

**CITATION:** R & P Petroleum Inc. v. Eternal Vibes Inc., 2025 ONSC 2906  
**COURT FILE NO.:** CV-23-00000442-0000  
**DATE:** 20250514

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
R & P PETROLEUM INC. )  
 )  
Plaintiff )  
 ) Danny Bellin, for the Plaintiff  
– and – )  
 )  
ETERNAL VIBES INC. carrying on )  
business as PHOENIX FUEL, and )  
ISHVINDER SINGH VIRK )  
 )  
Defendants )  
 ) Sukhminder Singh, for the Defendants  
 )  
 ) **HEARD:** By Written Submissions

2025 ONSC 2906 (CanLII)

**REASONS ON COSTS**

**HEALEY J.**

- [1] This is the costs decision following a successful motion for summary judgment brought by the plaintiff on a claim for payment of outstanding invoices. The plaintiff was successful in obtaining judgment in the full amount of the claim (\$285,325.64 plus prejudgment interest).
- [2] I have reviewed the written cost submissions of the parties, including the plaintiff’s cost outline and offer to settle dated May 12, 2023.
- [3] The plaintiff seeks costs on a substantial indemnity basis in the amount of \$66,036.28 inclusive of HST and disbursements, arguing that such costs are reasonable due to: the steps required to be taken in the case, against an obstructive defendant, Mr. Virk; the importance of the summary judgment motion; the plaintiff having made an offer to settle early in the proceeding, which was more favourable to the defendants; the defendants’ conduct increasing costs unnecessarily; and the defendants’ failure to admit matters that should have been admitted.
- [4] The plaintiff also seeks an elevated cost award over and above its substantial indemnity costs because of a threatening email alleged to have been sent by the defendant Ishvinder Virk, in which bodily harm is threatened against Mr. Bellin.

- [5] The defendants resist, submitting that the offer to settle does not attract the r. 49.10 cost consequences because the counterclaim remains to be litigated. The defendants' submissions do not attack the time spent or content of the plaintiff's costs outline, but submit that the court's approach should not depart from the ordinary practice of awarding costs on a partial indemnity scale. With respect to gauging the reasonableness of the cost award, the defendants have made no submissions as to the overall reasonableness of the award sought other than quoting from two of the leading cases on costs. They have also provided no submissions or evidence regarding their own expectations as the losing parties, including not having submitted their own costs outline.
- [6] The court has broad discretion in deciding whether to award costs, to whom, and in what amount: s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. However, that discretion is to be exercised in accordance with the provisions of an act or the *Rules of Civil Procedure*, O. Reg. 194: *1465778 Ontario Inc. v. 1122077 Ontario Ltd.*, [2006] O.J. No. 4248 (Ont. C.A.), at para. 25; *Andersen v. St. Jude Medical Inc.*, [2006] O.J. No. 508 (Div. Ct.), at para. 20; leave to appeal refused, 2006 CarswellOnt 7749 (Ont. C.A.).
- [7] Rule 57.01 sets out the factors a court may consider when deciding costs, and the court must adhere to the principle of proportionality set out in r. 1.04(1.1). Despite those factors, the court's authority under r. 57.01(1) remains discretionary: *Ontario v. Rothmans Inc.*, 2013 ONCA 353, [2013] O.J. No. 2367, at para. 134.
- [8] The overarching principle when fixing costs is that the amount of costs awarded be reasonable in the circumstances: *Davies v. Clarington (Municipality)*, 2009 ONCA 722, [2009] O.J. No. 4236, at para. 52.
- [9] In determining the appropriate amount of costs to which the defendant may be entitled pursuant to r. 57.01(1), the principles that guide my decision are those articulated in *Andersen*, at para. 22:
- (1) The discretion of the court must be exercised in light of the specific facts and circumstances of the case in relation to the factors set out in Rule 57.01(1): [*Boucher v. Public Accountants Council for the Province of Ontario*, [2004] O.J. No. 2634 (Ont. C.A.); *Moon v. Sher*, [2004] O.J. No. 4651 (Ont. C.A.); and *Coldmatic Refrigeration of Canada Ltd. v. Leveltek Processing LLC*, [2005] O.J. No. 160 (Ont. C.A.)].
  - (2) A consideration of experience, rates charged and hours spent is appropriate, but is subject to the overriding principle of reasonableness as applied to the factual matrix of the particular case: *Boucher*. The quantum should reflect an amount the court considers to be fair and reasonable rather than any exact measure of the actual costs to the successful litigant: [*Zesta Engineering Ltd. v. Cloutier*, [2002] O.J. No. 4495 (Ont. C.A.), at para. 4].

- (3) The reasonable expectation of the unsuccessful party is one of the factors to be considered in determining an amount that is fair and reasonable: Rule 57.01(1)(0.b).
- (4) The court should seek to avoid inconsistency with comparable awards in other cases. “Like cases, [if they can be found], should conclude with like substantive results”: [*Murano v. Bank of Montreal*, [1998] O.J. No. 2897 (Ont. C.A.)] at p. 249.
- (5) The court should seek to balance the indemnity principle with the fundamental objective of access to justice: *Boucher*.

- [10] In arriving at this decision on costs, I have fully considered the r. 57.01(1) factors and weighted them accordingly.
- [11] Costs rules are designed to foster three fundamental purposes: (1) to indemnify successful litigants for the cost of litigation; (2) to encourage settlements; and (3) to discourage and sanction inappropriate behavior by litigants: *Fong v Chan*, [1999] O.J. No. 4600 (Ont. C.A.), at para. 22.
- [12] With respect to the offer to settle, I easily conclude that it does attract the cost consequences of r. 49.10. The offer was more favourable to the defendants, who are now required to pay a judgment in a higher amount than the plaintiff offered to accept, plus prejudgment interest. It contained a term that cost would be in an amount agreed upon or otherwise assessed by the court.
- [13] As the plaintiff points out, all the steps required to be taken for the motion were done after the offer was served. The offer was made only 7 days after the statement of defence was filed. Accordingly, the plaintiff is entitled to an award of costs on a substantial indemnity basis from the date of the offer, which covers almost all of the costs incurred.
- [14] In reaching this conclusion, I reject the defendants’ submission that the counterclaim should affect the evaluation of the offer to settle. As found in my Reasons, the defendants’ counterclaim for damages is in no way “bound up” with the unpaid accounts for which summary judgment was sought. The offer to settle dealt only with the plaintiff’s claim and was silent with respect to the counterclaim. The counterclaim still exists and if pursued, costs will be determined separately following a determination on the merits.
- [15] The scale and the amount of the costs are different matters. It is the case that the defendants’ behavior added to the length and complexity of this matter. This includes but is not limited to the unreasonable conduct of the defendants in failing to comply with a litigation timetable, refusing to consent to straightforward procedural steps such as placing the matter on the long motions running list, issuing a counterclaim seven months after pleadings had closed without disclosing an intention to do so at the case conference and thereby interfering with the timetable order, and failing to admit receipt of a fuel delivery despite overwhelming evidence to the contrary. Several examples of the defendants’ conduct are

outlined in my endorsement dated February 11, 2025, which was the date the court had originally scheduled argument of the motion for summary judgment. Mr. Virk appeared and sought an adjournment without prior notice.

- [16] I have reviewed the plaintiff's cost outline. The time spent and fees are reasonable given the work required for a summary judgment motion, the inefficiencies and extra work created by the defendants' conduct, and the experience of plaintiff's counsel.
- [17] The real issue here is the content of the email. While the plaintiff has not requested full indemnity costs, it does seek an enhanced cost award over and above substantial indemnity costs solely because of the email.
- [18] Generally, other than when triggered by an offer to settle, solicitor and client costs are only awarded against a party where they have engaged in reprehensible, scandalous or outrageous conduct: *Young v. Young*, [1993] 4 S.C.R. 3, 1993 CarswellBC 264, at para. 260. Accordingly, an award of costs beyond substantial indemnity should only be made in response to behavior that goes beyond that which would attract an award of costs on a substantial indemnity scale. It is difficult to define the degree of aggravation to which the impugned conduct must rise to meet this threshold. However, where the conduct is such that it threatens bodily harm to another litigant or justice participant, in my view that threshold is met.
- [19] I have considered the jurisprudence from the Court of Appeal as expressed in *Bayford v. Boese*, 2021 ONCA 533, at para. 5:

On that point, however, we would reiterate the note of caution expressed in *Net Connect Installation Inc. v. Mobile Zone Inc.*, 2017 ONCA 766, 140 O.R. (3d) 77, at para. 8, that there is a significant and important distinction between full indemnity costs and substantial indemnity costs. This court added:

Substantial indemnity costs is the elevated scale of costs normally resorted to when the court wishes to express its disapproval of the conduct of a party to the litigation. It follows that conduct worthy of sanction would have to be especially egregious to justify the highest scale of full indemnity costs.

- [20] In *Hampton Securities Limited v. Christina Nicole Dean*, 2018 ONSC 1585, at para. 24, aff'd 2018 ONCA 901, 51 C.C.E.L. (4th) 244, the court explained that "[a] legitimate public purpose of cost orders is to discourage inappropriate conduct. A cost award based on the principle of full indemnity does that."
- [21] Unfortunately, the contents of the disgraceful email must be referenced. It purports to be sent by "Shaileen Goswami", with an email of international.relations@phoenixfuel.org, dated February 21, 2025. It was sent to Ishvinder Virk. It was copied to Mr. Bellin and the

plaintiff's employee and representative, Priya Patel, who provided evidence for the plaintiff on this motion.

- [22] The email includes allegations that Mr. Bellin spoke to employees at Phoenix Fuel, during which he “sounded intoxicated, used offensive language with girls, made racial comments, held a bullying, intimidating and interrogative tone during your calls...” Still referencing Mr. Bellin, the email states that “he has the permission to subpoena my d\*\*k in his loud and nasty mouth, oh and yeah, he can dip it in Priya’s buttole before that, because that’s where his head stays while trying to function legally”.
- [23] The email concludes by addressing Mr. Bellin as follows: “do translate this to your language Danny. If not understood, I will gladly do it”, followed by characters identified as being written in Gujarati. The plaintiff’s submission is that this translates to “ I will tear your ass apart, you bastard”.
- [24] Mr. Bellin reported the threat to the Waterloo Police Service on February 21, 2025, not for the purpose of having charges laid, but to have a record and occurrence number if something should happen.
- [25] The email chain provided to the court shows that Mr. Virk had sent an email to this same “Shaileen Goswami” earlier on the same day, asking “Shail” to look into “this matter”, alleging that “this guy” (who is unnamed in the email), “has called and bothered employees at Phoenix’s Caledon Site just for permission”. Somehow, “Shaileen Goswami” obtained both the name of Mr. Bellin and his email, as well as two other emails, including Priya Patel’s, as well as a whole body of background information, such that she was able to send the caustic email.
- [26] “Shaileen Goswami” purportedly holds the title of “International Relations & HR Manager” of the Eternal Group of Companies, with an address in Mumbai. If Shaileen Goswami is in fact a real person and human resource manager, one might reasonably conclude from the email that she is not temperamentally suited to her position and is in the entirely wrong line of work.
- [27] However, I readily conclude that she is not a real person, or alternatively, that Mr. Virk is using her name to disguise his identity. There is no legitimate human resource professional who would correspond in this manner, making rude comments and statements that are clearly only of interest to Mr. Virk such as “your client owes us hundreds of thousands of dollars for nonpayment of rebates, refund for overpayments and damages to our business, and it is high time you realize and put that fact in your worthless brain”. The email also references the court order requiring that costs be paid by March 7, 2025, which was the order made by this court on February 11, 2025 for costs thrown away when Mr. Virk made his last-minute request to adjourn the summary judgment motion. The email contains five reasonably lengthy paragraphs, containing insults and referencing the matters involved in this litigation.

[28] Even if I am wrong in concluding that this reprehensible email was authored by Mr. Virk, he was copied on it and has taken no steps to dissociate himself from it, other than denying that he and Goswami are the same person. He has certainly condoned this communication. His written submissions expressed no dismay that such an email had been delivered in response to his request that “the matter” be explored by Goswami.

[29] To the contrary, in their costs submissions the defendants continue the allegation that Mr. Bellin called and threatened multiple employees of Eternal Vibes Inc.. The defendants say that Mr. Virk has likewise complained to the police. The timing of Mr. Virk’s complaint is telling.

[30] Mr. Bellin’s reply submission provides this history of the matter:

7. The Defendants previous counsel removed themselves as counsel of record on January 28, 2025. The Defendants appointed new counsel on February 27, 2025. The Defendants represented themselves from January 28, 2025 to February 27, 2025.

8. On February 20, 2025, at 11:26 am, I called Phoenix Fuel in an attempt to speak to Virk. Virk was not at the gas station. I spoke to an individual that identified herself as Amandeep Kaur. The call lasted 2 minutes and 43 seconds.

9. Following my call, I emailed Virk twice. The first, was at 11:55 am in an attempt to follow up to my email to Virk on February 11, 2025. The second email was at 12:05 pm seeking Virk’s permission to speak to Amandeep Kaur. Virk did not respond to my phone call, nor did he respond to my emails.

10. On February 21, 2025, at 4:18 pm, R & P, Priya Patel and I were copied on an email from Shaileen Goswami to Virk. Shaileen Goswami identified herself as the International Relations & HR Manager of Eternal Group of Companies operating out of Mumbai. I believe Shaileen Goswami and Virk are one and the same person. In the alternative, if they are not one and the same person, Virk adopted the statements made by Shaileen Goswami.

11. Within 5 minutes of receiving the threatening email I replied to everyone, including Virk, that I would be providing a copy of the email to Madam Justice Healy prior to the motion for summary judgment. I made no further attempt to reach out to Virk.

12. I did not raise the threatening email at the hearing of the motion for summary judgment as I did not want to prejudice the Defendants right to a fair hearing.

13. The same day I received the threatening email I reported the threat to the Waterloo Regional Police Service.

14. On February 27, 2025 I received a notice of change of solicitor from Mr. Sukhminder. I immediately advised Mr. Sukhminder of the threatening email I received and that I had reported Virk to the Waterloo Regional Police. I provided Mr. Sukhminder with the occurrence reference number, the name of the officer that responded and their badge number. Mr. Sukhminder was not aware of the threatening email sent by Virk.

15. On February 28, 2025, one day after I informed Mr. Sukhminder that I had reported Virk to the police, I received a phone call at 12:26 pm from a constable with the Peel Regional Police. The constable was following up to a complaint filed by Virk whereby Virk alleged that I was harassing employees of Phoenix Fuel. The complaint filed by Virk is fabricated and without basis and was most likely done in response to learning that I had filed a complaint with the Waterloo Regional Police.

- [31] I assessed Mr. Virk’s credibility unfavourably on the motion for summary judgment, as I do now. I believe that the disgraceful email came from him. His comments could never be warranted and should not be excused. To be clear, I believe none of the accusations levelled by him against Mr. Bellin.
- [32] The processes of the court, the legitimate search for justice for parties, cannot allow itself to be sullied by the type of malicious, venomous communications of the type sent by Mr. Virk. Courts must respond appropriately to protect the integrity of the system. Bullying, threats, attempts to intimidate and deception have no place in the justice system. Parties should not be left to think that threats will be ignored. Parties should not be allowed to believe that they can intimidate their way out of a lawsuit. Our system requires that counsel be able to litigate matters in a professional manner without being subjected to rude and insulting rants such as that contained in the email, let alone threats of harm. Furthermore, litigants should know that when verbally attacked in the manner that Priya Patel has been, the court will not simply shrug its shoulders and hope that the offending litigant will behave better in future.
- [33] This type of highly reprehensible conduct requires an elevated award of costs beyond substantial indemnity for the purposes of keeping it in check. The award must not be more than what the plaintiff has paid its lawyer, so as not to represent a windfall, but must be enough to deter Mr. Virk and other like-minded litigants from engaging in such communications or similar disreputable conduct.
- [34] In the final analysis, I am to “step back” to consider the appropriateness of the costs order overall.

[35] I find that an amount that is fair and reasonable for the defendants to pay to the plaintiff for this action is \$75,000 inclusive of HST.

[36] This court orders that the defendants shall jointly and severally pay costs of this action to the plaintiff fixed in the amount of \$75,000 within 30 days.

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HEALEY J.

**Released: May 14, 2025**