



WorkSafeBC, aka *Workers* ) J.D. Belec, Counsel for the  
*Compensation Board of British* ) Workplace Safety and Insurance  
*Columbia; Workers' Compensation* ) Board  
Appeal Tribunal of BC – WCATBC; ) A. Lokan, Counsel for Workplace  
Workers Compensation Board of ) Safety and Insurance Appeals  
Alberta – AWCB; Appeals Commission ) Tribunal  
of Alberta – AAC; Saskatchewan )  
Workers Compensation Board – )  
SWCB; Saskatchewan Board of )  
Appeal Tribunal – SBAT; Workers )  
Compensation Board of Manitoba – )  
WCBM; The Appeal Commission of )  
Manitoba – ACM; Workplace Safety & )  
Insurance Board – WSIB, aka *Workers* )  
*Compensation Board of Ontario;* )  
Workplace Safety & Insurance )  
Appeals Tribunal – WSIAT, aka )  
*Workers Compensation Board of* )  
*Ontario; Commission des norms, de* )  
*l'equite, de la sante de la securite du* )  
*travail – CNESST; WorksafeNB, aka* )  
*Workers Compensation Board of New* )  
*Brunswick; New Brunswick Worker's* )  
*Compensation Appeals Tribunal –* )  
NBWCAT; Workers Compensation )  
Board of PEI – WCBPEI; Workers' )  
Compensation Appeal Tribunal of PEI )  
– WCATPEI; Workers' Compensation )  
Board of Nova Scotia – WCBNS; )  
Workers' Compensation Appeal )  
Tribunal of Nova Scotia – WCATNS; )  
Workplace Health, Safety and )  
Compensation Commission – )  
WHSCC, aka *Workers Compensation* )  
*Board of Newfoundland & Labrador;* )  
Workplace Health, Safety & )  
Compensation Review Division – )  
WHSCRD; Yukon Workers' )  
Compensation Health and Safety )  
Board – YWCHSB, aka *Workers* )



lead plaintiffs of the proposed class action to represent the class members who have yet to be defined (“Mr. Taylor’s Motion”).

[2] For their part, the defendants, WSIB and Workplace Safety and Insurance Appeals Tribunal (‘WSIAT’), sought an order dismissing the plaintiffs’ action by reason of the lead plaintiffs’ failure to comply with *Rule* 15, together with alternative relief.

[3] In my Reasons on Motion, dated March 5, 2025, I dismissed Mr. Taylor’s Motion and ordered the putative class proceedings stayed pending compliance with *Rule* 15.01(1), and if the lead plaintiffs have not retained counsel within 120 days of the date of my Ruling, the defendants be at liberty to bring a motion to have the proceedings dismissed.

[4] In my Reasons on Motion, I invited the parties to provide me with written submissions if they were unable to agree on the issue of costs. I now have the parties’ written submissions, and this is my ruling with respect to the matter of costs.

### **Position of the Parties**

[5] Mr. Taylor, on behalf of the lead plaintiffs, submits that although with their motion was unsuccessful, no costs should be awarded in favour of the WSIB and WSIAT. As a basis for this submission, Mr. Taylor argues that: (1) the law provides non-unionized injured workers with the right of legal representation to

be funded by the WSIB; (2) the lead plaintiffs, whom Mr. Taylor describes as persons with disabilities, were not provided with reasonable accommodations during the course of the motion proceedings; (3) neither the WSIB nor the WSIAT have the legal capacity to sue or be sued; and (4) the putative class proceeding is a matter of public litigation involving matters of importance that extend beyond the immediate interests of the parties.

[6] As the successful parties on the motions, the WSIB and WSIAT are aligned in their position. They seek their costs of the motions but only as against lead plaintiff, Mr. Taylor, the driving force behind the litigation. Although the partial indemnity costs of the WSIB and WSIAT are in the respective amounts of \$5,075.63, \$10,123.75 net of disbursements and any applicable HST, they each seek a cost award of \$2,500 all inclusive. These defendants submit that they are entitled to a cost award given that they were entirely successful on the motions, and in consideration of the complexity and importance of the issues as well as the conduct of Mr. Taylor who unnecessarily lengthened the duration of the proceedings.

### **Guiding Principles**

[7] Section 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 42, as amended, provides that “subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in the proceeding are in the

discretion of the court, and that the court may determine by whom and to what extent the costs shall be paid”.

[8] The factors to be considered by the court, in the exercise of its discretion on costs, are set out in rule 57.01(1).

[9] Rue 57.03(1) provides that on a contested motion, unless the court is satisfied that a different order would be more just, the fixed costs of the motion are to be paid within 30 days.

[10] The Court of Appeal has observed that modern costs rules are designed to foster three fundamental purposes: (i) to indemnify successful litigants for the cost of litigation; (ii) to encourage settlements; and (iii) to discourage and sanction inappropriate behaviours by litigants (see: *Fong v. Chan*, [1999] O.J. No. 4600 (ONCA), at para. 24).

[11] Perell J. in *394 Lakeshore Oakville Holdings Inc. v. Misek*, [2010] O.J. No. 5692 (ONSC) reformulated the purpose of the modern cost rules, at para. 10, as follows: (i) to indemnify successful litigants for the costs of litigation, although not necessarily completely; (ii) to facilitate access to justice, including access for impecunious litigants; (iii) to discourage frivolous claims and defences; (iv) to discourage the sanctioning of inappropriate behaviour by litigants in their conduct of the proceedings; and (v) to encourage settlements.

[12] The established principle is that, absent special circumstances, costs follow the event (see: *Gonawati v. Teitsson*, [2002] CarswellOnt 1007 (ONCA)).

[13] In *1318706 Ontario Ltd. v. Niagara (Regional Municipality)* (2005), 2005 CanLII 16071 (ONCA), at para. 50, the Court of Appeal applied the following statement of principle from *Larter v. Universal Sales Limited.* (1991), 1991 CanLII 4077 (NB CA); at pp. 67-68:

In M.M. Orkin, *The Law of Costs*, 2d ed (Aurora, Ont.: Canada Law Book, 1987) at p. 2-13, the author points out that the principle that a successful party is entitled to his costs is of long standing and should not be departed from except for very good reasons. One might depart from the rule if there has been (1) misconduct of the parties, (2) miscarriage in the procedure, or (3) oppressive and vexatious conduct of proceedings.

[14] It is well known that the overall objective in addressing costs is to fix an amount that is fair and reasonable for the unsuccessful party to pay in the circumstances of the case, rather than an amount fixed by the actual costs incurred by the successful party (see: *Zesta Engineering Ltd. v. Cloutier* (2002), 2002 CanLII 25577 (ONCA), at para. 4). The expectations of the parties concerning the quantum of costs is also a relevant factor to consider. The court is required to consider what is 'fair and reasonable' having regard to what the losing party could have expected the costs to be (see: *Coldmatic Refrigeration of Canada Ltd. v. Leveltek Processing LLC* (2005), 2005 CanLII 1042 (ONCA)).

## **Discussion**

[15] I rejected in my March 5, 2025 Ruling Mr. Taylor's submission that the WSIB has an obligation to fund the legal costs of the putative lead plaintiffs. I also do not accept the submission the lead plaintiffs had not been provided with reasonable accommodations during the course of the motion proceedings. They were granted numerous adjournments to argue the motions because of their claimed disabilities. I also note that their repeated failures to abide by consent ordered litigation timetables did not result in court imposed sanctions which would have normally been the case were the lead plaintiffs' circumstances otherwise. Furthermore, I view Mr. Taylor's submission regarding the capacity of the WSIB and WSIAT to sue or be sued as entirely irrelevant to my determination of the costs of the motions.

[16] While I accept without reservation the Supreme Court of Canada's observation in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71, that in special cases where individual litigants of limited means seek to resolve matters of consequence to the community as a whole, courts may exercise their discretion on costs to avoid the harshness that might result from adhering to the traditional costs principles, I find that this is not one such case.

[17] Whether or not this proceeding raises matters of public importance, I am not prepared to exercise my discretion on costs as Mr. Taylor urges me to do for

two reasons. Firstly, I have previously found that this putative class proceeding raises a number of issues that have been previously and unsuccessfully litigated by Mr. Taylor. To a large extent the only difference between this proceeding and the earlier litigation initiated by Mr. Taylor is that in this proposed class action, Mr. Taylor has joined other parties as plaintiffs and expanded the number of defendants to include all worker compensation boards and tribunals across the country.

[18] Additionally, it does not escape me that the conduct of Mr. Taylor unnecessarily delayed the motions from being heard and thereby increased the costs of litigation. In particular, I point to Mr. Taylor's issuance of summonses to the Minister of Labour, Immigration, Training and Skills Development and the Director of the Office of the Work Advisor. This court quashed these summonses and determined Mr. Taylor's attempt to examine the two non-parties within the context of the WSIB's and WSIAT's *Rule 15* Motion as an abuse of process.

[19] Therefore, I find that there is no reason to deviate from the normal rule of indemnifying successful litigants for their litigation costs particularly in this case where Mr. Taylor's motion was made unnecessarily complex by raising three grounds for relief from the requirements of *Rule 15*.

[20] In this respect I have also considered the importance of the issues raised to the responding defendants as well as their respective bills of costs which I find to be entirely reasonable.

[21] In fixing the costs of the motion, I have also considered Mr. Taylor's financial means. While the potential financial hardship of imposing a cost award is not an overriding factor in fixing an award of costs, it is one of many factors to be considered (see: *Gold v. Gold* 1993 Carswell 216 (BCCA); *Ogoki Frontier Inc. v. All A.I.R. Ltd*, 2005 CarswellOnt 125 (OSC)).

[22] In consideration of these factors, those under *Rule* 57.01(1) not specifically referenced in this ruling and the partial indemnity costs of the WSIB and WSIAT, I exercise my discretion to accept the cost requests of these defendants and order costs of the motions payable by Mr. Taylor to each of the WSIB and WSIAT in the fixed amount of \$2,500, payable within 60 days of the release of this Costs Endorsement.

**Disposition**

[23] It is therefore ordered that Mr. Taylor shall pay the WSIB costs of \$2,500 all-inclusive and the WSIAT its costs of the motions fixed in the same amount of \$2,500, both of which are payable within 60 days of the release of this Endorsement.

---

Justice Valente

**DATE:** April 2, 2025

2025 ONSC 1988 (CanLII)

**CITATION.:** Toombs et al. v. Worksafe BC et al., 2025 ONSC 1988  
**COURT FILE NO.:** CV-21-76781  
**DATE:** 2025-04-02

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

GREGORY TOOMBS, NORM RYDER,  
PATRICK JARDINE, DAVID HAMILTON,  
CHRISTOPHER SUMMERS, TERRY  
FEDORAK, ROD BARRETT, JENNIFER  
BAKER, BRUCE JUNKER, BLAINE  
GILBERTSON, KEN GRYSIUK, RICHARD  
LAST, DARREN SCHLAMB, CHRIS  
LAWSON, SARAH LAWSON, EUGENE

LAHO, NORMAN TRAVERSY, DAVID  
CURTIS, PATRICIA O'CONNOR,  
GIUSEPPE MARCELLINO, JAMES  
ROLLO, ANDRE MARTIN, ARMAND  
DURELLE, GILLES MARTIN, GORDON  
WAYNNE SKINNER, AND PAUL TAYLOR

Lead Plaintiffs  
(Moving/Responding Parties)

- and -

WorkSafeBC, aka *Workers Compensation Board of British Columbia*; Workers' Compensation Appeal Tribunal of BC – WCATBC; Workers Compensation Board of Alberta – AWCB; Appeals Commission of Alberta – AAC; Saskatchewan Workers Compensation Board – SWCB; Saskatchewan Board of Appeal Tribunal – SBAT; Workers Compensation Board of Manitoba – WCBM; The Appeal Commission of Manitoba – ACM; Workplace Safety & Insurance Board – WSIB, aka *Workers Compensation Board of Ontario*; Workplace Safety & Insurance Appeals Tribunal – WSIAT, aka *Workers Compensation Board of Ontario*; Commission des normes, de l'équité, de la santé de la sécurité du travail – CNESST; WorksafeNB, aka *Workers Compensation Board of New Brunswick*; New Brunswick Worker's Compensation Appeals Tribunal – NBWCAT; Workers Compensation Board of PEI – WCBPEI; Workers' Compensation Appeal Tribunal of PEI – WCATPEI; Workers' Compensation Board of Nova Scotia – WCBNS; Workers' Compensation Appeal Tribunal of Nova Scotia –

WCATNS; Workplace Health, Safety and Compensation Commission – WHSCC, aka *Workers Compensation Board of Newfoundland & Labrador*; Workplace Health, Safety & Compensation Review Division – WHSCRD; Yukon Workers’ Compensation Health and Safety Board – YWCHSB, aka *Workers Compensation Board of Yukon Territory*; Yukon Workers’ Compensation Appeal Tribunal – YWCAT; Northwest Territories Workers’ Safety and Compensation Commission – NWTWSCC, aka *Workers Compensation Board of Northwest & Nunavut Territories*; AND the NWT and Nunavut Workers’ Compensation Appeals Tribunal – NWTNWCAT

Defendants  
(Workplace Safety and Insurance Appeals Tribunal – Responding/Moving Parties)

---

**COSTS ENDORSEMENT**

---

Justice Valente

**Released:** April 2, 2025