.39 for disbursements</p> <p>Offer by Defendants: \$150,000.00 plus HST + disbursements of \$80,000 plus HST</p> <p>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.</p> <p>The costs claimed do not exceed the amount an unsuccessful party would reasonably expect to pay.</p>
Gogas v. Gogas  2011 ONSC 5368  Healey, J.	Applicant	Costs Awarded: \$75,000.00 inclusive of HST	<p>Offer by Plaintiff: \$95,931.30 inclusive of HST</p> <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>

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<p>Outaouais Synergist Incorporated and Keenan</p> <p>2011 ONSC 7340</p> <p>James, J.</p>	Plaintiff	<p>Cost Requested: \$138,844.47 for costs prior to the delivery of his offer</p> <p>Cost Awarded: \$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>Offer by Plaintiff: \$227,012.72 in a mixture of partial and substantial indemnity costs</p> <p>Offer by Defendant: Two offers prior to trial of \$50,000 and \$60,000</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>
<p>1221904 Ontario Inc. v 713949 Ontario Limited.</p> <p>2011 ONSC 3961</p> <p>Power, J.</p>	Defendants	<p>Costs Requested: \$97,891.74 inclusive of disbursements, GST and HST</p> <p>Costs Awarded: \$90,000 all-inclusive</p>	<p>Pursuant to Rule 49.10, 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.</p> <p>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.</p>

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<p>Michiels v Kinnear</p> <p>2011 ONSC 6024</p> <p>Power, J.</p>	Defendants	<p>Costs Requested:</p> <p>\$61,005.95 for all defendants except Mr. Vadala</p> <p>\$125,575.50 for Mr. Vadala</p> <p>Costs Awarded:</p> <p>\$50,000 to Mr. Vadala and \$50,000 to the rest of the defendants</p>	<p>Offer by Plaintiff:</p> <p>\$155,000 plus interest and costs</p> <p>Offer by Defendant:</p> <p>Dismissal of the claim in consideration of payment of his clients' costs on a substantial indemnity basis</p> <p>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.</p>

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<p>Ksiazek v. Halton (Police Services Board)</p> <p>2010 ONCA 341</p> <p>Doherty, Feldman, Cronk JJ.A.</p>	<p>Plaintiff</p>	<p>Costs Awarded:</p> <p>Trial judge awarded costs on a partial indemnity basis of \$287,995, including disbursements of \$101,997.</p>	<p>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.</p> <p>Second Offer: 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> <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>

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<p>Hayden v. Stevenson, et al.</p> <p>2010 ONSC 633</p> <p>Ferguson, J.</p>			<p>Offer by Defendant: 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 after the offer date, if not accepted within 30 days.</p> <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 Malik v. Sirois, [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 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.</p>
<p>Schwark v. Cutting</p> <p>2010 ONCA 299</p> <p>Gillese, Blair, MacFarland JJ.A.</p>	Appellants, defendants at trial	<p>Costs Requested: Partial indemnity prior to offer to settle; Substantial indemnity thereafter</p> <p>Costs Awarded: Total sum of \$89,755.19, inclusive of disbursements and GST, on the basis sought</p>	<p>Offer by Defendant: April 2008: Terms not disclosed, but it "would have permitted the plaintiffs continued use of the beach front property".</p> <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>

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<p>St Elizabeth Home Society v. Hamilton</p> <p>2010 ONCA 280</p> <p>Laskin, Rouleau, Epstein JJ.A.</p>	Defendant	<p>Costs Awarded: Costs to be assessed on a partial indemnity scale throughout.</p> <p>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.</p>	<p>Offer by Plaintiff: March 2004: \$1,299,000 plus interest and costs.</p> <p>Offer by Defendant: February 21, 2003: \$153,200 plus interest and costs</p> <p>Trial judge awarded costs of \$2,317,000 to the City and \$1,945,000 to the Region.</p> <p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Bulut v. Walker-Fairen</p> <p>2010 ONSC 706 (Div. Ct.)</p> <p>McCombs, Lederman, Molloy, JJ.A.</p>	<p>Appellants (Defendants)</p>	<p>Costs Awarded:</p> <p>On the original action: partial indemnity costs, to be assessed</p> <p>On the appeal: \$10,000 inclusive</p>	<p>Offers by Defendant:</p> <p>18 Nov 2005: (1) \$200,000 all inclusive, expiring on 25 Nov 2005</p> <p>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</p> <p>21 Dec 2007: \$200,000 plus partial indemnity costs to the offer date</p> <p>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.</p> <p>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.</p> <p>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.</p>

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<p>Wright v. Wal-Mart et al</p> <p>2010 ONSC 2936</p> <p>Price, J.</p>	Plaintiff		<p>Offer by Plaintiff: 13 November 2008: global offer to all the defendants to settle both actions for \$300,000.00</p> <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 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>
<p>Madison v. Shoppers Drug Mart</p> <p>2010 ONSC 494</p> <p>Roy, J.</p>	Defendant	<p>Cost Requested: \$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.</p> <p>Cost Awarded: \$200,000 all-in</p>	<p>Offer by Defendant: Offer made "shortly before trial"; details not disclosed.</p> <p>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.</p>

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<p>Baird v. Botham</p> <p>2010 ONSC 3057</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost Requested: \$49,924.88 for fees and \$11,524.61 for disbursements, both inclusive of GST for a total of \$61,449.49</p> <p>Cost Awarded: \$30,000.00 plus GST plus disbursements of \$8,500.00 plus GST</p>	<p>Offer by Defendant: March 2, 2005: dismiss action without costs July 7, 2005: dismiss action with partial indemnity costs to that date January 27, 2010: contribute \$1000 to the settlement and dismiss action without costs</p> <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> <p>This type of conduct should be encouraged, not sanctioned.</p>
<p>Empire Life Insurance Company v. Krystal Holdings Inc.</p> <p>(2009 Ont. Sup. Ct. J.)</p> <p>Court File No.: 02-CV-222931CM4</p> <p>Archibald, J.</p>	Plaintiff	<p>Cost Requested: Unreported costs on a substantial indemnity basis</p> <p>Cost Awarded: \$440,008.32 inclusive for one accounts, \$10,000 inclusive for the another account, and \$4,000 inclusive for the costs submissions, all on a partial indemnity basis</p>	<p>No Rule 49 consequences were attracted where:</p> <ol style="list-style-type: none"> <li>1) the first offer was implicitly withdrawn when the second offer was sent;</li> <li>2) the first offer was in any case made on a "without prejudice" basis; and</li> <li>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.</li> </ol>

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<p>MB Kouri Insurance Brokers Ltd. v. RL Gougeon Ltd.</p> <p>(2009 Ont. Sup. Ct. J.)</p> <p>Court File No.: 1522/05</p> <p>Power, J.</p>	Plaintiff	<p>Cost Requested: \$90,295.62, on a partial indemnity basis up to offer to settle, and on a substantial indemnity basis afterwards</p> <p>Cost Awarded: \$50,000 all inclusive on a partial indemnity scale</p>	<p>Rule 49 is not engaged where an offer addressed jointly to the defendants could not be accepted unilaterally by either of them.</p> <p>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.</p>
<p>Crete v. Carleton Condominium Corporation #47 (Chateau Vanier Towers)</p> <p>(2008, Ont. Sup. Ct. J.)</p> <p>Court File No.: 06-CV-33385</p> <p>Toscano-Roccamo, J.</p>	Defendant	<p>Cost Requested: \$123,558.90 plus disbursements of \$28,333.47, for a total of \$151,892.37 (inclusive of GST)</p> <p>Cost Awarded: 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.</p>	<p>Offer by Plaintiff: May 2006: \$30,000 plus interest and costs 22 Sept 2006: \$37,500 all inclusive if accepted by 6 Oct; escalating to \$50,000 if not accepted by 20 Oct Following settlement conference in Aug 2007: \$35,000 all inclusive</p> <p>Offer by Defendant: 1 Aug 2007: dismissal of claim with no costs</p> <p>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.</p> <p>"[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 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.)."</p>

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<p>Isildar v. Rideau Diving Supply</p> <p>(2008, Ont. Sup. Ct. J.),</p> <p>Court File No.: 04-CV-027264</p> <p>Toscano-Roccamo, J.</p>	<p>Defendants</p>	<p>Cost Requested:</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>Cost Awarded:</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>Offer by Defendant:</p> <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>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>

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<p>H. L. Staebler Company Limited v. Allan</p> <p>(2008), 92 O.R. (3d) 788 (Ont. Sup. Ct. J.)</p> <p>Taylor, J.</p>	<p>Defendant</p>	<p>Cost Requested: Substantial indemnity costs</p> <p>Cost Awarded: \$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>Offer by Defendant:</p> <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 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>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 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>

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<p>Roma Construction (Niagara) Ltd. v. Dykstra Bros. Roofing (1992) Limited</p> <p>[2008] O.J. No. 2755</p> <p>Walters, J.</p>		<p>Cost Requested and Awarded Not Disclosed</p>	<p>Offer by Plaintiff: 14 December 2007: \$104,011 "without prejudice" 2 January 2008: \$96,000 "without prejudice", and to "settle all outstanding accounts"</p> <p>Offer by Defendant: 23 November 2007: \$43,489 + \$5,000 in costs - \$9752 in unpaid invoices: \$38,737 total 21 December 2007: \$48,489</p> <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 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>

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<p>Dennie v. Hamilton</p> <p>(2008), 89 O.R. (3d) 542 (Ont. Sup. Ct. J.)</p> <p>Whalen, J.</p>	Plaintiff	<p>Cost Requested: Partial indemnity costs of \$135,357.85, Inclusive</p> <p>Cost Awarded: \$106,255.12, plus GST</p>	<p>Offer by 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</p> <p>Offer by Defendant: 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.</p> <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.</p> <p>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>
<p>Flentje v. Nichols</p> <p>2007 – citation unavailable</p> <p>Blishen, J.</p>	Plaintiff	<p>Cost Awarded: Partial indemnity costs to the date of the offer, and substantial indemnity costs thereafter</p>	<p>Offer by Plaintiff: One offer; details of which undisclosed</p> <p>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</p>

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<p>Caci v. MacArthur</p> <p>[2007] O.J. No. 1395 (S.C.J.)</p> <p>Brown, David J.</p>	<p>Defendant Third Party (Non-Marine Underwriters, Lloyd's of London)</p>	<p>Cost Requested: Costs on a partial indemnity basis until date of Offer and costs on a substantial indemnity basis thereafter, totaling \$125,753.93</p> <p>Cost Awarded: Costs on a partial indemnity basis until date of Offer, and costs on a substantial indemnity basis thereafter.</p>	<p>Offer by Defendant: 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.</p> <p>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.</p>
<p>Cerilli v. The Corporation of the City of Ottawa</p> <p>2007 CanLII 1320 (ONSC)</p> <p>McKinnon, J.</p>	<p>Plaintiff</p>	<p>Cost Awarded: Substantial indemnity costs totaling \$100,000, inclusive of GST, disbursements and submissions on costs</p>	<p>Offer by Plaintiff: Sept. 2006: \$56,000 + costs to be agreed 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</p> <p>Offer by Defendant: Sept. 2006: \$51,000 + costs to be agreed</p> <p>Plaintiff is prima facie entitled to receive costs on a substantial indemnity basis because she was awarded more than any offer made in the course of the proceedings</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Ward v. Manulife  [2007] O.J. No. 37 (S.C.J.)  Power, J.	Plaintiff	Cost Requested: Costs on a substantial indemnity basis in the amount of \$1,037,033.00 (includes a 15% premium)  Cost Awarded: 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
Tudor Inn Reception Hall (1992) Ltd. et al. v. Merzat Industries Ltd. et al.  2007 – citation unavailable  Sedgwick, J.	Defendants	Cost Requested: Costs in the amount of \$161,957.20, including fees, disbursements and applicable GST  Cost Awarded: Costs in the amount of \$80,000, inclusive of fees, disbursements and applicable GST	Offer by Defendant: First offer: Offer of \$25,000 in damages  Second offer: Offer for \$100,000 inclusive of damages, interest and costs  Ontario Court of Appeal in S & A Strasser Ltd. v. Richmond Hill (Town) (1990), 1 O.R. (3d) 243 that subrule 49.10 does not apply where the plaintiffs' action is dismissed.
Dunstan v. Flying J Travel Plaza  2007 CanLII 44819  Smith, Robert J.	Defendant	Cost Requested: Partial indemnity until offer, substantial indemnity thereafter.  Cost Awarded: Partial indemnity until offer, substantial indemnity thereafter.	Offer by Defendant: One offer on February 26, 2007 to dismiss claim without costs.  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.

### SECTION 3 - RULE 49 OFFERS TO SETTLE

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Farwell (Trustee of) v. Integrated Management &amp; Investments Inc.</p> <p>2007 CanLII 14339</p> <p>Taylor, J.</p>	Defendants	<p>Cost Requested: Substantial indemnity since time of first offer to settle for complete dismissal of action.</p> <p>Cost Awarded: Partial indemnity until August 2006 offer, substantial indemnity thereafter in the total amount of \$76,500 plus GST.</p>	<p>Offer by Plaintiff: Offer to settle for \$300,000</p> <p>Offer by Defendant: 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.</p> <p>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.</p>
<p>Baltruweit v. Goode</p> <p>2006 – citation unavailable</p> <p>Aitken, J.</p>	Defendant	<p>Cost Requested: \$25,000</p> <p>Cost Awarded: Costs on a partial indemnity basis in the amount of \$15,000</p>	<p>Offer by Defendant: One offer; details undisclosed</p> <p>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 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>

SECTION 3 - RULE 49 OFFERS TO SETTLE			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Chenier v. Hôpital Général de Hawkesbury</p> <p>2006 – citation unavailable</p> <p>Aitken, J.</p>	Plaintiff	<p>Cost Requested:</p> <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> <p>Cost Awarded:</p> <p>Costs on a partial indemnity basis in the amount of \$1,500</p>	<p>Offer by Defendant:</p> <p>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> <p>Defendant Physicians did not equal or better their Offer.</p>
<p>Lavinkas v. Jacques Whitford &amp; Associates Ltd.</p> <p>[2006] O.J. No. 2697 (S.C.J.)</p> <p>Aitken, J.</p>	Plaintiff	<p>Cost Requested:</p> <p>Costs on a substantial indemnity basis in the amount of \$44,134.</p> <p>Cost Awarded:</p> <p>Costs in the amount of \$28,000</p>	<p>Offer by Plaintiff:</p> <p>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</p> <p>Offer by Defendant:</p> <p>April 4, 2005: offer to settle whereby proceeding would be dismissed on a without-costs basis</p> <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.</p> <p>Plaintiff's offer to settle is a significant factor in the determination for costs. Signals that plaintiff was prepared to accept a reasonable resolution of this matter, while the defendant was not prepared to move from its hard-line position.</p>

### SECTION 3 - RULE 49 OFFERS TO SETTLE

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Barker v. Montfort Hospital  2006 – citation unavailable  Charbonneau, J.	Plaintiff	Cost Awarded: 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
Handa Travel Services Ltd. v. 1091873 Ontario Inc.  2006 – citation unavailable  Forget, J.	Plaintiff	Cost Requested: Costs in the amount of \$21,193.80, inclusive of costs and disbursements  Cost Awarded: Costs in the amount of \$13,500, inclusive of disbursements and GST	Offer by Plaintiff: Dec. 13, 2004: Offer to settle for \$17,500  Offer by Defendant: Jan. 13, 2005: Offer to settle for \$12,500 Sept. 2005: Offer to settle for \$20,000 all inclusive  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 to settle was served and substantial indemnity costs from that date, unless the court exercised its discretion otherwise.
Keryluk v. Lamarche  2006 – citation unavailable  Hackland, J.	Plaintiff	Cost Requested: 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  Cost Awarded: 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.	Offer by 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.  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.

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Lockhard v. Quiroz and CAA Insurance Company (Ontario)</p> <p>[2006] O.J. No. 5220 (S.C.J.)</p> <p>Lalonde, J.</p>	<p>Defendant (CAA)</p>	<p>Cost Requested: CAA requested 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).</p> <p>CAA submitted that Quiroz should reimburse the CAA for the settlement monies paid to Plaintiff, as well as costs of defending these actions</p> <p>Cost Awarded: Costs on a 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.</p> <p>Settlement monies are to be reimbursed by Quiroz to the CAA as well.</p>	<p>Offer by Defendant: CAA, automobile insurer to Lockhard, made an offer to settle with Plaintiff for \$275,000, plus costs to be agreed upon or assessed</p> <p>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 49.10 are triggered. CAA is entitled to costs on a substantial indemnity basis after the date of settlement.</p>

### SECTION 3 - RULE 49 OFFERS TO SETTLE

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>St. Amand v. Brookshell Pontiac Buick GMC Ltd.</p> <p>2006 – citation unavailable</p> <p>Lalonde, J.</p>	Plaintiff	<p>Cost Requested: 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</p> <p>Cost Awarded: Costs on a substantial indemnity basis totaling \$60,000 plus GST + \$1,637.66 (disbursements) plus GST</p>	<p>Offer by Plaintiff: First offer: Plaintiff would accept \$20,000, including payment in lieu of notice, interest and costs</p> <p>Second offer: Plaintiff would accept \$10,000</p> <p>Third Offer: Plaintiff would accept \$23,500, plus costs and interests</p> <p>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.</p> <p>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 result the Defendant must pay substantial indemnity costs.</p>
<p>Brownhall v. Canada (Ministry of National Defence)</p> <p>[2006] O.J. No. 187 (S.C.J.)</p> <p>Marchand, J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$58, 336.98.</p> <p>Cost awarded: 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</p>	<p>Offer by 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</p> <p>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."</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>DeHeus v. Niagara (Regional Municipality) Police Services Board</p> <p>[2006] O.J. No. 42 (S.C.J.)</p> <p>Matheson, J.</p>	Defendants	<p>Cost requested: Bell Canada requested costs in the amount of \$135,977.25</p> <p>Cost awarded: 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.</p>	<p>Offer by Plaintiff: Plaintiffs would accept \$75,000 from Bell Canada and \$75,000 from the remaining defendants plus costs on a party- and-party basis.</p> <p>Offer by Defendant: Defendants other than Bell Canada made two offers to settle, details of which were undisclosed</p> <p>Bell made separate offer to settle</p> <p>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.</p>
<p>Gerami v. Double Double Pizza Chicken Ltd.</p> <p>2006 – citation unavailable</p> <p>Métivier, J.</p>	Defendants	<p>Cost awarded: Costs on a partial indemnity basis in the amount of \$6,000 with disbursements of \$594.25</p>	<p>Offer by Plaintiff: Counter-offer to defendants: demand of \$20,000</p> <p>Offer by Defendant: Pay the plaintiff \$6,000</p> <p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Glass Block Solutions Ltd. v. Pickles</p> <p>2006 – citation unavailable</p> <p>Métivier, J.</p>	Plaintiff	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$15,627.78</p> <p>Cost awarded: Costs in the amount of \$7,000 plus GST and disbursements of \$1,655.21</p>	<p>Offer by Plaintiff: May 2, 2005 (after defendant's first offer): \$10,000</p> <p>Offer by Defendant: Prior to litigation: \$6,355.31 Second offer: \$8,000 Third offer (following mid- trial settlement conference): \$13,000</p> <p>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..</p>
<p>Diallo v. Benson et. al.</p> <p>2006 – citation unavailable</p> <p>Morin, J.</p>	Defendant	<p>Cost requested: Costs on a partial indemnity basis to date of offer and costs on a substantial indemnity basis thereafter. Total costs claimed: \$15,690.17</p> <p>Cost awarded: Costs totaling \$5,000</p>	<p>Offer by Defendant: Offer to settle by paying plaintiff \$3,000 plus interest plus costs</p> <p>In consideration of the factors set out in R. 57.01, and the relative impecuniosity of the plaintiff in comparison to that of the defendants, it is more equitable to only have the plaintiff pay a portion of the costs being claimed.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc.</p> <p>[2006] O.J. No. 4032 (S.C.J.)</p> <p>Panet, J.</p>	Defendant	<p>Cost requested: 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</p> <p>Cost awarded: Costs in the amount of \$265,000, plus \$47,010 in disbursements, totaling \$312,010 + GST</p>	<p>Offer by Defendant: One offer to settle – undisclosed what the terms were</p> <p>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</p>
<p>Rowe v. Unum Life Insurance Company of America</p> <p>2006 – citation unavailable</p> <p>Polowin, J.</p>	Plaintiff	<p>Cost requested: 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</p> <p>Cost awarded: Costs in the amount of \$140,000 plus GST and \$32,280.66 in disbursements</p>	<p>Offer by Plaintiff: Jan. 2002: \$197,948, plus ongoing benefits, interest and costs Sept. 2005: \$360,000, inclusive of interest, plus costs</p> <p>Offer by Defendant: Oct. 6 2005: \$205,189.38, inclusive of interest, plus costs Oct. 14, 2005: \$287,734.17, inclusive of interest, plus costs</p> <p>Trial award exceeded both of these offers. Plaintiff is entitled to costs on a substantial indemnity basis from Sept. 26, 2005.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Lecompte v. A. Potvin Construction Ltd.</p> <p>2006 – citation unavailable</p> <p>Roy, J.</p>	Plaintiffs	<p>Cost requested: Costs in the amount of \$141,736.27, inclusive of disbursements</p> <p>Cost awarded: Costs in the amount of \$50,000 plus \$20,000 in disbursements</p>	<p>Offer by Plaintiff: First offer: \$145,000 Second offer: Defendants should purchase the plaintiffs' properties for \$150,000 each and pay interest and costs to date</p> <p>Offer by Defendant: Purchase the plaintiffs' properties for \$100,000</p> <p>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</p>
<p>Haider v. Fiore et. al.</p> <p>2006 – citation unavailable</p> <p>Rutherford, J.A.</p>	Defendants	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$12,500</p> <p>Cost awarded: Costs on a substantial indemnity basis in the amount of \$12,500, including disbursements and GST</p>	<p>Offer by Defendant: Many "walk away" offers, whereby neither party would pay the other's costs – details of offers not disclosed</p> <p>There is no reason here not to apply the rule as to costs for parties who achieve a trial result that is superior to the position they had offered to accept prior to trial. The defendants' continuous offers were reasonable and the plaintiff's refusal to accept the offer was not backed up by the strength of his claim. The defendants displayed a continual willingness to compromise.</p>
<p>Clean-Mark Canada Inc. v. Home Depot of Canada Inc. et al.</p> <p>[2006] O.J. No. 572 (S.C.J.)</p> <p>Siegel, J.</p>	Defendant (Heartland)	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$48,396.64, inclusive of GST.</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$39,000 plus GST, plus disbursements of \$4,386.43 inclusive of GST.</p>	<p>Offer by Defendant: Defendant Heartland made an offer, details of which were not disclosed</p> <p>Offer made by Heartland included actual costs in its offer and as such did not come within the conditions of Rule 49.10(1).</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Morris v. Cusack</p> <p>2006 – citation unavailable</p> <p>Smith, Robert J.</p>	<p>Defendant</p>	<p>Cost requested: 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</p> <p>Cost awarded: Costs not awarded for the assessment hearing. Costs in the amount of \$3,000 plus GST plus disbursements of \$1,343.26.</p>	<p>Offer by Plaintiff: Jan. 11, 2006: Offer to settle by paying the solicitor (defendant) \$5,000.</p> <p>Offer by Defendant: Jan. 6, 2006: Offer to settle in the amount of \$12,000.</p> <p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Resch v. Canadian Tire Corp. et al.</p> <p>[2006] O.J. No. 2906 (S.C.J.)</p> <p>Spies, J.</p>	<p>Plaintiff &amp; Mills-Roy Defendant</p>	<p>Cost requested: Plaintiff: 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</p> <p>Mills-Roy: \$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</p> <p>Cost awarded: Costs in the amount of \$646,724, inclusive of fees and disbursements.</p> <p>Mills-Roy: Costs in the amount of \$108,165.97</p>	<p>Offer by Plaintiff: No offers to settle by plaintiff</p> <p>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.</p> <p>Offer by Defendant: Procycle defendants made no offers to settle</p> <p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Summers v. Harrower</p> <p>[2006] O.J. No. 452 (S.C.J.)</p> <p>Toscano-Roccamo, J.</p>	<p>Plaintiff</p>	<p>Cost requested: Costs in the amount of \$86,238.79 in fees plus \$7,119.65 in disbursements for a total of \$93,358.44.</p> <p>Cost awarded: Costs on a substantial indemnity basis in the amount of \$42,500 plus \$5,137.23 in disbursements, plus GST</p>	<p>Offer by Plaintiff: Two offers made. Details of both not disclosed, but each claimed costs on a substantial indemnity basis.</p> <p>Offer by Defendant: Offers made, but details not disclosed.</p> <p>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.</p>
<p>Crosby v. Wharton</p> <p>[2006] O.J. No. 1192 (S.C.J.)</p> <p>Wilson, J.</p>	<p>Defendant</p>	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$91,556.12 inclusive of GST</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$42,314</p>	<p>Offer by Plaintiff: No disclosed offers to settle</p> <p>Offer by Defendant: 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 to be agreed upon as assessed.</p> <p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Mitchell v. Clarica Life Insurance Company, et. al.</p> <p>2005 – citation unavailable</p> <p>Brennan, J.</p>	<p>Plaintiff</p>	<p>Cost awarded:</p> <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:</p> <p>\$9,050 plus GST of \$598.50 plus \$755.73 for disbursements</p>	<p>Offer by Plaintiff:</p> <p>Details not disclosed</p> <p>Offer by Defendant:</p> <p>No offers</p> <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.</p>
<p>Monks v. ING Insurance company of Canada</p> <p>[2005] O.T.C. 758; 30 C.C.L.I. (4th) 55 (S.C.J.)</p> <p>Lalonde, J.</p>	<p>Plaintiff</p>	<p>Cost requested:</p> <p>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)</p> <p>Cost awarded:</p> <p>Costs in the amount of \$470,330.82 (inclusive of premium) plus \$44,827.85 in Disbursements</p>	<p>Offer by Plaintiff:</p> <p>Dec. 2004: Defendant to pay plaintiff \$395,100.55</p> <p>Offer by Defendant:</p> <p>No offers by defendant</p> <p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>National Bank of Canada v. Reed et al.</p> <p>[2005] O.J. No. 2957 (S.C.J.)</p> <p>McMahon, J.</p>	<p>Plaintiff</p>	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$302,122.73, inclusive of disbursements</p> <p>Cost awarded: 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</p>	<p>Offer by Plaintiff: Offer to settle for \$900,000</p> <p>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.</p>
<p>Santini v. Thompson</p> <p>2005 – citation unavailable</p> <p>Métivier, J.</p>	<p>Defendant</p>	<p>Cost requested: Costs in the amount of \$16,495.97</p> <p>Cost awarded: \$10,350, plus disbursements as claimed (not disclosed), plus GST</p>	<p>Offer by Defendant: Prior to litigation: Offer to settle of \$13,000, inclusive of interest and costs</p> <p>Defendant is entitled to her costs on a partial indemnity basis up to the date of the offer, and on a substantial indemnity basis thereafter</p>

### SECTION 3 - RULE 49 OFFERS TO SETTLE

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Cummings v. Douglas</p> <p>2005 – citation unavailable</p> <p>Morin, J.</p>	Plaintiff	<p>Cost requested: 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</p> <p>Cost awarded: 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.</p>	<p>Offer by Defendant: Details of offer not disclosed</p> <p>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</p>

### SECTION 3 - RULE 49 OFFERS TO SETTLE

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Sommerard v. I.B.M. Canada Ltd.</p> <p>[2005] O.T.C. 944; 32 C.C.L.I. (4th) 57 (S.C.J.)</p> <p>Polowin, J.</p>	<p>Plaintiff</p>	<p>Cost awarded: Costs in the amount of \$60,000, plus \$7.250 in disbursements</p>	<p>Offer by 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 Courts of Justice Act 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>Offer by Defendant: Great West Life Assurance Company (second defendant): \$43,177 “all in” in return for plaintiff terminating his action as against GWL</p> <p>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 interest under the Courts of Justice Act, and costs.</p> <p>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.</p>

## SECTION 4 - RULE 57 FACTORS

### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Marchand v. MacKenzie</p> <p>2019 ONSC 5062</p> <p>De Sousa J</p>	Applicant	Cost Awarded: \$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>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.</p>
<p>St. Lewis v. Rancourt</p> <p>2013 ONSC 6118</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested: \$79,556.50 for St. Lewis and \$58,004.55 to the University of Ottawa</p> <p>Cost Awarded: \$52,000.00 for St. Lewis and \$42,000 for the University of Ottawa</p>	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.

## SECTION 4 - RULE 57 FACTORS

### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>St. Lewis v. Rancourt</p> <p>2012 ONSC 7066</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested: \$14,116.26 on a partial indemnity basis</p> <p>Cost awarded: \$12,000 (incl. HST) plus disbursements of \$417.76</p>	<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>
<p>Victoria Order of Nurses v. Greater Hamilton Wellness Foundation</p> <p>2012 ONSC 1527</p> <p>Beaudoin J.</p>	Applicants	<p>Cost requested: \$454,686.19 on a substantial indemnity basis</p> <p>Cost awarded: \$454,686.19 on a substantial indemnity basis</p>	<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 the offers to settle did not comply with rule 49.</p>

## SECTION 4 - RULE 57 FACTORS

### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Czegledy-Nagy v Seirli</p> <p>2012 ONSC 119</p> <p>Campbell J.A.</p>	Applicant	<p>Cost requested: Not specified</p> <p>Cost awarded: \$9500 plus HST</p>	<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>
<p>International Wall Systems v English Lane Residential Developments Limited and HSBC Bank Canada</p> <p>2012 ONSC 1424</p> <p>Fregeau, J.</p>	Applicant	<p>Cost requested: Applicant seeks costs of \$73,936.47 on a substantial indemnity basis; \$50,392.92 on a partial indemnity basis</p> <p>Cost awarded: Applicant awarded \$50,000 inclusive of disbursements and HST</p>	<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>

## SECTION 4 - RULE 57 FACTORS

### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>First Capital (Canholdings) Corporation v. North American Property Group</p> <p>2012 ONSC 1359</p> <p>Fregeau, J.</p>	Applicant	<p>Cost requested: Costs of \$35,000 on a partial indemnity basis</p> <p>Cost awarded: \$20,000 inclusive of HST plus disbursement of \$1865.00 inclusive of HST</p>	<p>Partial indemnity hourly rates that are higher than the maximum hourly rates established in the Information Notice for Mr. Gray for the following reasons:</p> <p>(a) the maximum hourly rates used in the Information Notice should be increased for inflation from at least 2005;</p> <p>(b) the maximum hourly rates in the Information Notice are intended to provide guidance and are not mandatory;</p> <p>(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;</p> <p>(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</p> <p>(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.</p>
<p>Park v. Park</p> <p>2012 ONSC 1436</p> <p>Turnbull J.</p>	Plaintiffs	<p>Cost requested: Not specified</p> <p>Cost awarded: \$7585.00 plus HST and disbursements of \$687.55</p>	<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>

## SECTION 4 - RULE 57 FACTORS

### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>West Carlton Concrete Corp. v. Smavila Forming Ltd.,</p> <p>2011 ONSC 3403</p> <p>Annis J.</p>	Plaintiffs	<p>Cost requested: \$1240.80 (based on 56.4 hours at \$220 per hour)</p> <p>Cost awarded: \$11,500, inclusive of HST and disbursements.</p>	<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>
<p>Smith v. Kearns</p> <p>2011 ONSC 754</p> <p>Beaudoin, J.</p>	Respondents	<p>Cost requested: Applicant: \$48,469.00 on a partial indemnity basis</p> <p>Respondent: \$40,589.64 on a partial indemnity basis</p> <p>Cost awarded: \$20,000 all- inclusive</p>	<p>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.</p> <p>The Applicant was wholly unsuccessful on the damage claims and these claims necessitated additional preparation, cross-examination and trial time.</p> <p>The respondents should be compensated for responding to the claims, and this will be half of the costs amount claimed by them.</p>

## SECTION 4 - RULE 57 FACTORS

### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Trisha Billings v. Lanark Mutual Insurance Company</p> <p>2011 ONSC 2564</p> <p>Beaudoin, J.</p>	Plaintiffs	<p>Cost requested: Plaintiffs seek costs on pre-trial motion for \$4,935.00, and costs of the trial on a substantial indemnity basis for \$412,596.99</p> <p>Cost awarded: There should be no costs with respect to pre- trial motions.</p>	<p>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.</p> <p>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.</p> <p>Total hours are 694.6 hours at \$260/hour equals \$180,596.00 (\$204,073.48 including GST/HST)</p> <p>\$12,587.67 in disbursements are allowed.</p> <p>Each party is to bear the costs of their own cost submissions.</p>
<p>Keum Tae Kim et al v. Dakin News Systems Inc., et al</p> <p>2011 ONSC 2955</p> <p>Himel J.</p>	Respondent	<p>Cost requested: The Applicants requested \$19,372.50. The respondents state that the amount should be fixed at \$3,000</p> <p>Cost awarded: \$14, 610.00 for the Respondents</p>	<p>This case is regarding a breach of a franchise agreement.</p> <p>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 &amp; 25 of the franchise agreement expressly permit the costs on the higher scale.</p> <p>While the case was somewhat complex, the amount of work claimed was excessive, but there was no bad faith.</p> <p>Costs were fixed at \$10,000 for fees and \$4,610 for disbursements including HST payable within 30 days.</p>

## SECTION 4 - RULE 57 FACTORS

### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Dewan v Burdet 2011 ONSC 7686 Kane, J.	Dewan motion: Plaintiffs, Administrators and CCC396  Condominium Action: Plaintiffs	<p>Cost requested: 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 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</p> <p>Condominium Action: CCC396 claims \$169,375 on a substantial basis, and \$114,103 on a partial indemnity basis.</p> <p>Cost awarded: Dewan action: no costs awarded to defendants; \$37,000 to plaintiffs on a partial indemnity basis. For the administrators, costs awarded are \$26,000 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>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 Defence counsel occasionally made derogatory comments about opposing counsel which were unnecessary and off topic; however, such remarks are 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>

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### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Sweda Farms Ltd. et al. v. Ontario Egg Producers et al.</p> <p>2011 ONSC 2428</p> <p>Lauwers, J.</p>	<p>Defendants (Responding Party)</p>	<p>Cost requested: 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 basis</p> <p>Cost awarded: Specific costs aren't detailed but the counsel rates are listed as follows:</p> <p>-Mr. Williams: \$400/hour -Ms. Webster: \$275/hour -Law student: \$75/hour -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>

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### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Moreira et al. v. Aileen Kay Pettersen</p> <p>2011 ONSC 3247</p> <p>McCartney J.</p>	Defendant	<p>Cost requested: Not listed</p> <p>Cost awarded: \$800.00</p>	<p>At no time did the defendant advise the plaintiff of a time beyond which a motion would be brought.</p> <p>Since there were refusals as well as undertakings, the only avenue for the defendant to deal with the refusals was through a court Motion.</p>
<p>Leroux v. Casselman (Village)</p> <p>2011 ONSC 5847</p> <p>Métivier J.</p>	Plaintiffs	<p>Cost requested: \$68,237.34 on a substantial indemnity basis.</p> <p>Alternatively, they ask for an award of \$47,106.10 on a partial indemnity basis.</p> <p>Cost awarded: \$38,500 to be paid by the Village of Casselman</p> <p>\$1500 to be paid by Myke Racine for his failure to be examined and attempted use of improper evidence.</p>	<p>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.</p> <p>Casselman ought to have expected that its overzealous and ill-founded defence would result in significant costs incurred.</p>
<p>Black v. Hamm</p> <p>2011 ONSC 5846</p> <p>Métivier, J.</p>	Plaintiff	<p>Cost requested: Plaintiffs were seeking \$38,191.85 on a partial indemnity scale.</p> <p>Cost awarded: \$28,000.00 all-inclusive</p>	<p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Waxman v. Ontario racing Commission</p> <p>2011 ONSC 5281</p> <p>Parayeski, J.</p>	Defendant	<p>Cost awarded: \$20,000.00 inclusive of HST and disbursements</p>	<p>There was nothing extraordinary to warrant moving away from partial indemnity.</p> <p>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.</p>
<p>Duffin et. al. v NBY Enterprises Inc. et. al.</p> <p>2011 ONSC 5335</p> <p>Parayeski, J.</p>	Defendants	<p>Cost requested: Not disclosed</p> <p>Cost awarded: All defendants:</p> <p>Gordon Clare, and Luciano Butera, the sum of \$15,305.41, all-inclusive</p> <p>Paul Leon, the sum of \$34,793.09, all-inclusive;</p> <p>Luigi DeLisio, the sum of \$30,480.49, all-inclusive;</p> <p>Harry Korosis and Chown Cairns LLP, the sum of \$28,564.90, all-inclusive</p>	<p>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 Manning v. Epp, 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.</p> <p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Rodrigues v Toop</p> <p>[2011] O.J. No. 2611 (S.C.J.)</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested:</p> <p>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.</p> <p>Cost awarded:</p> <p>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.</p>	<p>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.</p> <p>Both parties submitted offers to settle but the matter proceeded to a summary motion.</p> <p>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</p>
<p>Vigna v. Levant</p> <p>2011 ONSC 629</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested:</p> <p>For Heenan Blaikie: \$26,434.54 on substantial indemnity basis</p> <p>For self- represented plaintiff: \$68,250 substantial indemnity plus disbursements of \$7,516</p> <p>Cost awarded:</p> <p>\$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</p>	<p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Zurich Insurance Company Ltd. v. Ison T.H. Auto Sales Inc.</p> <p>2011 ONSC 3902</p> <p>Strathy, J.</p>	Defendant	<p>Cost requested: \$73,902.27 on a full indemnity basis or \$41,936.90 on a partial indemnity basis</p> <p>Cost awarded: \$30,000 inclusive of all taxes and disbursements</p>	<p>The circumstances require a substantial award of costs but not on a substantial indemnity basis.</p> <p>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.</p> <p>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.</p>
<p>Jourdain v. Ontario (Queen)</p> <p>2010 ONSC 2432</p> <p>Fregeau, J</p>	Defendant	<p>Cost requested: Defendants seeking \$14,325.96 on the plaintiff's motion. Also seek \$10,000 incurred in drafting a new Statement of Defense to respond to plaintiff's amendments</p> <p>Cost awarded: Defendants awarded \$6,000 for costs of motion including disbursements and \$500 for costs in drafting a new Statement of Defense</p>	<p>Success on the motion was divided but the Crown defendants were more successful than the plaintiffs.</p> <p>The hours of docketed time by counsel for Crown was excessive.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
GasTOPS Ltd. V. Forsyth  2010 ONSC 7068  Granger J.	Plaintiff	Cost requested: 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.  Cost awarded: \$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.  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.
Robinson v. Ottawa (City)  (2009, Ont. Sup. Ct. J.) Court File No.: 02-CV-21270 and 02-CV- 21270A  Smith, Robert J.		Cost requested: 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.  Cost awarded: To the City: \$35,000 plus GST plus disbursements of \$1,305.25  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.
Galpin v. Galpin  2007  Aitken J.	Plaintiff / Applicant	Cost requested: Costs in the amount of \$27,205  Cost awarded: 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)

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### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Flentje v. Nichols</p> <p>2007</p> <p>Blishen J..</p>	Plaintiff	<p>Cost requested:</p> <p>Total fees inclusive of disbursements and GST in the amount of \$30,399.88</p> <p>Cost awarded:</p> <p>Costs in the amount of \$28,000 (inclusive of disbursements and GST)</p>	<p>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</p>
<p>Dinsmore v. Southwood Lakes Holding Ltd.</p> <p>[2007] O.J. No. 263 (S.C.J.)</p> <p>Brockenshire, J.</p>	Plaintiff & Defendant (Ontario New Home Warranties Plan)	<p>Cost requested:</p> <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>Cost awarded:</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>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.</p> <p>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 (Amherst Crane Rentals).</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>United States of America v. Yemec</p> <p>[2007] O.J. No. 2006</p> <p>de Sousa J.</p>	<p>Respondents (Defendants)</p>	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$691,304.74.</p> <p>Cost awarded: Costs on a substantial indemnity basis in the amount of \$384,385.</p>	<p>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 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.</p>
<p>Sears Holdings Corp. v. Ontario (Securities Commission)</p> <p>[2007] O.J. No. 420 (S.C.J. – Div. Ct.)</p> <p>Ground, MacDonald, Hackland JJ.A.</p>	<p>Plaintiff Minority Shareholders</p>	<p>Cost requested: Costs in the amount of \$90,000</p> <p>Cost awarded: Costs in the amount of \$75,000 for fees together with disbursements of \$14,890.94 and applicable GST</p>	<p>Plaintiffs docketed five hundred hours of time in respect of the appeal in question. There was considerable overkill in the amount of time spent.</p>
<p>Antorisa Investments Ltd. v. 172965 Canada Ltd.</p> <p>[2007] O.J. No. 195 (S.C.J.)</p> <p>Lax J.</p>	<p>Defendant</p>	<p>Cost requested: 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</p> <p>Cost awarded: Costs in the amount of \$650,000 plus GST, plus disbursements in the sum of \$50,073.60, plus GST</p>	<p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Chenier v. Hôpital Général de Hawkesbury</p> <p>2006 – citation unavailable</p> <p>Aitken J.</p>	Plaintiff	<p>Cost requested:</p> <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> <p>Cost awarded:</p> <p>Costs on a partial indemnity basis in the amount of \$1,500</p>	<p>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.</p>
<p>Lavinskas v. Jacques Whitford &amp; Associates Ltd.</p> <p>[2006] O.J. No. 2697 (S.C.J.)</p> <p>Aitken J.</p>	Plaintiff	<p>Cost requested:</p> <p>Costs on a substantial indemnity basis in the amount of \$44,134.</p> <p>Cost awarded:</p> <p>Costs in the amount of \$28,000</p>	<p>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 to devote to an action under the Simplified Procedure.</p> <p>There was also a duplication of the time allotted to the preparation of pleadings, the motion regarding the pre-trial conference and trial preparation.</p>
<p>LeVan v. LeVan</p> <p>[2006] O.J. No. 4599 (S.C.J.)</p> <p>Backouse J.</p>	Plaintiff	<p>Cost requested:</p> <p>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)</p> <p>Cost awarded:</p> <p>Costs in the amount of \$646,602.20, inclusive of disbursements and GST.</p>	<p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
George S. Szeto Investments Ltd. v. Ott  [2006] O.J. No. 2390 (S.C.J.)  Beaudoin J.	Defendant (Attorney General)	Cost requested: Costs in the amount of \$5,393.77 (\$523.15 of which were for disbursements)  Cost awarded: 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.
Laurin v. Martin  2006 – citation unavailable  Brennan J.	Plaintiff	Cost requested: Total Bill of Costs, with disbursements, totaled \$10,230.82 (scale of costs requested not disclosed)  Cost awarded: Costs in the amount of \$6762.50 plus GST of \$405.75. Total fees awarded: \$7,168.25.  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 claimed).  Disbursements claimed are awarded.	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.

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Sarajlic, et. al. v. Marshall, et. al.</p> <p>2006 – citation unavailable</p> <p>Brennan J.</p>	Plaintiff	<p>Cost requested: Costs on a partial indemnity basis until date of offer to settle (amounts and details of offer not disclosed); substantial indemnity costs thereafter</p> <p>Mr. Sarajlic claim a cost amount of \$1,000/day while he was self-represented.</p> <p>Cost awarded: 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</p> <p>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) Total costs awarded: \$22,223.60</p>	<p>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.</p> <p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Gray et al. v. Province of Ontario et al.</p> <p>2006 – citation unavailable</p> <p>Cunningham, Lane, Hackland JJ.A.</p>	Plaintiffs / Applicants	<p>Cost requested: Costs on a partial indemnity basis. Amount not disclosed</p> <p>Cost awarded: 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</p>	Counsel for the Gray Applicants and the Ventola Applicants divided their submissions and shared the cross-examinations so as to minimize unnecessary 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.
<p>Mascioli v. Unilux Boiler Corp.</p> <p>[2006] O.J. No. 1706 (S.C.J.)</p> <p>Frank J.</p>	Defendant	<p>Cost requested: 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</p> <p>Cost awarded: Costs in the amount of \$18,000, plus disbursements and GST</p>	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.
<p>Schouten v. Rideau (Township)</p> <p>2006 – citation unavailable</p> <p>Hackland J.</p>	Defendant	<p>Cost requested: Total requested costs not disclosed</p> <p>Cost awarded: Total fees \$97,317.87 plus \$51,329.71 in disbursements plus GST</p>	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
<p>Imperial Brush Co. Ltd. v. Pedott et al.</p> <p>2006 – citation unavailable</p> <p>Lalonde J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$35,568.94</p> <p>Cost awarded: Costs in the amount of \$20,000 inclusive of disbursements and GST</p>	Since this case was not a complex one, the use of more than one counsel was not appropriate and the claim for additional counsel's work is refused.

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Glass Block Solutions v. Pickles  2006 – citation unavailable  Métivier J.	Plaintiff	Cost requested: Costs on a substantial indemnity basis in the amount of \$15,627.78  Cost awarded: Costs in the amount of \$7,000 plus GST and disbursements of \$1,655.21	Hours expended by plaintiff's counsel are out of 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.
Madore-Ogilvie (Litigation Guardian of) v. Ogilvie Estate  [2006] O.J. No. 703 (S.C.J.)  Panet J.	All parties' costs were paid from the Estate	Cost requested: Plaintiff: \$39,014.71 (full indemnity); \$33,504.18 (substantial indemnity); \$30,413.51 (partial indemnity)  Defendants' requested costs not disclosed  Cost awarded: Plaintiff: \$15,000 plus GST, plus disbursements as claimed in the amount of \$2,143.14  Defendant 1: \$7,500 plus GST plus disbursements as claimed in the amount of \$820.97  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.

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<p>Pricewaterhousecoopers Inc. v. Rohwedder Automated Systems Inc.</p> <p>[2006] O.J. No. 1245 (S.C.J.)</p> <p>Pepall J.</p>	Plaintiff	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$134,804.98.</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$74,722.48.</p>	<p>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.</p>
<p>3869130 Canada Inc. v. I.C.B. Distribution Inc</p> <p>2006 – citation unavailable</p> <p>Polowin J.</p>	Plaintiff	<p>Cost requested: A total of \$294,347.33 is claimed on a partial indemnity basis and \$361,858.34 on a substantial indemnity basis</p> <p>Cost awarded: 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>	<p>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 the 11 law clerks was denied.</p>
<p>1259695 Ontario Inc. (c.o.b. Upper Canada Office Systems) v. Guinchard</p> <p>[2006] O.J. No. 550 (S.C.J.)</p> <p>Power J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$10,405.98, inclusive of fees, disbursements and GST.</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$5,000, all inclusive.</p>	<p>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.</p>

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<p>Campeau v. Campeau</p> <p>[2006] O.J. No. 2297 (S.C.J.)</p> <p>Power J.</p>	<p>Defendants / Moving Parties</p>	<p>Cost requested:</p> <p>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</p> <p>Cost awarded:</p> <p>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.</p>	<p>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.</p>
<p>Gilchrist v. Oak</p> <p>2006 – citation unavailable</p> <p>Power J.</p>	<p>Defendant</p>	<p>Cost requested:</p> <p>Costs in the amount of \$4,667.88 (inclusive of fees, disbursements and applicable GST)</p> <p>Cost awarded:</p> <p>Costs in the amount of \$2,500 (inclusive of fees, disbursements and applicable GST)</p>	<p>The amount of time spent in preparation for the motion is somewhat onerous.</p>
<p>Riddell v. Conservative Party of Canada</p> <p>[2006] O.J. No. 4141 (S.C.J.)</p> <p>Power J.</p>	<p>Plaintiff</p>	<p>Cost requested:</p> <p>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)</p> <p>Cost awarded:</p> <p>Costs on a partial indemnity basis in the amount of \$6,500, all inclusive.</p>	<p>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.</p>

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<p>Worthman v. Assessmed Inc.</p> <p>2006 – citation unavailable</p> <p>Power, O'Driscoll, Gravely, JJ.A.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$47,000 (approx. Exact number not disclosed)</p> <p>Cost awarded: Costs in the amount of \$15,000 (including fees and disbursements)</p>	<p>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.</p>
<p>Access Health Care Services v. Ontario Nurses' Association</p> <p>2006 – citation unavailable</p> <p>Ratushny J.</p>	Defendant	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$14,031.35 inclusive of fees and GST and disbursements (\$3,701.57)</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$14,031.35 inclusive of fees and GST and disbursements (\$3,701.57)</p>	<p>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.</p>
<p>Lecompte v. A. Potvin Construction Ltd.</p> <p>2006 – citation unavailable</p> <p>Roy J.</p>	Plaintiff	<p>Cost requested: Costs and disbursements totaling \$141,736.27</p> <p>Cost awarded: Costs in the amount of \$50,000 plus \$20,000 in disbursements</p>	<p>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</p>

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<p>Bhaduria v. Toronto Star Newspapers Ltd.</p> <p>[2006] O.J. No. 192 (S.C.J.)</p> <p>Siegel J.</p>	Defendants	<p>Cost requested:</p> <p>Costs for the motion claimed on a partial indemnity basis in the amount of \$5,468.</p> <p>Costs for the action on a partial indemnity basis in the amount of \$15,084.</p> <p>Cost awarded:</p> <p>Costs for motion awarded in the amount of \$3,000.</p> <p>Costs for the motion awarded in the amount of \$11,000.</p>	<p>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.</p> <p>With respect to the action, defendants seek costs of \$15,084</p> <p>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.</p>
<p>Taylor v. Morrison</p> <p>[2006] O.J. No. 194 (S.C.J.)</p> <p>Siegel J.</p>	Plaintiff	<p>Cost requested:</p> <p>Costs on a partial indemnity basis in the amount of \$4,325</p> <p>Cost awarded:</p> <p>Costs in the amount of \$3,250, inclusive of disbursements and GST</p>	<p>Plaintiff used the maximum rates available on the 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.</p>

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<p>King v. Merrill Lynch Canada Inc.</p> <p>[2006] O.J. No. 1257 (S.C.J.)</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost requested: Costs on a partial indemnity scale in the amount of \$831,493</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$350,000 plus GST and disbursements of \$109,431.24 plus GST</p>	<p>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.</p> <p>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.</p>
<p>Llance Communications Ind. V. Star Web Ltd.</p> <p>[2006] O.J. No. 5054 (S.C.J.)</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$10,005.75 plus GST plus disbursements of \$241.28</p> <p>Cost awarded: Costs on a partial indemnity scale in the amount of \$4,000 plus GST plus disbursements of \$241.28</p>	<p>Thirty-one of the 37 paragraphs in the Defendant's factum were identical to the factum opposing the 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.</p>

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<p>Resch v. Canadian Tire Corp. et al.</p> <p>[2006] O.J. No. 2906 (S.C.J.)</p> <p>Spies J.</p>	<p>Plaintiff &amp; Mills-Roy Defendant</p>	<p>Cost requested:</p> <p>Plaintiff: 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</p> <p>Mills-Roy: \$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</p> <p>Cost awarded:</p> <p>Costs in the amount of \$646,724, inclusive of fees and disbursements.</p> <p>Mills-Roy: Costs in the amount of \$108,165.97</p>	<p>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.</p>
<p>Crosby v. Wharton</p> <p>[2006] O.J. No. 1192 (S.C.J.)</p> <p>Wilson J.</p>	<p>Defendant</p>	<p>Cost requested:</p> <p>Costs on a partial indemnity basis in the amount of \$91,556.12 inclusive of GST</p> <p>Cost awarded:</p> <p>Costs on a partial indemnity basis in the amount of \$42,314</p>	<p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Blais v. Cook</p> <p>[2005] O.J. No. 5881 (S.C.J.)</p> <p>Belch J.</p>	Plaintiffs	<p>Cost requested: Costs in the amount of \$29,703.20, inclusive of GST</p> <p>Cost awarded: Costs in the amount of \$24,814.99, inclusive of GST and disbursements</p>	Preparation time is high. Fees should be proportionate to the damages, which amounted to \$27,152.85.
<p>Lee Brothers Ltd. v. Windsor (City)</p> <p>[2005] O.J. No. 4624 (S.C.J.)</p> <p>Cunningham, McKinnon, Bryant JJ.A.</p>	Defendant	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$70,987 plus GST and \$4,315 for disbursements plus GST and PST</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$55,000 inclusive of disbursements and GST</p>	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.
<p>Canadian National Railway Corp. v. Royal and SunAlliance Insurance Co. of Canada</p> <p>[2005] O.J. No. 3931, 77 O.R. (3d) 612 (S.C.J.)</p> <p>Ground J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$1,261,364.00 plus GST and disbursements for a total of \$1,644,496.83.</p> <p>Cost awarded: 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.</p>	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.

## SECTION 4 - RULE 57 FACTORS

### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Adult Entertainment Assn. of Canada v. Ottawa (City)</p> <p>[2005] O.J. No. 4608 (S.C.J.)</p> <p>Hackland J.</p>	Defendant	<p>Cost requested: Costs in the amount of \$99,188.50 in fees plus \$4,744 in disbursements</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$61,000 for fees, plus GST \$4,270, plus \$4,744 in disbursements</p>	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.
<p>National Bank of Canada v. Reed et al.</p> <p>[2005] O.J. No. 2957 (S.C.J.)</p> <p>McMahon J.</p>	Plaintiff	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$302,122.73, inclusive of disbursements</p> <p>Cost awarded: 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</p>	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.
<p>Santini v. Thompson</p> <p>2005 – citation unavailable</p> <p>Métivier J.</p>	Defendant	<p>Cost requested: Costs in the amount of \$16,495.97</p> <p>Cost awarded: \$10,350, plus disbursements as claimed (not disclosed), plus GST</p>	Some of the time spent by Defendant's counsel seems to be excessive (time spent not disclosed)

## SECTION 4 - RULE 57 FACTORS

### INDEMNITY INCLUDING EXPERIENCE OF LAWYER, RATES CHARGES, HOURS SPENT (57.01(1)(0.a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Bowers v. Delegarde</p> <p>[2005] O.J. No. 3857 (S.C.J.)</p> <p>Power J.</p>	Defendant	<p>Cost requested: 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</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$40,000, inclusive of disbursements and all fees, and GST.</p>	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.
<p>Menard-St. Denis v. St. Denis</p> <p>2005 – citation unavailable</p> <p>Power J.</p>	Plaintiff	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$5,415.80 inclusive of GST.</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$3,000 inclusive of GST</p>	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.
<p>Nandy (c.o.b. Distributed System Links) v. Attorney General of Canada</p> <p>[2005] O.J. No. 4869 (S.C.J.)</p> <p>Power J.</p>	Defendant	<p>Cost requested: Fees of \$31,637.37 plus disbursements of \$1,315.89 for a total of \$32,953.26</p> <p>Cost awarded: Costs on a partial indemnity scale totaling \$15,000 (all inclusive)</p>	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 excessive. It would not be just or fair to pass on all of this expense to the Plaintiff.

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Marchand v. MacKenzie</p> <p>2019 ONSC 5062</p> <p>de Sousa J.</p>	Applicant	<p>Cost requested: Not disclosed</p> <p>Cost awarded: \$40,000.00</p>	<p>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</p>
<p>McLean v. Knox</p> <p>2012 ONSC 1069</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested: \$302,559.64 on a partial indemnity basis. \$92,394.39 for disbursements</p> <p>Cost awarded: \$150,000 plus HST plus disbursements of \$80,000 plus HST</p>	<p>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.</p> <p>The costs claimed do not exceed the amount an unsuccessful party would reasonably expect to pay.</p>
<p>Ottawa Police Association v. Ottawa Police Services Board</p> <p>2012 ONSC 936</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested: Plaintiff: \$15,495.02 on a partial indemnity basis</p> <p>Cost awarded: \$7,500 plus HST; \$1500 in disbursements inclusive of HST</p>	<p>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.</p>

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Jolicoeur v Hawkesbury (Ville)</p> <p>2011 ONSC 3835</p> <p>Beaudoin J.</p>	Mixed	<p>Cost requested:</p> <p>Gowlings (for the Woods, Parisien law firm): 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.</p> <p>Borden Ladner (for Douglas Menzies, Menzies &amp; Associates and Gelinias) in the counterclaim: \$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: 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 &amp; Associates: costs for the motion to have the claim dismissed, \$23,529.70.</p> <p>Cost awarded:</p> <p>\$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</p> <p>Awarded to each of the parties: Woods Parisien Landry and J.J. Edmond and Woods, Parisien; Menzies &amp; Associates, Douglas J. Menzies, Jean Claude G�linas 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.</p>	<p>Quantum continued:</p> <p>For the costs of the Corporation de la Ville de Hawkesbury and for Menzies &amp; Associates, Douglas Menzies, Jean Claude Gelinias as Defendants to the Counterclaim, those costs are fixed in the amount of \$75,000.00 each.</p> <p>Case Summary</p> <p>Each of the moving parties should be treated in a similar fashion in assessing their claims.</p> <p>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</p>

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### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Healey v. Lakeridge Health Corporation</p> <p>2010 ONSC 1884</p> <p>Perell J.</p>	Defendants	<p>Cost requested: Lakeridge: \$250,000 Defendant Doctors: \$130,495.27</p> <p>Cost awarded: Lakeridge: \$180,000 Defendant Doctors: \$80,000</p>	<p>The motions raised complex issues of significant issues to the parties, and all parties acted appropriately. However the claim was not a test case, 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 the plaintiffs' expectations could be derived from the fact that they recovered \$125,000 for the certification motions.</p>
<p>Canada (Attorney General) v. Rostrust Investments Inc.</p> <p>2010 ONSC 1106</p> <p>Polowin J.</p>	Plaintiff	<p>Cost requested: Partial indemnity costs of \$227,858.93 consisting of fees (\$196,222.01), GST (\$9,811.10) and disbursements (\$21,825.82)</p> <p>Cost awarded: \$170,000 plus GST, plus disbursements of \$21,825.82 plus GST</p>	<p>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.</p>
<p>Bremer v. Foisy</p> <p>(2009, Ont. Sup. Ct. J.) – unreported</p> <p>Beaudoin J.</p>	Plaintiffs	<p>Cost requested: Fees in the amount of \$23,345 plus disbursements of approximately \$2,100</p> <p>Cost awarded: \$10,000 inclusive</p>	<p>The costs outline submitted by the party added as a defendant included fees of \$9,455.</p>
<p>6862829 Canada Ltd. v. Dollar It Ltd.</p> <p>(2009, Ont. Sup. Ct. J.) Court File No.: 08-CV-41479</p> <p>de Sousa J.</p>	Applicants	<p>Cost requested: Not disclosed</p> <p>Cost awarded: Partial indemnity costs fixed at \$7,482.82, inclusive of GST</p>	<p>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.</p>

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### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Youg v. RBC Dominion Securities</p> <p>(2009, Ont. Sup.Ct. J.) Court File No.:05-CV-31905</p> <p>Polowin J.</p>	Defendants	<p>Cost requested: \$303,786.30</p> <p>Cost awarded: Fees of \$180,000, inclusive of GST, plus disbursements of \$35,000, inclusive of GST.</p>	<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>
<p>Demers v. Lévesque</p> <p>(2009 Ont. Sup. Ct. J.) Court File No.: 06-CV-033321</p> <p>Roy J.</p>	Plaintiff	<p>Cost requested: \$292,770.32</p> <p>Cost awarded: \$200,000 all inclusive</p>	<p>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.</p>

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### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Lafontaine- Rish Medical Group Limited v. Global TV News Inc.</p> <p>2008 CanLII 9372 (Ont. Sup. Ct. J. (Div. Ct.))</p> <p>Carnwath J.</p>	Defendants	<p>Cost requested:</p> <p>Global Defendants: \$67,568.55 (partial) or \$101,352.83 (substantial)</p> <p>Thomas Bell, M.D.: \$22,180.78 (partial) or \$32,820.76 (substantial)</p> <p>Jerry Levitan: \$13,481.08 (partial) or \$20,044.27 (substantial)</p> <p>College of Physicians &amp; Surgeons: \$8,295.88 (partial) or \$12,038.88 (substantial)</p> <p>Cost awarded:</p> <p>On a partial indemnity basis:</p> <p>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</p> <p>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</p> <p>Levitan: fees of \$7,500, inclusive of GST, and disbursements of \$762.92, inclusive of GST, for a total award of \$8,262.92</p> <p>College of Physician &amp; Surgeons: fees of \$4,000, inclusive of GST, and disbursements of \$759.88, inclusive of GST, for a total award of \$4,759.88</p>	<p>The assessment was said to be "an amount that is fair and reasonable, having regard to the broad range of factors in Rule57.01(3)."</p> <p>The plaintiff's submissions were essentially ignored: his "conduct in this matter renders his counsel's submissions on costs of no value."</p>

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### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Pouget v. Hynes</p> <p>(2008 Ont. Sup. Ct. J.) Court File No.: 07-CV-9402CM</p> <p>Cusinato J.</p>	<p>Plaintiff (Respondent on motion to dismiss)</p>	<p>Cost requested: \$47,123</p> <p>Cost awarded: \$18,803, including \$743.35 for disbursements</p>	<p>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.</p>
<p>Audience Communication Inc. v. Sguassero</p> <p>(2008), 91 (3d) O.R. 47 (Ont. Sup. Ct. J.)</p> <p>Lederman J.</p>	<p>Applicants and Defendant Teplitsky</p>	<p>Cost requested: 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>Cost awarded: 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 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.</p>
<p>Heenan Blaikie LLP v. Barrick Poulsen</p> <p>Aitken J.</p>	<p>Plaintiff</p>	<p>Cost requested: Costs on a full indemnity basis in the amount of \$17,756.88, inclusive of GST</p> <p>Cost awarded: \$1,500 inclusive of disbursements and GST</p>	<p>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 reasonable amount for Heenan Blaikie as trustee to have incurred in fees and disbursements for this type of action</p>

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### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Dinsmore v. Southwood Lakes Holding Ltd.</p> <p>[2007] O.J. No. 263 (S.C.J.)</p> <p>Brockenshire J.</p>	<p>Plaintiff &amp; Defendant (Ontario New Home Warranties Plan)</p>	<p>Cost requested:</p> <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>Cost awarded:</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>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.</p> <p>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 Amherst Crane Rentals Ltd. v. Perring (2004), 241 D.L.R. (4th) 176 (Ont. C.A.), costs must be commensurate with the value of the lawsuit to the parties.</p>
<p>Sears Holdings Corp. v. Ontario (Securities Commission)</p> <p>[2007] O.J. No. 420 (S.C.J. – Div. Ct.)</p> <p>Ground, MacDonald, Hackland, JJ.A.</p>	<p>Plaintiff Minority Shareholders</p>	<p>Cost requested:</p> <p>Costs in the amount of \$90,000</p> <p>Cost awarded:</p> <p>Costs in the amount of \$75,000 for fees together with disbursements of \$14,890.94 and applicable GST</p>	<p>In light of the principles enunciated in the case of Boucher, the costs claimed by the Plaintiff should be reduced.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Riddell v. The Conservative Party of Canada</p> <p>2007 CanLII 296</p> <p>Hackland J.</p>	Plaintiff	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$7678</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$2000 in fees, plus GST, plus \$183.24 in disbursements</p>	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
<p>Antorisa Investments Ltd. v. 172965 Canada Ltd.</p> <p>[2007] O.J. No. 195 (S.C.J.)</p> <p>Lax J..</p>	Defendant	<p>Cost requested: 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</p> <p>Cost awarded: Costs in the amount of \$650,000 plus GST, plus disbursements in the sum of \$50,073.60, plus GST</p>	In determining a reasonable amount for fees for the 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.
<p>Cerilli v. The Corporation of the City of Ottawa</p> <p>2007 CanLII 1320</p> <p>McKinnon J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$138,147.79</p> <p>Cost awarded: Costs in the amount of \$100,000 (inclusive of GST, disbursements and submissions on costs)</p>	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

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Lavinkas v. Jacques Whitford &amp; Associates Ltd.</p> <p>[2006] O.J. No. 2697 (S.C.J.)</p> <p>Aitken J.</p>	Plaintiff	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$44,134.</p> <p>Cost awarded: Costs in the amount of \$28,000</p>	<p>Simplified Procedure. Defendant would have reasonably expected the costs claimed to have been proportionate to the amount being claimed in the action.</p> <p>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.</p>
<p>Bach v. McKellar</p> <p>[2006] O.J. No. 155 (S.C.J.)</p> <p>Beaudoin J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$3,169 inclusive of disbursements</p> <p>Cost awarded: Costs in the amount of \$2,777</p>	<p>This is what an unsuccessful party could reasonably expect to pay</p>
<p>George S. Szeto Investments Ltd. v. Ott</p> <p>[2006] O.J. No. 2390 (S.C.J.)</p> <p>Beaudoin J.</p>	Defendant (Attorney General)	<p>Cost requested: Costs in the amount of \$5,393.77 (\$523.15 of which were for disbursements)</p> <p>Cost awarded: Costs in the amount of \$5,393.77</p>	<p>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.</p>
<p>Khan v. TD Waterhouse Canada Inc. (c.o.b. TD Waterhouse Investment Advice)</p> <p>[2006] O.J. No. 1177 (S.C.J.)</p> <p>Beaudoin J.</p>	Defendant	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$27,805.99</p> <p>Cost awarded: Costs in the amount of \$10,000 for fees plus disbursements of \$5,415.39 for a total of \$15,415.39.</p>	<p>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.</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>OZ Merchandising Inc. v. Canadian Professional Soccer League Inc.</p> <p>[2006] O.J. No. 3718 (S.C.J.)</p> <p>Beaudoin J.</p>	Defendants	<p>Cost requested: Eastern Ontario District Soccer Association (Defendant) &amp; 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</p> <p>Cost awarded: Eastern Ontario District Soccer Association: Costs in the amount of \$1,500 + \$250 (excess counsel's costs) + \$1,000 (excess counsel's costs)</p>	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.
<p>OZ Optics Limited v. Timbercon Inc.</p> <p>2006 – citation unavailable</p> <p>Beaudoin J.</p>	Defendant	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$4,665.</p> <p>Cost awarded: 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.</p>	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.
<p>Mustapha v. Culligan of Canada Ltd.</p> <p>[2006] O.J. No. 1574, 39 C.C.L.T. (3d) 8 (S.C.J.)</p> <p>Brockenshire J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$117,653.78, inclusive of disbursements and GST.</p> <p>Cost awarded: Costs in the amount of \$101,541.26, inclusive of disbursements and GST.</p>	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.

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Goodman LLP v. Ryan</p> <p>[2006] O.J. No. 1705 (S.C.J.)</p> <p>Frank J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$95,537.17, all-inclusive</p> <p>Cost awarded: Costs in the amount of \$25,000, inclusive of disbursements and GST.</p>	<p>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.</p>
<p>Mascioli v. Unilux Boiler Corp.</p> <p>[2006] O.J. No. 1706 (S.C.J.)</p> <p>Frank J.</p>	Defendant	<p>Cost requested: 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</p> <p>Cost awarded: Costs in the amount of \$18,000, plus disbursements and GST</p>	<p>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.</p>

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Radvar v. Canada (Attorney General)</p> <p>[2006] O.J. No. 252 (S.C.J.)</p> <p>Frank J.</p>	Defendants	<p>Cost requested:</p> <p>Chubb: Costs in the amount of \$30,000</p> <p>Attorney General: Costs in the amount of \$30,392</p> <p>Signum &amp; Rye: Not disclosed</p> <p>Cost awarded:</p> <p>Chubb: \$20,000 in fees plus \$4,558 in disbursements</p> <p>Attorney General: \$12,000 in fees plus \$2,280 in disbursements</p> <p>Signum &amp; Rye: \$7,000 in fees plus \$5,423.97 in disbursements</p>	<p>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.</p>
<p>Keryluk v. Lamarche</p> <p>2006 – citation unavailable</p> <p>Hackland J.</p>	Plaintiff	<p>Cost requested:</p> <p>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</p> <p>Cost awarded:</p> <p>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.</p>	<p>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 expect to pay in the circumstances of the case.</p>

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Imperial Brush Co. Ltd. V. Pedott et al.  20006  Lalonde J.	Plaintiff	Cost requested: Costs in the amount of \$35,568.94  Cost awarded: 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.
Denis v. Mouvement Desjardins  [2006] O.J. No. 5208 (S.C.J.)  Lalonde J.	Defendant	Cost requested: Not disclosed  Cost awarded: 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.
Petro-Quip International Inc. v. Kala Naft Canada Ltd.  [2006] O.J. No. 2369 (S.C.J.)  Low J.	Defendant	Cost requested: Costs on a partial indemnity basis in the amount of \$199,366.73, but urged court to consider costs on a substantial indemnity basis.  Cost awarded: 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.
MacMartin v. King  2006 – citation unavailable  MacLeod J.	Plaintiff	Cost requested: Costs in the amount of \$39,335.35, inclusive of fees, disbursements and GST  Cost awarded: 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.

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Omnia Res Investments Inc. v. Solarc Construction Ltd.</p> <p>2006 – citation unavailable</p> <p>MacLeod J.</p>	Plaintiff	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$39,710.48</p> <p>Cost awarded: Costs on a substantial indemnity basis in the amount of \$39,710.48</p>	<p>The costs submitted are only \$1,322.52 higher than the partial 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.</p>
<p>Cusson v. Quan</p> <p>[2006] O.J. No. 3186 (S.C.J.)</p> <p>Maranger J.</p>	Plaintiff	<p>Cost requested: 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)</p> <p>Cost awarded: 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)</p>	<p>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.</p>
<p>E.S. Fox Ltd. v. Nordarla Enterprises Inc.</p> <p>[2006] O.J. No. 1904 (S.C.J.)</p> <p>McMahon J.</p>	Plaintiff	<p>Cost requested: 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.</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$11,500</p>	<p>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 (Boucher).</p>

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Brulé v. Brulé-Morgan</p> <p>2006 – citation unavailable</p> <p>Morin J.</p>	Defendant	<p>Cost requested: Bill of costs for fees and disbursements inclusive of GST totaling \$57,504.96</p> <p>Cost awarded: 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</p>	The costs awarded must be a fair and reasonable amount that the unsuccessful party would expect to pay in the particular proceeding.
<p>Canadian Blood Services v. Freeman</p> <p>* This case also involved costs to the intervenor Egale Canada Inc.</p> <p>2006 – citation unavailable</p> <p>Morin J.</p>	Defendant & Intervenor	<p>Cost requested: Egale: \$10,710 and disbursements of \$522.88</p> <p>Defendant:\$11,375 and disbursements of \$231.44</p> <p>Cost awarded: \$10,000 to Egale and Defendant in addition to the disbursements claimed by each party</p>	The plaintiffs would have reasonably expected to pay costs in these amounts. They claimed similar amounts in their Bill of Costs.
<p>Diallo v. Benson et. al.</p> <p>*This costs decision the Ottawa Police Services Board defendant</p> <p>2006 – citation unavailable</p> <p>Morin J.</p>	Defendant	<p>Cost requested: Costs in the amount of \$15,690.17</p> <p>Cost awarded: Costs in the amount of \$5,000</p>	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.

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Rowe v. Unum Life Insurance Company of America</p> <p>2006 – citation unavailable</p> <p>Polowin J.</p>	Plaintiff	<p>Cost requested: 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</p> <p>Cost awarded: Costs in the amount of \$140,000, plus GST and \$2,280.66 in disbursements</p>	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
<p>1259695 Ontario Inc. (c.o.b. Upper Canada Office Systems) v. Guinchard</p> <p>[2006] O.J. No. 550 (S.C.J.)</p> <p>Power J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$10,405.98, inclusive of fees, disbursements and GST.</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$5,000, all inclusive.</p>	The claim of costs is too high for a motion for leave to appeal to the Divisional Court.
<p>Hanis v. University of Western Ontario</p> <p>*This was a proceeding against third party insurance companies to indemnify UWO for their fees they incurred in defending themselves</p> <p>[2006] O.J. No. 2763 (S.C.J.)</p> <p>Power J.</p>	Defendant	<p>Cost requested: Costs on a full indemnity basis totaling \$667,920.36</p> <p>Cost awarded: Costs on a Substantial indemnity basis totaling \$554,491.54</p>	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.

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Worthman v. Assessmed Inc.</p> <p>2006 – citation unavailable</p> <p>Power, O'Driscoll, Gravely J.J.A.</p>	Plaintiff	<p>Cost requested: Costs totaling approximately \$47,000 (Exact number not disclosed)</p> <p>Cost awarded: Costs in the amount of \$15,000 (including fees and disbursements)</p>	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.
<p>Lecompte v. A. Potvin Construction Ltd.</p> <p>2006 – citation unavailable</p> <p>Roy J.</p>	Plaintiff	<p>Cost requested: Costs and disbursements totaling \$141,736.27</p> <p>Cost awarded: Costs in the amount of \$50,000 plus \$20,000 in disbursements</p>	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
<p>Inscan Contractors (Ontario) Inc. v. Halton District School Board</p> <p>[2006] O.J. No. 815 (S.C.J.)</p> <p>Siegel J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$86,255 plus GST plus \$2,000 in respect of its costs submission</p> <p>Cost awarded: 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)</p>	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.

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>King v. Merrill Lynch Canada Inc.</p> <p>[2006] O.J. No. 1257 (S.C.J.)</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost requested:</p> <p>Costs on a partial indemnity scale in the amount of \$831,493</p> <p>Cost awarded:</p> <p>Costs on a partial indemnity basis in the amount of \$350,000 plus GST and disbursements of \$109,431.24 plus GST</p>	<p>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, 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.</p>
<p>Morris v. Cusack</p> <p>2006 – citation unavailable</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost requested:</p> <p>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</p> <p>Cost awarded:</p> <p>Costs not awarded for the assessment hearing. Costs in the amount of \$3,000 plus GST plus disbursements of \$1,343.26.</p>	<p>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.</p>

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Nelligan v. Fontaine</p> <p>[2006] O.J. No. 3699 (S.C.J.)</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested: 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.</p> <p>Plaintiff law firm claims fees of \$22,816.68 inclusive of GST on a substantial indemnity basis, plus disbursements of \$531.36</p> <p>Cost awarded: Costs thrown away were assessed at \$10,000 plus GST and disbursements of \$371.80, inclusive of GST</p>	The clients were familiar with the high costs of litigation as they received regular invoices from the plaintiff law firm.
<p>Sauvé v. Merovitz</p> <p>[2006] O.J. No. 5059 (S.C.J.)</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost requested: Not disclosed</p> <p>Cost awarded: Merovitz Motion: Applicant ordered to pay \$8,000 + \$716.91 (disbursements) + GST</p> <p>Cotes Motion: Applicant ordered to pay \$5,000 + \$431.03 (disbursements) + GST</p> <p>Cotes Application: Applicant ordered to pay \$6,000 + \$729.51 (disbursements) + GST</p>	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.

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Champion v. Guibord</p> <p>[2006] O.J. No. 3197 (S.C.J.)</p> <p>Toscano-Roccamo J.</p>	Plaintiff	<p>Cost requested:</p> <p>Costs on a full indemnity basis in the amount of \$13,617.50 in fees, plus \$1,748.89 in disbursements, plus applicable GST</p> <p>Cost awarded:</p> <p>Costs on a partial indemnity basis in the amount of \$11,098 in fees, plus \$1,748.89 in disbursements, plus applicable GST</p>	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
<p>Summers v. Harrower</p> <p>[2006] O.J. No. 452 (S.C.J.)</p> <p>Toscano-Roccamo J.</p>	Plaintiff	<p>Cost requested:</p> <p>Costs in the amount of \$86,238.79 in fees plus \$7,119.65 in disbursements for a total of \$94,358.44.</p> <p>Cost awarded:</p> <p>Costs on a substantial indemnity basis in the amount of \$42,500 plus \$5,137.23 in disbursements, plus GST</p>	Although an award for fees in the amount of \$42,500 is well in 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.

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Harvey v. Leger</p> <p>[2005] O.J. No. 3582 (S.C.J.)</p> <p>Beaudoin J.</p>	<p>Defendants &amp; Third Parties</p>	<p>Cost requested:</p> <p>Defendants: Costs on a substantial indemnity basis in the amount of \$7,901.95 plus disbursements of \$628.06 inclusive of GST.</p> <p>Third Parties: Costs on a partial indemnity basis in the amount of \$5,061.15 inclusive of counsel fee, GST and disbursements</p> <p>Cost awarded:</p> <p>Defendants: Costs on a partial indemnity basis in the amount of \$3,000 inclusive of GST and disbursements</p> <p>Third Parties: Costs on a partial indemnity basis in the amount of \$3,500 inclusive of GST and disbursements</p>	<p>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.</p> <p>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.</p>
<p>Millen v. Kingsway General Insurance Company</p> <p>2005 – citation unavailable</p> <p>Belch J.</p>	<p>Defendant</p>	<p>Cost requested:</p> <p>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</p> <p>Cost awarded:</p> <p>Costs on a partial indemnity basis in the amount of \$7,500, including fees and disbursements and GST where applicable</p>	<p>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.</p>

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Woodcliffe Corporation, et al. v. Rotenberg, et al.  2005 – citation unavailable  Brennan J.	Third Parties	Cost requested: Costs on a full indemnity basis  Cost awarded: 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.  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.
Thomson v. S.I.A. Insurance Brokers Ltd.  [2005] O.J. No. 4497 (S.C.J.)  Ferguson J.	Defendant	Cost requested: Not disclosed  Cost awarded: 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.
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.)  Ground J.	Plaintiff	Cost requested: Costs in the amount of \$1,261,364.00 plus GST and disbursements for a total of \$1,644,496.83.  Cost awarded: 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.

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Cummings v. Douglas</p> <p>2005 – citation unavailable</p> <p>Morin J.</p>	Plaintiff	<p>Cost requested:</p> <p>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</p> <p>Cost awarded:</p> <p>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.</p>	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.
<p>Bowers v. Delegarde</p> <p>[2005] O.J. No. 3857 (S.C.J.)</p> <p>Power J.</p>	Defendant	<p>Cost requested:</p> <p>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</p> <p>Cost awarded:</p> <p>Costs on a partial indemnity basis in the amount of \$40,000, inclusive of disbursements and all fees, and GST.</p>	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.
<p>Spearhead Management Canada Ltd. v. Henningsen</p> <p>2005 – citation unavailable</p> <p>Power J.</p>	Defendant	<p>Cost requested:</p> <p>Costs on a substantial indemnity basis in the amount of \$27,219.23, inclusive of GST.</p> <p>Cost awarded:</p> <p>Costs in the amount of \$12,000, inclusive of GST.</p>	The appropriate amount of costs to be awarded must reflect the reasonable expectations of the parties and, in particular, the party seized with the responsibility of paying the costs.

## SECTION 4 - RULE 57 FACTORS

### REASONABLE EXPECTATIONS / COSTS THAT AN UNSUCCESSFUL PARTY COULD EXPECT TO PAY (57.01(1)(0.b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Inkworks Quality Printers Corporation v. Gary Baxter et. al.</p> <p>2005 – citation unavailable</p> <p>Rutherford J.</p>	Plaintiff	<p>Cost requested:</p> <p>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.</p> <p>Cost awarded:</p> <p>Costs on a partial indemnity basis in the amount of \$4,000, inclusive of fees, disbursements and applicable GST.</p>	<p>According to Boucher v. Public Accountants Council for the Province of Ontario (2004), 71 O.R. (3d) 291 (C.A.), the following principles are to be adhered to in fixing costs:</p> <ol style="list-style-type: none"> <li>1) Fixing costs is not a mechanical exercise. All of the factors in R. 57.01 must be considered;</li> <li>2) Costs Grid calculation is appropriate, but judge must also step back and see if the result is fair and reasonable; and</li> <li>3) the expectation of the parties is a relevant factor in deciding what is fair and reasonable</li> </ol>

SECTION 4 - RULE 57 FACTORS			
AMOUNT CLAIMED AND AMOUNT RECOVERED (57.01(1)(a))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Sandborn v. Pottruff and Malik</p> <p>2011 ONSC 2819</p> <p>Conway J.</p>	Defendants	<p>Cost requested:</p> <p>Defendants claim \$59,228.74 on a partial indemnity basis up to December 17, 2010 and substantial basis afterwards.</p> <p>Plaintiffs only submitted that defendants should only be awarded partial indemnity scale.</p> <p>Cost awarded:</p> <p>\$42,000 inclusive of disbursements and taxes.</p>	<p>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 Clarington (Municipality) v. Blue Circle Canada Inc 2009 ONCA 722. has superseded this. There was no reprehensible conduct by the plaintiff therefore costs on a partial indemnity basis are awarded.</p> <p>Partial indemnity fees are calculated as \$44,729.25 with disbursements just under \$4000.</p> <p>With the rule of proportionality, the plaintiff could reasonably expect 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.</p>
<p>Major v York Region Children's Aid Society et al</p> <p>2011 ONSC 6695</p> <p>Fregeau J.</p>	Defendants	<p>Cost requested:</p> <p>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</p> <p>Cost awarded:</p> <p>\$10,000 inclusive of HST and disbursements</p>	<p>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.</p> <p>The Plaintiff was self-represented. It is reasonable to expect errors in a self-represented litigant's pleadings.</p> <p>He was twice given the opportunity to consider the merit of his claim but failed to do so.</p>

## SECTION 4 - RULE 57 FACTORS

### AMOUNT CLAIMED AND AMOUNT RECOVERED (57.01(1)(a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Asco Construction Ltd. V Epoxy Solutions Ltd.</p> <p>2011 ONSC 4464</p> <p>Lalonde J.</p>	Defendant	<p>Cost requested: \$56,174.00 plus HST for fees; 7944.08 plus HST for disbursements</p> <p>Cost awarded: \$36,100 plus HST for fees; 5944.08 plus HST for disbursements</p> <p>Pre-judgment interest of \$4,521.57 will also be paid</p>	<p>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.</p> <p>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)</p> <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>
<p>Leroux v Casselman (Village)</p> <p>2011 ONSC 5847</p> <p>Métivier J.</p>	Applicants	<p>Cost requested: Applicants seek costs of \$68,237.34 on a substantial indemnity basis; or, \$47,406.10 on a partial indemnity basis.</p> <p>Cost awarded: \$38,500 to be paid by Village of Casselman and \$1500 to be paid by Myke Racine</p>	<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>

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### AMOUNT CLAIMED AND AMOUNT RECOVERED (57.01(1)(a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Gordon v. North Grenville (Municipality)  2011 ONSC 3070  Ratushny J.	Appellant	Cost requested: \$40,204.57 on a substantial indemnity basis  Cost awarded: \$20,000 all inclusive	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.  There was evidence that there were other legal options available to the respondents to deal with their safety concerns  The unsuccessful party submitted a Bill of Costs for \$23,575.25.
137328 Canada Inc. Alliance Security Systems v. Economical Mutual  2011 ONSC 2563  Smith, Robert J.	Respondents	Cost requested: 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  Cost awarded: \$17,000 inclusive of GST/HST on a partial indemnity basis plus \$3,000 in disbursements	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.  Not prepared to award substantial indemnity costs as the offer to settle did not comply strictly with Rule 49.  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.
Bérubé v. Rational Entertainment Ltd.  2010 ONSC 894  Power J.	Respondent defendant	Cost requested: \$5,539.31 on partial indemnity scale, including \$457.81 in disbursements  Cost awarded: \$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.

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### AMOUNT CLAIMED AND AMOUNT RECOVERED (57.01(1)(a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Hollingsworth Estate v. Halsall  2010 ONSC 2087  Ray J.	Applicant	Cost requested: \$21,148.03 on a full indemnity scale, substantial indemnity costs at \$19,032.13 or partial indemnity costs of \$13,385.13  Cost awarded: \$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 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.
Malenfant v. Lavergne  2010 ONSC 3596  Ray J.	Defendant	Cost requested: \$81,834.51 inclusive, on a partial indemnity basis  Cost awarded: \$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.
Baird v. Botham  2010 ONSC 3057  Smith, Robert J.	Defendant	Cost requested: \$49,924.88 for fees and \$11,524.61 for disbursements, both inclusive of GST for a total of \$61,449.49  Cost awarded: 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.  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.
Rowe v. Unum Life Insurance Company of America (Motion to Vary)  [2007] O.J. No. 474 (S.C.J.)  Polowin J.	Plaintiff	Cost requested: Costs in the amount of \$8,431.77, inclusive of GST  Cost awarded: Partial indemnity costs totaling \$1,500.	Plaintiff claimed \$600,000 in damages, but only recovered \$30,000.

## SECTION 4 - RULE 57 FACTORS

### AMOUNT CLAIMED AND AMOUNT RECOVERED (57.01(1)(a))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Lavinkas v. Jacques Whitford &amp; Associates Ltd.</p> <p>[2006] O.J. No. 2697 (S.C.J.)</p> <p>Aitken J.</p>	Plaintiff	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$44,134.</p> <p>Cost awarded: Costs in the amount of \$28,000</p>	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.
<p>Cusson v. Quan</p> <p>[2006] O.J. No. 3186 (S.C.J.)</p> <p>Maranger J.</p>	Plaintiff	<p>Cost requested: 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)</p> <p>Cost awarded: 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)</p>	The plaintiff claimed almost \$3 million in damages. The jury awarded \$125,000 in general damages.
<p>Lecompte v. A. Potvin Construction Ltd.</p> <p>2006 – citation unavailable</p> <p>Roy J.</p>	Plaintiff	<p>Cost requested: Costs and disbursements totaling \$141,736.27</p> <p>Cost awarded: Costs in the amount of \$50,000 plus \$20,000 in disbursements</p>	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

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AMOUNT CLAIMED AND AMOUNT RECOVERED (57.01(1)(a))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>King v. Merrill Lynch Canada Inc.</p> <p>[2006] O.J. No. 1257 (S.C.J.)</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost requested: Costs on a partial indemnity scale in the amount of \$831,493</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$350,000 plus GST and disbursements of \$109,431.24 plus GST</p>	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.
<p>Sauvé v. Merovitz</p> <p>[2006] O.J. No. 5059 (S.C.J.)</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost requested: Not disclosed</p> <p>Cost awarded: Merovitz Motion: Applicant ordered to pay \$8,000 + \$716.91 (disbursements) + GST</p> <p>Cotes Motion: Applicant ordered to pay \$5,000 + \$431.03 (disbursements) + GST</p> <p>Cotes Application: Applicant ordered to pay \$6,000 + \$729.51 (disbursements) + GST</p>	Applicant's claim exceeded \$30 million against a number of defendants, and the amount recovered against these defendants was nil.

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AMOUNT CLAIMED AND AMOUNT RECOVERED (57.01(1)(a))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Summers v. Harrower  [2006] O.J. No. 452 (S.C.J.)  Toscano-Roccamo J.	Plaintiff	<p>Cost requested: Costs in the amount of \$86,238.79 in fees plus \$7,119.65 in disbursements for a total of \$94,358.44.</p> <p>Cost awarded: Costs on a substantial indemnity basis in the amount of \$42,500 plus \$5,137.23 in disbursements, plus GST</p>	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
Cummings v. Douglas  2005 – citation unavailable  Morin J.	Plaintiff	<p>Cost requested: 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</p> <p>Cost awarded: 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.</p>	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.

## SECTION 4 - RULE 57 FACTORS

### APPORTIONMENT OF LIABILITY (57.01(1)(b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Lavinkas v. Jacques Whitford &amp; Associates Ltd.</p> <p>[2006] O.J. No. 2697 (S.C.J.)</p> <p>Aitken J.</p>	Plaintiff	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$44,134.</p> <p>Cost awarded: Costs in the amount of \$28,000</p>	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.
<p>Chevrier v. Patterson Hadden Limited</p> <p>[2006] O.J. No. 3917 (S.C.J.)</p> <p>Beaudoin J.</p>	Defendants	<p>Cost requested: 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</p> <p>Cost awarded: \$2,500</p>	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.
<p>Khan v. TD Waterhouse Canada Inc. (c.o.b. TD Waterhouse Investment Advice)</p> <p>[2006] O.J. No. 1177 (S.C.J.)</p> <p>Beaudoin J.</p>	Defendant	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$27,805.99</p> <p>Cost awarded: Costs in the amount of \$10,000 for fees plus disbursements of \$5,415.39 for a total of \$15,415.39.</p>	Defendants were completely successful on the motion seeking security for costs.

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### APPORTIONMENT OF LIABILITY (57.01(1)(b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>OZ Merchandising Inc. v. Canadian Professional Soccer League Inc.</p> <p>[2006] O.J. No. 3718 (S.C.J.)</p> <p>Beaudoin J.</p>	Defendants	<p>Cost requested: Eastern Ontario District Soccer Association (Defendant) &amp; 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</p> <p>Cost awarded: Eastern Ontario District Soccer Association: Costs in the amount of \$1,500 + \$250 (excess counsel's costs) + \$1,000 (excess counsel's costs)</p>	<p>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.</p>
<p>OZ Optics Limited v. Timbercon Inc.</p> <p>2006 – citation unavailable</p> <p>Beaudoin J.</p>	Defendant	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$4,665.</p> <p>Cost awarded: 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.</p> <p>Total costs to the defendant in the amount of \$2,665.</p>	<p>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.</p>

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APPORTIONMENT OF LIABILITY (57.01(1)(b))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Shalouf v. Beaudry  [2006] O.J. No. 2550 (S.C.J.)  Beaudoin J.	Defendants	Cost requested: 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  Cost awarded: 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.
Temelini v. Canada Permanent Trust Company  [2006] O.J. No 509 (S.C.J.)  Beaudoin J.	Plaintiff	Cost requested: Costs on a partial indemnity basis in the amount of \$16,933 and disbursements of \$2,345.94  Cost awarded: 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.
Iko Industries Ltd. v. Grant  [2006] O.J. No. 4068 (S.C.J.)  Charbonneau J.	Plaintiff	Cost requested: Not disclosed  Cost awarded: \$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 contempt 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.

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APPORTIONMENT OF LIABILITY (57.01(1)(b))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Gray et al. v. Province of Ontario et al.  2006 – citation unavailable  Cunningham, Lane, Hackland JJ.A.	Plaintiffs / Applicants	Cost requested: Costs on a partial indemnity basis. Amount not disclosed  Cost awarded: 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.
Rwagasore v. Sugira  2006 – citation unavailable	Defendant	Cost requested: Not disclosed  Cost awarded: \$4,200	Defendant was successful on this motion.
Viertelhausen v. Burbridge  [2006] O.J. No. 1406 (S.C.J.)  Linhares de Sousa J.	Plaintiff	Cost requested: Not disclosed  Cost awarded: 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.

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### APPORTIONMENT OF LIABILITY (57.01(1)(b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Agricredit et al. v. Somerville Farm Supplies Ltd.</p> <p>2006 – citation unavailable</p> <p>Hackland J.</p>	<p>Plaintiff and Defendant (to be set off against each other)</p>	<p>Cost requested: Not disclosed</p> <p>Cost awarded: Plaintiff: Costs on a partial indemnity basis in the amount of \$30,000 in fees and \$2,500 for disbursements (inclusive of GST)</p> <p>Defendant: Costs in the amount of \$10,000 in fees and \$700 for disbursements (inclusive of GST)</p>	<p>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.</p>
<p>Schouten v. Rideau (Township)</p> <p>2006 – citation unavailable</p> <p>Hackland J.</p>	<p>Defendant</p>	<p>Cost requested: Total requested costs not disclosed</p> <p>Cost awarded: Total fees \$97,317.87 plus \$51,329.71 in disbursements plus GST</p>	<p>The action was dismissed; defendants were entirely successful</p>
<p>Cusson v. Quan</p> <p>[2006] O.J. No. 3186 (S.C.J.)</p> <p>Maranger J.</p>	<p>Plaintiff</p>	<p>Cost requested: 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)</p> <p>Cost awarded: 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)</p>	<p>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.</p> <p>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.</p>

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### APPORTIONMENT OF LIABILITY (57.01(1)(b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Canadian Blood Services v. Freeman</p> <p>* This case also involved costs to the intervenor Egale Canada Inc.</p> <p>2006 – citation unavailable</p> <p>Morin J.</p>	<p>Defendant &amp; Intervenor</p>	<p>Cost requested: Egale: \$10,710 and disbursements of \$522.88</p> <p>Defendant: \$11,375 and disbursements of \$231.44</p> <p>Cost awarded: \$10,000 to Egale and Defendant in addition to the disbursements claimed by each party</p>	<p>Egale and Freeman were successful in opposing the appeals of the opposing parties</p>
<p>Andison v. Cheeseman</p> <p>2006 – citation unavailable</p> <p>Power J.</p>	<p>Plaintiff</p>	<p>Cost requested: Costs in the amount of \$6,112.25</p> <p>Cost awarded: Costs in the amount of \$4,000, all-inclusive</p>	<p>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.</p>
<p>Dunklin v. Dunklin</p> <p>[2006] O.J. No. 1886 (S.C.J.)</p> <p>Power J.</p>	<p>Defendant</p>	<p>Cost requested: Costs in the amount of \$16,500 plus GST. Counsel requests that 75% of these costs be ordered against the Plaintiff (being an amount of \$12,375 plus GST and disbursements for a total costs request of \$14,651.50).</p> <p>Cost awarded: Costs should be awarded in the amount of 50% of the \$16,500, and not 75% of that amount. Costs were awarded in the rounded-off amount of \$8,500, inclusive of GST and disbursements.</p>	<p>Defendant was primarily successful on most, if not all, of the issues that proceeded to trial.</p>

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APPORTIONMENT OF LIABILITY (57.01(1)(b))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Gilchrist v. Oak</p> <p>2006 – citation unavailable</p> <p>Power J.</p>	Defendant	<p>Cost requested: Costs in the amount of \$4,667.88 (inclusive of fees, disbursements and applicable GST)</p> <p>Cost awarded: Costs in the amount of \$2,500 (inclusive of fees, disbursements and applicable GST)</p>	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 should be rebutted.
<p>Hanis v. University of Western Ontario</p> <p>*This was a proceeding against third party insurance companies to indemnify UWO for their fees they incurred in defending themselves</p> <p>[2006] O.J. No. 2763 (S.C.J.)</p> <p>Power J.</p>	Defendant	<p>Cost requested: Costs on a full indemnity basis totaling \$667,920.36</p> <p>Cost awarded: Costs on a substantial indemnity basis totaling \$554,491.54</p>	While substantially successful in its claim against Guardian Insurance Company of Canada, UWO was not one hundred percent successful

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### APPORTIONMENT OF LIABILITY (57.01(1)(b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Riddell v. Conservative Party of Canada</p> <p>[2006] O.J. No. 4141 (S.C.J.)</p> <p>Power J.</p>	Plaintiff	<p>Cost requested:</p> <p>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)</p> <p>Cost awarded:</p> <p>Costs on a partial indemnity basis in the amount of \$6,500, all inclusive.</p>	There is no good reason why an award of costs should not be made to the Plaintiff as the successful party on the motion.
<p>King v. Merrill Lynch Canada Inc.</p> <p>[2006] O.J. No. 1257 (S.C.J.)</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost requested:</p> <p>Costs on a partial indemnity scale in the amount of \$831,493</p> <p>Cost awarded:</p> <p>Costs on a partial indemnity basis in the amount of \$350,000 plus GST and disbursements of \$109,431.24 plus GST</p>	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.
<p>Llance Communications Ind. V. Star Web Ltd.</p> <p>[2006] O.J. No. 5054 (S.C.J.)</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested:</p> <p>Costs in the amount of \$10,005.75 plus GST plus disbursements of \$241.28</p> <p>Cost awarded:</p> <p>Costs on a partial indemnity scale in the amount of \$4,000 plus GST plus disbursements of \$241.28</p>	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.

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### APPORTIONMENT OF LIABILITY (57.01(1)(b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Morris v. Cusack</p> <p>2006 – citation unavailable</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost requested:</p> <p>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</p> <p>Cost awarded:</p> <p>Costs not awarded for the assessment hearing. Costs in the amount of \$3,000 plus GST plus disbursements of \$1,343.26.</p>	Success in the outcome of the case was divided.
<p>Sauvé v. Merovitz</p> <p>[2006] O.J. No. 5059 (S.C.J.)</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost requested:</p> <p>Not disclosed</p> <p>Cost awarded:</p> <p>Merovitz Motion: Applicant ordered to pay \$8,000 + \$716.91 (disbursements) + GST</p> <p>Cotes Motion: Applicant ordered to pay \$5,000 + \$431.03 (disbursements) + GST</p> <p>Cotes Application: Applicant ordered to pay \$6,000 + \$729.51 (disbursements) + GST</p>	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

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APPORTIONMENT OF LIABILITY (57.01(1)(b))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Campbell v. Fappiano  2006 – citation unavailable  Trousdale J.	Plaintiff	Cost requested: Costs on a full indemnity basis in the amount of \$2,396.80  Cost awarded: \$500 inclusive of GST	A large part of the Court time was taken up with the defendant's motion, which was dismissed.
Harvey v. Leger  [2005] O.J. No. 3582 (S.C.J.)  Beaudoin J.	Defendants & Third Parties	Cost requested: Defendants: Costs on a substantial indemnity basis in the amount of \$7,901.95 plus disbursements of \$628.06 inclusive of GST.  Third Parties: Costs on a partial indemnity basis in the amount of \$5,061.15 inclusive of counsel fee, GST and disbursements  Cost awarded: Defendants: Costs on a partial indemnity basis in the amount of \$3,000 inclusive of GST and disbursements  Third Parties: 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.

## SECTION 4 - RULE 57 FACTORS

### APPORTIONMENT OF LIABILITY (57.01(1)(b))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Lee-Chin v. Lee-Chin</p> <p>[2005] O.J. No. 5573 (S.C.J.)</p> <p>Gordon J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$27,500</p> <p>Note: Counsel for plaintiff disclosed that actual costs charged to the client were \$29,982.36</p> <p>Cost awarded: Costs in the amount of \$13,375</p>	<p>Counsel, in their submissions, attempted 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.</p>
<p>Cada Construction Inc. v. Kinney</p> <p>[2005] O.J. No. 5769 (S.C.J.)</p> <p>McKinnon J.</p>	Defendant	<p>Cost requested: Not disclosed</p> <p>Cost awarded: \$1,000, inclusive of GST and disbursements</p>	<p>Defendants were successful in resisting the Plaintiffs’ motion. They are entitled to their reasonable costs.</p>
<p>Natufe v. Ottawa-Carleton Regional Transport</p> <p>[2005] O.J. No. 3769 (S.C.J.)</p> <p>Power J.</p>	Barrister & Solicitor	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$18,163, inclusive of GST</p> <p>Cost awarded: Costs in the amount of \$12,000, plus GST</p>	<p>Barrister &amp; Solicitor was substantially successful and there should be an award of costs in his favour.</p>
<p>Maritime Life Assurance Co. v. Anderson et al.</p> <p>[2005] O.J. No. 4911 (S.C.J.)</p> <p>Power J.</p>	Defendant (by counterclaim)	<p>Cost requested: Not disclosed</p> <p>Cost awarded: 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.</p>	<p>Defendant by counterclaim was completely successful and is prima facie 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.</p>

SECTION 4 - RULE 57 FACTORS			
APPORTIONMENT OF LIABILITY (57.01(1)(b))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
1514904 Ontario Ltd. v. Mississippi Mills (Town)  [2005] O.J. No. 5281 (S.C.J.)  Power J.	Defendant	Cost requested: Parties reached an agreement with respect to quantum of costs in the amount of \$7,500 plus GST.  Cost awarded: Costs in the amount of \$7,500 plus GST	Defendant was the successful party.
Fedorchuk v. Merrill Lynch, et. al.  2005 – citation unavailable  Ratushny J.	Plaintiffs	Cost requested: Costs on a partial indemnity basis in the amount of \$2,472.88  Cost awarded: 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 issues in importance and attracts costs even though on the other issues there was divided success.  Each party will bear their own costs for the other appeal issues, due to the divided nature of success between the parties.

SECTION 4 - RULE 57 FACTORS			
COMPLEXITY OF THE PROCEEDING (57.01(1)(c))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Marchand v. MacKenzie  2019 ONSC 5062  de Sousa J	Applicant	Cost requested: Not disclosed  Cost awarded: \$40,000.00	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).
D'Addario v. EnGlobe Corp.  2012 ONSC 4380  Brown, David M. J.	Defendants	Cost requested: By Englobe: \$348,411.71 + \$33,792.62 disbursements  By Tony Bussieri: \$266,894.55 + \$13,041.85  Cost awarded: To Englobe: \$200,232.47 total  To Bussieri: \$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.  Some principles relied on by judge:  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"  Parameters: 1) If costs recovered at motions stage, no double recovery at trial, only incremental costs for use at trial.  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)

SECTION 4 - RULE 57 FACTORS			
COMPLEXITY OF THE PROCEEDING (57.01(1)(c))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Manary v. Dr. Martin Strban et al</p> <p>2012 ONSC 932</p> <p>Kent J.</p>	Plaintiff	<p>Cost requested: \$421,574.48 for fees and \$108,074.75 for disbursements on a substantial indemnity basis</p> <p>Cost awarded: \$400,000 inclusive of disbursements and exclusive of appropriate taxes</p>	<p>Like all medical malpractice actions, this was a complex matter.</p> <p>Costs in a complex medical malpractice can equal or exceed the damages award (See Dybongco-Rimando Est. v Jackiewicz [2003], O.J. No. 534 &amp; Hannsen v Anvari, 2002 CanLii 18680</p> <p>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.</p>
<p>TPG Technology Consulting Ltd. V. Canada (Industry)</p> <p>2012 ONSC 1092</p> <p>Kershman J.</p>	Plaintiffs	<p>Cost requested: Plaintiff seeks costs on a substantial indemnity basis for \$34,259.00 Defendant seeks costs in the amount of \$3,633.94</p> <p>Cost awarded: \$15,000 inclusive of disbursements and HST</p>	<p>This is a decision on costs for an abandoned motion under rule 21.02(2)(a)</p> <p>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.</p> <p>The Plaintiff's claim for costs is excessive, the hours charged are high and should be reduced.</p> <p>The matter was reasonably complex and issues were very important.</p>
<p>Green v. Canada(Attorney General)</p> <p>2011 ONSC 5750</p> <p>Kane J.</p>	Defendants	<p>Cost requested: Defendants request \$7000 with an hourly billing rate of \$181</p> <p>Cost awarded: \$5400.00 including all disbursements and HST to be paid within 6 months.</p>	<p>\$7000 exceeded what an unsuccessful party could expect on a procedural motion.</p> <p>Subparagraphs (a), (b), (e), (f), (g) and (h) of this sub-rule are inapplicable</p> <p>The complexity of this case was moderate.</p>

SECTION 4 - RULE 57 FACTORS			
COMPLEXITY OF THE PROCEEDING (57.01(1)(c))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Rodrigues v Toop  2011 ONSC 2611  Smith, Robert J.	Plaintiff	<p>Cost requested: 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.</p> <p>Cost awarded: 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.</p>	<p>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.</p> <p>Both parties submitted offers to settle but the matter proceeded to a summary motion.</p> <p>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.</p>
Mondoux v. Tuchenhausen  2011 ONSC 3310  Shaw J.	Applicant	<p>Cost requested: \$31,746.15 for fees on a partial indemnity basis plus disbursement and GST/HST for total of: \$38,524.15</p> <p>\$449.77 on a substantial indemnity basis for the time incurred with a draft order</p> <p>Cost awarded: \$16,750 for fees on a partial indemnity basis</p> <p>\$3568.68 for disbursements</p> <p>Inclusive of GST/HST</p>	<p>The partial indemnity rates for all counsels are reasonable given their experience</p> <p>Applicant should not be liable for respondent's partial indemnity costs for the cross-examination</p> <p>Damages are not permitted under section 10(1)(c) of MCIA</p> <p>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</p>

## SECTION 4 - RULE 57 FACTORS

### COMPLEXITY OF THE PROCEEDING (57.01(1)(c))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Toronto Community Housing Corporation v. Thyssenkrupp Elevator (Canada) Limited</p> <p>2011 ONSC 7588</p> <p>Horkins J.</p>	Plaintiffs	<p>Cost requested: Plaintiffs: \$792,388.14 on a substantial indemnity basis; alternatively, \$541,273.72 on a partial indemnity basis</p> <p>Cost awarded: \$400,000 for fees plus disbursements of \$34,673.56 plus GST/HST</p>	<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>
<p>Rowe v. Unum Life Insurance Company of America (Motion to Vary)</p> <p>[2007] O.J. No. 474 (S.C.J.)</p> <p>Polowin J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$8,431.77 inclusive of GST</p> <p>Cost awarded: Partial indemnity costs totaling \$1,500.</p>	<p>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</p>
<p>Mick v. Boulder City Climbing School Inc.</p> <p>2007 – citation unavailable</p> <p>Métivier J.</p>	Plaintiff	<p>Cost requested: Costs on a substantial indemnity basis</p> <p>Cost awarded: Costs in the amount of \$14,000 inclusive of fees, disbursements and GST</p>	<p>This case involved a non-complex nature of a proceeding</p>

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### COMPLEXITY OF THE PROCEEDING (57.01(1)(c))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Suserski v. Nurse [2007] O.J. No. 965 (S.C.J.) Glithero J.	Defendant	Cost requested: Costs in the amount of \$50,000  Cost awarded: 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.
Galpin v. Galpin 2007 – citation unavailable Aitken J.	Plaintiff	Cost requested: Costs in the amount of \$27,205  Cost awarded: 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
Flentje v. Nichols 2007 – citation unavailable Blishen J.	Plaintiff	Cost requested: \$30,399.88 (inclusive of GST and disbursements)  Cost awarded: \$28,000 (inclusive of disbursements and GST)	The action did not deal with legal issues of particular complexity or of wider importance
Iko Industries Ltd. v. Grant [2006] O.J. No. 4068 (S.C.J.) Charbonneau J.	Plaintiff	Cost requested: Not disclosed  Cost awarded: \$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.

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### COMPLEXITY OF THE PROCEEDING (57.01(1)(c))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Niagara Neighbourhood Housing Cooperative Inc. v. Edward  [2006] O.J. No. 2924 (Div. Ct.)  Epstein J.	Plaintiff	Cost requested: Costs in the amount of \$15,100  Cost awarded: 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.
Keryluk v. Lamarche  2006 – citation unavailable  Hackland J.	Plaintiff	Cost requested: 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  Cost awarded: 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.	This was a straight forward case proceeding under the Simplified Procedure (Rule 76).
Schouten v. Rideau (Township)  2006 – citation unavailable  Hackland J.	Defendant	Cost requested: Total requested costs not disclosed  Cost awarded: 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

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### COMPLEXITY OF THE PROCEEDING (57.01(1)(c))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Cusson v. Quan</p> <p>[2006] O.J. No. 3186 (S.C.J.)</p> <p>Maranger J.</p>	Plaintiff	<p>Cost requested:</p> <p>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)</p> <p>Cost awarded:</p> <p>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)</p>	This was a complex and hard-fought six-week jury trial involving claims of defamation against two separate defendants
<p>3869130 Canada Inc. v. I.C.B. Distribution Inc.</p> <p>2006 – citation unavailable</p> <p>Polowin J.</p>	Plaintiff	<p>Cost requested:</p> <p>A total of \$294,347.33 is claimed on a partial indemnity basis and \$361,858.34 on a substantial indemnity basis</p> <p>Cost awarded:</p> <p>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>	The issues in this case were not unduly complex, but there were three separate actions to be dealt with which led to some complexity.

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COMPLEXITY OF THE PROCEEDING (57.01(1)(c))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Rowe v. Unum Life Insurance Company of America  2006 – citation unavailable  Polowin J.	Plaintiff	Cost requested: 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  Cost awarded: 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
Campeau v. Campeau  [2006] O.J. No. 2297 (S.C.J.)  Power J.	Defendants / Moving Parties	Cost requested: 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  Cost awarded: 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.
King v. Merrill Lynch Canada Inc.  [2006] O.J. No. 1257 (S.C.J.)  Smith, Robert J.	Defendant	Cost requested: Costs on a partial indemnity scale in the amount of \$831,493  Cost awarded: 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.

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### COMPLEXITY OF THE PROCEEDING (57.01(1)(c))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Nelligan v. Fontaine</p> <p>[2006] O.J. No. 3699 (S.C.J.)</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested:</p> <p>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.</p> <p>Plaintiff law firm claims fees of \$22,816.68 inclusive of GST on a substantial indemnity basis, plus disbursements of \$531.36</p> <p>Cost awarded:</p> <p>Costs thrown away were assessed at \$10,000 plus GST and disbursements of \$371.80, inclusive of GST</p>	<p>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.</p>
<p>Sauvé v. Merovitz</p> <p>[2006] O.J. No. 5059 (S.C.J.)</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost requested:</p> <p>Not disclosed</p> <p>Cost awarded:</p> <p>Merovitz Motion: Applicant ordered to pay \$8,000 + \$716.91 (disbursements) + GST</p> <p>Cotes Motion: Applicant ordered to pay \$5,000 + \$431.03 (disbursements) + GST</p> <p>Cotes Application: Applicant ordered to pay \$6,000 + \$729.51 (disbursements) + GST</p>	<p>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</p>

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### COMPLEXITY OF THE PROCEEDING (57.01(1)(c))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Champion v. Guibord</p> <p>[2006] O.J. No. 3197 (S.C.J.)</p> <p>Toscano-Roccamo J.</p>	Plaintiff	<p>Cost requested: Costs on a full indemnity basis in the amount of \$13,617.50 in fees, plus \$1,748.89 in disbursements, plus applicable GST</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$11,098 in fees, plus \$1,748.89 in disbursements, plus applicable GST</p>	<p>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</p>
<p>Summers v. Harrower</p> <p>[2006] O.J. No. 452 (S.C.J.)</p> <p>Toscano-Roccamo J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$86,238.79 in fees plus \$7,119.65 in disbursements for a total of \$94,358.44.</p> <p>Cost awarded: Costs on a substantial indemnity basis in the amount of \$42,500 plus \$5,137.23 in disbursements, plus GST</p>	<p>The case did not involve any novel or complex questions of law</p>

SECTION 4 - RULE 57 FACTORS			
IMPORTANCE OF THE ISSUES (57.01(1)(d))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Sarnia (City) v. River City Vineyard Christian Fellowship of Sarnia</p> <p>2015 ONCA 732</p> <p>Doherty, Epstein, Tulloch J.J.A.</p>	Defendant	<p>Cost requested: \$163,479.54</p> <p>Cost awarded: \$90,000</p>	<p>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 Carter v Canada, there was no reason to deviate from the standard partial indemnity of costs.</p>
<p>Starkes v. Harrison</p> <p>2011 ONSC 6659</p> <p>Platana J.</p>	Plaintiff	<p>Cost requested: \$3500 inclusive of disbursements and HST</p> <p>Cost awarded: \$3500 inclusive of disbursements and HST</p>	<p>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.</p>
<p>Galpin v. Galpin</p> <p>2007 – citation unavailable</p> <p>Aitken J.</p>	Plaintiff / Applicant	<p>Cost requested: Costs in the amount of \$27,205</p> <p>Cost awarded: Costs in the amount of \$13,000</p>	<p>This motion was of great importance to both parties</p>
<p>Lavinkas v. Jacques Whitford &amp; Associates Ltd.</p> <p>[2006] O.J. No. 2697 (S.C.J.)</p> <p>Aitken J.</p>	Plaintiff	<p>Cost requested: Costs on a substantial indemnity basis in the amount of \$44,134.</p> <p>Cost awarded: Costs in the amount of \$28,000</p>	<p>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.</p>

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IMPORTANCE OF THE ISSUES (57.01(1)(d))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
George S. Szeto Investments Ltd. v. Ott  [2006] O.J. No. 2390 (S.C.J.)  Beaudoin J.	Defendant (Attorney General)	Cost requested: Costs in the amount of \$5,393.77 (\$523.15 of which were for disbursements)  Cost awarded: 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.
Iko Industries Ltd. v. Grant  [2006] O.J. No. 4068 (S.C.J.)  Charbonneau J.	Plaintiff	Cost requested: Not disclosed  Cost awarded: \$120,000, "all in"	This issue was important for all concerned. The plaintiff had to ensure the continued peaceful operation of its plant.
Gray et al. v. Province of Ontario et al.  2006 – citation unavailable  Cunningham Lane, Hackland JJ.A.	Plaintiffs / Applicants	Cost requested: Costs on a partial indemnity basis. Amount not disclosed  Cost awarded: 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.
Schouten v. Rideau (Township)  2006 – citation unavailable  Hackland J.	Defendant	Cost requested: Total requested costs not disclosed  Cost awarded: 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

## SECTION 4 - RULE 57 FACTORS

### IMPORTANCE OF THE ISSUES (57.01(1)(d))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Petro-Quip International Inc. v. Kala Naft Canada Ltd.</p> <p>[2006] O.J. No. 2369 (S.C.J.)</p> <p>Low J.</p>	Defendant	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$199,366.73, but urged court to consider costs on a substantial indemnity basis.</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$150,000, plus GST.</p>	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.
<p>Canadian Blood Services v. Freeman</p> <p>* This case also involved costs to the intervenor Egale Canada Inc.</p> <p>2006 – citation unavailable</p> <p>Morin J.</p>	Defendant & Intervenor	<p>Cost requested: Egale: \$10,710 and disbursements of \$522.88</p> <p>Defendant: \$11,375 and disbursements of \$231.44</p> <p>Cost awarded: \$10,000 to Egale and Defendant in addition to the disbursements claimed by each party</p>	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.
<p>Campeau v. Campeau</p> <p>[2006] O.J. No. 2297 (S.C.J.)</p> <p>Power J.</p>	Defendants / Moving Parties	<p>Cost requested: 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</p> <p>Cost awarded: 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.</p>	This motion was a complex one, the importance of which went beyond the dispute involving the parties to this litigation.

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### IMPORTANCE OF THE ISSUES (57.01(1)(d))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>King v. Merrill Lynch Canada Inc.</p> <p>[2006] O.J. No. 1257 (S.C.J.)</p> <p>Smith, Robert J.</p>	Defendant	<p>Cost requested: Costs on a partial indemnity scale in the amount of \$831,493</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$350,000 plus GST and disbursements of \$109,431.24 plus GST</p>	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.
<p>Champion v. Guibord</p> <p>[2006] O.J. No. 3197 (S.C.J.)</p> <p>Toscano-Roccamo J.</p>	Plaintiff	<p>Cost requested: Costs on a full indemnity basis in the amount of \$13,617.50 in fees, plus \$1,748.89 in disbursements, plus applicable GST</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$11,098 in fees, plus \$1,748.89 in disbursements, plus applicable GST</p>	A number of novel issues were involved in this case
<p>Summers v. Harrower</p> <p>[2006] O.J. No. 452 (S.C.J.)</p> <p>Toscano-Roccamo J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$86,238.79 in fees plus \$7,119.65 in disbursements for a total of \$94,358.44.</p> <p>Cost awarded: Costs on a substantial indemnity basis in the amount of \$42,500 plus \$5,137.23 in disbursements, plus GST</p>	The case did not involve any important questions of principle that would warrant driving up an award of costs

## SECTION 4 - RULE 57 FACTORS

### CONDUCT OF THE PARTY THAT TENDED TO SHORTEN OR LENGTHEN PROCEEDING (57.01(1)(e))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Marchand v. MacKenzie  2019 ONSC 5062  de Sousa J	Applicant	Cost requested: Not disclosed  Cost awarded: \$40,000.00	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).
2145850 Ontario Limited v. Student Transportation  2014 ONSC 7401  Belch J.	Plaintiff	Cost requested: 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  Cost awarded: \$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.

## SECTION 4 - RULE 57 FACTORS

### CONDUCT OF THE PARTY THAT TENDED TO SHORTEN OR LENGTHEN PROCEEDING (57.01(1)(e))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Guergis v. Novak et al  2013 ONSC 1130  Hackland J.	Defendants	Cost requested: \$205,969.68 – partial indemnity \$20,286.61 – disbursements  Cost awarded: \$108,000 – for costs \$10,560 – disbursements	<p>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).</p> <p>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).</p> <p>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.</p>

## SECTION 4 - RULE 57 FACTORS

### CONDUCT OF THE PARTY THAT TENDED TO SHORTEN OR LENGTHEN PROCEEDING (57.01(1)(e))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
J. v. M.  2012 ONSC 7342  Ray J.	Applicant	Cost requested: \$23,216.15, partial indemnity up to Nov 7, 2012 and full after  Cost awarded: \$1,000	Judges order as favourable as respondent's Nov 7th offer.  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.  No costs awarded prior to period up to November 7th 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.  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.
McNeill v Sun Life Assurance Company of Canada  2012 ONSC 884  Healey J.	Defendants	Cost requested: Not specified  Cost awarded: \$1,600	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.  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.
Ford v. Shuter  2011 ONSC 5051  de Sousa J.	Defendant	Cost requested: not specified  Cost awarded: \$1500.00	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.

## SECTION 4 - RULE 57 FACTORS

### CONDUCT OF THE PARTY THAT TENDED TO SHORTEN OR LENGTHEN PROCEEDING (57.01(1)(e))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>South Simcoe Railway Heritage Corporation v. Wakeford</p> <p>2011 ONSC 2427</p> <p>Healey J.</p>	Defendant	<p>Cost requested: \$9048.03 on a partial indemnity basis</p> <p>Cost awarded: \$5,133.11</p>	<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 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>
<p>Milone v. Delorme</p> <p>2010 ONSC 4162</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested: Plaintiff: costs thrown away of \$13,066.83 as well as an additional \$2,282.75 for the costs of the motion</p> <p>Defendants: \$2,887.00 on a partial indemnity basis for the motion</p> <p>Cost awarded: for costs thrown away: \$3,000.00 plus GST plus disbursements of \$426.35</p> <p>No costs for the motion</p>	<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>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Boyd v. Taj Mahal Stables Inc.</p> <p>[2009] O.J. No. 2595 (Ont. Sup. Ct. J.)</p> <p>Ray J.</p>	Defendant	<p>Cost requested: Partial indemnity at rate of 70%, amounting to \$12,632.75</p> <p>Cost awarded: \$5,000, plus \$1,000 for this motion</p>	<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>
<p>Désir v. Care Canada</p> <p>(2009 Ont. Sup. Ct. J.) Court File No.: 04-CV-028853</p> <p>Polowin J.</p>	Defendant	<p>Cost requested: Costs 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.</p> <p>Cost awarded: Costs of \$8,000 total, of which \$5,000 to be paid by the plaintiff's former counsel, personally.</p>	<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 proceedings. Substantial indemnity costs were warranted in these circumstances.</p> <p>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.</p>
<p>Magas v. Canada (Attorney General); Magas v. Monette; Magas v. Pasanen</p> <p>2009 – citation unavailable</p> <p>Brennan J.</p>	Defendants	<p>Cost requested: Unreported in the Pasanen and Monette Actions; \$130,079.70 in the Crown action</p> <p>Cost awarded: On the combined Pasanen and Monette actions, \$97,000 plus GST; on the Crown action \$100,000 plus GST</p>	<p>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).</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Crete v. Carleton Condominium Corporation #47 (Chateau Vanier Towers)</p> <p>2008 CanLII 475</p> <p>Toscano-Roccamo J.</p>	Defendant	<p>Cost requested: \$123,558.90 plus disbursements of \$28,333.47, for a total of \$151,892.37 (inclusive of GST)</p> <p>Cost awarded: 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.</p>	<p>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.</p>
<p>Mega Wraps BC Inc. v. Mega Wraps Holdings Inc.</p> <p>(2008), 169 A.C.W.S. (3d) 41, [2008] O.J. No. 2947</p> <p>Young J.</p>	Plaintiff	<p>Cost requested: \$68,252 on partial indemnity basis to \$98,802 on substantial indemnity basis for the trial, plus \$152,494 on full indemnity basis for work done by counsel during earlier stages.</p> <p>Cost awarded: \$158,252 consisting of partial indemnity costs up to plaintiff's offer to settle, and substantial indemnity from that point on.</p>	<p>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</p>
<p>Flentje v. Nichols</p> <p>2007 – citation unavailable</p> <p>Blishen J.</p>	Plaintiff	<p>Cost requested: \$30,399.88 (inclusive of GST and disbursements)</p> <p>Cost awarded: \$28,000 (inclusive of disbursements and GST)</p>	<p>Once the Statement of Claim was served, there were no unnecessary delays by either party</p>

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Mick v. Boulder City Climbing School Inc.  2007 – citation unavailable  Métivier J.	Plaintiff	Cost requested: Costs on a substantial indemnity basis  Cost awarded: 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
Lavinkas v. Jacques Whitford & Associates Ltd.  [2006] O.J. No. 2697 (S.C.J.)  Aitken J.	Plaintiff	Cost requested: Costs on a substantial indemnity basis in the amount of \$44,134.  Cost awarded: 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.  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.
Shalouf v. Beaudry  [2006] O.J. No. 2550  Beaudoin J.	Defendants	Cost requested: 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  Cost awarded: 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.
Rioux v. Rhodenizer  2006 – citation unavailable  Charbonneau J.	Plaintiff	Cost requested: Not disclosed  Cost awarded: 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.

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Lanty v. Ontario (Ministry of Natural Resources)</p> <p>[2006] O.J. No. 859 (S.C.J.)</p> <p>DiTomaso J.</p>	Defendant	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$241,633.31</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$133,800</p>	<p>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.</p> <p>The Plaintiff was uncooperative in her cross-examination and also in respect of production of certain documents.</p>
<p>Spirent Communications of Ottawa Limited v. Quake Technologies (Canada) Inc.</p> <p>[2006] O.J. No. 4032 (S.C.J.)</p> <p>Panet J.</p>	Defendant	<p>Cost requested: 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</p> <p>Cost awarded: Costs in the amount of \$265,000, plus \$47,010 in disbursements, totaling \$312,010 + GST</p>	<p>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</p>
<p>3869130 Canada Inc. v. I.C.B. Distribution Inc.</p> <p>2006 – citation unavailable</p> <p>Polowin J.</p>	Plaintiff	<p>Cost requested: 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</p> <p>Cost awarded: 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>	<p>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.</p>

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### CONDUCT OF THE PARTY THAT TENDED TO SHORTEN OR LENGTHEN PROCEEDING (57.01(1)(e))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Svencicki v. Latreille</p> <p>2006 – citation unavailable</p> <p>Rutherford J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$5,955.93 payable to Legal Aid Ontario</p> <p>Cost awarded: Costs in the amount of \$1,200 payable to Legal Aid Ontario</p>	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.
<p>Norbar Insurance Agencies Inc. v. Freeman</p> <p>[2006] O.J. No. 709 (S.C.J.)</p> <p>Stewart J.</p>	Plaintiff	<p>Cost requested: Costs on a substantial indemnity basis – amount not disclosed.</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$58,690, plus disbursements in the amount of \$3,518.52, plus applicable taxes.</p>	Defendants continually failed to make full and proper disclosure, forcing the Plaintiff to bring a series of motions to compel production.
<p>Champion v. Guibord</p> <p>[2006] O.J. No. 3197 (S.C.J.)</p> <p>Toscano-Roccamo J.</p>	Plaintiff	<p>Cost requested: Costs on a full indemnity basis in the amount of \$13,617.50 in fees, plus \$1,748.89 in disbursements, plus applicable GST</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$11,098 in fees, plus \$1,748.89 in disbursements, plus applicable GST</p>	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

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Leschyna v. CIBC World Markets Inc.</p> <p>[2006] O.J. No. 1266 (S.C.J.)</p> <p>Whitten J.</p>	Defendants	<p>Cost requested: Not disclosed</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$9,000, inclusive of disbursements.</p>	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.
<p>DB Marketing Inc. (c.o.b. as Brinker, Ink) v. Gary Gurmukh Sales Ltd. (c.o.b. GGS Ltd.)</p> <p>[2005] O.J. No. 4684 (S.C.J.)</p> <p>Beaudoin J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$5,585.16 inclusive of GST</p> <p>Cost awarded: 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.</p>	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.
<p>Thomson v. S.I.A. Insurance Brokers Ltd.</p> <p>[2005] O.J. No. 4497 (S.C.J.)</p> <p>Ferguson J.</p>	Defendant	<p>Cost requested: Not disclosed</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$55,000, inclusive of disbursements and GST</p>	The conduct of both parties tended to lengthen the duration of the trial unnecessarily.

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CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Radvar v. Canada (Attorney General)</p> <p>[2005] O.J. No 5239 (S.C.J.)</p> <p>Frank J.</p>	<p>Defendants</p>	<p>Cost requested: Parties seek costs on a partial indemnity basis as follows:</p> <p>Signum &amp; Rye: \$19,620.23</p> <p>Costs requested by Chubb and the Attorney General not disclosed</p> <p>Cost awarded: Costs on a partial indemnity basis in the amounts of: Chubb: \$12,000 Signum &amp; Rye: \$10,000 Attorney General: \$7,000</p>	<p>The Plaintiff unduly prolonged the proceedings by compelling the Defendants to bring motions which should have been unnecessary and then contesting those motions.</p> <p>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.</p>

## SECTION 4 - RULE 57 FACTORS

### IMPROPER, VEXATIOUS, UNNECESSARY STEPS; STEPS TAKEN THROUGH NEGLIGENCE, MISTAKE OR EXCESSIVE CAUTION (57.01(1)(f))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Marcus v. Cochrane</p> <p>2014 ONCA 207</p> <p>Goudge, J.</p>	<p>Defendant/ Respondent</p>	<p>Cost requested: \$160,706.99</p> <p>Cost awarded: \$60,000</p>	<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>
<p>Kandolo v. Kabelu</p> <p>2013 ONSC 73</p> <p>Smith, Robert J.</p>	<p>Applicant</p>	<p>Cost requested: Applicants: \$138,220.38 on premium basis, alternatively \$125,108.20 on substantial indemnity basis or \$91,785 on partial indemnity basis</p> <p>Cost awarded: \$65,000 + HST and \$7000 disbursements on partial indemnity scale</p>	<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>

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### IMPROPER, VEXATIOUS, UNNECESSARY STEPS; STEPS TAKEN THROUGH NEGLIGENCE, MISTAKE OR EXCESSIVE CAUTION (57.01(1)(f))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Marcus v. Cochrane</p> <p>2012 ONSC 2331</p> <p>Warkentin, J.</p>	<p>Defendant</p>	<p>Cost requested: \$160,706.99 on full indemnity basis</p> <p>Cost awarded: \$160,706.99 on full indemnity basis</p>	<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 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>

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### IMPROPER, VEXATIOUS, UNNECESSARY STEPS; STEPS TAKEN THROUGH NEGLIGENCE, MISTAKE OR EXCESSIVE CAUTION (57.01(1)(f))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Murray v. Lesk</p> <p>2011 ONSC 1144</p> <p>Ratushny J.</p>	Defendants	<p>Cost requested: 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 on a substantial basis plus disbursements and taxes</p> <p>Cost awarded: Darcy Lesk as the Estate Trustee: \$4,145.93 all inclusive Karen Murray: \$2,000 all- inclusive 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>
<p>Suserski v. Nurse</p> <p>[2007] O.J. No. 965 (S.C.J.)</p> <p>Glithero J.</p>	Defendant	<p>Cost requested: Costs in the amount of \$50,000</p> <p>Cost awarded: Costs in the amount of \$50,000, inclusive of fees, disbursements and applicable GST</p>	<p>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.</p>

## SECTION 4 - RULE 57 FACTORS

### IMPROPER, VEXATIOUS, UNNECESSARY STEPS; STEPS TAKEN THROUGH NEGLIGENCE, MISTAKE OR EXCESSIVE CAUTION (57.01(1)(f))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Sunview Doors Ltd. v. Academy Doors &amp; Windows Ltd.</p> <p>2007 WL 1898677 (Ont. S.C.J.),</p> <p>Brown, David M. J.</p>	Defendant	<p>Cost requested: Costs in the amount of \$14,075.41 plus GST.</p> <p>Cost awarded: Costs in the amount of \$2,500.</p>	<p>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.</p>
<p>Roscoe v. Roscoe</p> <p>[2006] O.J. No. 259 (S.C.J.)</p> <p>Power J.</p>	Defendant	<p>Cost requested: Costs on a full indemnity basis in the amount of \$10,611.71, inclusive of disbursements and GST.</p> <p>Cost awarded: Costs on a full indemnity basis in the amount of \$10,611.71, inclusive of disbursements and GST.</p>	<p>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 contumelious attitude towards court orders and procedures. His motion was frivolous, vexatious and an abuse of the procedures of this court.</p>

## SECTION 4 - RULE 57 FACTORS

### PARTY'S DENIAL OF OR REFUSAL TO ADMIT WHAT SHOULD HAVE BEEN ADMITTED (57.01(1)(g))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Marchand v. MacKenzie  2019 ONSC 5062  de Sousa J	Applicant	Cost requested: Not disclosed  Cost awarded: \$40,000.00	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.
McCaw v. McCaw  [2007] O.J. No. 853 (S.C.J.)  Belch J.	Plaintiff	Cost requested: 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  Cost awarded: 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.
Lavinkas v. Jacques Whitford & Associates Ltd.  [2006] O.J. No. 2697 (S.C.J.)  Aitken J.	Plaintiff	Cost requested: Costs on a substantial indemnity basis in the amount of \$44,134.  Cost awarded: 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.
Rioux v. Rhodenizer  2006 – citation unavailable  Charbonneau J.	Plaintiff	Cost requested: Not disclosed  Cost awarded: 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.

## SECTION 4 - RULE 57 FACTORS

### PARTY'S DENIAL OF OR REFUSAL TO ADMIT WHAT SHOULD HAVE BEEN ADMITTED (57.01(1)(g))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Glass Block Solutions Ltd. v. Pickles  2006 – citation unavailable  Métivier J.	Plaintiff	Cost requested: Costs on a substantial indemnity basis in the amount of \$15,627.78  Cost awarded: Costs in the amount of \$7,000 plus GST and disbursements of \$1,655.21	The defendants admitted certain facts only at trial, which they ought reasonably to have admitted before.
Brulé v. Brulé- Morgan  2006 – citation unavailable  Morin J.	Defendant	Cost requested: Bill of costs for fees and disbursements inclusive of GST totaling \$57,504.96  Cost awarded: 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.

## SECTION 4 - RULE 57 FACTORS

### AWARD OF COSTS OR MORE THAN ONE SET OF COSTS (SEPARATE PROCEEDINGS) (57.01(1) (h))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Raymond v. 1495669 Ontario Ltd.,  2011 ONSC 4265  Pope, J.	Plaintiffs	Cost requested: Not specified  Cost awarded: \$12,300 plus interest from August 22, 2006 to July 6, 2011 at a rate of 4.5% against Ontario Ltd.  \$2000 against Sood, all- inclusive	Plaintiffs are entitled to partial indemnity costs.  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.
St. Elizabeth Home Society v. Hamilton (City)  2010 ONCA 280  Laskin, Rouleau, Epstein JJ.A.	Defendant	Cost requested: Trial judge awarded costs of \$2,317,000 to the City and \$1,945,000 to the Region.  Cost awarded: Fee portion of post- amalgamation costs (after adjustment to partial indemnity) reduced by additional 25% to account for duplication. No adjustment of disbursements.	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.  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.

## SECTION 4 - RULE 57 FACTORS

### AWARD OF COSTS OR MORE THAN ONE SET OF COSTS (SEPARATE PROCEEDINGS) (57.01(1) (h))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Leclair v. Ontario (Attorney General)</p> <p>2010 ONSC 3147</p> <p>Hackland J.</p>		<p>Cost requested: Plaintiffs: \$212,224 on partial indemnity basis or \$306,785 on a substantial indemnity basis Defendant Aitken: \$67,606 on a partial indemnity basis, for successful motion for summary dismissal</p> <p>Cost awarded: (a) The defendant Dr. Ayroud shall pay to the plaintiffs their costs of the motion fixed in the sum of \$150,600.00 plus disbursements in the sum of \$21,786.00;  (b) The plaintiffs shall pay the costs of Dr. Susan Aitken for the action, fixed in the sum of \$67,606.00;  (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.  (d) The defendants OPSD and Detective Monette shall pay the plaintiffs their costs of this motion fixed in the sum of \$81,390.00.</p>	<p>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.</p> <p>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.</p>

## SECTION 4 - RULE 57 FACTORS

### AWARD OF COSTS OR MORE THAN ONE SET OF COSTS (SEPARATE PROCEEDINGS) (57.01(1) (h))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
George S. Szeto Investments Ltd. v. Ott  [2006] O.J. No. 2390 (S.C.J.)  Beaudoin J.	Defendant (Attorney General)	Cost requested: Costs in the amount of \$5,393.77 (\$523.15 of which were for disbursements)  Cost awarded: 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.

## SECTION 4 - RULE 57 FACTORS

### OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Cohlmeyer v French 2012 ONSC 929 Mulligan, J	Respondents	<p>Cost requested: Applicants: \$197,313.90 on a partial indemnity basis (including previously recovered costs of \$27,000)</p> <p>Respondents: \$104,253.29 on a substantial indemnity basis or \$69,495.24 on a partial indemnity basis.</p> <p>Cost awarded: \$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</p>	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.
Friends of the Greenspace Alliance v. Ottawa (City) 2011 ONSC 472 McKinnon, J.	None	<p>Cost requested: Respondent claims \$40,000 in legal fees</p> <p>Cost awarded: Counsel to agree on costs of this motion within 20 days otherwise submissions will be entertained for costs</p>	<p>Costs of an abandoned motion for leave to appeal to the Divisional Court are governed by Rules 37.09</p> <p>It has become generally accepted principle in Canadian courts of law that individuals or groups who pursue litigation in the public 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>
Jomar Cattle Feeders Inc. v. Murphy [2007] O.J. No. 1646 Reilly J.	Defendant	<p>Cost requested: Costs on partial and substantial indemnity basis in the amount of \$95,641.50</p> <p>Cost awarded: Costs in the amount of \$58,000, inclusive of disbursements and GST</p>	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.

SECTION 4 - RULE 57 FACTORS			
OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Bowman v. Rainy River (Town)  [2007] O.J. No. 1844  Shaw J.		Cost requested: Costs on a substantial indemnity basis in the amount of \$6,000 plus disbursements and GST  Cost awarded: Costs on a partial indemnity basis in the amount of \$3,794.51 plus GST	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.
Riddell v. The Conservative Party of Canada  2007 CanLII 24093 (ONSC)  Power J.	Applicant	Cost requested: Full indemnity in the amount of \$396,947.71.  Cost awarded: 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..
Flentje v. Nichols  2007 – citation unavailable  Blishen J.	Plaintiff	Cost requested: \$30,399.88 (inclusive of GST and disbursements)  Cost awarded: \$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

## SECTION 4 - RULE 57 FACTORS

### OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Antorisa Investments Ltd. v. 172965 Canada Ltd.</p> <p>[2007] O.J. No. 195 (S.C.J.)</p> <p>Lax J.</p>	Defendant	<p>Cost requested: 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</p> <p>Cost awarded: Costs in the amount of \$650,000 plus GST, plus disbursements in the sum of \$50,073.60, plus GST</p>	<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> <p>Proportionality between the damages awarded and the costs sought is a costs principle.</p>
<p>Mick v. Boulder City Climbing School Inc.</p> <p>2007 – citation unavailable</p> <p>Métivier J.</p>	Plaintiff	<p>Cost requested: Costs on a substantial indemnity basis</p> <p>Cost awarded: Costs in the amount of \$14,000 inclusive of fees, disbursements and GST</p>	<p>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</p>

## SECTION 4 - RULE 57 FACTORS

### OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Rowe v. Unum Life Insurance Company of America (Motion to Vary)</p> <p>[2007] O.J. No. 474 (S.C.J.)</p> <p>Polowin J.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$8,431.77, inclusive of GST</p> <p>Cost awarded: Partial indemnity costs totaling \$1,500</p>	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
<p>Chenier v. Hôpital Général de Hawkesbury</p> <p>2006 – citation unavailable</p> <p>Aitken J.</p>	Plaintiff	<p>Cost requested: 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> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$1,500</p>	This motion unnecessarily added expense to the conduct of this action. For this reason, a costs award is called for against the Defendants.
<p>Shalouf v. Beaudry</p> <p>[2006] O.J. No. 2550</p> <p>Beaudoin J.</p>	Defendants	<p>Cost requested: 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</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$20,000, all inclusive.</p>	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 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.

## SECTION 4 - RULE 57 FACTORS

### OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Temelini v. Canada Permanent Trust Company</p> <p>[2006] O.J. No 509 (S.C.J.)</p> <p>Beaudoin J.</p>	Plaintiff	<p>Cost requested: Costs on a partial indemnity basis in the amount of \$16,933 and disbursements of \$2,345.94</p> <p>Cost awarded: 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.</p>	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.
<p>OZ Merchandising Inc. v. Canadian Professional Soccer League Inc.</p> <p>[2006] O.J. No. 3718 (S.C.J.)</p> <p>Beaudoin J.</p>	Defendants	<p>Cost requested: Eastern Ontario District Soccer Association (Defendant) &amp; 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</p> <p>Cost awarded: Eastern Ontario District Soccer Association: Costs in the amount of \$1,500 + \$250 (excess counsel's costs) + \$1,000 (excess counsel's costs)</p>	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.
<p>Langille v. Limestone District School Board</p> <p>2006 – citation unavailable</p> <p>Belch J.</p>	Defendant	<p>Cost requested: \$12,000 + GST and disbursements</p> <p>Cost awarded: \$5,000 + GST and disbursements</p>	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

SECTION 4 - RULE 57 FACTORS			
OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Rioux v. Rhodenizer  2006 – citation unavailable  Charbonneau J.	Plaintiff	Cost requested: Not disclosed  Cost awarded: 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.
Calgar v. Moore  [2006] O.J. No. 445 (S.C.J.)  Ducharme J.	Defendant	Cost requested: Costs on a partial indemnity basis in the amount of \$99,991.00, plus disbursements of \$8,937.79.00 for a total, with G.S.T. where applicable, of \$116,258.10.  Cost awarded: 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.
Schouten v. Rideau (Township)  2006 – citation unavailable  Hackland J.	Defendant	Cost requested: Total requested costs not disclosed  Cost awarded: 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

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OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Cusson v. Quan</p> <p>[2006] O.J. No. 3186 (S.C.J.)</p> <p>Maranger J.</p>	Plaintiff	<p>Cost requested:</p> <p>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)</p> <p>Cost awarded:</p> <p>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)</p>	Although the plaintiff's credibility was suspect in this case, it does not disentitle him to some costs.
<p>Diallo v. Benson et. al.</p> <p>*This costs decision concerned the Ottawa Police Services Board defendant</p> <p>2006 – citation unavailable</p> <p>Morin J.</p>	Defendant	<p>Cost requested:</p> <p>Costs totaling \$15,690.17</p> <p>Cost awarded:</p> <p>Costs in the amount of \$5,000</p>	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.

## SECTION 4 - RULE 57 FACTORS

### OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Campeau v. Campeau</p> <p>[2006] O.J. No. 2297 (S.C.J.)</p> <p>Power J.</p>	<p>Defendants / Moving Parties</p>	<p>Cost requested: 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</p> <p>Cost awarded: 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</p>	<p>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.</p>
<p>Gilchrist v. Oak</p> <p>2006 – citation unavailable</p> <p>Power J.</p>	<p>Defendant</p>	<p>Cost requested: Costs in the amount of \$4,667.88 (inclusive of fees, disbursements and applicable GST)</p> <p>Cost awarded: Costs in the amount of \$2,500 (inclusive of fees, disbursements and applicable GST)</p>	<p>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.</p>
<p>McLean v. Vallance</p> <p>[2006] O.J. No. 3393 (S.C.J.)</p> <p>Power J.</p>	<p>Defendant</p>	<p>Cost requested: Costs in the amount of \$4,870</p> <p>Cost awarded: Costs in the amount of \$1,000</p>	<p>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.</p>

## SECTION 4 - RULE 57 FACTORS

### OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Worthman v. Assessmed Inc.</p> <p>2006 – citation unavailable</p> <p>Power, O'Driscoll, Gravely JJ.A.</p>	Plaintiff	<p>Cost requested: Costs in the amount of \$47,000 (approx. Exact number not disclosed)</p> <p>Cost awarded: Costs in the amount of \$15,000 (including fees and disbursements)</p>	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.
<p>Lampron v. Lampron</p> <p>2006 – citation unavailable</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested: Not disclosed</p> <p>Cost awarded: \$500 + disbursements of \$400</p>	Neither party retained a lawyer. As a result, a modest amount of costs should be awarded.
<p>Nelligan v. Fontaine</p> <p>[2006] O.J. No. 3699 (S.C.J.)</p> <p>Smith, Robert J.</p>	Plaintiff	<p>Cost requested: 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.</p> <p>Plaintiff law firm claims fees of \$22,816.68 inclusive of GST on a substantial indemnity basis, plus disbursements of \$531.36</p> <p>Cost awarded: Costs thrown away were assessed at \$10,000 plus GST and disbursements of \$371.80, inclusive of GST</p>	<p>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.</p> <p>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.</p>

## SECTION 4 - RULE 57 FACTORS

### OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Baldwin v. Daunbey</p> <p>[2006] O.J. No. 3919 (S.C.J.)</p> <p>Spence J.</p>	Defendant	<p>Cost requested: Costs in the amount of \$1,141,000.</p> <p>Cost awarded: Costs in the amount of \$440,000, all-inclusive.</p>	<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>Impecuniosity 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>
<p>Millen v. Kingsway General Insurance Company</p> <p>2006 – citation unavailable</p> <p>Belch J.</p>	Defendant	<p>Cost requested: 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</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$7,500, including fees and disbursements and GST where applicable</p>	<p>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.</p>

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OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Santini v. Thompson  2005 – citation unavailable  Métivier J.	Defendant	Cost requested: Costs in the amount of \$16,495.97  Cost awarded: \$10,350, plus disbursements as claimed (not disclosed), plus GST	Defendant was found to be contributorily negligent – costs should be reduced.
Bowers v. Delegarde  [2005] O.J. No. 3857 (S.C.J.)  Power J.	Defendant	Cost requested: 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  Cost awarded: Costs on a partial indemnity basis in the amount of \$40,000, inclusive of disbursements and all fees, and GST.	Nothing is to be awarded for the Defendant's personal expenses incurred. These losses do not fall within the ambit of "costs".
Cipolla v. Leblanc, et. al.  2005 – citation unavailable  Ratushny J.	Defendants	Cost requested: Not disclosed  Cost awarded: Defendants Leblanc & Beaudoin: \$3,981 inclusive of counsel fee, GST, disbursements and counsel's driving time (\$100/hr)  Defendant Kenjgewin Teg Educational Institute: \$1,500 inclusive of fees, GST and 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.

SECTION 4 - RULE 57 FACTORS			
OTHER MATTERS RELEVANT TO COSTS (57.01(1)(i))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Blenkhorn Sayers Structural Steel Corp. v. Webb, et. al.</p> <p>2005 – citation unavailable</p> <p>Rutherford J.</p>	Plaintiff	<p>Cost requested: Not disclosed</p> <p>Cost awarded: Costs on a partial indemnity basis in the amount of \$1,000</p>	<p>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.</p>

SECTION 5 - COSTS AGAINST SUCCESSFUL PARTY (57.01(2))			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Marcus v Cochrane,  2014 ONCA 207  Goudge J.	Respondent	\$20,000 to respondent	<p>While the appellant succeeded on one issue, she was unsuccessful on two of the three issues before the Court.</p> <p>The appellant's costs on appeal were unreasonably high (\$375,000), compared to the respondent's much more modest partial indemnity costs (\$49,001.53).</p>
Goulding v Street Motor Sales  2013 ONSC 1904  Beaudoin J.	Defendant	\$10,000 plus HST (\$1,300) and disbursements (\$271.12)	<p>Wrongful dismissal claims to which was added vague allegations of conspiracy and inducement. These allegations were made recklessly, without any factual or legal basis. Plaintiff named three defendants but did not plead a clear cause of action against two of them.</p> <p>The defendants were dragged to Ottawa when this action could have easily been commenced in Lanark County. Because the action was commenced in the Superior Court, they were forced to hire counsel for the corporate defendants and had to bear the costs of discoveries and a referral to mediation.</p> <p>Rule 57.01(2) allows for an award of costs against a successful party "in a property case." This is such a case.</p>
Hartman Estate v Hartfam Holdings Ltd.,  2005 – citation unavailable  Aitken J.	Defendant	\$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 Court found that the motion would not have been required had the plaintiffs' case been fully and properly pleaded in the first instance.

SECTION 6 - PROPORTIONALITY			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Lavender v. MillerBernstein LLP</p> <p>2018 ONCA 955</p> <p>Epstein, van Rensburg, Brown JJ.A.</p>	Plaintiff.	<p>Summary judgement motion: \$1,009,063.32.</p> <p>Appeal: \$159, 463.29.</p> <p>Both inclusive of disbursements and HST</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>Pankhurst v. Kulikovsky</p> <p>(2009, Ont. Sup. Ct. J.) Court FileNo.: 02-CV-20759</p> <p>Ray J.</p>	Plaintiffs.	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." Assessment pursuant to a settlement on the eve of trial set at \$255,000 plus costs.
<p>Wesley v. Sunday</p> <p>2012 ONSC 1557</p> <p>McMunagle, J.</p>	Plaintiff.	\$20,000 plus HST and disbursements.	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. 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>Vance v. 337737 Ontario Ltd.</p> <p>2011 ONSC 505</p> <p>Smith, Robert J.</p>	Plaintiff.	\$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.
<p>Cimmaster v. Piccione</p> <p>2010 ONSC 846</p> <p>Gray J.</p>	Plaintiff.	\$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."

SECTION 6 - PROPORTIONALITY			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Tucci v. Pugliese, Aviva and Pilot</p> <p>2010 ONSC 2144</p> <p>Price J.</p>	<p>Respondents (Defendant insurers).</p>	<p>\$3,500.00.</p>	<p>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.</p> <p>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.</p>
<p>Van Blankers v. Stewart</p> <p>2010 ONSC 3978</p> <p>Price J.</p>	<p>Applicant (Defendant).</p>	<p>\$9,219.89.</p>	<p>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.</p>
<p>Charlesfort Developments Ltd v. The Corporation of the City of Ottawa</p> <p>2019 ONSC 4460</p> <p>Gomery J</p>	<p>Plaintiff.</p>	<p>\$1,169,495.</p>	<p>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.</p>

## SECTION 6 - PROPORTIONALITY

CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Cadieux v. Cloutier</p> <p>2019 ONCA 241</p> <p>Strathy CJO, Hoy ACJO, Feldman, Brown, Paciocco JJ.A.</p>	Plaintiff.	\$25,000.00.	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.
<p>Van de Vrande v. Butkowsky</p> <p>Weiler, Blair, Rouleau JJ.A.</p>	Appellant (Defendant).	<p>For the Small Claims case: \$1,150.</p> <p>For the appeal to the Divisional Court: \$1,200.</p> <p>For the appeal to the Court of Appeal: \$2,500.</p> <p>All sums inclusive of disbursements and GST</p>	The appellant was entitled to costs in the appeal. However in light of the novelty and importance of the issues raised, and the fact that the original claim was a Small Claims case involving a modest sum, the costs award should itself be modest.
<p>JV Mechanical v. Steelcase</p> <p>2010 ONSC 2274</p> <p>Albert J.</p>	Applicant (Defendant).	\$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. "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.

SECTION 6 - PROPORTIONALITY			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Corbett v. Odorico  2016 ONSC 2961  Hackland J.	Plaintiffs.	\$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.
Bank of Nova Scotia v Diemer  2014 ONCA 851  Peppall J.A.	Receiver.	\$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. Value provided should predominate over mathematical calculation.
McLean v. Knox  2013 ONCA 357  Gillese J.A.	Plaintiff.	\$250,000.	15-day jury trial. Plaintiff recovered judgment for: <ul style="list-style-type: none"> <li>• \$70,000, less deductible, less 15% for contributory negligence for a net recovery of \$30,000;</li> <li>• 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.</li> <li>•</li> </ul>
Oakwood Designers v. Da Silva  2013 ONSC 2638  James J.	Plaintiff.	\$34,000 plus \$5,459.81 in disbursements.	18-day trial. Judgment of \$8,900 was awarded. Plaintiff spent \$236,000 in legal costs and defendant spent \$156,000 in legal costs. Judge awarded \$34,000 in legal costs plus \$5,459.81 in disbursements and HST. Costs significantly exceed damage award, but defendants brought several unmeritorious claims, lengthening trial unnecessarily.

## SECTION 6 - PROPORTIONALITY

CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Rochon v. MacDonald  2014 ONSC 591  McCarthy J.	Plaintiff.	\$635,500, half of which is to be paid by each defendant.	<p>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 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 was 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>
Guergis v. Novak et al.  2013 ONSC 1130  Hackland J	Defendants.	<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>

SECTION 6 - PROPORTIONALITY			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
GB/Plasman v. APP Holdings  2013 ONSC 6401  Newbould J.	Applicant.	\$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. 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 build a case to be far more than the work needed to be done.</p>
Jian Ya Li v. Fo Ling Li  2010 ONSC 4716  Short J.		<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. In the circumstances, proportionality required a consideration of access to justice when determining whether to order security for costs. Security was ordered, largely because the plaintiff had failed to prove his financial situation. 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.</p>
Mawji v. AXA Insurance  2010 ONSC 2146  Price J.	Plaintiff.	\$23,371.91.	<p>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.</p>

## SECTION 6 - PROPORTIONALITY

CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
SIPGP No. 1 Inc. v. Eastern Construction Company Limited  2010 ONSC 2695  Polika J.	Plaintiff.	Lien action: \$225,000.  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. 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.
Polywheels Inc. (Re),  2010 ONSC 2445  Karakatsanis J.	Applicant.	\$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.
Moosa v. Hill Property Management Group Inc.  2010 ONSC 13  Short J.	Defendants.	Security for costs of \$10,725 plus GST for each defendant. No costs for the motion.	Security for costs sought in a suit relating to an insurance claim in respect of a fire in a residential property. The plaintiff had moved overseas.  The general aim of the proportionality rule was to improve access to justice, and to promote certainty. 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."  The proper approach to security for costs for discovery is to adopt the prima facie durations provided for by subrule 31.05.1(1).

SECTION 6 - PROPORTIONALITY			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Kaymar Rehabilitation Inc. v. Champlain Community Care Access Centre, et al.,</p> <p>2010 ONSC 6614</p> <p>Polowin J.</p>	Defendants.	<p>Defendant COTA from plaintiff Kaymar: \$20,000 plus GST and \$2,178.34 including GST for disbursements.</p> <p>Defendant Carefor from plaintiff Kaymar: \$126,600 plus GST less \$13,794.73, plus disbursements of \$21,744.08 inclusive of GST.</p> <p>Plaintiff Kaymar from defendant OCCAC: \$48,000 including GST and disbursements in the amount of \$7,178.94.</p>	<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 regard to the COTA motion: COTA did not behave unreasonably. Kaymar's offers to COTA "missed their mark," and should not trigger any costs consequences. However, the hours claimed by COTA were excessive.</p> <p>With regard to the OCCAC motion: There is no question that partial indemnity is the appropriate scale, however the defendants object to the number of hours claimed. The fairness and reasonableness of the award are "overriding concerns." Furthermore, there were concerns that the plaintiffs had not allocated costs appropriately between the various motions.</p> <p>Additionally, it was not appropriate to order joint and several liability for costs where Carefor played a limited role in the motion and OCCAC did the "heavy lifting." Instead, an 80%/20% apportionment of the award was ordered.</p>
<p>Empire Life Insurance Company v. Krystal Holdings Inc.</p> <p>(2009 Ont. Sup. Ct. J.) Court File No.: 02-CV-222931CM4).</p> <p>Archibald J.</p>		<p>\$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.</p>	<p>A joint and several costs order would be inappropriate. It would create an unfair, disproportionate burden on 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.</p>

## SECTION 7 - HOURLY RATES

CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	RATES AWARDED	CASE SUMMARY
<p>Donleavy v. Ultramar Ltd.</p> <p>2019 ONSC 2985</p> <p>Corthorn, J.</p>	Plaintiff.	\$175,000.	<p>Costs requested: \$306,832.45.</p> <p>Hourly rates should have regard to what clients would typically pay for the same services. The court had previously determined that \$425/hr was excessive so when \$550/hr was claimed, it was held to be excessive and a rate of \$350/hr was implemented.</p> <p>The court also recommended that the lawyers not redact information from their dockets, but to simply remove privileged information and describe work done to facilitate accounting for costs.</p> <p>Finally, no costs were awarded for a request to fix costs.</p>
<p>Lavinskas v. Jacques Whitford &amp; Associates Ltd.</p> <p>[2006] O.J. No. 2697 (S.C.J.)</p> <p>Aitken J.</p>	Plaintiff.	The rates charged are reasonable, except for associate's substantial indemnity rate.	<p>Actual rates: Senior counsel (1971 call) \$350/hour; Associate (2000 call) \$185/hour (actual) and \$200/hour (substantial indemnity rate); Articling student \$85/hour.</p> <p>Costs in a Simplified Procedure action should not be based on an hourly rate higher than what is charged to the client.</p>
<p>Bremer v Foisy</p> <p>(2009, Ont. Sup. Ct. J) – unreported.</p> <p>Beaudoin J.</p>	Plaintiff.		<p>Actual rates set by LawPro: \$315-\$335.</p> <p>The appropriate hourly rate for costs was not to be determined by the retainer between counsel and his or her client.</p>
<p>Adult Entertainment Assn. of Canada v. Ottawa (City)</p> <p>[2005] O.J. No. 4608 (S.C.J.)</p> <p>Hackland J.</p>	Defendant.	Partial indemnity rate of \$200/hr.	<p>Actual rate: Two senior counsel (1987 calls) \$250/hr.</p> <p>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.</p>

## SECTION 7 - HOURLY RATES

CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	RATES AWARDED	CASE SUMMARY
<p>Thomas C. Assaly Charitable Foundation v. BMO Nesbitt Burns Inc.</p> <p>2008 CanLII 13786</p> <p>Beaudoin J.</p>	Defendants.	\$260/hour.	<p>Actual rates: Counsel for Jacques Alexanian \$260/hour; Counsel for BMO Nesbitt Burns Inc. and John Berryman \$300/hour.</p> <p>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.</p>
<p>3869130 Canada Inc. v I.C.B. Distribution Inc.</p> <p>2006 – citation unavailable</p> <p>Polowin J.</p>	Plaintiff.	Requested rates were awarded.	<p>Actual rates.</p> <ul style="list-style-type: none"> <li>- Senior counsel (1982 call) \$250/hr (partial indemnity rate) and \$350/hr (substantial indemnity rate);</li> <li>- Associate 1 (1990 call) \$160/hr (partial indemnity rate) and \$185/hr (substantial indemnity rate);</li> <li>- Associate 2 \$125/hr (partial indemnity rate) and \$150/hr (substantial indemnity rate);</li> <li>- Associate 3 \$100/hr (partial indemnity rate) and \$150/hr (substantial indemnity rate);</li> <li>- Associate 4 (1983 call) \$200/hr (partial indemnity rate) and \$250/hr (substantial indemnity rate);</li> <li>- Associate 5 (1998 call) \$200/hr (partial indemnity rate) and \$250/hr (substantial indemnity rate);</li> <li>- Associate 6 (2002 call) \$100/hr (partial indemnity rate) and \$150/hr (substantial indemnity rate)</li> <li>- Articling Students \$60/hr (partial indemnity rate) and \$90/hr (substantial indemnity rate); and</li> <li>- Law Clerks \$75/hr (partial indemnity rate) and \$100/hr (substantial indemnity rate).</li> </ul> <p>Rates claimed for counsel are within the Costs Grid and are reasonable and appropriate.</p>

## SECTION 7 - HOURLY RATES

CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	RATES AWARDED	CASE SUMMARY
<p>Moosa v Hill Property Management Group Inc.</p> <p>2010 ONSC 13</p> <p>Short J.</p>		<p>Partial indemnity calculated at 66.6%.</p>	<p>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.</p> <p>Partial indemnity rates must be proportional to the actual rates charged. A low actual rate does not provide any basis for a cost premium.</p>
<p>Magnussen Furniture Inc. v. Mylex Ltd.</p> <p>(2008), 89 O.R. 401 (Ont. C.A.)</p> <p>Rosenberg, Cronk, MacFarland JJ.A.</p>	Plaintiff.		<p>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.</p> <p>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 to Boucher and noting that the final analysis must consider the overriding principle of reasonableness.</p>
<p>OGT Holdings Ltd. v. Startek Canada Services Ltd. et al</p> <p>2010 ONSC 1090</p> <p>Power J.</p>	Respondents.	<p>Partial indemnity at 60%.</p> <p>Senior counsel: \$390/hour.</p> <p>Junior counsel: \$225/hour.</p>	<p>Actual Rates: Senior counsel: \$650/hour, more than 20 years experience (1987c call). Junior counsel: \$375/hour (2001 call).</p> <p>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%).</p>
<p>Baird v Botham</p> <p>2010 ONSC 3057</p> <p>Smith, Robert J.</p>	Defendant.	<p>Reduced by ~60% to compute partial indemnity.</p>	<p>Actual Rates: \$225-\$350.</p> <p>The costs claimed would have exceeded full indemnity. Partial indemnity must be substantially less than indemnity. Partial indemnity is 2/3 of substantial indemnity, which must itself be ~10% less than full indemnity. Partial indemnity is therefore approximately 60% of full indemnity. This was not a case to justify maximum partial indemnity rates, in any event.</p>

## SECTION 7 - HOURLY RATES

CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	RATES AWARDED	CASE SUMMARY
First Capital (Canholdings) Corporation v. North American Property Group  2012 ONSC 1359  Smith, Robert J.	Appellant.	Lawyer 1: \$610 (regular billing rate), \$455 (partial).  Lawyer 2: \$415 (regular), \$309 (partial).	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.
680195 Ontario Ltd. v. 2169728 Ontario Limited o/a Stoneybrook Auto Service  2010 ONSC 4064  Thomson J.	Applicant.	\$210/hour.	Previous counsel: \$370 – over 20 years experience present counsel reported only the LawPro partial indemnity rate of \$350 as both actual and partial indemnity.  Justice Thomson took issue with the fact that counsel did not include actual rates in the cost outline. 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.
Canada (Attorney General) v Rostruct Investments Inc.  2010 ONSC 1106  Polowin J.	Plaintiff.	Partial indemnity rates at 65%. 2006 call: 123.50/hour. 1992 call: 247.00/hour.	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.

## SECTION 7 - HOURLY RATES

CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	RATES AWARDED	CASE SUMMARY
<p>Young v. RBC Dominion Securities</p> <p>2009 CanLII 7181 (ONSC)</p> <p>Polowin J.</p>	Defendants.	<p>\$300/hour - 1983 call</p> <p>\$175/hour - 2003 call</p> <p>\$140/hour - 2007 call</p> <p>\$75/hour - senior law clerk</p> <p>\$55/hour - law students</p>	<p>Actual rates: \$660-\$700/hour ( 1983 call); \$310-\$420/hour (2003 call); and \$180/hour (2007 call).</p> <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>
<p>Pouget v. Hynes</p> <p>2008 CanLII 36771 (ONSC)</p> <p>Cusinato J.</p>	Plaintiff (Respondent on motion to dismiss).	\$300/hour - 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/hour 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.
<p>Basilevska v. Seto</p> <p>2006 – citation unavailable</p> <p>Hackland J.</p>	Defendant.	Not disclosed.	<p>Actual rate: Counsel (1996 call) \$225/hr.</p> <p>This is a reasonable rate for a lawyer of a 1996 call in a case such as this of average complexity.</p>
<p>King v. Merrill Lynch Canada Inc.</p> <p>[2006] O.J. No. 1257 (S.C.J.)</p> <p>Smith, Robert J.</p>	Defendant.	Defendant counsel's rates were awarded.	<p>Actual rates:</p> <ul style="list-style-type: none"> <li>- Lawyer : \$260-\$300/hr (partial indemnity rate);</li> <li>- Lawyer 2: \$205-\$230/hr</li> <li>- Lawyer 3 (junior lawyer): \$135-\$155/hr.</li> </ul> <p>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.</p>

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CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	RATES AWARDED	CASE SUMMARY
Harvey v. Leger 2006 – citation unavailable Hackland J.	Third party respondents.	Partial indemnity rate of \$275/hr.	Actual rate: Counsel (1974 call) \$275/hr (partial indemnity rate).  Counsel is a specialist in civil litigation. Rates claimed are entirely reasonable.
Skyline Equities V Inc. v. Stocco  [2005] O.J. No. 5607 (S.C.J.)  Flynn J.	Plaintiff.	Partial indemnity rate of \$235/hr.	Actual rate: Senior counsel \$325/hr (actual rate) and \$300/hr (rate submitted in costs submission).  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 close to it.

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CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	RATES AWARDED	CASE SUMMARY
<p>Schouten v. Rideau (Township)</p> <p>2006 – citation unavailable</p> <p>Hackland J.</p>	<p>Defendant.</p>	<p>Rates claimed by defendant counsel are reasonable, notwithstanding that they amount to 75% of the rates actually billed to the client.</p>	<p>Defendant's counsel is a senior and highly experienced civil litigation counsel (1972 call). He handled the case himself without assistance from a junior associated or student.</p> <p>Actual rates:</p> <ul style="list-style-type: none"> <li>- Hourly rates charged up to and including examinations for discovery: \$215/hr.</li> <li>- Period when two settlement conferences were held: \$250/hr.</li> <li>- Prior to preparation for trial: \$250/hr.</li> </ul> <p>Partial indemnity rates sought are 75% of the actual rates charged.</p> <p>Total of 225.8 hours claimed for total fees of \$113,655.</p> <p>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)).</p>

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CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	RATES AWARDED	CASE SUMMARY
<p>Resch v. Canadian Tire Corp. et al.</p> <p>[2006] O.J. No. 2906 (S.C.J.)</p> <p>Spies J.</p>	<p>Plaintiff and Defendant, Mills-Roy.</p>	<p>Partial indemnity rates: Senior counsel \$250/hr in 1999 to 2001; \$275/hr in 2002 to 2004; and \$350/hr thereafter to the date of Offer to Settle.</p> <p>Second counsel \$200/hr</p> <p>Substantial indemnity rate: Senior counsel \$525/hr Second counsel \$300/hr</p>	<p>Actual rates:</p> <ul style="list-style-type: none"> <li>Senior counsel charged \$350/hr in 1999, \$425/hr in 2004, and \$500/hr thereafter. Partial indemnity rate of \$350/hr and substantial indemnity rate of \$500/hr.</li> <li>Second counsel \$225/hr (partial indemnity rate) and \$325/hr (substantial indemnity rate).</li> </ul> <p>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 "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>
<p>St-Lewis v Rancourt,</p> <p>2013 ONSC 6118</p> <p>Smith, Robert J.</p>	<p>Plaintiff.</p>	<p>\$450/hour.</p>	<p>Actual Rates: \$900/hour (full indemnity) and \$540/hour (partial indemnity).</p> <p>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.</p>
<p>Sommerard v. I.B.M. Canada Ltd.</p> <p>[2005] O.T.C. 944; 32 C.C.L.I. (4<sup>th</sup>) 57 (S.C.J.)</p> <p>Polowin J.</p>	<p>Plaintiff.</p>	<p>Partial indemnity rate of \$300/hr.</p>	<p>Actual rate: Senior counsel (40 year call) sought an hourly rate of \$350/hr on a partial indemnity scale (the maximum under the Costs Grid).</p> <p>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.</p>

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Shalouf v. Beaudry [2006] O.J. No. 2550  Beaudoin J.	Defendants.	Not disclosed.	Actual rates: Senior counsel (1967 call) \$300/hr; Associate 1 (2001 call) \$135/hr; and Associate 2 (2001 call): \$150/hr.  Senior counsel has over 35 years of experience. Counsel fees requested are reasonable.
Windanson Holdings Ltd. v. Smith [2006] O.J. No. 3728 (S.C.J.)  Beaudoin J.	Defendants.	\$260/hr.	Actual rate: Counsel \$260/hr (partial indemnity rate).  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.
Doherty v. Wilcox [2007] O.J. No. 738 (S.C.J.)  Aitken J.	Plaintiff.	\$210/hour.	Actual rate: Plaintiff's lawyer \$210/hour. Lawyer had been practicing for 15 years; rate within the reasonable range.
BD 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.)  Beaudoin J.	Plaintiff.	\$200/hr.	Actual rate: \$275/hr. Counsel has practiced law for 14 years.
Geographic Resources Integrated Data Solutions Ltd v. Peterson  2013 ONSC 1041  Aitken, J.	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.

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Barkley v. Vogel  2009 – citation unavailable  McNamara J.	Plaintiffs.	Partial indemnity rate of \$180.	Actual rates: Partial indemnity rate of \$225, less than 10 years experience.  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.
Solway v. Lloyd's Underwriters  [2005] O.J. No. 5465 (S.C.J.)  Stinson J.	Plaintiff.	Partial indemnity rates: - Counsel 1: \$225/hr Counsel 2: \$325/hr	Actual rates: - Counsel 1: \$370/hr. - Counsel 2: \$400/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/hr when fixing partial indemnity costs. Similarly, the hourly rate charged by Counsel 2 is too high, given the \$350/hr 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.
Bach v. McKellar  [2006] O.J. No. 155 (S.C.J.)  Beaudoin J.	Plaintiff.	\$120/hour (partial indemnity rate).	Actual rate: Associate: \$140/hour (partial indemnity rate).  Associate is a four-year call. A rate of \$120/hour is appropriate.
Milne v. Ontario (Securities Commission)  [2006] O.J. No. 1573 (S.C.J.)  Speigel J.	Defendant.	\$350/hr.	Actual rate: Counsel \$350/hr (partial indemnity rate).  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/hr for a 3-year call whose normal hourly rate is \$260.

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<p>Monks v. ING Insurance Company of Canada</p> <p>[2005] 80 O.R. (3d) 609; O.T.C. 758; 30 C.C.L.I (4<sup>th</sup>) 55 (Ont. S.C.J.)</p> <p>Lalonde J.</p>	Plaintiff.	Requested rates were awarded.	<p>Actual rates: Counsel (involved in civil litigation for last 26 years) \$240/hr (partial indemnity rate) and \$300/hr (substantial indemnity rate).</p> <p>Given counsel's experience, these rates are reasonable and represent an amount an unsuccessful party could reasonably expect to pay.</p> <p>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 \$17,5000 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 the expense is warranted by the nature of the case, subject to the maximum total counsel fee set out in the grid.</p>
<p>Rochon v. Macdonald</p> <p>2014 ONSC 591</p> <p>McCarthy, J.</p>	Plaintiff.	\$450/hour.	<p>Actual Rates: \$900/hour.</p> <p>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.</p> <p>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.</p>
<p>Benarroch v. Fred Tayar &amp; Associates PC</p> <p>2019 ONCA 228</p> <p>Rouleau, Trotter, Zarnett JJ.A.</p>	Appellants.		<p>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 incurred because some remunerative activity was forgone."</p> <p>Costs Awarded: \$20,000 inclusive of disbursements and HST, an additional \$10,000 for the cost of appeal.</p>

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Mega Wraps BC Inc. v. Mega Wraps Holdings Inc.  (2008), 169 A.C.W.S. (3d) 41, [2008] O.J.No. 2947  Harvison Young J.	Plaintiff.	\$50/hour for non-lawyer.	A self-represented plaintiff need not necessarily prove that he forwent any specific remunerative activity. 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."
Whaley v. Dennis  [2006] O.J. No. 683 (S.C.J.)  Quinn J.	Plaintiff.	\$17,200, all-inclusive.	Actual rates not disclosed but "fees including counsel fee at trial" claimed amounted to \$21,030. That is, only \$1,245 higher than the partial indemnity fees.  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.
Summers v. Harrower  [2006] O.J. No. 452 (S.C.J.)  Toscano-Roccamo J.	Plaintiff.	Substantial indemnity rates: <ul style="list-style-type: none"> <li>- Lawyer 1: \$195/hr (87% of actual rate)</li> <li>- Clerk 1: \$80/hr (89% of actual rate)</li> <li>- Clerk 2: \$45/hr (89% of actual rate)</li> </ul> Total costs awarded: \$42,500.	Actual rates: <ul style="list-style-type: none"> <li>- Lawyer 1: \$225/hr;</li> <li>- Clerk 1: \$90/hr; and</li> <li>- Clerk 2: \$50/hr.</li> </ul> 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.

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<p>Hanis v. University of Western Ontario</p> <p>[2006] O.J. No. 2763 (S.C.J.)</p> <p>Power J.</p>	<p>Defendant.</p>	<p>Calculated in accordance with the 60%-90%-100% rule-of-thumb explained under "Judge's Comments."</p>	<p>This was a proceeding against third party insurance companies to indemnify UWO for their fees incurred in defending themselves.</p> <p>Actual rates:</p> <ul style="list-style-type: none"> <li>- Lawyer 1 (1973 call): \$355-\$650/hr.</li> <li>- Lawyer 2 (1983 call): \$330-\$575/hr.</li> <li>- Lawyer 3 (1981 call): \$270-\$410/hr.</li> <li>- Lawyer 4 (1989 call): \$190-\$255/hr.</li> <li>- Lawyer 5 (1997 call): \$300-\$430/hr.</li> <li>- Lawyer 6 (2002 call): \$290-\$400/hr.</li> <li>- Law Clerk: \$210/hr.</li> </ul> <p>Partial indemnity rates:</p> <ul style="list-style-type: none"> <li>- Lawyer 1 (1973 call): \$300-\$350/hr.</li> <li>- Lawyer 2 (1983 call): \$250-\$350/hr.</li> <li>- Lawyer 3 (1981 call): \$200-\$300/hr.</li> <li>- Lawyer 4 (1989 call): \$150/hr.</li> <li>- Lawyer 5 (1997 call): \$225/hr.</li> <li>- Lawyer 6 (2002 call): \$175/hr.</li> <li>- Law Clerk: \$80/hr.</li> </ul> <p>Substantial indemnity rates:</p> <ul style="list-style-type: none"> <li>- Lawyer 1 (1973 call): \$400-\$525/hr.</li> <li>- Lawyer 2 (1983 call): \$330-\$450/hr.</li> <li>- Lawyer 3 (1981 call): \$300-\$410/hr.</li> <li>- Lawyer 4 (1989 call): \$225/hr.</li> <li>- Lawyer 5 (1997 call): \$338/hr.</li> <li>- Lawyer 6 (2002 call): \$263/hr.</li> <li>- Law Clerk: \$120/hr.</li> </ul> <p>Rates are 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 the full indemnity rates are the equivalent of the actual rates charged to the client. These percentages, 60%, 90% and 100%, should be employed as a rough rule of thumb.</p>

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CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	RATES AWARDED	CASE SUMMARY
<p>Riddell v. Conservative Party of Canada</p> <p>[2006] O.J. No. 4141 (S.C.J.)</p> <p>Power J.</p>	Plaintiff.	<p>Partial indemnity rate: Senior counsel \$230/hr. Student \$60/hr.</p> <p>Substantial indemnity rate: Senior counsel \$345/hr. Student \$80/hr.</p>	<p>Rates: Senior Counsel \$390/hr (actual rate), \$280/hr (partial indemnity rate), and \$300/hr (substantial indemnity rate); Student \$110/hr (actual rate).</p> <p>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/hr, which is \$30 more than the actual billing rate of senior counsel.</p>
<p>Spirent Communications of Ottawa Ltd. v. Quake Technologies (Canada) Inc.</p> <p>[2006] O.J. No. 4032 (S.C.J.)</p> <p>Panet J.</p>	Defendant.	<p>In these circumstances, award of costs should be greater than on a partial indemnity basis.</p> <p>Total fees awarded: \$265,000.</p>	<p>Actual rates at partial indemnity rates:</p> <ul style="list-style-type: none"> <li>- SV: 442hrs x \$300/hr</li> <li>- DC: 420 hrs x \$150/hr</li> <li>- PG: 11.2hrs x \$125/hr</li> <li>- AH: 1.5hrs x \$125/hr</li> <li>- TP: 1hr x \$100/hr</li> <li>- Student: 37hrs x \$60/hr</li> <li>- Clerk: 27hrs x \$75/hr</li> </ul> <p>Total: \$201,532.</p> <p>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.</p>

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<p>Rivington v. Rivington</p> <p>[2007] 154 A.C.W.S. (3d) 391.</p> <p>Power J.</p>	Plaintiff.	<p>Partial indemnity rate: \$175/hour.</p> <p>Substantial indemnity rate: \$220/hour.</p> <p>Bulk of the hours were performed at the higher rate (actual number of hours not disclosed).</p> <p>Fee portion of the claim is \$10,500 + \$290.24 (disbursements) for a total of \$10,790.24 (inclusive of GST).</p>	<p>Actual rates: Plaintiff's counsel \$175/hour as a partial indemnity rate; \$225/hour as a substantial indemnity rate.</p> <p>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/hour 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/hour.</p>
<p>Rodriguez Holding Corp. v. Vaughan (City)</p> <p>[2006] O.J. No. 4779, 28 M.P.L.R. (4<sup>th</sup>) 96 (S.C.J.)</p> <p>Power J.</p>	Defendant.	<p>Partial indemnity rate: 60% of \$54,000 for a total of \$32,000.</p> <p>Substantial indemnity rate: 1.5 this total for a cost award of \$48,000.</p>	<p>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.</p> <p>Actual rates charged by the solicitor to his/her client are important. Since, when fixing costs on a partial indemnity 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%-100%. Partial indemnity rates should be 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.</p> <p>Defendant's rates are reasonable hourly rates.</p>

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Ward v. ManulifeFinancial [2007] O.J. No. 37 (S.C.J.) Power J.	Plaintiff.	Substantial Indemnity rates: Senior lawyer: \$350/hour. Associate: \$150/hour.	Actual rate: Not disclosed.  Substantial indemnity rates should be approximately 90% of full indemnity rates.

## SECTION 8 - DISBURSEMENTS

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Banihashem-Bakhtiari v Axes Investments Inc.</p> <p>[2003] OJ No. 3071, 2003 CanLII 32527 (ONSC)</p> <p>Lane J.</p>	Plaintiffs	Disbursements of over \$100,000.00	The plaintiffs claimed over \$200,000.00 in disbursements, as part of a lengthy proceeding. The defendants objected to several disbursements on the basis that they fell outside of the disbursements allowed under the tariff. These included faxes, long distances, couriers, and legal research. The Court found that these omissions illustrated the degree to which the tariff of disbursements had lost touch with modern legal practice. The Court further found that all of the items claimed were everyday costs in running litigation and were case-specific, rather than mere overhead. The Court concluded that, although not included expressly in the tariff, these expenses were captured as disbursements “reasonably necessary for the conduct of the proceeding” within item 35 of the tariff.
<p>Cain v Peterson</p> <p>[2006] OJ No. 188 (SCJ), 2006 CanLII 1182 (ONSC)</p> <p>Dambrot J.</p>	Defendant	Disbursements of \$1,504.76	The defendant was self-represented and sought \$1,270.83 for accommodations during trial. The plaintiff argued that the defendant was within driving distance. However, the Court allowed the disbursement, noting that the defendant did not drive and would have had to spend an amount of time on the bus each day of trial which would have interfered with her trial preparation and might have interfered with the orderly conduct of the trial.
<p>Lecompte v A. Potvin Construction Ltd.</p> <p>2006 – citation unavailable</p> <p>Roy J.</p>	Plaintiff	Disbursements of \$20,000.00	The plaintiff sought disbursements for two experts, totalling \$53,779.24. The Court found these disbursements were unjustifiable and reduced them to \$20,000.
<p>Nelligan, O'Brien, Payne LLP v Fontaine et al</p> <p>[2006] OJ No. 3699 (SCJ), 2006 CanLII 31920 (ONSC)</p> <p>Smith, Robert J.</p>	Plaintiff	Disbursements of \$371.80	The plaintiff sought disbursements of \$531.36, which the Court labelled “modest.” Of these disbursements, \$359.56 were earmarked for “computer research,” but without any evidence of the subject of the computer research. The Court allowed \$200.00 as a reasonable amount for computer research, because a “substantial amount of case law was presented.”

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CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Summers v Harrower  [2006] OJ No. 452 (SCJ), 2006 CanLII 3273 (ONSC)  Toscano-Roccamo J.	Plaintiffs	Disbursements of \$5,137.23	The plaintiff claimed disbursements totalling \$7,119.65. The Court found that, although the documents introduced in evidence by the parties were voluminous, the amount claimed by the plaintiffs for photocopies were “excessive,” and the Court reduced this disbursement by 50%. The Court further found that there was no justification for long-distance fax charges, as both lawyers were in the same locality.
Crosby v Wharton  [2006] OJ No. 1192 (SCJ), 2006 CanLII 9408 (ONSC)  Wilson J.	Defendants	Disbursement amount included in total cost award of \$42,314.00	The defendants sought to recoup expenses totalling \$5,634.14 for flying back from Mexico or the Bahamas, as they were on vacation. The Court found that this “is not a recoverable disbursement.” The Court further disallowed an unexplained expense for legal research, totalling \$2,212.50.
Dinsmore v Southwood Lakes Holding Ltd.  [2007] OJ No. 263 (SCJ), 2007 CanLII 1861 (ONSC)  Brockenshire J.	Plaintiff	Disbursements of \$28,525.62	Some of the disbursements claimed by the plaintiffs were found by the Court to be overhead expenses of the law office. The Court discounted fees for computer legal searches, lunches, “miscellaneous expenditures during trial,” and charges for clerical assistance at trial. The Court further disallowed fax charges, courier charges, and long-distance telephone charges. The Court slashed the plaintiff’s photocopy charges by \$1,000, from a total of \$2,147.50 sought.

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CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Pankhurst v Kulikovsky</p> <p>2009 Ont. Sup. Ct., 02-CV-20759</p> <p>Ray J.</p>	Plaintiffs	Disbursements of \$23,000.00	<p>The Court labelled the plaintiffs' disbursements as "troublesome." Their disbursements including 22,000 copies at \$0.25 per page, with no explanation as to the volume of copies. Expert fees of over \$11,000 were claimed for an accounting firm, without any explanation given.</p>
<p>Baird v Botham</p> <p>2010 ONSC 3057</p> <p>Smith, Robert J.</p>	Defendant (as against co-defendant)	Disbursements of \$8,500.00	<p>The defendants settled with the plaintiff and proceeded to trial on the issue of liability as between the defendants. The successful defendant sought disbursements of \$11,524.61 and was awarded \$8,500.</p> <p>The unsuccessful defendant opposed three disbursements, all of which appear to have been discounted: \$300 for law clerk's accommodations, \$1,684.18 for expert reports never produced, and \$745.00 for doctor's no-show fees.</p>
<p>Mayer v 1474479 Ontario Inc.</p> <p>2014 ONSC 2622</p> <p>Leach J.</p>	No costs awarded	N/A	<p>The Court noted that our courts "have confirmed that the principle of proportionality applies equally to disbursements, and that an expert cannot simply charge what he or she considers appropriate and then expect through counsel that such fee will be deemed acceptable by the court. In the long term, simple acceptance of disbursements which, on their face, appear to be extravagant and excessive, will encourage experts to charge excessive fees, and enhance the risk that litigation will be placed beyond the reach of most people seeking or needing access to our courts."</p>

## SECTION 8 - DISBURSEMENTS

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Rochon v MacDonald  2014 ONSC 591  McCarthy J.	Plaintiff	Disbursements were bundled into the total cost award of \$635,500.00	<p>The defendants objected to a number of disbursements claimed by the plaintiff. The Court agreed that the defendants should not be expected to fund the costs of focus groups, nor should the defendants be responsible for experts when they become embroiled in accident benefits issues. In addition, the cost of a report not served cannot be the responsibility of the defendants.</p> <p>On the other hand, the Court found that a plaintiff should not be deprived on the cost of an expert report simply because the expert did not testify at trial. Calling an expert merely to ensure that the cost of his report gets paid is something to be discouraged. The Court also noted that tariff item 26 did not require the expert to be called at trial.</p> <p>Lastly, the plaintiff claimed transportation costs for her mother to attend at trial. The Court disallowed these expenses, finding that the plaintiff's mother was a mere spectator.</p>
Lopresti v Rosenthal  2016 ONSC 7494  Wilson J.	Plaintiffs	Disbursements of \$45,000.00	<p>The parties settled at a further pre-trial on the first day of trial but could not agree on costs. The plaintiffs sought disbursements of \$72,882.24.</p> <p>The Court found that the sum charged by a single doctor for four short reports, totalling \$36,560.00, was neither fair nor reasonable and ought to be reduced. The Court fixed this expense at \$20,000.00.</p> <p>The Court noted that "it is trite to say that experts are critical to a party's success at trial; however, that does not mean that an expert can charge whatever he or she wishes to for delivery of a r. 53.03 report. The party who retained an expert may be obligated to pay the invoice of the expert, but the unsuccessful party is not obliged to do so if it is not reasonable."</p>

## SECTION 8 - DISBURSEMENTS

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>XPG v Royal Bank of Canada</p> <p>2017 ONSC 6345</p> <p>Raikes J.</p>	Defendant	Disbursements of \$75,000.00 for three expert reports	<p>The plaintiffs objected to disbursements for an expert's preparation for trial. The Court noted that item 35 permits recovery of any other disbursements reasonably necessary for the conduct of the proceeding. The Court concluded that preparation by an expert for the purpose of giving evidence at trial is both reasonable and expected, just as lawyers prepare for court. Preparation by experts benefits all parties and the Court.</p> <p>Another expert prepared a report on the standard of care was not called at trial. His invoice was \$90,979.20, more than nine times as much as the plaintiff's expert on the same subject. The Court found that the invoice was "grossly excessive" and reduced it to \$20,000.00.</p> <p>Lastly, the defendants sought \$281,461.62 for two other reports and expert testimony. The Court found that this was "so grossly excessive, even for two experts combined, that I have little difficulty finding that the amount claimed for these experts is unreasonable." The Court allowed \$55,000.00 for these experts.</p>

## SECTION 9 - CONTINGENCY FEES AND CLASS ACTIONS

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Vester v Boston Scientific Ltd.</p> <p>2017 ONSC 2498</p> <p>Perell J.</p>	Plaintiffs	\$450,000.00 forthwith and \$450,000.00 in any event of the cause	<p>The plaintiffs successfully sought costs all-inclusive of \$900,000.00.</p> <p>The Court noted that the decision to award costs is discretionary, and the Court the discretion to reduce the amount of cost or to order that there be cost costs in a variety of circumstances, including:</p> <ul style="list-style-type: none"> <li>- the proceeding raises novel issues, the resolution of which is in the public interest, including, for example, the interpretation of a statute,</li> <li>- the proceeding is a test case,</li> <li>- the state of the law is uncertain or under development and it is in the public interest that the question be resolved,</li> <li>- the unsuccessful party qualified as a public interest litigant, and</li> <li>- the unsuccessful party is a government or public authority or regulator acting in the public interest</li> </ul> <p>The Court further noted that another important factor in awarding costs in class actions is the principle that the Court should have regard to the underlying goals of the <i>Class Proceedings Act, 1992</i>; namely: (1) access to justice; (2) behaviour modification; and (3) judicial economy.</p> <p>Generally speaking, costs awarded against unsuccessful plaintiffs in certification motions have typically been more modest, relative to the actual costs incurred by the successful defendants, reflecting the concern that costs awards are not inconsistent with the objective of access to justice.</p> <p>Where a successful plaintiff substantially recasts their case for certification, the defendant's liability for costs may be reduced to compensate the defendant for the prejudice it suffered in wasting time responding to a case that was improperly formulated. A class proceeding should not become a means for either party to overspend on legal expenses simply because the economies of scale of a class proceeding makes it worthwhile to enlarge the investment in the defence or advancement of the case. In anticipating costs, a defendant should rein in any tendency to commit more resources than are necessary to fairly test and challenge the propriety of certifying the class proceeding. A costs award must be fair to the defendants and should reflect their reasonable and effective efforts and concessions to limit the scope of the motion. The defendants should not reasonably be expected to pay for the inefficiencies of the plaintiffs.</p>

## SECTION 9 - CONTINGENCY FEES AND CLASS ACTIONS

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Sutts, Strosberg LLP v Atlas Cold Storage Holdings Inc.</p> <p>2009 ONCA 690</p> <p>MacFarland, Doherty, and Rosenberg JJ.A.</p>	<p>Appellants (class counsel)</p>	<p>At trial: \$6.3M plus GST; class counsel had sought \$12M</p>	<p>An order approving an agreement respecting fees and disbursements under s. 32 of the <i>Class Proceedings Act</i>, or fixing a multiplier under s. 33, is a final order of the Superior Court judge from which an appeal lies by virtue of s. 6(1)(b) of the <i>CJA</i>. It is not an order with respect to costs payable by one party to another, for which leave 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,</li> <li>(c) the degree of responsibility assumed by the lawyer,</li> <li>(d) the monetary value at 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 base fees claimed by class counsel would have represented 52% of the net recovery. The lower Court found that this was not reasonable and should be reduced by 25%. The Court of Appeal found that this conclusion was warranted and that there was no palpable and overriding error. The motions judge was also justified in concluding that the multiplier was unreasonable where it “offends the principle of proportionality.”</p> <p>The fee agreement was only one factor which can be considered to assess what is fair and reasonable. The motions judge was not obliged to accept that fee agreement. Neither the risks nor the complexities of the action were as great as counsel contended.</p> <p>The approved fee represented nearly twice the fully docketed fee, which the motions judge noted should be more than adequate to incentivize lawyers to take on a claim of this nature.</p>

## SECTION 9 - CONTINGENCY FEES AND CLASS ACTIONS

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Evans Sweeny Bordin LLP v Zawadzki et al</p> <p>2015 ONCA 756</p> <p>Gillese, Lauwers, D.M. Brown JJ.A.</p>	Applicant solicitors	\$500,000.00	<p>Assessment officers do not have jurisdiction to rule on the reasonableness of a contingency fee agreement. They can only be referred to explain the quantum of the contingency fee.</p> <p>The lower Court found that the solicitors' fees of \$500,000.00 were reasonable, in light of the \$20M resolution in favour of the plaintiffs. This was upheld by the Court of Appeal.</p>
<p>Du Vernet v 1017682 Ontario Ltd.</p> <p>[2009] OJ No. 2373, 2009 CanLII 29191 (ONSC)</p> <p>Aston J.</p>	Applicant solicitor	\$255,000.00 plus GST on a <i>quantum meruit</i> basis, plus disbursements of \$29,262.54	<p>The contingency agreement was void where it did not comply with the requirements of the <i>Solicitors Act</i> and its regulations. The contingency agreement was also found not to have been a true meeting of the minds.</p> <p>The solicitors were entitled to the majority of the settlement, due to the time invested, the financial risks assumed, including posting substantial security for costs that they may never have recovered. However, the clients should nonetheless receive a significant share as well, recognizing that their case had some merit and that this was the only reason that the solicitors were receiving anything.</p>

## SECTION 9 - CONTINGENCY FEES AND CLASS ACTIONS

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Cogan (Re)</p> <p>(2007) 88 OR (3d) 38</p> <p>Smith, Robert J.</p>	Applicant solicitor	As requested	<p>A contingency fee agreement was entered into by a child plaintiff's litigation guardian. This agreement is not binding unless approved by a judge, though this does not mean that the agreement should be disregarded by the Court when assessing its fairness and reasonableness.</p> <p>Here, there was a significant causation issue and so the likelihood of success was very uncertain and the financial risk therefore high. The results achieved were "very impressive," in that the child's future needs were to be well provided for. The recovery was approximately double the expectations of the party. The contingency agreement provided that any costs awarded would be included in the recovery, and not paid to the solicitor in addition to the percentage. All of these factors supported a higher contingency fee.</p> <p>The litigation guardian was financially sophisticated and experienced. The agreement was understood and accepted at the time, and both the litigation guardian and the child's parents supported approving the agreement.</p> <p>The Court found that access to justice requires that an injured child should have the right to enter into contingency fee arrangements, provided they are fair and reasonable. The Court found that significant weight should be given to the sophistication of the litigation guardian entering into a contingency fee agreement.</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 recovery by the law firm is very high.</p>
<p>J. Arthur Cogan Q.C.,</p> <p>2010 ONSC 915</p> <p>Hackland, J</p>	Applicant solicitor	\$1,840,625, being 25% of the net settlement, plus disbursements of \$65,177.52	<p>In the circumstances, a contingency fee agreement 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 access to justice.</p>

## SECTION 9 - CONTINGENCY FEES AND CLASS ACTIONS

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Choi v Choi</p> <p>2010 ONSC 4800</p> <p>Fuerst J.</p>	<p>Applicant solicitor</p>	<p>\$2,000,000.00</p>	<p>The applicant solicitor claimed \$2.6M under their contingency fee agreement. This was reduced by \$600,000.00, as the Court found that there was a real prospect that the child would have to contribute more than the amount provided for in the settlement towards the purchase of a new home.</p> <p>In deciding whether to approve a settlement, the Court must ensure that the whole settlement, including amounts charged for legal fees, is in the infant plaintiff's best interests.</p> <p>The Court found the following in the circumstances:</p> <ul style="list-style-type: none"> <li>- There was minimal risk that the action would be unsuccessful,</li> <li>- The case was not complex,</li> <li>- Disbursements were not large,</li> <li>- The size of the settlement was somewhat fortuitous, since substantial insurance coverage happened to be available,</li> <li>- The time spent by the firm was not fully docketed, and</li> <li>- The fees claimed might encroach on the amount needed to cover the child's needs</li> </ul>

## SECTION 10 - PREMIUMS

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>The Manufacturers Life Insurance Company v. Ward</p> <p>2007 ONCA 881</p> <p>Weiler, Rosenberg, Rouleau JJ.A.</p>	<p>Plaintiffs (respondents)</p>	<p>\$50,000 risk premium awarded by trial judge set aside</p>	<p>Trial judge awarded a \$50,000 costs premium to the plaintiffs on the basis that they: lacked financial resources to fund lengthy and complex litigation; their counsel financed the litigation; the defendants contested liability; their counsel assumed the risk of not only delayed but possible non-payment of fees.</p> <p>In accordance with the Supreme Court's decision in <i>Walker v Ritchie</i>, 2006 SCC 45, and notwithstanding the new wording of Rule 57.01 enacted in 2005, the Court of Appeal found that risk premiums are not allowed to be claimed as against defendants. The Court stated that risk premiums are private arrangements between plaintiffs and their counsel and that they run contrary to the principles of transparency and predictability that govern costs award.</p> <p>Stated differently, the risk of non-payment to a plaintiff's lawyer is not a relevant factor under the costs regime set out in Rule 57.01 (<i>Lloyd v. Bush</i>, 2020 ONSC 2892, at para 85, citing <i>Walter</i> and <i>Manufacturers</i>).</p>

## SECTION 10 - PREMIUMS

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>DeMichino v. Musialkiewicz</p> <p>2012 ONCA 458</p> <p>Juriansz, LaForme, Epstein JJ.A.</p>	<p>Plaintiffs' counsel</p>	<p>\$561,320.75 risk premium requested, approximately half awarded (precise number unknown)</p>	<p>This appeal stemmed from a motion judge's refusal to award a fee premium on an R 7.08 settlement approval motion (i.e. fee premium between the plaintiffs and their counsel). Before the Court of Appeal, the plaintiffs and plaintiffs' counsel agreed on an appropriate amount for legal fees (including the premium), but required the court's approval of that settlement pursuant to R. 7.08.</p> <p>The Court of Appeal relied on the factors enumerated in <i>Christian Brothers of Ireland in Canada (Re)</i> (2003), 2003 CanLII 18327 (ON CA) to determine whether a lawyer should be entitled to a premium: the difficulty and complexity of the case, the responsibility assumed by the lawyer, the amount in issue, the importance of the case to the client, the skill shown by the lawyer, the result achieved, the client's ability to pay and the lawyer's corresponding financial risk.</p> <p>The Court recognized that there is a balance that needs to be achieved between reducing the funds available to meet the plaintiff's needs and fairly compensating lawyers who assist their clients. This includes compensating lawyers who are willing to assume risk that their fees may go unpaid.</p> <p>Here, the proposed settlement of the premium issue represented approximately half of what had been recommended by the Public Guardian and Trustee and the plaintiff's agreed to the settlement with their lawyers. Thus, the Court approved the settlement.</p>
<p>Perri v. Thind</p> <p>2009 CanLII 34977, 98 O.R. (3d) 74</p> <p>Henderson, J.</p>	<p>Defendant</p>	<p>Substantial indemnity (\$2,713)</p>	<p>This was a Divisional Court appeal of a motion judge's decision to award \$10,000 in costs, which was well in excess of costs actually incurred or requested, to express the court's disapproval of the conduct of plaintiff's counsel.</p> <p>Costs are awarded to indemnify the successful party, not punish the unsuccessful party.</p> <p>Here, the Court ordered that substantial indemnity costs were the appropriate mechanism to express the Court's disapproval of the plaintiff's counsel's conduct.</p>

SECTION 11 - NO COSTS AWARDED			
CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Staples Canada Inc. v. Virtualink Canada Ltd.</p> <p>2018 ONSC 3639</p> <p>Master McAfee</p>	No costs	No costs	<p>This was a motion for setting aside a default judgment. Although the defendant was successful in setting aside the default judgment, it was responsible for not having updated its corporate profile, leading to service of the claim at the wrong location, where it was no longer operating. As such, the Court found that no costs should be awarded.</p>
<p>Cooper et al. v. Wiancki et al.</p> <p>2018 ONSC 1654</p> <p>Healey J.</p>	No costs	No costs	<p>This was an application brought pursuant to s. 9(1) of the <i>Municipal Conflict of Interest Act</i>. The Court reviewed and applied the factors identified in <i>St. James' Preservation Society v. Toronto (City)</i> (2006), 2006 CanLII 22806 (ON SC): (a) the nature of the unsuccessful litigant, (b) the nature of the successful litigant, (c) whether the litigation was in the public interest, (d) whether the litigation had an adverse impact on the public interest, and (e) the financial consequences to the parties.</p> <p>In this case, based on the fact the parties made offers to settle, divided success and the fact that the litigation served the public interest, the Court ordered that each party should bear their own costs.</p>
<p>Cohlmeyer v. Ffrench</p> <p>2012 ONSC 929</p> <p>Mullian, J.</p>	No costs	No costs	<p>This corporate dispute pursuant to the <i>Business Corporations Act</i> and the <i>Winding-up and Restructuring Act</i> was settled, but the settlement did not address the issue of costs.</p> <p>The Court found that it is difficult to determine who had been the "successful" party. Given that one of the principles of costs is to encourage settlement, the Court found that each party in this case should bear their own costs so as not to be penalized by a costs order.</p>
<p>O'Dea v. Real Estate Council of Ontario</p> <p>2011 ONSC 507</p> <p>Smith, Robert J.</p>	No costs	No costs	<p>There is a public benefit in having a Court decide a novel issue (that raises a new uncertain and unsettled point of law with no previous authoritative rulings).</p> <p>In this case, given the novel issue raised and divided success, the court ordered no costs.</p>

SECTION 11 - NO COSTS AWARDED			
CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Vallée v. Pickard</p> <p>2007 CanLII 10795 (ON SC)</p> <p>Smith, Robert J.</p>	No costs	No costs	<p>This was an oppression case where the shareholders and directors were deadlocked.</p> <p>The Court found that neither party was more blameworthy than the other, neither was completely successful and both shared responsibility for the dispute by having not entered into a Shareholders' Agreement. Since the Court's involvement was required to resolve the deadlock, the Court found that each party should bear their own costs.</p>

# SECTION 12 - LIABILITY OF SOLICITOR FOR COSTS (RULE 57.07)

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Carleton v Beaverton Hotel</p> <p>(2009), 98 OR (3d) 391, 2009 CanLII 92124 (Divisional Court)</p> <p>Cunningham, Hackland, and Taliano JJ.A.</p>	Defendant		<p>The Divisional Court overturned the motion judge's award of costs against solicitor personally. The motions judge's award was made on the basis that the solicitor made groundless and unproved allegations of unprofessional conduct on the part of defendants' lawyer and that he had been conducting litigation in an unreasonable manner.</p> <p>The Divisional Court found that cost awards against solicitors personally should be made sparingly, with care and discretion, and only in clear cases. The motions judge failed to indicate how the solicitor's misconduct caused costs to be unreasonably incurred.</p> <p>Costs should not be awarded against a solicitor personally under Rule 57.07 for professional misconduct which does not create unnecessary costs.</p>
<p>Young v Young</p> <p>[1993] 4 SCR 3 (SCC), 1993 CanLII 34</p> <p>McLachlin J</p>	Appellants		<p>Costs awarded personally against a lawyer are intended as compensation for a successful party and not as punishment of the lawyer.</p> <p>Any member of the legal profession might be subject to a compensatory order for costs if it is shown that repetitive and irrelevant material, and excessive motions and applications, characterized the proceedings in which he or she was involved, and that the lawyer acted in bad faith in encouraging this abuse and delay.</p>

## SECTION 12 - LIABILITY OF SOLICITOR FOR COSTS (RULE 57.07)

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Galganov v Russell (Township)</p> <p>2012 ONCA 410</p> <p>Weiler, Sharpe, Blair JJ.A.</p>	Respondents		<p>The applicants were unsuccessful in their application against the Township of Russell. The Court made a costs award in favour of the Township and ordered 40% of those costs payable by the applicants' lawyer personally.</p> <p>The Court of Appeal found that the application judge erred in awarding costs against the solicitor personally. The application judge erred in principle by not separating the lawyer's conduct from that of his clients.</p> <p>If an order for costs is to be made against a lawyer personally on the basis of negligence, then that negligence must be based on a breach of the objective standard of care of a reasonably competent lawyer in the same position. Here, that position would be of a lawyer acting on instructions or with the approval of his clients. The Court must also bear in mind to whom the lawyer's duty of care is owed, which is primarily to the client and to the Court.</p> <p>The rule was not intended to allow the frustration of an opposing party's counsel to be taken out against counsel personally because they went down a series of blind alleys with their client's instructions or approval. Rather, resort is to the general principles governing costs between parties, which include deterrence of unnecessary steps that unduly prolong litigation.</p>
<p>Desir v Care Canada</p> <p>(2009 Ont. Sup. Ct.)</p> <p>Polowin J.</p>	Defendant		<p>The Court found that 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 communications in a timely fashion or at all, in failing to advise opposing counsel of his suspension by the Law Society, in failing to attend the settlement conference without satisfactory evidence, in misrepresenting that he would not be available for the trial because of a Law Society hearing, even though it would have been over by the scheduled time, and in failing to move for an adjournment in a timely fashion, was all 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.</p>

SECTION 12 - LIABILITY OF SOLICITOR FOR COSTS (RULE 57.07)			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Forsyth v Li</p> <p>(2009 Ont. Sup. Ct.), 2009 CanLII 24637 (ONSC)</p> <p>Smith, Robert J.</p>	Defendant		<p>The Court found that counsel's conduct – including inappropriate criticisms of opposing counsel's competence and conduct, attribution of improper motives made in response to the defendant's motion for summary judgment – did not cause costs to be incurred and therefore did not fall within Rule 57.07.</p> <p>While the allegations did not comply with professional rules concerning civility, they were not so egregious as to require a solicitor to pay costs personally.</p>
<p>Grenville College Management Corp. v 1745038 Ont. Ltd.</p> <p>(2009 Ont. Sup. Ct.)</p> <p>Quigley J.</p>	Defendant		<p>The defendant unsuccessfully sought a costs award against plaintiff's counsel personally. Once a party decides to pursue costs personally against an opposing party's lawyer, it cannot then take the position that the lawyer should not be compensated personally, where that claim was without merit. These costs were independent of costs in the main action, and the plaintiff's lawyer was awarded \$1,200.00 in costs personally.</p>

## SECTION 13 - ESTATE LITIGATION

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>McDougald Estate v. Gooderham</p> <p>2005 CanLII 21091, 255 D.L.R. (4th) 435 (Ont. C.A.)</p> <p>Gillese, Cronk, MacFarland, JJ.A.</p>	Respondent	Costs of appeal awarded: \$17,000	<p>The traditional approach to awarding costs in estate litigation (that the estate bears the costs of all the parties) 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. (para 80)</p> <p>The same rules that govern costs in civil litigation at the appeal level apply to unsuccessful appellants in estate litigation. (para 91)</p>
<p>Sawdon Estate v Sawdon</p> <p>2014 ONCA 101</p> <p>Gilese, Hoy, Strathy JJ.A.</p>	Estate Trustee (blended costs award)	<p>Trial costs awarded by Court of Appeal: partial indemnity against losing party, with balance of estate trustee's trial costs recoverable from the estate.</p> <p>Appeal costs awarded by Court of Appeal: \$30,000 partial against the appellant, with the balance of the estate trustee's costs being recoverable from the estate.</p>	<p>The public policy considerations at play in estate litigation (which may support the payment of an award of costs by the estate) are primarily of two sorts: (1) the need to give effect to valid wills that reflect the intention of competent testators; and (2) the need to ensure that estates are properly administered. (para 85)</p> <p>In terms of the latter consideration, because the testator is no longer alive to rectify any difficulties or ambiguities created by his or her actions, it is desirable that the matter be resolved by the courts. Where the problems giving rise to the litigation were caused by the testator, it is appropriate that the testator, through his or her estate, bear the cost of their resolution. (paras 85-86)</p> <p>A blended costs order (with losing party liable for partial indemnity and balance of costs paid by Estate) is permissible at trial and on appeal where the public policy considerations are at play. A blended costs order gives the court the ability to both respect the public policy considerations that may be involved and maintain litigation discipline.</p>
<p>Brown v. Rigsby</p> <p>2016 ONCA 521</p> <p>Pepall, Simmons, van Rensburg JJ.A.</p>	Request by estate trustees for their costs refused		<p>"In summary, subject to the discretion of the court, the general rules governing an estate trustee's ability to recover legal costs from an estate are as follows:</p> <ul style="list-style-type: none"> <li>- an estate trustee is entitled to indemnification from the estate for all reasonably incurred legal costs;</li> <li>- if an estate trustee acts unreasonably or in his or her own self-interest, he or she is not entitled to indemnification from the estate; and</li> <li>- if an estate trustee recovers a portion of his or her costs from another person or party, he or she is entitled to indemnification from the estate for the remaining reasonably incurred costs." (para 14)</li> </ul>

## SECTION 13 - ESTATE LITIGATION

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Bank of Nova Scotia v Kuklis</p> <p>2017 ONSC 3069</p> <p>Corthorn, J.</p>	<p>Estate Trustee (blended costs award)</p>	<p>\$21,560.45 (substantial) against one Respondent, with Applicant Estate Trustee During Litigation entitled to difference between that amount and full indemnity costs, payable by the Estate.</p>	<p>“[T]he modern approach with respect to costs awards in estate litigation is to avoid the potential depletion of the estate through litigation. Depletion of the estate is avoided by applying the ‘loser pays’ principle, as developed in the context of civil litigation, and thereafter requiring that the balance, if any, of the estate trustee’s reasonable costs be paid from the Estate.” (para 25)</p> <p>The process outlined in <i>Sawdon</i> can be summarized as follows:</p> <p>“The first step is to determine which, if any, individual is personally liable for the costs of an estate trustee.</p> <p>The second step is to determine the scale and quantum of costs to which the estate trustee is entitled and the apportionment of those costs as between the individuals adverse to the estate trustee.</p> <p>The final step is to determine whether the circumstances warrant a blended order. If so, then the difference, if any, between the estate trustee’s full reasonable costs and the costs awarded against one or more of the individuals adverse to the estate is to be paid from the estate.” (para 26)</p>
<p>MacDougall v. Trust Company of Bank of Montreal</p> <p>2009 CanLII 2325</p> <p>Ray, J.</p>	<p>Respdnts</p>	<p>\$74,000 against the Applicant personally</p>	<p>The Respondents are residual beneficiaries who successfully defended against the application (the executor did not participate). An award of costs payable by the estate would result in the Respondents, the successful parties, having to effectively pay for costs (either their own or the Applicant’s) through their residual shares.</p> <p>There is no basis in law for the Applicant’s suggestion that the estate should fund the litigation unless it can be proved that the application was patently unreasonable. (para 7)</p>

## SECTION 13 - ESTATE LITIGATION

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>MacDougall v. Trust Company of Bank of Montreal</p> <p>2009 CanLII 2325</p> <p>Ray J.</p>	Respondents	\$74,000 against the Applicant personally	<p>The Respondents are residual beneficiaries who successfully defended against the application (the executor did not participate). An award of costs payable by the estate would result in the Respondents, the successful parties, having to effectively pay for costs (either their own or the Applicant's) through their residual shares.</p> <p>There is no basis in law for the Applicant's suggestion that the estate should fund the litigation unless it can be proved that the application was patently unreasonable. (para 7)</p>
<p>Driscoll v Driscoll</p> <p>2016 ONSC 6013</p> <p>Rutherford, J.</p>	All parties, out of the estate	Applicants entitled to full costs payable out of the estate; Objectors/Respondents entitled to payment of fees they requested (relating to disbursements and costs for a procedural step), payable out of the estate.	<p>Testator's behaviour may have engaged the first public policy consideration (see <i>Sawdon Estate</i>) that would justify costs payable by the estate. Furthermore, even if they lost, the Objectors/Respondents had a strong case, engaging the second public policy consideration.</p>
<p>In The Estate of Irmgard Burgstaler (disability)</p> <p>2018 ONSC 4725</p> <p>Shaw, J.</p>	Objectors (blended costs award)	Partial indemnity costs of the successful Objectors paid by the Applicant, with the balance for full indemnity paid by the estate.	<p>The Court found that a blended costs order was appropriate based on the second <i>Sawdon</i> public policy consideration: the litigation was necessary for the proper administration of the estate and to recover funds inappropriately used by the Applicant/Attorney for Property.</p>

## SECTION 13 - ESTATE LITIGATION

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Zimmerman v. McMichael Estate</p> <p>2010 ONSC 3855</p> <p>Strathy, J.</p>	Objectors	Full indemnity costs of the successful Objectors paid by the Applicant. The trustee presented accounts that were “manifestly inaccurate, incomplete and false,” and engaged in behaviour that delayed and obstructed the beneficiaries in their search for answers.	<p>The Court summarized the applicable principles to estate litigation at para 4:</p> <p>“(a) the costs of a proceeding are in the discretion of the court and the court may determine by whom and to what extent costs should be paid: <i>Courts of Justice Act</i>, R.S.O. 1990, c. C43, s. 131(1);</p> <p>(b) estate litigation, like any other form of civil litigation, operates subject to the general civil litigation costs regime: <i>McDougland Estate v. Gooderham</i> (2005), 2005 CanLII 21091 (ON CA), 255 D.L.R. (4th) 435, [2005] O.J. No. 2432 (C.A.);</p> <p>(c) as a general proposition, the principle that the “loser pays” applies to estate litigation: <i>Bilek v. Salter Estate</i>, [2009] O.J. No. 2328, 2009 CanLII 28403 (S.C.J.);</p> <p>(d) in the determination of costs, the court must have regard to the factors set out in Rule 57 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, but, at the end of the day, the court’s responsibility is to make an award that is fair and reasonable, having regard to all the circumstances, including the reasonable expectations of the parties;</p> <p>(e) the court’s discretion to award costs on a full indemnity basis is preserved by rule 57.01(4)(d);</p> <p>(f) full indemnity costs are reserved for those exceptional circumstances where justice can only be done by complete indemnity: Mark M. Orkin, <i>The Law of Costs</i>, Vol. 1, 2nd ed., looseleaf, (Aurora, Ontario: Canada Law Book, 2010).”</p>
<p>Owen Estate v Owen</p> <p>2017 ONSC 5673</p> <p>Beaudoin, J.</p>	Beneficiary (blended costs award)		<p>Legal costs incurred by a beneficiary that are necessary or of benefit to the estate can be claimed in the same manner as costs claimed by a trustee.</p> <p>In this case, even if an Estate Trustee During Litigation had been appointed, the beneficiary had to incur further legal fees, the fruit of that work ultimately benefiting the estate. An order for the partial payment of the beneficiary’s fees was granted against a separate beneficiary, who had acted unlawfully. The legal fees were paid out of that beneficiary’s share of the Estate with the outstanding balance being paid by the Estate.</p>

# SECTION 13 - ESTATE LITIGATION

CASE NAME AND CITATION	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Marziliano Estate v. Ebrekdjian  2012 ONSC 1488  Stinson, J.	Beneficiary	Full indemnity	<p>Counsel to one of the beneficiaries (who was a former co-trustee of the estate) had completed work when the beneficiary was the estate trustee, but also after an ETDL had been appointed. The Court found that the lawyer's involvement was helpful and appropriate – and that the work served the beneficiaries' interests and the interests of the client as a former estate trustee. As such, the Court awarded full indemnity fees, payable by the estate.</p> <p>The Court refused a separate claim for costs by a former estate trustee (who was not a beneficiary) who had shown a lack of cooperation in managing the estate.</p>

## SECTION 14 - EMPLOYMENT LAW

### COST DECISIONS INVOLVING A SEPARATE TORT (separate actionable wrong (including human rights violations) in addition to wrongful dismissal)

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Hale v Innova Medical Ophthalmics Inc.</p> <p><a href="#">2018 ONSC 7343</a></p> <p>Brown, Carole J.</p>	Plaintiff	Substantial indemnity	Plaintiff commenced an action for wrongful dismissal. Defendants counterclaimed for overpayment to the plaintiff related to an insurance policy and alleged dishonesty and fraud on the part of the plaintiff. The plaintiff was successful at trial, while the defendant's counterclaim was dismissed in its entirety. Plaintiff sought and was awarded its costs on a substantial indemnity basis given the claims of dishonesty and fraud, which were rejected by the court.
<p>Demers c Lévesque</p> <p><a href="#">2009 CanLII 23867</a> (ON CS)</p> <p>Roy J.</p>	Plaintiff	Substantial indemnity	Plaintiff commenced an action for wrongful dismissal and malicious prosecution against his former employer. The Plaintiff was successful at trial.
<p>GasTOPS Ltd. v Forsyth</p> <p><a href="#">2010 ONSC 7068</a></p> <p>Granger J.</p>	Plaintiff	Full indemnity	<p>Plaintiff commenced an action for breach of fiduciary duty against several former employees. Defendants failed to disclose all of the relevant evidence and even concealed relevant evidence.</p> <p>[27] Applying the criteria set out in Gerula v. Flores, supra, the defendants' acts were a deliberate attempt to frustrate the plaintiff's claim by fraud and/or deception. The defendant's actions were deliberate and intended to financially harm GasTOPS both in this action and in the military aviation field. The defendants deliberately intended to frustrate these proceedings through deception and as a result of their actions increased the complexity and length of these proceedings. The actions of the defendants are proper grounds upon which order the defendants to completely indemnify the plaintiff for its legal fees at the maximum possible rate.</p>

## SECTION 14 - EMPLOYMENT LAW

### COST DECISIONS INVOLVING A SEPARATE TORT (separate actionable wrong (including human rights violations) in addition to wrongful dismissal)

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Gordon v Altus <a href="#">2017 ONSC 3470</a>  Glass J.	Plaintiff (respondents to the motion)	Substantial indemnity	Plaintiff's action for wrongful dismissal was allowed and costs were awarded. The Defendants appealed, alleging that one of the witnesses at trial was a fraudulent and lying person and advance a motion to introduce fresh evidence. The Plaintiff's challenged to motion to introduce fresh evidence and the Defendant's soon after abandoned the motion.
Bernal v Centre for Spanish Speaking Peoples <a href="#">2017 ONSC 1819</a>  Hackland J.	Defendants (moving party for the motion)	Partial indemnity and Substantial indemnity	Plaintiff commenced an action for wrongful dismissal. The Defendants moved to strike portions of the Statement of Claim and were successful in doing so. Substantial indemnity was asked by some of the Defendants as they believed the Plaintiff had conducted himself in an uncooperative, uncivil and offensive manner. Partial indemnity was awarded. The one remaining sole defendant asked for substantial indemnity costs as the Plaintiff advanced several baseless and inflammatory claims against her in his Statement of Claim. Substantial indemnity costs were awarded to this defendant.  14 The Plaintiff's allegations against Ms. Wong were in my view, so outrageous and unjustified as pleaded that costs should be awarded on a substantial indemnity basis in order to signal the Court's displeasure with this behaviour and to deter it in future. Having said that, the case has only proceeded to the pleadings stage and it is not a complex matter. I therefore reduce the amount claimed.
Goulding v Street Motor Sales <a href="#">2013 ONSC 1904</a>  Beaudoin J.	No costs awarded	N/A	Plaintiff commenced an action for wrongful dismissal in superior court and was awarded damages of \$15,000. Even so, the court found that the Plaintiff was not entitled to any costs because of his conduct during trial: added vague allegations of inducement and conspiracy, commenced the action in superior court instead of small claims and in a region far from the Defendants.
Danis v 1292024 Ontario Inc. <a href="#">2006 CanLII 21051 (ON SC)</a>  Smith, Robert J.	Plaintiff	Partial indemnity	Reduction of costs awarded because the matter ought to have been brought under the simplified procedure and because of the lack of success on the allegations in support of general damages.

## SECTION 14 - EMPLOYMENT LAW

### COST DECISIONS INVOLVING A SEPARATE TORT (separate actionable wrong (including human rights violations) in addition to wrongful dismissal)

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Lavinskas v Jacques Whitford &amp; Associates Ltd.</p> <p><a href="#">2006 CanLII 22657 (ON SC)</a></p> <p>Aiken J.</p>	Plaintiff	Partial indemnity	<p>Simplified procedure Plaintiff was successful on wrongful dismissal action and in obtaining Wallace damages.</p> <p>Plaintiff was unsuccessful in obtaining damages for intentional infliction of mental suffering or punitive damages.</p> <p>Plaintiff exceeded his offer to settle.</p> <p>Costs awarded in simplified proceedings follows these principles:</p> <ul style="list-style-type: none"> <li>• The Simplified Procedure rule was introduced to promote affordable access to justice.</li> <li>• Costs awards in Simplified Procedure actions are normally significantly lower than they would be under the ordinary procedure.</li> <li>• Costs incurred in Simplified Procedure actions must be reasonable and proportionate to the amount recovered.</li> <li>• When fixing costs in a Simplified Procedure action, the court must bear in mind the objectives of the Simplified Procedure rule, one being to curb the crippling cost of litigating small claims.</li> <li>• Rule 57.01(1) continues to apply.</li> <li>• The Costs Grid was one factor to take into account until its revocation effective July 1<sup>st</sup>, 2005.</li> <li>• 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.</li> <li>• The reasonable expectations of both the successful party and the unsuccessful party in regard to costs must be taken into account.</li> </ul>
<p>Thomson v. S.I.A. Insurance Brokers Ltd.</p> <p><a href="#">2005 CanLII 38586 (ON SC)</a></p> <p>Power J.</p>	Defendant	Partial indemnity	<p>Plaintiff advanced wrongful dismissal and additional causes of action, none of which were made out.</p>

## SECTION 14 - EMPLOYMENT LAW

### COST DECISIONS INVOLVING A SEPARATE TORT (separate actionable wrong (including human rights violations) in addition to wrongful dismissal)

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Iko Industries Ltd. v. Grant <a href="#">2006 CanLII 34278 (ON SC)</a>  Charbonneau J.	Moving Party (Plaintiff)		Union members found in contempt of a court order. Union ordered to pay costs despite not itself being found in contempt.

## SECTION 14 - EMPLOYMENT LAW

### COST DECISIONS INVOLVING INAPPROPRIATE CONDUCT DURING LITIGATION

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>GasTOPS Ltd. v Forsyth</p> <p><a href="#">2010 ONSC 7068</a></p> <p>Granger J.</p>	Plaintiff	Full indemnity	<p>Plaintiff commenced an action for breach of fiduciary duty against several former employees. Defendants failed to disclose all of the relevant evidence and even concealed relevant evidence.</p> <p>[27] Applying the criteria set out in Gerula v. Flores, supra, the defendants' acts were a deliberate attempt to frustrate the plaintiff's claim by fraud and/or deception. The defendant's actions were deliberate and intended to financially harm GasTOPS both in this action and in the military aviation field. The defendants deliberately intended to frustrate these proceedings through deception and as a result of their actions increased the complexity and length of these proceedings. The actions of the defendants are proper grounds upon which order the defendants to completely indemnify the plaintiff for its legal fees at the maximum possible rate.</p>
<p>Narayan et al. v Dhillon</p> <p><a href="#">2021 ONSC 2461</a></p> <p>Harris J.</p>	No costs awarded	N/A	<p>The Appellants (Defendants at trial), although successful in their appeal, were deprived of their costs on appeal because of their conduct at trial.</p> <p>[16] The trial and appellant proceedings cannot be separated. Both the trial and the appeal should be considered as one course of litigation. In the circumstances, the Appellants' frivolous and vexatious position at the trial leads to the conclusion that it was not a reasonable expectation that they would recover their costs on this appeal: B. (R.) v. Children's Aid Society of Metropolitan Toronto, 1995 CanLII 115 (SCC), [1994] S.C.J. No. 24, [1995] 1 S.C.R.</p>

## SECTION 14 - EMPLOYMENT LAW

### COST DECISIONS INVOLVING INAPPROPRIATE CONDUCT DURING LITIGATION

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Saikaly v Akman Construction Ltd.</p> <p><a href="#">2019 ONSC 799</a></p> <p>Corthorn J.</p>	Plaintiff	Substantial indemnity	<p>The Plaintiff commenced an action for wrongful dismissal and the Defendant was subsequently noted in default. Before the termination, the Defendant made allegations of wrongdoing against the Plaintiff and significantly delayed the issuance of an ROE.</p> <p>47 The fact that the defendant retained counsel and ultimately chose not to defend the action is not conduct in litigation deserving of an elevated costs award (Bovin at para. 20). I am, however, concerned by the defendant's conduct in (a) delaying by five months before issuing an ROE, (b) making allegations of wrongdoing that were never particularized, and (c) failing to give Mr. Saikaly an opportunity to address the allegations before the decision was made to terminate his employment. The defendant's conduct in that regard is not litigation conduct, per se. That conduct, however, left Mr. Saikaly with no option but to proceed with litigation. I find that Mr. Saikaly is entitled to his costs of this action on a substantial indemnity basis.</p>
<p>Nemirovski v Socast Inc.</p> <p><a href="#">2017 ONSC 5616</a></p> <p>Abkarali J.</p>	Plaintiff	Substantial indemnity	<p>Plaintiff commenced an action for wrongful dismissal and was successful on a summary judgment motion. The Defendant failed to engage in litigation which unnecessarily increased the Plaintiff's costs.</p>
<p>Gordon v Altus</p> <p><a href="#">2017 ONSC 3470</a></p> <p>Glass J.</p>	Plaintiff (respondents to the motion)	Substantial indemnity	<p>Plaintiff's action for wrongful dismissal was allowed and costs were awarded. The Defendants appealed, alleging that one of the witnesses at trial was a fraudulent and lying person and advance a motion to introduce fresh evidence. The Plaintiff's challenged to motion to introduce fresh evidence and the Defendant's soon after abandoned the motion.</p>

## SECTION 14 - EMPLOYMENT LAW

### COST DECISIONS INVOLVING INAPPROPRIATE CONDUCT DURING LITIGATION

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Bernal v Centre for Spanish Speaking Peoples</p> <p><a href="#">2017 ONSC 1819</a></p> <p>Hackland J.</p>	Defendants (moving party for the motion)	Partial indemnity and Substantial indemnity	<p>Plaintiff commenced an action for wrongful dismissal. The Defendants moved to strike portions of the Statement of Claim and were successful in doing so. Substantial indemnity was asked by some of the Defendants as they believed the Plaintiff had conducted himself in an uncooperative, uncivil and offensive manner. Partial indemnity was awarded. The one remaining sole defendant asked for substantial indemnity costs as the Plaintiff advanced several baseless and inflammatory claims against her in his Statement of Claim. Substantial indemnity costs were awarded to this defendant.</p> <p>14 The Plaintiff's allegations against Ms. Wong were in my view, so outrageous and unjustified as pleaded that costs should be awarded on a substantial indemnity basis in order to signal the Court's displeasure with this behaviour and to deter it in future. Having said that, the case has only proceeded to the pleadings stage and it is not a complex matter. I therefore reduce the amount claimed.</p>
<p>Chen v Canadian Imperial Bank of Commerce</p> <p><a href="#">2017 ONCA 166</a></p> <p>LaForme, Pepall and Pardu</p>	Defendants	Substantial indemnity	<p>Plaintiff commenced action for wrongful dismissal. Later, the Plaintiff sought to discontinue the action. The Defendant's consented on the condition that it was with prejudice to the Plaintiff's ability to bring a further action on the same subject matter. The Plaintiff agreed to these terms before a hearing judge who granted the consent order. Later, the Plaintiff sought to set aside the consent order, alleging the hearing judge had improperly provided him legal advice. He further alleged a conspiracy between the hearing judge and others. The Plaintiff's motion was denied. Substantial indemnity was awarded to the Defendant's because of this conduct.</p> <p>14 Mr. Chen's motion is dismissed. His outrageous allegations that judges, lawyers and a court reporter have conspired together to commit fraud, without any evidence at all to support those claims, is deserving of denunciation. This conduct merits an award of substantial indemnity costs. CIBC is, therefore, awarded its costs of the motion fixed in the amount of \$11,791.96, inclusive of disbursements and HST.</p>

## SECTION 14 - EMPLOYMENT LAW

### COST DECISIONS INVOLVING INAPPROPRIATE CONDUCT DURING LITIGATION

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Gates v Humane Society of Canada for the Protection of Animals and the Environment</p> <p><a href="#">2016 ONSC 6051</a></p> <p>Horkins J.</p>	Plaintiff	Substantial indemnity	<p>The Plaintiff brought an action in small claims court for wrongful dismissal. Per the court, the Defendant repeatedly engaged in conduct that was frivolous and vexatious and an abuse of the court's process. Further, the Defendant ignored previous orders of the court and continued to make unfounded criminal allegations against the Plaintiff and his counsel. These reasons were used to justify an order for substantial indemnity costs against the Defendant.</p>
<p>Savin v Granite Club</p> <p><a href="#">2016 ONSC 4671</a></p> <p>Faieta J.</p>	Defendant	Substantial indemnity	<p>Plaintiff brought action for wrongful dismissal. The Plaintiff was granted a default judgment, but execution was stayed as it was allegedly made without notice to the Defendant. The Plaintiff would not consent to set aside default judgment in face of motion to set aside default judgment. The Plaintiff's conduct satisfied standard of reprehensible, scandalous or outrageous conduct supporting elevated costs.</p>
<p>McDonald v United States of America</p> <p><a href="#">2014 ONSC 2779</a></p> <p>Ray J.</p>	Plaintiff	Full indemnity \$23,500.00	<p>Plaintiff's default judgment was set aside.</p> <p>6 There is no doubt that the conduct of the defendant prior to judgment demanded that the plaintiff be fully indemnified. I was quite concerned as well about the conduct of the defendant after it became aware of the judgment. Those delays were unacceptable, and I considered a proper response was appropriate in the form of a full indemnity order - subject to counsels' submissions.</p>
<p>Goulding v Street Motor Sales</p> <p><a href="#">2013 ONSC 1904</a></p> <p>Beaudoin J.</p>	No costs awarded	N/A	<p>Plaintiff commenced an action for wrongful dismissal in superior court and was awarded damages of \$15,000. Even so, the court found that the Plaintiff was not entitled to any costs because of his conduct during trial: added vague allegations of inducement and conspiracy, commenced the action in superior court instead of small claims and in a region far from the Defendants.</p>

## SECTION 14 - EMPLOYMENT LAW

### COST DECISIONS INVOLVING INAPPROPRIATE CONDUCT DURING LITIGATION

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Altman v Steve's Music Store Inc.  <a href="#">2011 ONSC 2886</a>  Corrick J.	Plaintiff	Partial indemnity	The court denied a request from the Plaintiff for substantial indemnity costs based on the conduct of the Defendant where punitive damages had already been awarded for that same conduct.
Lampi v Princess House Products Canada Inc.  <a href="#">2006 CanLII 8205 (ONSC)</a>  Master Hawkins	Defendant	Substantial indemnity	The Plaintiff commenced an action for wrongful dismissal. Two previous indulgences were granted by the Master due to the Plaintiff's lack of preparation. Because of this, substantial indemnity costs were awarded against the Plaintiff.
Iko Industries Ltd. v Grant  <a href="#">2006 CanLII 34278 (ON SC)</a>  Charbonneau J.	Moving Party (Plaintiff)		Union members found in contempt of a court order. Union ordered to pay costs despite not itself being found in contempt.
King v Merrill Lynch Canada Inc.  <a href="#">2006 CanLII 9964 (ON SC)</a>  Smith, Robert J.	Defendant		Plaintiff's claims occupied most of the court's time and were unsuccessful.  Concerned with access to justice for individuals.

## SECTION 14 - EMPLOYMENT LAW

### COST DECISIONS INVOLVING INAPPROPRIATE CONDUCT DURING LITIGATION

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Wickens v Chambers Insurance</p> <p><a href="#">2018 ONSC 2412 (CanLII)</a></p> <p>Arrell J.</p>	Defendant	Partial indemnity throughout	<p>[24] I am bound by the <i>Davies</i> decision unless I find that the plaintiff's conduct during the litigation is such that it warrants the court's disapproval and therefore elevated costs. I have found as a fact that there was no conduct by either party of which the court could disapprove.</p> <p>[25] I have also considered the principles in <i>Boucher v. Public Accountants Council for the Province of Ontario</i> (2004), 2004 CanLII 14579 (ON CA), 71 O.R. (3d) 291(C.A.) and find that costs to the defendants on a partial indemnity basis throughout in all the circumstances is fair and reasonable to both sides and within their respective expectations.</p>
<p>Vu v Affinia</p> <p><a href="#">2014 ONSC 2529 (CanLII)</a></p> <p>Price J.</p>	Plaintiff	Partial indemnity	<p>[33] Affinia argues that its failure to serve an offer to settle on the plaintiffs does not entitle the plaintiffs to its costs.<sup>[9]</sup> It is true that not every instance of unreasonable conduct attracts an order that costs be paid on a substantial indemnity scale. Substantial indemnity costs, like their predecessor, solicitor and client costs, are exceptional. Mark M. Orkin, in <i>The Law of Costs</i>,<sup>[10]</sup> cites the Supreme Court in <i>Young v. Young</i>, in this regard: "Solicitor and client costs are generally awarded only where there has been reprehensible, scandalous, or outrageous conduct on the part of one of the parties."<sup>[11]</sup></p>

## SECTION 14 - EMPLOYMENT LAW

### COST DECISIONS INVOLVING INAPPROPRIATE CONDUCT DURING LITIGATION

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Sommerard v I.B.M. Canada Ltd.</p> <p><a href="#">2005 CanLII 39896 (ON SC)</a></p> <p>Polowin J.</p>	Plaintiff	Partial indemnity	<p>[40] It is well established in case law that while a court has the power and discretion to award costs on a “solicitor and client” or substantial indemnity scale, it is only in the rare and exceptional case that such costs should be so awarded. Generally such 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 where it is necessary for the court to mark its disapproval of the conduct of a party to the litigation. In <i>Gallery Resources Ltd. v. Lamontagne Geophysics Ltd.</i>, [2002] O.J. No. 3261 the following is stated at paragraphs 17 and 18: [...]</p> <p>[42] I cannot find, in the circumstances before me, that this is one of those rare and exceptional cases where substantial indemnity costs should be awarded. I do not find that IBM has engaged in conduct that can be characterized as reprehensible, scandalous or outrageous. While I note that the jury awarded punitive damages, that fact alone does not automatically dictate an award of costs on a substantial indemnity basis. If that were so, there would be a third “circumstance” established where substantial indemnity costs are awarded, that being where punitive damages are awarded. However, the award of punitive damages is of course one of the factors to be considered in the exercise of the court’s discretion.</p>

## SECTION 14 - EMPLOYMENT LAW

### RULE 49 OFFERS

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Wilkinson-Moore v United Floors</p> <p><a href="#">2019 ONSC 3711</a></p> <p>Howard J.</p>	Plaintiff	Partial indemnity	<p>Plaintiff commenced action for wrongful dismissal. About a month before trial, the Plaintiff offered to settle on the basis that the Defendant would pay the Plaintiff a certain amount and costs to be agreed upon by the parties. On the morning of the trial, the Defendant accepted the offer to settle. In fixing costs, it was determined that Rule 49 did not apply to the Plaintiff's offer and that there was no basis to award the plaintiff costs on a substantial indemnity scale.</p>
<p>Johnston v The Corporation of the Municipality of Arran-Elderslie</p> <p><a href="#">2019 ONSC 1210</a></p> <p>Conlan J.</p>	Plaintiff	Substantial indemnity	<p>The Plaintiff commenced an action for wrongful dismissal and was successful at trial. He had earlier made an offer to settle to the Defendant for a substantial amount less than what was recovered at trial. This offer remained open till approximately halfway through the trial. In awarding substantial indemnity costs, the court found that this offer to settle was particularly relevant.</p> <p>18 That is not our situation, however, as substantial indemnity costs in Johnston's favour are grounded, principally, on the settlement factor discussed above. It must be remembered that encouraging parties to settle disputes is one of the main objectives of modern costs awards in civil litigation.</p>
<p>Peternel v Custom Granite &amp; Marble Ltd.</p> <p><a href="#">2018 ONSC 4881</a></p> <p>Sheard J.</p>	Defendant	Partial indemnity	<p>Plaintiff commenced an action for constructive dismissal and violation of Employment Standards Act. Plaintiff's action was dismissed. Although the Plaintiff recovered nothing at trial, the court still considered offers made by the Defendant in fixing their cost award.</p>
<p>Chandran v National Bank</p> <p><a href="#">2011 ONSC 4369</a></p> <p>Pollak J.</p>	Plaintiff	Substantial indemnity	<p>Plaintiff commenced an action for wrongful dismissal and was largely successful at trial. The Plaintiff had made two Rule 49 offers prior to the trial. These were considered valid Rule 49 offers and the Plaintiff was entitled to substantial indemnity costs from the date of the first offer.</p>

## SECTION 14 - EMPLOYMENT LAW

### RULE 49 OFFERS

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>H. L. Staebler Company Limited v Allan</p> <p><a href="#">2008 CanLII 64396 (ONSC)</a></p> <p>Taylor J.</p>	Defendants	Partial indemnity before the offer and substantial indemnity after the first offer	<p>The defendants were completely successful in their defence of the action on the restrictive covenants. A defendant who is ultimately found not liable does not have access to rule 49.10 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 to obtain an award of substantial indemnity costs. However, where a defendant makes a reasonable offer and the action is eventually dismissed, by a combination of rule 49.13 and rule 57.01, the court may award a defendant substantial indemnity cost from the date of the offer to settle. The defendants made three offers which remained open until five minutes after the commencement of the trial.</p>
<p>Bain v UBS Securities Canada Inc.</p> <p><a href="#">2017 ONSC 1472 (CanLII)</a></p> <p>Wilson J.</p>	Plaintiff	Partial indemnity	<p>Review and application of the relevant jurisprudence and Rule 57.01 factors.</p> <p>Defendant's offer to settle was for less than 50% of what the Plaintiff recovered at trial.</p> <p>[23] The goal, as noted in <i>Boucher</i>, is to fix costs in a reasonable amount, a sum that the losing party could reasonably expect to pay, as opposed to doing a precise mathematical calculation of the costs incurred. [...]</p> <p>Discussion on prejudgment interest accruals.</p>

## SECTION 14 - EMPLOYMENT LAW

### RULE 49 OFFERS

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Brousseau. v La Cité Collégiale et al.</p> <p><a href="#">2021 ONSC 2676</a></p> <p>Costs endorsement: <a href="#">2021 ONSC 6403</a></p> <p>Smith, Robert J.</p>	Defendant	Partial indemnity	<p>Co-Defendants made a joint offer to settle.</p> <p>[8] The co-defendant, CAAT, entered into a Pierringer Agreement with the plaintiff and settled the action against it on February 3, 2021, shortly before the commencement of the trial. Under the Pierringer Agreement, CAAT settled with the plaintiff for \$200,000, the full amount of the offer to settle. La Cité was not aware of the terms of the Pierringer Agreement and did not amend its offer to settle.</p> <p>[9] The offer to settle did not specify the amount offered by each co-defendant and as such, the amount of La Cité's continued to offer to settle, after the Pierringer Agreement was entered into, was not specified. In fact, the full \$200,000 offered was accepted by the plaintiff, but only from CAAT, one of the co-defendants.</p> <p>[11] After the plaintiff accepted CAAT's offer to settle for the full \$200,000, there wasn't any further amount to accept from La Cité. La Cité was not aware of the terms of the Pierringer Agreement and was therefore unaware that there was no amount remaining on its offer to settle. La Cité's only option would have been to have made an offer to settle for the amount that it was prepared to pay in order to settle the action against it, and a term of the order approving the settlement agreement reducing the time to make a valid offer to settle to avoid any prejudice.</p> <p>[15] The Pierringer Agreement was made 3 days before the commencement of the trial and therefore, it was not possible for La Cité to submit a new offer to settle at least 7 days before the commencement of trial. The issue of whether the time for service of a separate offer to settle by La Cité only was not considered as part of approving the settlement with CAAT. However, Rule 49.10(2) does not provide for substantial indemnity costs to be awarded to a defendant as a result of exceeding its offer to settle.</p>

## SECTION 14 - EMPLOYMENT LAW

### RULE 49 OFFERS

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Doyle v Zochem Inc. et al.</p> <p><a href="#">2017 ONSC 920</a></p> <p>Trimble J.</p>	Plaintiff	Partial indemnity	<p>Examination of offers to settle that did not qualify as a Rule 49 offer to settle.</p> <p>[37] There are no offers to settle from either party which trigger the cost consequences of Rule 49.10. Zochem made 5 offers which require consideration under Rule 49.13, which says:</p> <p style="padding-left: 40px;">Despite Rules 49.03, 49.10 and 49.11, the court, in exercising its discretion with respect to costs, may take into account any offer to settle made in writing, the date of the offer was made and the terms of that offer.</p> <p>Review and application of the relevant jurisprudence and Rule 57.01 factors.</p> <p>[25] A Judge in fixing of costs is engaged in a different exercise than an Assessment Officer engaged in assessing costs. The Judge does not engage in an arithmetical exercise. Rather, she or he fixes costs in an amount that is reasonable for the unsuccessful party to pay rather than determines the exact costs of the successful litigant (<i>Davies, supra</i> at para. <a href="#">52</a>, <i>Boucher, supra</i>, at para. <a href="#">26</a>).</p> <p>[26] Costs, generally, should be proportional to the issues in the action and amount awarded (<i>Elbakhiet, supra</i>, at para. <a href="#">36</a>). It does not follow, however, that a reasonable amount for costs cannot exceed the award of damage in appropriate circumstances (<i>A &amp; A Steelseal Waterproofing Inc. v. Kaslovski, 2010 ONSC 2652</i> (S.C.J.) at para. <a href="#">21</a>). Proportionality should not override other considerations, and determining proportionality should not be a purely retrospective inquiry based on the award. It should not be used to undercompensate a litigant for costs legitimately incurred ...</p> <p>[27] An undue focus on proportionality ignores principles of indemnity and access to justice (see <i>Gardiner v. MacDonald Estate, 2016 ONSC 2770</i> (S.C.J.) at para. <a href="#">65</a>). The trial judge must make an award that is fair and appropriate, overall.</p>

## SECTION 14 - EMPLOYMENT LAW

### Generally

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>McCracken v Canadian National Railway Company</p> <p><a href="#">2012 ONCA 797 (CanLII)</a></p> <p>Winkler C.J.O., Laskin and Cronk JJ.A.</p>	<p>Defendant (Respondent in the Appeal/ Appellant by Cross-Appeal)</p>		<p>Defendants were successful in obtaining partial indemnity costs in the underlying action.</p> <p>Defendants were successful on the Appeal.</p> <p>Appeal raised novel and complex legal issues</p>
<p>Walsh v 1124660 Ontario Limited</p> <p><a href="#">2007 CanLII 27588 (ON SC)</a></p> <p>Lane J.</p>	n.a.	n.a.	<p>No costs awarded based on evidence that the plaintiff is impecunious.</p> <p>Court specifies that in an ordinary case, it would have awarded substantial indemnity costs to one Defendant (per offer to settle and unproven allegations put forward by Plaintiff) and partial indemnity costs to the other Defendant.</p>
<p>Kourzos v The Manufacturers Life Insurance Company et al.</p> <p><a href="#">2021 ONSC 4608</a></p> <p>Harris J.</p>	<p>Defendant (Moving Party)</p>		<p>Action dismissed following a tardy Rule 21 Motion. Unionized employee is barred from pursuing civil claim against former employer before the courts and must proceed through labour arbitration.</p> <p>Plaintiff was found to be “likely impecunious.”</p>
<p>Dunsmuir v Royal Group, Inc.</p> <p><a href="#">2017 ONSC 5738 (CanLII)</a></p> <p>Myers J.</p>	<p>Defendant</p>	<p>Partial indemnity</p>	<p>[4] The fixing of costs is a discretionary decision under section 131 of the <i>Courts of Justice Act</i>. That discretion is generally to be exercised in accordance with the factors listed in Rule 57.01 of the <i>Rules of Civil Procedure</i>. These include the principle of indemnity for the successful party (57.01(1)(0.a)), the expectations of the unsuccessful party (57.01(1)(0.b)), the amount claimed and recovered (57.01(1)(a)), and the complexity of the issues (57.01(1)(c)). Overall, the court is required to consider what is “fair and reasonable” in fixing costs, and is to do so with a view to balancing compensation of the successful party with the goal of fostering access to justice: <i>Boucher v Public Accountants Council (Ontario)</i>, <a href="#">2004 CanLII 14579 (ON CA)</a>, (2004), 71 O.R. (3d) 291, at paras <a href="#">26</a>, 37.</p>

## SECTION 14 - EMPLOYMENT LAW

### Generally

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Mason v Chem-Trend</p> <p><a href="#">2011 ONSC 839 (CanLII)</a></p> <p>Kruzick J.</p>	<p>Defendant (Respondent in the Motion)</p>		<p>Costs deriving from a motion brought by the Plaintiff to have a restrictive covenant declared unenforceable.</p> <p>[8] Here Chem-Trend was successful on the application. However, in looking at the amount claimed, I bear in mind the principle of proportionality. In other words, the parties must deal with a case in a manner that is proportionate to what is involved. I am of the view that <a href="#">Rule 57.01 (1)</a>(e) and (i) are broad enough to capture the consideration of proportionality when considering costs. See also <i>Tucci v. Pugliese</i>, [2010] O.J. No. 2432 (Sup. Ct.). I find the amount as sought by Chem-Trend here is excessive.</p> <p>Costs awarded in the cause.</p>
<p>Hamilton v Open Window Bakery Ltd.</p> <p><a href="#">2004 SCC 9</a></p> <p>McLachlin C.J. and Major, Bastarache, Binnie, Arbour, LeBel &amp; Deschamps.</p>	<p>Plaintiff (Respondent before ONCA; Appellant before SCC)</p>	<p>Party-and-party costs and solicitor-client costs order by trial judge restored</p> <p>Costs before Court of Appeal and SCC to be borne by each party</p>	<p>Decision deals with Elements required for appellate court to set aside or vary award of costs.</p> <p>A costs award should be set aside on appeal only if the trial judge made an error in principle or if the costs award was plainly wrong. The trial judge's costs order was restored as neither condition was met here.</p>

## SECTION 15 - COSTS IN ANTI-SLAPP MOTIONS

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
1704604 Ontario Ltd. v. Pointes Protection Association  2020 SCC 22  Côté J.	Defendant (moving party on motion/respondent on appeal)	Party-and-party costs to the respondent for the appeal to the Supreme Court	“With regard to costs, the legislature expressly contemplated a costs regime for s. 137.1 motions. Indeed, s. 137.1(7) sets out an award of costs as the default rule if a s. 137.1 motion is granted, unless a judge determines that “such an award is not appropriate in the circumstances.” That would not be the case here. I would therefore simply award party-and-party costs to the respondents, as per this Court’s ordinary practice.” (para 129)
Subway Franchise Systems of Canada, Inc. v. Canadian Broadcasting Corporation  2021 ONCA 243  Brown, Zarnett, Thorburn JJ.A.	Plaintiff (respondent on motion, appellant on appeal)	Partial indemnity costs (\$40,000) to the appellant for the appeal	When considering the issue of the costs of an appeal, the discretion of the appellate court to award costs must be informed by ss. 137.1(7) and (8).  In this case, Subway was awarded its partial indemnity costs despite 137.1(8), given two factors: (1) the motion and the appeal resulted in expensive litigation and (2) the parties had the benefit of substantial judicial guidance given the six decisions recently released by the ONCA on the s.137.1 scheme.
Grist v. TruGrp Inc.  2021 ONCA 374  Lauwers, Miller, Nordheimer JJ.A.	Plaintiffs (responding parties on motion, appellants on appeal)	Fixed award of \$25,000 to the appellants for the appeal	Following the general principle that a successful party is entitled to costs, the Court awarded the appellants (Plaintiffs and responding party on the motion) their costs of the appeal, despite s. 137.1(8).

SECTION 15 - COSTS IN ANTI-SLAPP MOTIONS			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Fortress Real Developments Inc. v. Rabidoux</p> <p>2018 ONCA 686</p> <p>Dohert, Brown Huscroft JJ.A.</p>	Defendant (moving party)	Full indemnity (\$129,106.61 plus HST)	<p>S. 137.1(7) makes an important change to the starting point of the assessment of an appropriate costs order in cases to which the section applies. It maintains, however, the overriding judicial discretion to ultimately impose the order that is appropriate in all the circumstances. (para 64)</p> <p>Section 137.1(7) directs that the motion judge start from the premise that the defendant should receive costs on both the motion and in the proceeding on a full indemnity basis. Section 137.1(7), however, goes on to confirm that the ultimate decision with respect to costs under s. 137.1(7), like the determination of costs generally, is a matter for the discretion of the judge. (pars 60-62)</p> <p>In deciding how a motion judge should exercise his or her discretion under s. 137.1(7), he or she will be guided by the considerations that guide the exercise of discretion with respect to costs in other civil proceedings. These include the factors identified in r. 57.01 of the <i>Rules of Civil Procedure</i>, R.R.O. 1990, Reg. 194. They also include the overriding objective in any costs order that the award be fair and reasonable, having regard to all of the relevant factors including any applicable legislation (para 63)</p> <p>A motion judge, in determining whether the circumstances warrant an order other than costs on a full indemnity basis, will consider a variety of factors, including any determinations made under ss. 137.1(4)(a) and (b), any findings made as to the motivation of the parties, and the manner in which the parties have conducted the proceedings. (para 67)</p>
<p>United Soils Management Ltd. v. Mohammed</p> <p>2019 ONCA 128</p> <p>Doherty, Pardu, Nordheimer JJ.A.</p>	Defendants (moving parties)	Full indemnity (\$122,286.94 and \$126,438.55 awarded by motion judges in separate motions heard together on appeal)	<p>There remains an obligation on a motion judge, when determining the quantum of costs under s. 137.1(7), to undertake the same type of analysis that is required when fixing costs in any other context. Just because the award is on a full indemnity basis does not mean that the successful party is entitled to whatever costs were incurred. The quantum must still be fair and reasonable for what was involved in the particular proceeding. (para 42)</p>

SECTION 15 - COSTS IN ANTI-SLAPP MOTIONS			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Schwartz et al. v. Collette 2021 ONSC 5620  Nieckarz, J.	Defendant (moving party)	Substantial indemnity (\$17,500)	The majority of the Plaintiffs' claims were dismissed, but the entire action was not dismissed. This was not a case that squarely fit within s. 137.1(7) or (8).  Starting from these provisions, and in exercising its discretion, the Court departed from the presumption of full indemnity costs and instead ordered costs on a substantial indemnity scale given the presence of an offer to settle.
Levant v. Day 2019 ONCA 244  Pardu, Doherty, Nordheimer JJ.A.	Respondent (Plaintiff)	Partial indemnity (\$18,000)	"Given the serious cost consequences which can result from a successful anti-SLAPP motion, such as full indemnity costs as per s. 137.1(7), these motions should be brought early in proceedings. Here, the delay in bringing the anti-SLAPP motion justified an award of costs in favour of the successful plaintiff, the respondent, despite s. 137.1(8)." (para 29)
Veneruzzo v. Storey 2018 ONCA 688  Doherty, Brown, Huscroft JJ.A.	Respondents (Plaintiffs)	Partial indemnity (\$7,500 plus HST plus disbursements awarded by motion judge)	"The purpose underlying the costs provisions in s. 137.1 disappears when the lawsuit has none of the characteristics of a SLAPP, and the impugned expression is unrelated to a matter of public interest. In those circumstances, it is not the initial lawsuit challenging the expression that represents a potential misuse of the litigation process, but rather the s. 137.1 motion. A costs order denying a successful respondent its costs on a s. 137.1 motion, even though the lawsuit was not brought for an improper motive and the claim did not relate to a matter of public interest, could be seen as encouraging defendants to bring meritless s. 137.1 motions." (para 39). Here, the motion judge was entitled to consider these factors in exercising their discretion in awarding costs to the successful Plaintiffs, despite s.137.1(8).
B.W. (Brad) Blair v. Premier Doug Ford 2021 ONSC 695  Belobaba, J.	Defendant (moving party)	Partial indemnity (\$130,000)	A full indemnity costs award was found not to be appropriate on the facts of the case as the Court found that the plaintiff's defamation action was not a true SLAPP suit.

SECTION 15 - COSTS IN ANTI-SLAPP MOTIONS			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Kam v. CBC  2021 ONSC 2537  Papageorgiou, J	Defendant (moving party)	Partial indemnity (\$55,603.21)	In this case, several reasons justified a departure from the s.137(7) presumption: 1. The action did not have the hallmarks of a SLAPP. 2. The Plaintiff had established substantial merit to the claim in defamation. 3. The Plaintiff had provided evidence demonstrating harm (monetary and non-monetary). 4. The Defendant had also claimed for summary judgment in its Notice of Motion and had only withdrawn that prayer for relief after records and examinations were completed.

SECTION 16 - COST CONSEQUENCES UNDER THE SIMPLIFIED PROCEDURE (RULE 76.13)			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Oudin v. Centre Francophone de Toronto, Inc.</p> <p>2015 ONSC 7622</p> <p>Dunphy J.</p>	Defendant	Partial indemnité \$34,000	<p>Consideration of rule 76.13 in a cost award where the plaintiff “over shot” the amount of damages that they could have ever reasonably received. In this case, the final costs awarded to the defendant considered the plaintiff’s decision to not proceed under the simplified procedure.</p> <p>10 A successful plaintiff who failed to employ the simplified procedure may be deprived of costs or ordered to pay those of the defendant including on a substantial indemnity basis: Rule 76.13(6) of the Rules of Civil Procedure. The rule is not explicitly applicable where a claim is dismissed and no damages are awarded at all. However, the motion required me to decide the narrow legal issue (applicability of the employment contract limiting the required notice) as well as to fix the common law notice in the alternative. As I have noted, even if the plaintiff had been successful, its claim would have been fallen well within the \$100,000 threshold for Rule 76. In this circumstance at least, I am of the view that the failure of the plaintiff to employ the simplified procedure rules remains a factor that I may take into account in exercising my discretion to award costs. I attach particular significance to the failure to have adopted a more realistic view of the claim at the outset with a view towards ensuring the overall costs of the proceeding remained proportional to the stakes in line with the objectives of Rule 1.04(1) and (1.1) of the Rules of Civil Procedure.</p> <p>11 Plaintiffs are entitled to seek to "aim high" in commencing a claim, but aiming too high can have consequences. Inflated or overly-optimistic claims seldom awe defendants into settlement but can instead sometimes operate to create obstacles to early settlement. Where the result is the avoidance of the available simplified procedure mechanism of Rule 76, the practice may also impose higher litigation costs and more delay on all parties. Neither outcome is desirable.</p>

SECTION 16 - COST CONSEQUENCES UNDER THE SIMPLIFIED PROCEDURE (RULE 76.13)			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Manase v. Toronto District School Board</p> <p>2015 ONSC 7086</p> <p>Dunphy J.</p>	Plaintiff	Partial indemnity \$40,000	<p>Useful analysis of the application of Rule 76.13 to a case that settles before trial but where the issue of costs is still to be determined by the court.</p> <p>6 It is in my view quite appropriate to have regard to the principles underlying Rule 76 and in particular R. 76.13 when assessing costs arising out of an accepted settlement offer. Here as in any assessment of costs, the court retains an overriding discretion to disregard such considerations where they appear unhelpful.</p> <p>7 Rule 76 of the Rules of Civil Procedure represents a significant evolution of our Rules to accomplish the overriding objective of ensuring that access to justice remains feasible, efficient and proportional. The decision of the Supreme Court of Canada in Hryniak v. Mauldin, 2014 SCC 7 (S.C.C.) is another. The litigation landscape is evolving lest justice become unavailable to the public it is intended to serve. Plaintiffs should have regard to the Rule and possible costs consequences in assessing how to advance their claims realistically and efficiently. Defendants should not be penalized for making Offers to Settle under Rule 49 when the accepted offer amount falls well within the rule as was the case here.</p>
<p>Dhaliwal v. Premier Fitness Clubs Inc.</p> <p>2012 ONSC 5531</p> <p>Campbell J.</p>	Plaintiff	Partial indemnity costs in the total amount of \$36,771.98	<p>Application of Rule 76.13 where it was not unreasonable for the plaintiff to advance his claim under the ordinary procedure:</p> <p>[13] While I did not accept all of the arguments advanced by the plaintiff as to his damages claims, the plaintiff did not act unreasonably in advancing and pursuing them. I cannot conclude that the plaintiff ought to have realized prior to trial that there was simply no reasonable prospect that his damages claims would be accepted by the trial judge. Nor can I conclude that the plaintiff ought to have abandoned all of his damages claims over \$50,000 on the basis that there was no realistic possibility of an award greater than \$50,000. See: Garisto v. Wang, at para. 19, 21. Indeed, in my opinion the plaintiff acted reasonably in continuing to pursue his claims using the ordinary procedure all the way to the trial of this action. See: Ayerswood Development Corp. v. Western Proresp Inc., 2011 ONSC 2385 (S.C.J.); Affirmed: 2012 ONSC 2492 (Div.Ct.) at para. 5; Wicken (Litigation Guardian) v. Harssar (2002), 24 C.P.C. (5th) 164 (Ont.S.C.J.) at para. 13-15.</p>

SECTION 16 - COST CONSEQUENCES UNDER THE SIMPLIFIED PROCEDURE (RULE 76.13)			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Frank &amp; Sons Painting &amp; Decorating Ltd v.M/2 Grouplnc. et al.</p> <p>2010 ONSC 4525</p> <p>Lalonde J.</p>	Plaintiff	\$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>
<p>Southworks Outlet Mall Inc. v.Bradley</p> <p>(2009), 97 O.R. 796</p> <p>Flynn J.</p>	Plaintiff	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>

SECTION 16 - COST CONSEQUENCES UNDER THE SIMPLIFIED PROCEDURE (RULE 76.13)			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Garisto v. Wang</p> <p>(2008), 91 O.R. (3d) 298 (Ont. C.A.)</p> <p>Sharpe, Gillese, Blair JJ.A.</p>	Appellant (plaintiff)	<p>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.</p> <p>Appeal allowed; costs awarded as assessed by the trial judge, plus \$7,500 inclusive for the appeal.</p>	<p>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.</p> <p>Principle and paragraph cited in several Rule 76.13 cost decisions: (21) Accepting at face value the trial judge's jury instruction and threshold ruling, I fail to see how it could not have been reasonable for the appellant to have commenced or continued the action under the ordinary procedure. The reasonableness of the appellant's decision to proceed under the ordinary procedure must be assessed on the basis of the facts as they existed before the jury's verdict. To proceed under the simplified procedure, the appellant would have to abandon any claim for more than \$50,000 and forgo the opportunity to approach the case with the level of procedural rigour appropriate for a potentially significant claim. The trial judge found that the appellant had impressive expert medical evidence and although the appellant's credibility was plainly under dispute, the trial judge accepted his evidence as sufficiently credible to defeat the respondents' threshold motion. Jury verdicts in this area are notoriously difficult to predict and, as the trial judge himself recognized, had the jury accepted the appellant's evidence, there was a realistic possibility of an award in excess of \$50,000. Moreover, in the end, the jury did accept at least part of the appellant's evidence, as it returned a verdict in his favour.</p>
<p>Dennie v. Hamilton</p> <p>(2008), 89 O.R. (3d) 542 (Ont. Sup. Ct. J.)</p> <p>Whalen J.</p>	Plaintiff	Partial indemnity: \$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>

SECTION 16 - COST CONSEQUENCES UNDER THE SIMPLIFIED PROCEDURE (RULE 76.13)			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Aristorenas v. Comcare Health Services</p> <p>[2007] O.J. No. 522 (C.A.)</p> <p>Rosenberg, MacPherson, Rouleau JJ.A.</p>	Plaintiff / Respondent	Costs in the amount of \$115,000	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.
<p>Dinsmore v. Southwood Lakes Holding Ltd.</p> <p>[2007] O.J. No. 263 (S.C.J.)</p> <p>Brockenshire J.</p>	Plaintiff & Defendant (Ontario New Home Warranties Plan)	<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>
<p>Newman v. TD Securities Inc.</p> <p>[2007] O.J. No. 1260 (S.C.J.)</p> <p>Smith, Robert J.</p>	Plaintiffs	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 procedure as opposed to under the simplified rules.

SECTION 16 - COST CONSEQUENCES UNDER THE SIMPLIFIED PROCEDURE (RULE 76.13)			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Lavinkas v. Jacques Whitford &amp; Associates Ltd.</p> <p>[2006] O.J. No. 2697 (S.C.J.)</p> <p>Aitken J.</p>	Plaintiff	Costs in the amount of \$28,000	<p>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</p>
<p>Handa Travel Services Ltd. v. 1091873 Ontario Inc.</p> <p>2006 – citation unavailable</p> <p>Forget J.</p>	Plaintiff	\$13,500, inclusive of disbursements and GST	<p>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)</p>
<p>Lecompte v. A. Potvin Construction Ltd.</p> <p>2006 – citation unavailable</p> <p>Roy J.</p>	Plaintiff	Costs in the amount of \$50,000 plus \$20,000 in disbursements	<p>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</p>
<p>Inscan Contractors (Ontario) Inc. v. Halton District School Board</p> <p>[2006] O.J. No. 815 (S.C.J.)</p> <p>Siegel J.</p>	Plaintiff	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)	<p>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.</p>

SECTION 16 - COST CONSEQUENCES UNDER THE SIMPLIFIED PROCEDURE (RULE 76.13)			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Danis v. 1292024 Ontario Inc. (c.o.b. as Rendez-Vous Nissan)</p> <p>[2006] O.J. No. 2495 (S.C.J.)</p> <p>Smith, Robert J.</p>	Plaintiff	Costs on a partial indemnity basis in the amount of \$10,000 plus GST plus disbursements 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.
<p>Santini v. Thompson</p> <p>2005 – citation unavailable</p> <p>Métivier J.</p>	Defendant	\$10,350, plus disbursements as claimed (not disclosed), plus GST	This trial was a simplified procedure matter. Costs claimed are not entirely reasonable given this factor.

## SECTION 17 - ACCESS TO JUSTICE

CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Walsh v 1124660 Ontario Limited  2007 CanLII 27588  Lane J.	No costs awarded		<p>The plaintiff was unsuccessful. The Court did not order any costs.</p> <p>In deciding whether to award costs against an unsuccessful plaintiff, the Court should not overemphasize the degree of choice that a plaintiff might have in deciding whether to advance a claim. Often, a plaintiff's choice is between suing and going uncompensated.</p> <p>Impecuniosity is a relevant factor in the exercise of some discretionary orders. The individual circumstances of a party are a legitimate concern in exercising discretion as to costs.</p> <p>If costs awards, to be paid by the losing party, reach the level, as they have done in Ontario, that they can bankrupt an ordinary person, never mind an impecunious one, there is a danger that confidence in the justice system will be undermined and it will increasingly be seen, and not without good reason, as a system for business and the wealthy, but not for the mass of people whose tax dollars fund the system.</p>
Walsh v 1124660 Ontario Limited  2008 ONCA 522  Doherty, Rosenberg, Cronk JJ	Respondents	\$4,000.00 to "police respondents," \$7,000.00 to "Tim Hortons respondents"	<p>The respondents were entirely successful at trial, but no costs were awarded. The respondents did not challenge that exercise of the trial judge's discretion. The appellant then chose to appeal, and the respondents were again entirely successful. The Court of Appeal found that the respondents "should not be deprived of their costs a second time."</p> <p>The Court concluded that "the respondents will no doubt have regard to the appellant's financial circumstances when determining what steps, in any, should be taken to enforce this order."</p>
Bray v Ottawa Police Services Board  [2007] OJ No. 1874, 2007 CanLII 16819 (ONSC)  Rutherford J.	Defendant	\$5,000.00	<p>The plaintiff's action was dismissed, and the defendant sought partial indemnity costs in the amount of \$10,382.62.</p> <p>The Court found that 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 its discretion in assessing costs, the Court 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.</p>

SECTION 17 - ACCESS TO JUSTICE			
CASE NAME, CITATION & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
1465778 Ontario Inc. v 1122077 Ontario Ltd.  82 OR (3d) 757, 2006 CanLII 35819 (ONCA)  Feldman, Blair, LaForme JJ.A.	Appellant	\$4,500.00	Appellant's counsel acted <i>pro bono</i> but sought a costs award in the amount of \$4,500.00.  The Court found that there is no prohibition on awarding costs in favour of parties represented by <i>pro bono</i> counsel in private actions which do not involve issues of general public importance. Costs awards belong to the party, not to <i>pro bono</i> counsel, though there is nothing to prevent parties and <i>pro bono</i> counsel from making fee arrangements to allow such costs to be paid to counsel.
R v Caron  2011 SCC 5  Binnie (McLachlin CJ, LeBel, Deschamps, Fish, Charron, Rothstein, and Cromwell JJ, concurring reasons by Abella J.)	Defendant (interim costs)	Interim funding	The Supreme Court found that the provincial court was faced with a potential failure of justice once the unexpected length of the trial had exhausted the defendant's financial resources. Superior courts possess an inherent jurisdiction to render assistance to inferior courts to enable them to administer justice fully and effectively, although the assistance can be rendered only in circumstances where the inferior tribunals are powerless to act, and the intervention of the superior court is essential to avoid a serious injustice in derogation of the public interest.
The Friends of the Greenspace Alliance v Ottawa (City)  2011 ONSC 472  McKinnon J.	Respondent	To be agreed upon	The appellant applied to be relieved from a costs order following their abandonment of an appeal, on the basis of being a public interest litigant. The Divisional Court did not accept this submission at face value and, in any event, noted that public interest litigation must be pursued responsibly, not recreationally, particularly when responding parties are private actors. The Court concluded that the claim in this case was unreasonable and declined to make an order excusing the appellant from paying costs as a consequence of its appeal.
Mondal v Evans-Bitten  2022 ONSC 2831  Morgan J.	Defendants	\$41,000.00	The plaintiff's defamation action was dismissed. The defendants sought costs in the amount of \$41,082.45, all-inclusive. The plaintiff argued that this amount should be reduced by amounts raised by the defendants on a GoFundMe campaign.  The Court declined to do so, finding that there are many ways that a party may fund litigation and inquiring into a party's source of funds raises the discovery possibilities in a cost controversy to an entirely new level. The Court concluded that, as a matter of policy, costs inquiries are restricted to an examination of the lawyer's legal bill. Nothing in the <i>Rules</i> or in the case law convinced the judge that the inquiry should be expanded to examine a successful party's means of payment.

## SECTION 18 - ADVERSE COSTS INSURANCE

### Generally

CASE NAME AND CITATION	CASE SUMMARY
Noori v Liu 2021 ONSC 3445 Coats J.	The costs award made against the plaintiff was reduced by 20%, to \$152,680.93, to reflect her financial circumstances. The Court was explicit that this reduction had nothing to do with the existence and amount of adverse cost insurance. In addition, the Court noted that, of a \$100,000.00 policy limit, a total of \$82,890.49 had already been consumed by disbursements, leaving less than \$18,000.00 to cover any adverse costs award against the plaintiff.
Munding v Ashton 2020 ONSC 2024 Charney J.	The wholly successful defendant sought all-inclusive partial indemnity costs of \$160,000.00. The plaintiff unsuccessfully took the position that her costs should be limited to her adverse costs insurance policy limit of \$100,000.00. The Court concluded that the existence and amount of adverse costs insurance is irrelevant when fixing costs. To cap costs at coverage would undermine one of the purposes of the cost regime to promote settlement, allowing a plaintiff to ignore reasonable offers to settle and take their chance at trial without risk of consequences
Stewart et al v Wood et al 2019 ONSC 3931 Tausendfreund J.	The Court again allowed an adverse costs insurance premium as an assessable disbursement, referring back to <i>Armstrong</i> . The Court noted that “adverse costs insurance directly impacts access to justice” and therefore held it to be a compensable disbursement payable to the plaintiffs.
Canfield v Brockville Ontario Speedway 2018 ONSC 3288 Mew J.	The Court found that “plaintiffs are not able to recover the cost of obtaining adverse costs insurance as an assessable disbursement.” The Court also noted that the presence or absence of adverse costs insurance, as well as the policy limits, is irrelevant when quantifying costs.
Little v Floyd Sinton Limited 2018 ONSC 3165 Quinlan J.	The Court compared the reasoning in the conflicting decisions of <i>Markovic</i> and <i>Armstrong</i> before disallowing the plaintiff’s claim to recover its costs insurance premium from the defendant. The Court concluded that costs insurance does nothing to advance the litigation <i>per se</i> .

## SECTION 18 - ADVERSE COSTS INSURANCE

### Generally

CASE NAME AND CITATION	CASE SUMMARY
Armstrong v Lakeridge Resort Ltd.  2017 ONSC 6565  Salmers J.	The Court allowed an adverse costs insurance premium as an assessable disbursement and disagreed with the reasoning in <i>Markovic</i> . The Court found that, “without costs insurance, the fear of a very large adverse costs award would cause many plaintiffs of modest means to be afraid to pursue meritorious claims. It is in the interest of justice that plaintiffs be able to pursue meritorious claims without fear of a potentially devastating adverse costs award.”  Importantly, the Court was satisfied that it was reasonable for the plaintiffs to advance their claims and there were genuine triable issues.
Markovic v Richards et al  2015 ONSC 6983  Milanetti J.	Adverse costs insurance was not a payable disbursement by the defence. The Court found that the existence of the policy may well provide comfort to the plaintiff but is entirely discretionary, does nothing to advance the litigation, and may even act as a disincentive to thoughtful, well-reasoned resolution of claims.  Relied on in <i>Foster v Durkin</i> , 2016 ONSC 684 and <i>Valentine v Rodriguez-Elizadle</i> , 2016 ONSC 6395, in which costs were awarded to the plaintiffs but did not include premiums paid for adverse costs insurance.

## SECTION 18 - ADVERSE COSTS INSURANCE

### DISCLOSURE OF POLICY

CASE NAME AND CITATION	CASE SUMMARY
James v McGuire 2020 ONSC 914 Master Robinson	The Court was bound by <i>Jamieson</i> and <i>Robichaud</i> but did note what it called a more nuanced argument by defence counsel, relating to the interrelatedness of the policyholder, named insured, named additional insured, and potential other parties covered by the policy. The Court noted, for example, that the declarations page produced by plaintiff's counsel did not define "insured," nor did it outline what persons are covered or how coverage under the policy was triggered.
Robichaud et al v Constanrinidis et al 2020 ONSC 310 Schabas J.	The Court declined to order production of the adverse costs insurance policy, noting that, as in the case of <i>Jamieson</i> , where the policyholder is the law firm and not a "party," Rule 30.02 does not apply.
Jamieson v Kapashesit et al 2017 ONSC 5784 Cornell J.	<p>The Court distinguished the facts before it from those in <i>Fleming</i>. Importantly, the adverse costs insurance policy at issue was a blanket policy obtained by the plaintiffs' lawyers, covering other clients, as well as all of the lawyers at the firm, and continuing for an indeterminate period of time. The plaintiffs put forth a number of arguments that were accepted by the Court, including the fact that Rule 30.02(3) refers to "a party," and not to the party's lawyers, and the fact that the firm's insurance policy was not in the plaintiffs' possession, control, or power. Because the policy covered other clients of the firm, the Court noted that solicitor-client privilege could be triggered.</p> <p>Insurance policy issued to plaintiff's law firm.</p> <p>Policy is not in the possession, control, or power of the plaintiff.</p>
Fleming v Brown 2017 ONSC 1430 Grace J.	The Court found that Rule 30.02(3) was triggered and ordered the disclosure of the plaintiff's adverse costs insurance policy. The Court relied on the Court of Appeal's discussion of the rationale behind Rule 30.02(3) in its decision in <i>Sabatino v Gunning</i> , in which the Court of Appeal noted that the purpose of the rule was to assist a party to make informed and sensible decisions.
Abu-Hmaid v Napar 2016 ONSC 2894 Master Short	Adverse costs insurance is an entirely different "category of liability," to which Rule 30.02(3) does not apply. The existence of the policy is relevant to the action and its existence must be disclosed to the defence. However, plaintiffs are not obligated to disclose any details of the policy, including the carrier.

SECTION 19 - COST CONSEQUENCES FOR <i>FLA</i> CLAIMANTS	
CASE NAME AND CITATION	CASE SUMMARY
Winters v Haldimond (County)  2014 ONSC 5759  Parayeski J.	Each <i>FLA</i> claimant was ordered to pay costs of \$5,000.00. The plaintiffs unsuccessfully appealed, with the Court of Appeal finding that there is no general rule against awarding costs against <i>FLA</i> claimants. The Court of Appeal emphasized that the awarding of costs is a matter for the discretion of the trial judge, and the Court of Appeal will only interfere where the trial judge has committed an error in principle or is clearly wrong.
Boyuk v Loblaw's Supermarket Limited  2007 CanLII 5522 (ONSC)  Perrell J.	The Court declined to order costs against the plaintiff's daughter. The Court noted that the daughter's claim was a statutory and derivative one, and the daughter's participation to assert that derivative claim, although unsuccessful, should not expose her to a cost award. The Court concluded that, if unsuccessful <i>FLA</i> claimants were automatically exposed to costs, it would discourage family members from making claims that the legislation is clearly intended to make available to them.
Sacks v Ross  2016 ONSC 2498  Wilson J.	The Court awarded costs against the <i>FLA</i> claimants. However, with respect to the injured plaintiff's parents, the Court found that it would be unfair to make the jointly and severally liable for the full cost award. The Court was unable to apportion a percentage with any precision, as counsel had not submitted damages assessments, and instead ordered \$20,000.00 payable by the plaintiff's parents (i.e. \$10,000.00 each). A further \$15,000.00 was awarded against the injured plaintiff's spouse, who was also made jointly and severally liable for the full cost award. In coming to this conclusion, the Court noted that the plaintiff's spouse was an educated woman who must have known the risks of an adverse finding by the jury and the cost consequences that flow from losing at trial.
Pyatt v Roessle Estate  2017 ONSC 3878  McCarthy J.	The Court declined to award costs against the <i>FLA</i> claimants, finding that it would be "entirely inappropriate" to do so. The Court emphasized the derivative nature of <i>FLA</i> claims and the comparatively "miniscule" time spent pursuing and defending the <i>FLA</i> claims.
Noori v Liu  2021 ONSC 3445  Coats J.	The Court declined to award costs against the <i>FLA</i> claimant, noting that her claim was modest and was statutory and derivative. The Court also noted that she would have been called as a witness at trial in any event, to speak to the injured plaintiff's condition pre- and post-accident, and so the time spent presenting and responding to the <i>FLA</i> claim was relatively modest.

SECTION 20 - MISCELLANEOUS			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Connolly and Connolly Obagi LLP</p> <p>2019 ONSC 1693</p> <p>Corthorn J.</p>	Applicants.	The parties requested the approval of a fee agreement after a claimant changed representation. The agreement was approved.	<p>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).</p> <p>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: 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>
<p>Connolly v. Riopelle,</p> <p>2019 ONSC 3988</p> <p>Corthorn J.</p>	Plaintiff and third parties (lawyers).	<p>\$539,533.65 for the main action (Connolly Obagi and plaintiff)</p> <p>\$109,301.76 for Moore (previous lawyer).</p>	<p>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.</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. Legal complexity;</li> <li>2. Risk assumed by lawyer;</li> <li>3. Time expended by lawyer; and</li> <li>4. Results achieved.</li> </ol> <p>It was found that the costs in the contingency agreement and costs for the main action and third party claim were awarded.</p>

SECTION 20 - MISCELLANEOUS			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Newell v. Sax</p> <p>2019 ONCA 445</p> <p>Roberts JA.</p>	Appellants.	\$10,000.	<p>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.</p> <p>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.</p> <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> <li>10.</li> </ol>
<p>Cadieux v. Cloutier</p> <p>2019 ONCA 241</p> <p>Strathy CJO, Hoy ACJO, Feldman, Brown, Paciocco JJA</p>	Plaintiff.	\$25,000.	<p>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.</p>
<p>Gilbert’s LLP v. Dixon Inc.</p> <p>2016 ONSC 753</p> <p>S. F. Dunphy, J.</p>		Dismissed both applications without costs.	<p>In this case, the plaintiffs were owed 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 to be done through applications. There was no dispute as to the reasonableness this was not the proper avenue and the judge denied the applications.</p>

SECTION 20 - MISCELLANEOUS			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Hession v. Black Construction Services Inc.  2015 ONSC 7047  Master C. MacLeod.	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 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.
Robins v Wagar  2014 ONSC 6989  Belch, J.	Ontario.	\$6,000.	Rates suggested in "Information to the Profession" found to be substantially reasonable and correct.
2145850 Ontario Inc. v STEO  2014 ONSC 7401  Belch, J.	All parties.	P: \$150,000  D: \$93,326  Crown: 61,950	Motion with divided success. Plaintiff mostly successful. Reduction in Plaintiff's award based on hours the Court felt was reasonable rather than hourly rates. Costs awarded to Crown, despite novelty of the funding issue, as the Court found that the case was primarily about private economic interests. The 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.

SECTION 20 - MISCELLANEOUS			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Bales Beall, LLP v. Fingrut</p> <p>2013 ONCA 266</p> <p>Laskin, Cronk, HoyJJ.A.</p>	Plaintiff.	\$202,822.28.	<p>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.</p> <p>The appeal was dismissed. The Trial Judge made four findings of error in the assessment of costs that hold up on appeal but was justified in declining to confirm Assessment Officer's report.</p> <p>Assessment Officer erred in evaluation of the skill and competence of solicitors, as findings were not supported by evidence.</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Assessment Officer used old grid rather than retainer rates for no good reason.</li> <li>• "Team approach" to case management disclosed in retainer agreement and not inherently objectionable.</li> </ul>
<p>Karamzadeh v. Pierre</p> <p>2010 ONSC 1319 (Div. Ct.)</p> <p>Cunningham, Ferrier, Lederman JJ.A.</p>		Remitted for reconsideration.	<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>

SECTION 20 - MISCELLANEOUS			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Cindy Jahn-Cartwright v John Cartwright</p> <p>2010 ONSC 2263</p> <p>Price J.</p>	Applicant	\$9,038, plus HST, and disbursements of \$616.56	<p>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:</p> <ul style="list-style-type: none"> <li>• indemnity;</li> <li>• encouragement of settlement;</li> <li>• discouragement of frivolous claims;</li> <li>• discouragement of unnecessary litigation steps; and</li> <li>• improvement of access to justice.</li> </ul> <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>
<p>Daimler Chrysler v. 1377738 Ontario Inc. et al.</p> <p>2010 ONSC 931</p> <p>Matheson J.</p>	Plaintiff.	\$19,793.80.	<p>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.</p>

SECTION 20 - MISCELLANEOUS			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Wright v. Wal-Mart et al.  2010 ONSC 2936  Price J.	Plaintiff.	Third party claim: \$4,575.00 in fees and \$9,880.00 from third party defendant, Cari-All.	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. 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.
Dubuc v. 1663066 Ontario Inc. (Laurier Optical)  (2009, Ont. Sup. Ct. J.) Court FileNo.: 08-CV- 40526  Ratushny J.			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 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).
Casa Luna Furniture v. Ottawa (City)  (2009, Ont. Sup. Ct. J.) Court FileNo.: 06-CV- 34423  Power J.	Third Party (Graydex Ottawa Inc.).	\$4,000.	Rule 29.05(2) includes the possibility that a third party may be entitled to an award of costs. "[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."
Inforica Inc. v. CGI Information Systems and Management Consultants Inc.  2009 ONCA 642  Sharpe, LaForme, Watt JJ.A.	Appellant (Respondent).	\$15,000 for the appeal and \$25,000 for the motion in the superior court.  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.

SECTION 20 - MISCELLANEOUS			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
Désir v. Care Canada,  (2009 Ont. Sup. Ct. J.) Court FileNo.: 04-CV-028853  Polowin J.	Defendant.	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.
Hakim Optical Laboratory Ltd. v. Phillips  (2009), 98 O.R. (3d) 798 (Ont. Sup. Ct. J.)  Glustein J.	Defendant.	\$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.
Ortepi v. Pozzuoli et al.  (2008), 89 O.R. (3d) 452 (Ont. Sup. Ct. J.)  Graham J.			<p>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 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>

SECTION 20 - MISCELLANEOUS			
CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Audience Communication Inc. v. Sguassero</p> <p>(2008), 91 O.R. (3d) 47 (Ont. Sup. Ct. J.)</p> <p>Lederman J.</p>	<p>Applicants and Defendant, Teplitsky.</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>
<p>H. L. Staebler Company Limited v. Allan</p> <p>(2008), 92 O.R. (3d) 788 (Ont. Sup. Ct. J.)</p> <p>Taylor J.</p>	<p>Defendant.</p>	<p>Total of \$558,232.50.</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>

## SECTION 20 - MISCELLANEOUS

CASE NAME, CITATION, & JUDGE	PARTY AWARDED COSTS	SCALE AND QUANTUM	CASE SUMMARY
<p>Noah v. Desjardins Financial Security</p> <p>[2008] O.J. No. 437 (Ont. Sup.Ct. J.)</p> <p>Dash J.</p>	<p>Plaintiff for costs for the motion.</p> <p>Defendant for costs for the costs submission.</p>	<p>\$1,420 to plaintiffs on a partial indemnity basis; \$915 to the defendants. Setting one off against the other, the net award is \$505 to the plaintiffs.</p>	<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>