

CITATION: Lachapelle v. St. Laurent Automotive Group Inc., 2025 ONSC 2879
COURT FILE NO.: CV-20-83872
DATE: 2025/05/14

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Jesse Lachapelle, Plaintiff

-and-

St. Laurent Automotive Group Inc., Defendant

BEFORE: Justice Pierre E. Roger

COUNSEL: Daria Strachan, for the Plaintiff

Danesh Rana, for the Defendant

HEARD: In writing

COSTS ENDORSEMENT

[1] This case involves a wrongful dismissal action. The action proceeded under the simplified procedure rule, found at r. 76 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[2] The trial occurred over five days in January and February 2025. The court rendered its decision on March 31, 2025. It can be found at *Lachapelle v. St. Laurent Automotive Group Inc.*, 2025 ONSC 1956.

[3] Essentially, I awarded \$65,610.02 as common-law notice for seven months notice plus benefits of \$6,561 (minus the statutory minimum amounts paid by the defendant). I dismissed the claims for bad faith, aggravated and punitive damages, and found that nothing was owed under a construction retention bonus.

[4] The parties could not agree on the amount of costs payable by the defendant to the plaintiff, and this endorsement contains my reasons for decision on that issue.

[5] The plaintiff incurred significant legal fees pursuing this action. The plaintiff filed a bill of costs showing legal fees exceeding \$200,000. These include legal fees for the examinations for discovery of both parties, a mediation, and a five-day trial that was adjourned on earlier occasions,

including at the last minute in February 2023 for lack of judicial resources and in November 2024 when counsel for the plaintiff was called on another matter before the New Brunswick Court of Appeal. Significant time was spent preparing for trial, which was made worse by the last-minute adjournments.

[6] Despite having incurred significantly more in legal fees, the plaintiff seeks costs from the defendant of \$62,699.16. This represents the maximum available for legal fees under r. 76.12.1 (\$50,000 plus HST), plus \$6,199.16 for his disbursements.

[7] The defendant asks that I fix the amount of costs that it must pay to the plaintiff at \$30,000 all-inclusive. The defendant argues that the maximum amount payable for fees under r. 76.12.1 of \$50,000 plus HST “should be reserved for cases of higher complexity, or situations where an award of substantial indemnity costs is clearly warranted”, relying on *Ingratta v. McDonald*, 2024 ONSC 1349. The defendant argues as well that the amount of costs that it must pay to the plaintiff should be reduced to account for the plaintiff’s conduct.

[8] Costs payable by one party to another following the trial of a legal action are in the discretion of the court: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 131(1). Rule 57 outlines factors that the court may consider when determining the issue of costs payable by a party to the other.

[9] When determining costs, the facts and circumstances of the case are important. These are considered in relation to the relevant factors set out in r. 57.01. Reasonableness, in light of the facts of the case, is the overriding principle. The amount ordered for costs must reflect what is fair, reasonable, and proportionate, rather than an exact measure of the actual costs to the successful litigant. The reasonable expectations of the unsuccessful party are also a factor to consider when determining an amount that is fair and reasonable.

[10] In simplified procedure actions, r. 76.12.1 provides that the maximum amount of costs that a party may recover from the other in such actions are \$50,000 plus HST for fees and \$25,000 plus HST for disbursements. As well, proportionality takes on added importance in simplified procedure actions given the smaller amounts involved (these actions involve claims of \$200,000 or less, exclusive of interest and costs).

[11] The plaintiff's lawyer has 25 years of experience. Therefore, her hourly rates of \$395 and \$425 were reasonable.

[12] This was a highly disputed action, with the parties unable to agree on matters that should have been agreed upon, for example, the plaintiff's salary, benefits, and outstanding vacation. Consequently, legal costs incurred by each party went up. Moreover, the trial had to be adjourned on several occasions which also increased the parties' preparation costs. As a result, the parties should have expected that the unsuccessful party might have to pay significant costs to the other, likely in the range of the maximum amounts allowed under r. 76.12.1.

[13] The issues were important to the parties and were of moderate complexity, particularly the issue of length of notice considering the break in the plaintiff's employment with the defendant. This issue added a level of complexity to this action.

[14] As I explain below, a trial was required because of the defendant's unreasonable settlement position. Five days for trial was necessary considering the parties' diverging positions, the many issues in dispute, and the evidence required to address those issues.

[15] Ultimately, the plaintiff was the successful party. The defendant's arguments that the plaintiff unsuccessfully sought \$261,566, including for bad faith, aggravated and punitive damages, are, in the circumstances of this case, without merits as this trial was required because of the defendant's unreasonable settlement position. Indeed, on January 3, 2021, the plaintiff fairly assessed this matter and offered to settle for \$60,000, less applicable statutory deductions, plus \$15,000 for legal fees and disbursements. This was a reasonable offer that should have been accepted as higher damages were assessed following the trial. Negotiating against himself, on January 12, 2023, the plaintiff offered to settle for the all-inclusive sum of \$40,000. Alternatively, and for the same reasons, this second offer should have been accepted. These offers were genuine attempts to resolve this action. Accepting either of these offers would have been a better outcome for the defendant than proceeding to trial.

[16] The defendant offered the plaintiff \$4,000 to settle this action.

[17] The defendant's hard-line approach caused the parties to agree on very little and forced the parties to litigate this action and incur significant costs.

[18] The two offers of the plaintiff outlined above invoke r. 49. As the plaintiff obtained a judgment more favourable than either of his two offers, the costs consequences of r. 49.10(1) are triggered, with substantial indemnity costs available from the date of the plaintiff's first offer.

[19] As well, the defendant took unreasonable positions. For example, it initially refused to acknowledge that the plaintiff had been terminated, arguing that he had voluntarily resigned. It also refused to admit that the plaintiff's lay-off constituted constructive dismissal when this was and should have been obvious.

[20] Further, the defendant failed to disclose relevant documents. As indicated at paragraph 30 of the trial decision, the defendant's controller, Ms. Salvi, contradicted the defendant's answer to undertakings when she testified that the information sought by the plaintiff about what had been earned by other technicians *was* available. I made a factual finding from the evidence of Ms. Salvi that the hours sold for all technicians from February 2019 to March 2020 was information that was available, contradicting the defendant's answer to undertaking that "This information is no longer available". By opposition, the defendant's arguments that the plaintiff's conduct should warrant lower costs being ordered is without merits as it seems to impose a standard of perfection on counsel for the plaintiff.

[21] Looking at the additional factors outlined in *Ingratta*, a case relied upon by the defendant, this case was of moderate complexity and, considering the plaintiff's offers, this is a case where the plaintiff can recover his substantial indemnity costs from the date of the offers. As such, this is another example of the defendant's arguments being contradicted by the authorities it relies upon. I note as well that the facts of this case are further distinguishable from the circumstances in *Ingratta* where the plaintiff was allowed no damages because of the applicable threshold. In any event, I am not convinced that it is necessary to add some rigid test to decide when, under r. 76.12.1, the limits on costs and disbursements may be ordered because the assessment of costs already requires that the court assess all relevant circumstances to arrive at a fair and reasonable amount.

[22] In the circumstances of this case, the plaintiff's options were to accept a \$4,000 offer or take his chances and incur required additional costs to proceed to trial and hopefully obtain a better result. In the end, the plaintiff did obtain a better result. As such, even though the plaintiff did not obtain 12 months notice and the other amounts that he sought, the plaintiff was nonetheless the successful party as the defendant's position at trial was that nothing was owed to the plaintiff, net of the statutory minimum amounts paid by the defendant. Further, as outlined above, the plaintiff obtained a better result than both of his offers, and much better than the defendant's \$4,000 offer.

[23] A successful party involved in a civil action in this province may, depending on various circumstances, generally recover about 60% of his or her legal fees, plus disbursements, from the other side. This proportion may rise to 90% of some or all the successful party's legal fees depending on offers to settle and other circumstances. As such, parties involved in civil litigation in this province should understand that generally about 40% of their legal fees may never be recovered, irrespective of their success. As well, parties involved in a simplified procedure action should know that they must exercise additional constraint in their expenditure of legal costs, or risk being further limited in their recovery of costs from the other side, by the limits on what may be ordered for costs and disbursements awards imposed by r. 76.12.1.

[24] In some cases, and this is one of them, because of a party's refusal to negotiate a reasonable resolution, the complexity of the matter, the number of issues to be resolved, and the evidence required to be presented to the court, a party might have no option but to keep incurring legal fees and disbursements despite what may be recovered from the unsuccessful party to advance his or her claims. Deciding whether to pursue a legal action right up to trial, despite the mounting legal costs required to successfully litigate a party's position, is a delicate balancing exercise. This is probably made more difficult by the fact that the maximum amounts prescribed at r. 76.12.1 are not indexed and the hourly rates for legal services and for the cost of various disbursements continue to increase. In such cases where defendants can afford to play hard ball irrespective of reasonable offers made by plaintiffs, it is not clear whether such limits on the amount of costs that may be recovered from the other party improve or impede access to justice. Fully facing the costs consequences or one's unreasonable settlement positions might motivate early resolution and improve access to justice.

[25] As litigation between these parties went on, it should have been apparent to the defendant from the litigation history of this matter that the actual costs incurred by the plaintiff would be high and that if unsuccessful, the defendant might very well have to pay amounts in the range of the maximum amounts allowed for costs in a simplified procedure action.

[26] I find that the plaintiff's request for \$56,500 in fees reflects the r. 76.12.1 limit on fees plus HST and is proportionate, fair, and reasonable. A lesser award would undermine the costs consequences intended to encourage early settlement and fair litigation conduct. It would also fail to reflect the time and effort expended by the plaintiff to achieve a just result after years of unnecessary litigation, considering that the plaintiff obtained a better result than either of his two offers. Disbursements are not in issue and, in any event, are reasonable.

[27] Further, one can see that even if the costs of the plaintiff were significantly reduced to arrive at a more reasonable and proportionate range for this matter, by allowing partial indemnity costs at 60% on amounts up to the date of either of the plaintiff's offers and substantial indemnity costs at 90% on amounts from the date of either of the plaintiff's offers, costs quickly exceed the maximum amount of \$50,000 plus HST that may be awarded for fees in a simplified procedure action. For example, if the plaintiff's actual legal fees were reduced to a range between \$80,000 and \$100,000, the maximum amount for costs of \$50,000 plus HST is easily exceeded when the rate of 60% is applied to the amounts up to the plaintiff's offers and the rate of 90% is applied to the amounts after the offers.

[28] Frankly, but for the limits imposed on costs imposed by r. 76.12.1, I would have found it fair and proportionate to order the defendant to pay more in costs, something more reflective of its unsuccessful hardline approach.

[29] Consequently, the costs of this action are fixed in the all-inclusive amount sought by the plaintiff of \$62,699.16, payable forthwith by the defendant to the plaintiff.

Justice Pierre E. Roger

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Roger J.

Released: May 14, 2025