

CITATION: Kingsdale Partners LP v. Sprott Asset Management LP, 2025 ONSC 3980
COURT FILE NO.: CV-18-00602433-0000
DATE: 20250703

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
KINGSDALE PARTNERS LP) *James Renihan and Jacob Medvedev, for*
) the Plaintiff
Plaintiff)
)
- and -)
)
SPROTT ASSETT MANAGEMENT) *David Chernos and Brendan Brammall,*
) for the Defendant
Defendant)
)
)
) **Read at Toronto:** June 30, 2025

2025 ONSC 3980 (CanLII)

REASONS FOR JUDGMENT ON COSTS

[1] As the successful party, Kingsdale is presumptively entitled to the costs of the trial. Kingsdale seeks the costs of the trial fixed in the amount of \$527,303.91 on a partial indemnity scale. Counsel have agreed on costs for the security for costs motion.

[2] Fixing costs is a discretionary decision under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. In exercising my discretion, I may consider the result in the proceeding, any offer to settle or to contribute made in writing, and the factors listed in rule 57.01. These factors include but are not limited to: (i) the result in the proceeding; (ii) 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; (iii) 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; (iv) the amount claimed and the amount recovered in the proceeding; (v) the complexity of the proceeding; (vi) the importance of the issues; and (vii) the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding. Rule 57.01(1)(f) provides that the court may also consider “any other matter relevant to the question of costs.”

[3] In exercising my discretion to fix costs, I must consider what is fair and reasonable for the unsuccessful party to pay in this proceeding and balance the compensation of the successful party with the goal of fostering access to justice: *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (ONCA) at paras. 26 and 37.

[4] In my view, this is an appropriate case for costs on a partial indemnity basis of \$475,000.00 for the following reasons.

[5] This was complex litigation involving a claim for \$4.6 million USD, with the costs claimed at less than 10% of the judgment. The costs claimed are proportionate to the reward sought, the importance of the issues, the complexity of the motion, the time required to prepare and argue the motions, and the reasonable expectations that the losing party would have had in terms of its jeopardy with respect to costs: *Vespera Country Estates Limited v. Pine Hill Estates*, 2012 ONSC 330 at para. 9.

[6] Both parties retained Bay Street law firms and were “well resourced”. “Both parties spent huge sums of money on this litigation and should therefore expect to pay large amounts in costs when unsuccessful”: *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587 at para. 72.

[7] The parties went through pleadings, document production, examinations for discovery, multiple rounds of undertakings, mediation and pre-trial. The parties also engaged in an initial, pre-action mediation for which Kingsdale is not claiming costs.

[8] I have some concerns, however, about the hours spent, given the duplication of work. Kingsdale had one set of counsel at the pleadings stage, another set of counsel at

the examinations for discovery, and finally counsel at the mandatory mediation were Mr. Renihan and Mr. Medvedev. Four other lawyers, two students and five clerks are also included in the Bill of Costs.

[9] I appreciate that incoming counsel must take some time to acquaint themselves with the file notwithstanding having the benefit of the work performed by prior counsel. The cost associated, however, with the duplication of work should not be borne by Sprott.

[10] I also have concerns respecting Mr. Renihan's hourly rate which progressed from \$716.51 and \$725.04 for the pleadings and mediation stage, to his trial preparation and trial rates of \$1,438.75 and \$1,450.00 respectively. While I appreciate that Mr. Renihan was lead counsel, he is a 2009 call. Mr. Chernos, lead counsel for Sprott is a 1993 call and has an hourly rate of \$975.00. It is not clear to me why Mr. Renihan's hourly rate was not only so high, but why it increased by almost \$700 an hour over the course of the litigation.

[11] I recognize that Sprott has not otherwise disclosed their bill of costs, and I have taken that into consideration in my overall assessment of the reasonableness of Kingsdale's costs: *Banman v. Ontario*, 2023 ONSC 7187 at para. 21.

[12] For these reasons, I fix the costs of the trial at \$475,000.00, inclusive of disbursements and HST, and order the defendant, Sprott, to pay that amount within 60 days of this Order.

J.K. PENMAN J.

Date: July 3, 2025

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BETWEEN:

KINGSDALE PARTNERS LP

Plaintiff

– and –

SPROTT ASSET MANAGEMENT LP

Defendant

REASONS FOR JUDGMENT ON COSTS

J.K. PENMAN J.

Released: July 3, 2025