

CITATION: Davies et al. v. Butts, 2026 ONSC 4099
COURT FILE NO.: CV-25-91196
DATE: 2026/07/14

B E T W E E N:	)	
	)	
RYAN DAVIES, TANYA DAVIES	)	
AND TANYA DAVIES ON BEHALF	)	
OF MINOR, V.D.	)	J.S.M. Kitchen, for the Plaintiffs
	)	
Plaintiffs	)	
	)	
- and -	)	
	)	
	)	
SPENCER BUTTS	)	Self-represented
	)	
	)	
	)	
Defendant	)	
	)	
	)	HEARD: In Chambers
	)	

A.J. GOODMAN J.:

COSTS ENDORSEMENT

- [1] This costs endorsement refers to a summary judgment motion with ruling and reasons provided to the parties on May 28, 2026, (Citation: 2026 ONSC 3127).
- [2] The plaintiffs were entirely successful in the summary judgment motion to establish their claim for defamation against the defendant.
- [3] An extension of time to provide written materials on costs was granted. However, since the issue of costs could not be resolved by the parties, I have received and reviewed the materials.
- [4] The self-represented defendant chose not to file any materials or provide submissions on the issue of costs.

- [5] The plaintiff submit that they were entirely successful with the motion and request their partial indemnity costs.
- [6] The plaintiffs contend that the proceeding was of average complexity that would be suitable for summary judgment. The simpler procedure chosen by the plaintiffs appropriately reduced the resources spent on the case. Counsel's hours were commensurately appropriate and his rate was reasonable, given his approximately 10 years' experience. The issues were of significance to the plaintiffs, their reputation both personally and in the podcast space, which connects to their livelihood.
- [7] On the other hand, the plaintiffs say that the defendant's conduct at times fell short of appropriateness and integrity. Early on, the defendant had an opportunity to make an admission, but instead, he behaved in an evasive manner, both toward the plaintiffs and before the Court. To say this unnecessarily lengthened the proceeding is an understatement.
- [8] In fact, the plaintiffs offered a settlement to the defendant, whereby no money would change hands, no proceeding would occur, and accordingly no liability for costs would have ensued. The plaintiffs say that, instead, the defendant strung the plaintiffs along by assuring them multiple times he was committed to resolving the dispute, only to eventually publish a mocking "apology", wherein he mostly complained about them. These evasive tactics wasted the plaintiffs' time and resources.
- [9] The plaintiffs submit that there is no reasonable basis on which to conclude that the plaintiffs are entitled to less than presumptive partial indemnity costs, which the defendant could reasonably expect to pay on the basis of the foregoing factors.
- [10] The plaintiffs seek partial indemnity costs of \$25,000 inclusive of fees, disbursements and HST, representing approximately 60% of their actual costs.

Legal Principles:

- [11] As a general principle, costs are in the absolute discretion of the court. The fixing of costs is not simply a mechanical exercise. The overall 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.
- [12] The Court of Appeal, in *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579, (2004) 71 O.R. (3d) 291, articulated

the principles that govern costs assessments. In that case, Armstrong J.A. noted that Rule 57.01(3) provides: “When the court awards costs, it shall fix them in accordance with subrule (1) and the tariffs.” He continued: “...Subrule (1) lists a broad range of factors that the court may consider in exercising its discretion to award costs under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

Factors to be Considered in Fixing Costs:

[13] Rule 57.01(1) contains what amounts to a non-exhaustive checklist of factors that should guide the court in its reasoning when awarding costs in the exercise of its discretion under section 131 of the *Courts of Justice Act*. Rule 57.01(1) provides, in part:

[14] In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider...

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

(a) the amount claimed and the amount recovered in the proceeding;

...

(c) the complexity of the proceeding;

(d) the importance of the issue;

(e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;

(f) whether any step in the proceeding was

(i) improper, vexatious or unnecessary, or

...

(i) any other matter relevant to the question of costs.

[15] The amount of costs varies widely depending on the circumstances of the case, including the complexity of the issues, of facts, and the witnesses from whom evidence is required, amongst other considerations.

Discussion:

[16] It is a well-settled principle that the successful party should have its costs and there is no good reason in the present circumstances to depart from this legal principle. The court must, first and foremost, be fair and reasonable when exercising its discretion to award costs. Proportionality is of fundamental import.

[17] I agree with the plaintiffs that this case was of importance to them as their well-established reputation was subject to defamation. The defendant's initial actions in libeling and maligning the plaintiffs through the use of social media or podcasts cannot be condoned.

[18] The proceeding was average to moderately complexity and of significant import to the parties. With the ubiquitous use of the internet and related social media, the issues in this case may have wide-ranging implications.

Bill of Costs:

[19] It is widely accepted that the appropriate quantum of costs is not determined by multiplying hours by rates. Rather, 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. Proportionality is also a consideration.

[20] I note that it is not necessary for me to have to go through the hours, or disbursements, line by line, in order to determine what the appropriate costs are. Nor is the court to second-guess the amount of time claimed unless it is clearly excessive or overreaching. I must consider what is reasonable in the circumstances, and all the relevant factors.

[21] There must be practical and reasonable limits to the amounts awarded for costs and those amounts should bear some reasonable connection to the amount that should reasonably have been contemplated.

- [22] Plaintiff's principal lawyer on file, Mr. Kitchen, was called to the Bar in 2017. His actual rate is \$375 per hour. Another lawyer, Ms. J. Wells and staff within the firm assisted counsel. Plaintiffs' counsel is highly competent with years of experience. I find that counsel's respective hourly rates are reasonable.
- [23] The fees detailed in the plaintiffs' Costs Outline include legal fees of \$20,895 (plus HST) and \$3,130 for disbursements. The total costs being sought on a partial indemnity basis is \$25,481.73.
- [24] I have reviewed the hours expended on preparation, reviews, drafting, and preparation of written submissions and the other materials provided for my analysis. I am satisfied with the total hours expended by plaintiffs' counsel in respect of this motion.
- [25] The plaintiffs attempted to resolve this matter with the defendant prior to the motion. I agree with the plaintiffs that the defendant's conduct contributed to the necessity and prolongation of the litigation. However, proportionality is the key to awarding costs. The objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding. This includes my consideration of the ultimate quantum of damages awarded in this case.
- [26] For all of these considerations, I have modestly reduced the plaintiffs' total legal fees to reflect this analysis.

Conclusion:

- [27] In the exercise of my discretion under Rule 57.01, it is ordered that the defendant pay partial indemnity costs in favour of the plaintiffs fixed at \$20,000 (all incl.), payable forthwith.



A. J. Goodman J.

Released: July 14, 2026