CITATION: Jonckheere v. Slegers, 2025 ONSC 3714
COURT FILE NO.: FC486/23
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2025 ONSC 3714 (CanLII)

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Hans Charles Jonckheere, Applicant

AND:

Irene Theodora Maria Slegers, Respondent

BEFORE: T. PRICE J.

COUNSEL: S. Laubman - Counsel for the Applicant, and agent for Lerners LLP

I.D.D. Sneddon – Agent for the Respondent

HEARD: In Chambers, on written materials

COSTS ENDORSEMENT

Background

[1] The Respondent, Irene Theodora Maria Slegers (**"Irene**"), moved for an order disqualifying Lerners LLP ("**Lerners**") from acting for the Applicant, Hans Charles Jonckheere, **("Hans"**) because of an alleged conflict of interest. It was said to have been based on her being a former client of Lerners, when she allegedly conveyed confidential information which could be used against her in this proceeding to two Lerners lawyers during two different time periods, both of which pre-dated the commencement of this proceeding.

[2] In dismissing her motion[1], I found that Irene had never been a client of Lerners, and that neither lawyer with whom she had spoken had received any information from her, confidential or otherwise, which could be used against her in the current litigation.

[3] Having been unable to resolve the costs of the dismissed motion, the parties are now requesting that I make that determination.

Parties' Positions

[4] Hans seeks costs in the amount of $73,210.71. This amount is the total of his claims for costs in relation to work undertaken on his behalf for the motion by both Lerners

[1] *Jonckheere v. Slegers*, 2025 ONSC 1681

($38,491.21) and Henein Hutchison Robitaille (**"HHR")**, ($34,719.50), the firm he retained specifically to respond to the motion because of constraints faced by Lerners in doing so as a result of its alleged conflict of interest.

[5] While Mr. Sneddon appears to not currently be on the record for Irene, he did author her costs submissions. Irene's request is that a determination of costs should be delayed until after the trial or, at least, until the issue of interim spousal support is determined. A motion concerning that issue was said to be returnable on June 4, 2025. Alternatively, he asks that I award Irene a nominal amount of costs for reasons he articulated in his submissions, which will be discussed later in this endorsement.

Timing of a Costs Determination[2]

[6] Rule 24(1) mandates that a court "promptly after dealing with a step in a case…shall, in a summary manner," either:

a. determine who, if anyone, is entitled to costs in relation to that step and set the amount of any costs, or

b. expressly reserve the decision on costs for determination at a later step in the case.

[7] Mr. Smith, on behalf of Lerners and HHR, urges me to determine costs now.

[8] Having had to address costs of a contested issue reserved from an earlier date in other cases, I am in full agreement with Justice A. Pazaratz, who wrote at paragraph 14 of *Laidman v. Pasalic and Laidman*, 2020 ONSC 7068, that, "A judge who has just completed a step in a case will usually be in the best position to evaluate all of the relevant Rule 18 and 24 considerations. Reserving costs to a future event — often to a different judge — can result in later confusion and controversy about what really happened at the earlier step."

[9] That comment is particularly appropriate in this case. While scheduled as a regular motion, Irene's motion took longer to argue than counsel anticipated. The issue she raised was complex and the facts on which she relied evolved up to the time the motion was argued.[3]

[10] It would be manifestly unfair to expect another judge to determine the costs of this motion, both in terms of the time it would take to become familiar with its nuances and the parties' costs submissions. I am in the best position to assess the parties' claims about costs, being not only fully aware of the underlying bases for the motion but also having made the decision to dismiss it, and having read and considered the parties' costs submissions.

[11] While there is nothing in Mr. Sneddon's submission that would have precluded me from deferring the determination of costs to myself at a later time, as I read Rule 24(1)(b), in order to do that I would have to designate myself as the judge who would preside over a

[2] All references hereafter to a Rule are references to that Rule in the Family Law Rules, O. Reg. 114/99, as amended.
[3] *Jonckheere v. Slegers*, 2025 ONSC 1681 at paras. 81–84

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"later step in the case" which, given Mr. Sneddon's request, would be either Irene's interim support motion, which was already before the court on a date preceding the release of this endorsement, or the trial. I cannot do the former and am not prepared to do the latter. Irene may have objected to me doing so in any event, given my reasons on the motion. And, what if the case were to settle with costs of the motion being reserved? It could conceivably return to me for determination over a year from now. My recollection of the facts and grasp of the issue raised by Irene is far better now than it is likely to be in the distant future. Moreover, Mr. Sneddon did not provide any reason for the costs determination to be delayed.

[12] As a result, I intend to determine costs at the present time.

Success on the Motion

[13] Rule 24(3) provides that, except as may otherwise be provided for in Rule 24, "there is a presumption that a successful party is entitled to the costs of a step in a case."

[14] Given that Irene's motion was dismissed, Hans is presumptively the successful party and is, therefore, presumptively entitled to his costs in defending against Irene's motion.

[15] The exceptions provided for in Rule 24 that could upset the presumption that Hans is entitled to his costs of defending the motion include cases of "divided success" (Rule 24(4)), child protection cases (Rule 24(5)), cases with a government agency as a party (Rule 24(6)), a case where a successful party behaves unreasonably (Rule 24(7)) and, conceivably, a case where a successful party is found to have acted in bad faith (Rule 24(10)).

[16] Of those exceptions, the only ones hinted at by Mr. Sneddon were the implications that:

a. Hans behaved unreasonably when he failed to instruct Lerners to provide an affidavit from Ms. Dale before Irene served her motion materials, thereby running up Irene's costs; and

b. Hans ran up costs by "failing to advise his counsel [about] his knowledge of Irene's previous relationship with Lerners."[4]

[17] I note, however, that Mr. Sneddon only once directly accused Hans of behaving unreasonably, and that is in Paragraph 14 of his submissions, when he tied such behaviour to an issue decided on a different motion decided by Justice ten Cate.

[18] Mr. Sneddon also noted on more than one occasion that Hans had allegedly refused to agree to mediation in this case. Apart from me having no evidence of that, the issue about which

[4] The use of the singular "relationship" is interesting, as the submission was made in relation to Irene's communications with Ms. Dale only. Had Irene's alleged legal relationship with Mr. Lerner been intended to be included, I assume that the plural, "relationships", would have been used.

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Irene brought her motion would not have been capable to resolution by mediation between the parties, since the motion was a direct attack on Hans' choice of counsel at a time when he had already incurred substantial legal fees and would have to duplicate some of those costs if he willingly agreed to have Lerners removed as his counsel.

[19] I therefore conclude that the presumptive position of Hans as the successful party on the motion, who is presumptively entitled to costs, has not been displaced by any of the exceptions set out in Rule 24.

Offers to Settle

[20] I have twice noted that Hans is the presumptively successful party to the motion. I have done so because of the legal authorities which have suggested that, to determine whether a party has been successful, the court should take into account how the order or eventual result compares to any settlement offers that were made. (*Lawson v. Lawson,* [2008] O.J. No. 1978; *Scipione v. Del Sordo,* [2015] O.J. No. 5130; *Reichert v. Bandola*, [2024] O.J. No. 3643)

[21] The reason is the potentially elevated costs provisions set out in Rule 24(12) (formerly Rule 18(14).5). In order to be entitled to elevated costs, a party who makes an order must obtain an order that is as good as or better than that party's offer.

[22] Each party made one settlement offer. Irene's contained severable terms. It provided that, in exchange for the dismissal of her motion to remove Lerners as counsel for Hans, he could either:

a. pay her $6,000.00 and agree that she could amend her Answer to include a claim for equalization of net family property and substitute a new clause for another already in the Answer; or

b. pay her $8,500.00 and agree to adjourn her motion to amend her pleadings to a mutually agreed upon date.

[23] In order to be found to be the successful party as measured against this offer and thereby entitled to elevated costs, Irene would have had to have the court dismiss her motion and, at the very least, award her some costs and adjourn her motion to amend her pleadings to another date.

[24] While Irene's Notice of Motion included a request that she be permitted to amend her Answer to include a claim for equalization of net family property and substitute a new clause for another already in the Answer, the materials placed before me on the motion contained no information about the reason for the need to substitute a new clause for one already contained in the Answer. As a result, I could not have addressed that requested amendment to her pleading, so my order would not have addressed that issue. Moreover, by the time the matter was argued, the parties had already agreed that Irene's motion to amend pleadings was to be adjourned in any event.

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[25] That left Irene needing to obtain an order dismissing her motion and awarding her costs of at least $8,500.00 for it to have been as good as her offer, and costs of more than $8,500.00 for it to have been better than her offer.

[26] The order dismissed her motion (thus matching her offer that the motion be dismissed), but made no determination that she would be entitled to costs. Therefore, the order was worse for her than her offer. As a result, she cannot access elevated costs as a successful party.

[27] In effect, with her offer, Irene, bet against the relief that was being sought on her behalf during the motion.

[28] While Irene's offer anticipated Lerners not being removed as counsel for Hans, for her to have been a successful party from the perspective of the continuing litigation, given the relief that she sought and continued to advocate for at the time of the motion, Lerners would have had to be removed as counsel for Hans. It was not.

[29] All of this leads to an obvious conclusion: Hans was the successful party on the motion.

Rule 24(12) – Hans' Claim for Elevated Costs

[30] Mr. Smith submitted that Hans is entitled to the benefit of the elevated costs provisions set out in Rule 24(12).

[31] He pointed out that Hans' offer met the other requirements of Rule 24(12) — being made more than one day before the motion date, not having expired or been withdrawn before the motion was commenced, and not accepted by Irene.

[32] The only remaining issue is whether the order made was as good as or better for Hans than his offer. It provided as follows:

a. Irene's motion seeking Lerners' removal as counsel for Hans would be dismissed;

b. Irene's request to amend her Answer would be adjourned to a mutually agreed upon date;

c. the balance of Irene's motion (costs, in effect) and Hans' motion (requesting leave to file affidavits of Mr. Smith and Ms. Dale and requesting that Irene's motion be dismissed with costs) would both be dismissed; and

    i. if accepted before noon on February 7, 2025, Irene would pay all-inclusive costs of $7,500.00 to Hans on or before March 14, 2025; or,

    ii. if accepted after noon on February 7, 2025, Irene would pay as costs to Hans, on or before March 14, 2025, the sum of $12,500.00 plus, on a full recovery basis, the costs incurred by him after noon on February 7, 2025.

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[33] While Hans' offer seems to meet all of the criteria to satisfy an enhanced costs award under Rule 24(12), decisions exist in which the entitlement to enhanced costs provided from in Rule 18(14), the predecessor of Rule 24(12), have been denied because the offer contains a costs provision. (*Chomos v. Hamilton*, 2016 ONSC 6232; *Henderson v. Winsa*, [2019] O.J. No. 6; *Van Boekel v. Van Boekel*, 2020 O.J. No. 5371; *F.K. v. A.K.*, [2020] O.J. 3456)

[34] It seems that Mr. Smith may have anticipated this problem because, in his submissions, after referring to Hans' offer and its costs provisions, he wrote:

> "Considering the costs incurred, Mr. Jonckheere's offer should be considered favourable, or more favourable to Ms. Slegers' offer, than the Order made. If the court finds that Mr. Jonckheere's Offer does not entitle him to full recovery costs under Rule [24(12)], it remains relevant under Rule 24(14(a)(iii)…."

[35] While I understand Mr. Smith's logic that it is more likely than not that, by February 7, 2025, Hans might have incurred lawyer's fees in an amount greater than $7,500.00 or even $12,500.00, thereby making his offer more favourable to Irene than the order, I prefer the reasoning of Justice Pazaratz at paragraphs 24 through 29 of *Chomos v. Hamilton*, which I adopt in concluding that Hans' offer failed to fully comply with the provisions of Rule 24(12) because it included a partial predetermination of costs.

[36] Another flaw in Hans' offer is that it was not severable. Had he made the costs provisions severable, his offer may have otherwise met the criteria for Rule 24(15).5.

[37] I do agree, however, with Mr. Smith that I may still have regard to Hans' offer under the provisions of Rule 24(12(a)(iii), which I intend to do when setting costs.

Rule 24(14) – Setting Costs

Rule 24(14)(a) – Importance and Complexity of the issues

[38] Mr. Smith submitted that the motion was significant to Hans because Irene sought to deprive him of counsel of his choice. Had she succeeded, he submitted, it would have rendered "redundant" the substantial legal fees that he had already paid to Lerners.

[39] As to complexity, Mr. Smith submitted that this was not a "run-of-the-mill" family law motion. The motion's complexity was compounded, according to Mr. Smith, by the changing reasons advanced by Irene for the relief that she sought as evidence failed to support her position. He noted that Irene's "constantly evolving grounds created an evidentiary analytical target" which resulted in Lerners having to file affidavit evidence from three different lawyers responding to the allegations against them.

[40] Mr. Sneddon, on the other hand, referred more than once to Irene's motion to remove Lerners as a "procedural motion." I disagree.

[41] Irene's request to be permitted to amend her Answer was procedural in nature.

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[42] I contrast that with the gravity of Irene's primary motion seeking to deprive Hans of his counsel of choice. The two motions are not of equal import or nature. The primary motion struck at one of Hans' fundamental rights. It was not a procedural motion.

[43] The fact that the motion to remove Lerners was complex is evidenced by the time that all counsel put into preparing for it, including writing factums which included detailed, and well-supported, legal arguments.

[44] Consequently, when assessing the factors that follow in Rules 24(14)(a)(i) through 24(14)(a)(vi), I intend to do so through a lens of Irene's motion being of the utmost significance and above-average complexity.

Rule 24(14)(a)(i) – Each Party's Behaviour

[45] This factor drew much of the attention in the submissions of both Mr. Smith and Mr. Sneddon.

Mr. Smith, on behalf of Hans

[46] Mr. Smith, while not specifically labelling Irene's action in bringing her motion an act undertaken in bad faith, came close when examining her actions as her knowledge evolved.

[47] Beginning by again citing Irene's original reason for bringing the motion — that she was a client of Lerners because she was the daughter and a beneficiary of the estate of a woman who had retained Lerners to prepare her will and thereafter provided legal services to her Estate Trustees — he submitted that Irene should have ceased claiming that she was a client of Lerners upon learning that her understanding was incorrect, but she failed to do so.

[48] She also claimed that Lerners had gained confidential information about her through her mother, but was unable to substantiate her allegation, and failed to dispute the evidence of Ms. Dale to the contrary. Yet, she persisted in advancing her claims.

[49] She claimed that she had spoken to Ms. Dale and conveyed confidential health information to her but was unable to particularize what she told Ms. Dale, nor show its relevance to the current case.

[50] Failing to advance her case with the allegations about Ms. Dale, and only at the last minute, Irene then alleged that she had been a client of Mark Lerner many years before in relation to an action that she had commenced against an institutional lender which Lerners represented at the time. Again, Irene failed to demonstrate how the information that she allegedly conveyed to Mr. Lerner — and which he denied receiving — had any relevance to the current proceeding.

[51] In making those allegations, Irene failed to comply with the Rules, raising her claim against Mark Lerner late in the process and, for the first time, in a reply affidavit. She compounded her non-compliance by filing a further affidavit responding to Mark Lerner's denial of her

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allegations. As Mr. Smith noted, Rule 1(8.1) allows the court to award costs against someone who fails to follow the Rules.

[52] Lastly, Irene alleged that Lerners cannot represent Hans because Ms. Dale might need to testify at the trial between the parties. She failed, however, to convince me that there was even a reason why Ms. Dale would need to do so, leading me to conclude that this claim was far from enough to disqualify Lerners.

[53] In the result, according to Mr. Smith, Irene's true purpose in bringing her motion was to gain a tactical advantage over Hans by driving up his costs and putting him off-balance by losing his lawyer, rather than to ensure that she was protected from the possibility of confidential information that she had shared with her former lawyers being used against her during the current litigation.

[54] These, combined, according to Mr. Smith, while not amounting to bad faith, suggest that I should order substantial costs against Irene.

Mr. Sneddon, on behalf of Irene

[55] According to Mr. Sneddon, the entire motion could have been avoided if Ms. Dale had simply provided him, early on, with an affidavit in which she confirmed that she had received no confidential information about Irene while representing her mother. That, he submitted, should be a factor when I determine costs.

[56] In fact, he suggests that many of the costs incurred by Irene stem from the work that had to be undertaken to advance her motion before Ms. Dale ultimately relented and provided the requested affidavit.

[57] To that end, he pointed to the fact that Irene had served her offer to settle immediately after receiving Ms. Dale's affidavit. As already noted, that offer would have had Irene's motion dismissed if Hams had paid her costs of $8,500.00 and agreed (as he did) to the motion to amend pleadings going to a different date.

[58] Mr. Sneddon's submission was to the effect that Hans was at fault for leaving Irene without Ms. Dale's information, thereby causing Irene to incur mounting legal costs having Mr. Sneddon prepare for the motion to remove Lerners.

[59] Mr. Sneddon also pointed to actions which, he suggested, support his claim that Irene has behaved reasonably about this motion. These include her checking with the Law Society of Ontario about Lerners' potential conflict before bringing her motion, bringing the motion early in the proceeding, and quickly serving her offer to settle once satisfied that Ms. Dale possessed no confidential information about Irene.

[60] In making his submissions, Mr. Sneddon pointed to a number of matters outside my jurisdiction in setting costs of the motion that I heard. These included: costs in a motion between the parties that had been heard by Justice ten Cate; that Hans refuses to participate

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in mediation; that he ceased paying support to Irene and refuses to pay her interim support; and that Hans would not settle the issue of costs.

Analysis

[61] Having already noted that Irene's offer to settle was, in effect, a case of her betting against her own motion succeeding, I must admit to being perplexed about another aspect of that offer.

[62] Irene's offer was dated February 5, 2025. Had Hans accepted either of its two severable proposals, Irene's motion to have Lerners removed as counsel for Hans would have been dismissed.

[63] It appears to have been Irene's intention that, had Hans accepted the offer before 4:00 p.m. on February 6, 2025, he would have paid the fixed costs set out in the offer. However, had he accepted the offer after February 6 , 2025, he would have had to pay partial indemnity costs until February 6, 2025 and full recovery costs thereafter.

[64] February 6, 2025 is the date on which, if the offer was not accepted by Hans, the cost of acceptance increased, since the offer remained open for acceptance until one minute after the commencement of the motion to remove Lerners.

[65] Given the significance on costs of an acceptance by Hans on or before of February 6, 2025, I am left to wonder what Irene's position would have been about having previously being a client of Mark Lerner if Hans had accepted her offer at any point before she delivered her reply affidavit sworn February 7, 2025 in which she raised, for the first time, that she was also a former client of Mark Lerner.

[66] Would she simply not have mentioned her allegation, and left it untold? If she had, what does that say about the seriousness with which she regarded her allegation that her discussions with Mark Lerner placed Lerners in a conflict of interest in representing Hans? The fact that she attempted to incentivize Hans to accept her offer no later than February 6, 2025 suggests to me that Irene was quite prepared not to make that argument, or even to raise the issue.

[67] On the other hand, I also question whether Irene's willingness to settle by February 6, 2025 for lower costs was only in relation to the allegations that she had made about Ms. Dale — her only known allegations at that point — leaving her allegations about the role of Mark Lerner to be raised later, in a different motion. Mr. Sneddon did not address these issues in his submissions.

[68] However, the fact that these possibilities exist causes me to be concerned about the sincerity of Irene's claim of Lerners being in a conflict of interest because of her prior discussions with Mark Lerner. A lack of sincerity about that claim would be serious because, once made, it put Hans to significant additional legal expense responding to it.

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[69] These concerns lend much weight to Mr. Smith's submission that, in bringing her motion, Irene was less concerned about protecting her own allegedly confidential information than in gaining a tactical advantage over Hans in this proceeding, an act that, if not bad faith, must be factored in when considering Irene's behaviour.

[70] As for Mr. Sneddon's submission that the whole motion could have been avoided if Hans had accepted Irene's offer, I agree with Mr. Smith that, once she was aware that her claim regarding Ms. Dale's alleged possession of confidential information was undermined, Irene could have withdrawn her motion and left the parties to argue costs at a much earlier stage of the matter. This would have avoided the large claims for costs that emerged after February 6, 2025. Instead, as noted, Irene escalated her claim.

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Rule 24(14)(a)(ii) – Time Spent by Each Party

[71] According to the Lerners Bill of Costs submitted by Mr. Smith, Lerners lawyers and staff devoted 88.5 hours to preparing for the motion over the period between January 17, 2025 and February 11, 2025.

[72] The persons who worked on the file were Mr. Smith, who devoted 40 hours to preparatory and related work, a junior associate lawyer, who devoted 15.1 hours to preparatory and related work, and a law clerk who devoted 32.9 hours to assisting the lawyers and undertaking other work in relation to the pending motion.

[73] All three persons also docketed time for attending on the motion when it was argued on February 12, 2025, but no fees or disbursements were charged for the events of that day.

[74] According to the HHR Bill of Costs submitted by Mr. Smith, Mr. Laubman devoted 35 hours to preparing for, attending, and arguing the motion on February 12, 2025, and a junior associate lawyer devoted 1.6 hours to assisting Mr. Laubman.

[75] As a result, the two firms involved on behalf of Hans devoted 92.2 hours of work by lawyers on the motion, including Mr. Laubman's attendance to argue it on February 12, 2025, and 32.9 hours by Mr. Smith's law clerk, for a total of 125.1 hours.

[76] According to a Bill of Costs submitted by Mr. Sneddon, lawyers and staff devoted 83.2 hours to preparing for the motion over the period between January 15, 2025 and February 12, 2025. The total includes Mr. Sneddon's attendance on the motion on February 12, 2025.

[77] Work on the file was undertaken by Mr. Sneddon (51 hours), two other lawyers (4.3 hours), two law students (11.2 hours) and a law clerk (16.7 hours).

[78] The work undertaken by Mr. Smith and his associate totalled 55.6 hours, while the work undertaken by Mr. Sneddon, his associates and law students, totalled 66.5 hours. The time

docketed by Mr. Smith's law clerk was about twice that of the time docketed by Mr. Sneddon's law clerk.

[79] The factor which resulted in Hans having more legal time devoted to his defence of the motion was the involvement of Mr. Laubman and his associate.

[80] Mr. Laubman's involvement was necessary for two reasons. Firstly, when Irene raised the issue of a conflict, Lerners put into place a communication prohibition between Mr. Smith and, initially Ms. Dale, which was extended to Mark Lerner when he was also identified by Irene as a potential source of conflict for Lerners. This meant that Mr. Laubman had to prepare the affidavits of Ms. Dale and Mark Lerner. Secondly, because Mr. Smith could not argue the motion, Mr. Laubman did so.

[81] Both Lerners' and HHR's Bills of Costs were light on examples of double-billing and excessive "consultations" or "reviews" of documents. HHR's Bill of Costs, in particular, was focused on the task for which Mr. Laubman had been retained: prepare for and argue the motion.

[82] That noted, in reviewing the Bills of Costs for both Lerners and HHR and before setting costs, I:

a. reduced by 1/3 the time docketed by Mr. Smith's law clerk, since many of the tasks that she undertook, by their description, seemed more akin to secretarial work, which are part of overhead and not recoverable as costs. ((*Martinuk v. Graham*, [2016] O.J. No. 3102, at para. 22(d); *Reichert v. Bandola*, at para. 26);

b. deducted the time spent by Mr. Smith (1.2 hours) and his associate (2.0 hours) to researching expert opinion evidence, since this does not appear to have been an issue raised on the motion;

c. deducted the time that Mr. Smith's associate devoted to reviewing and revising the factum (1.8 hours), since this appears to represent a duplication of efforts expended in that regard by both Mr. Smith and Mr. Laubman;

d. reduced, by two hours, the eleven (11) hours that Mr. Smith devoted to drafting the factum, since Mr. Laubman devoted 5.6 hours to "reviewing and revising" it; and

e. reduced, by 1 hour, the 11.2 hours that Mr. Smith devoted to drafting his affidavit, since Mr. Laubman devoted 2.6 hours to "reviewing and revising" it.

[83] In making these reductions, I do not wish in any to be taken as commenting on the quality of the work undertaken by either Mr. Smith or his associate, because I am not. They, instead, represent what I perceive as possibly being duplicative, or unnecessary, efforts for which Irene should not be paying costs.

Rule 24(14)(a)(iii) – Any Written Offers to Settle, including those not complying with Rule 24(12) or Former Rule 18

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[84] I have already commented on Irene's offer. It is inconceivable that she seriously thought that Hans would pay her to withdraw a motion that he firmly opposed and which, if successful, had the potential effect of setting him back in the litigation.

[85] While I have explained why Hans' offer does not fully comply with Rule 24(12), it was in all other respects reasonable and, in hindsight, ought either to have been accepted by Irene or met with a counteroffer to leave the issue of costs to the court. In either event, the continued build-up of costs would have ended for both parties.

[86] By not accepting Hans' offer or seeking to settle based on some variant of it, or by not withdrawing her motion and seeking to either resolve the issue of costs or have the court determine them, Irene, was, it seems, truly content to "sit back and roll the dice."[5]

Rule 24(14)(a)(iv) – Any Legal Fees, including the number of lawyers and their rates

[87] I have already noted who worked on this motion for each party.

[88] Further details of those who worked on the motion for Hans are as follows:

a. Mr. Smith, who has been a lawyer since 1989, billed his time at $840.00/hr.

b. Ms. Lawr, his associate, who has been a lawyer since 2024, billed her time at $330.00/hr.

c. Mr. Smith's law clerk, who has 24 years' experience, billed her time at $330.00/hr.

d. Mr. Laubman, who has been a lawyer since 2005, billed his time at $1,050.00/hr.

e. Ms. Crocker, his associate, who has been a lawyer since 2019, billed her time at $575.00/hr.

[89] For comparison, I note that Mr. Sneddon, who has been a lawyer since 1996, and who is a Certified Specialist in Family Law, billed his time at $565.00/hr. The other lawyers who assisted Mr. Sneddon have been lawyers since 1983 ($500.00/hr.) and 2016 ($360.00/hr.). The law students' efforts were billed at rates varying between $160.00/hr. and $165.00/hr., and Mr. Sneddon's law clerk, with 30 years' experience, billed her time at $160.00/hr.

[90] While not disputing the experience of either Mr. Smith or Mr. Laubman, Mr. Sneddon submitted that the overall costs claimed by Hans are excessive and not reflective of a motion that was completed in 90 minutes. He compared his experience and hourly rate and those of his associates and staff against those from Lerners and HHR.

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[5] *Husein v. Chatoor* (2006), 24 R.F.L. (6th) 274 (Ont. Ct. J.), at para. 30, endorsed by the Court of Appeal in *Serra v. Serra*, [2009] O.J. No. 1905, at para. 6.

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[91] He urged that I apply Justice G.A. Campbell's "general observation" about the use of counsel from a larger centre articulated in *Czegledy-Nagy v. Seirli*, [2012] O.J. No. 249, and not pass on to Irene the higher costs incurred by Hans in retaining counsel from Toronto when the proceeding is in London.

[92] As to the issue of using Toronto counsel, while I understand the views expressed by Justice G.A. Campbell in *Czegledy-Nagy v. Seirli,* other courts have taken a different view. For example, in *Grant v. Grant*, [2006] O.J. No. 23 (S.C.J.), Justice T.M. Wood addressed this issue as follows, at para. 5(c):

> The respondent father hired one of the more senior and respected counsel in the province. His hourly rate is $485.00 an hour. His junior billed her time at $325.00 per hour. I have been urged by counsel for the applicant mother to find that these "Toronto rates" are not appropriate to litigation being conducted outside that city. Notwithstanding some case law, which would appear to support this position, I do not find the analysis helpful. The respondent and the applicant were each entitled to retain any counsel they wished. The amount that each of them will have to pay their lawyer is one factor to take into account among the other enumerated factors. It does not follow that costs should be higher because one party has hired senior counsel. Similarly, however, it does not follow that some automatic discount should be applied because the rates charged to one party are higher than those normally seen in a given area.

[93] A similar view was expressed recently by Justice F. Kristjanson in *Kuang v. Young*, [2024] O.J. No. 574, who wrote, at para. 5, "Ultimately, reasonableness and proportionality are the touchstone considerations in setting costs, not the fees charged by solicitors."

[94] I agree with the views expressed by Justices Wood and Kristjanson. However, one issue that flows from Mr. Sneddon's concerns about Hans retaining Toronto counsel has to do with the discrepancy between the hourly rates of Mr. Smith, a lawyer with 36 years' experience ($840.00) and Mr. Laubman, a lawyer with 20 years experience ($1,050.00). While Hans was able to select whoever he wanted to represent him on the motion, I find it reasonable to consider, when setting costs, what HHR's Bill of Costs would total if Mr. Laubman's hourly rate were set at that of Mr. Smith, who is Hans' primary counsel, is senior to Mr. Laubman by 16 years, and practices law in the same jurisdiction as Mr. Laubman.

[95] In my endorsement on the motion, I directed Mr. Sneddon to indicate what he had billed Irene for her motion, having regard to a principle articulated in many costs decisions, a more recent one being that of Justice Kraft in *Reichert v. Bandola*, at para. 28, that "[a] useful benchmark for determining whether costs claimed are fair, reasonable and proportional is to consider the time that the other party has spent and the amount they have paid for their own legal fees and disbursements in the matter."

[96] Mr. Sneddon's submissions included a form of Bill of Costs from which I discerned that Irene was, or was liable to be, billed as much as $39,439.83, all inclusive, for the motion.

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[97] In *Scipione v. Del Sordo,* [2015] O.J. No. 5130, Justice A. Pazaratz also addressed how a court should address what might be seen to be an unreasonably large claim for costs when he wrote:

> **113** … The Rules do not require the court to allow the successful party to demand a blank cheque for their costs. *Slongo v Slongo 2015 ONSC 3327* (SCJ). The court retains a residual discretion to make costs awards which are proportional, fair and reasonable in all the circumstances. *M.(C.A.) v. M.(D.) (2003) 67 O.R. (3d) 181* (Ont. C.A.)

Case Law and Analysis

[98] Justice Epstein, writing on behalf of a unanimous Court of Appeal panel on a costs appeal in *Davies v. Clarington*, 2009 ONCA 722, at para. 52, held that the "overriding principle" when setting costs "is reasonableness." Justice Epstein continued,

> "If the judge fails to consider the reasonableness of the costs award, then the result can be contrary to the fundamental objective of access to justice. Rather than engage in a purely mathematical exercise, the judge awarding costs should reflect on what the court views as a reasonable amount that should be paid by the unsuccessful party rather than any exact measure of the actual costs of the successful litigant. In *Boucher,* this court emphasized the importance of fixing costs in an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding at para. 37, where Armstrong J.A. said, "[t]he failure to refer, in assessing costs, to the overriding principle of reasonableness, can produce a result that is contrary to the fundamental objective of access to justice."

[99] More recently, the Court of Appeal held that "proportionality and reasonableness are the touchstone considerations to be applied in fixing the amount of costs" in a family law case. (*Beaver v. Hill*, [2018] O.J. No. 5412)

[100] In assessing proportionality, I am also required to give some consideration to the expectations of the unsuccessful party. That consideration was discussed by Justice Pazaratz in *Scipione v. Del Sordo*, where he wrote:

> **124** The issue of proportionality often becomes intertwined with another priority in fixing costs: Consideration of the reasonable expectation of the unsuccessful party, concerning the size of any costs claim they might face if they lost the case. These expectations are relevant, but not determinative of costs. *Zesta Engineering Ltd. v. Cloutier*, *[2002] O.J. No. 4495* (ONT. C.A.); *Moon v. Sher [2004] O.J. 4651* (ONT. C.A.); *Van Wieren v Bush 2015 ONSC 5615* (SCJ).
>
> **125** The unsuccessful party's "expectations" must usually be addressed inferentially…[o]ften the best evidence is comparative. How much did the unsuccessful party pay their own lawyer, in relation to the same case?

[101] However, Justice Pazaratz also noted, at paragraph 129, that "[t]he size of an unsuccessful party's legal bill does not in any way dictate that the successful party's legal bill is limited to the same amount."

[102] Additionally, I am also required to take into account the financial circumstances of the party who must pay the costs award. (*F.K. v. A.K.,* [2020] O.J. No. 3456 (S.C.J.)) However, that factor seems to be more applicable in cases where the losing party also has child-care obligations. That is not an issue in this case.

[103] Other key points to be taken from *F.K. v. A.K.*, pertinent to this case, are found in paragraph 24[6]:

a. A party's limited financial circumstances cannot be used as a shield against any *liability* for costs. Ability to pay will be taken into account regarding the *quantum* of costs. *Snih v. Snih*, 2007 CanLII 20774 (SCJ); *Dhillon v. Gill*, 2020 ONCJ 68 (OCJ). But ability to pay will be less of a mitigating factor when the impecunious party has acted unreasonably, or where their claim was illogical or without merit. *Gobin v. Gobin* (2009), 71 R.F.L. (6th) 209 (OCJ).

b. Parties cannot expect to be immune from an order of costs based on their limited financial resources. If this were the case, parties would be free to conduct litigation as they wished without fear of reprisal in the form of adverse costs orders and this would be contrary to the philosophy and requirements of the *Rules*. *Culp v. Culp*, 2019 ONSC 7051 (SCJ); *Mark v. Bhangari*, 2010 ONSC 4638 (SCJ).

c. Ability to pay alone cannot, nor should it, over-ride the other factors in Rule 24(12). *Peers v. Poupore*, 2008 ONCJ 615 (OCJ)

d. Those who can least afford litigation should be the most motivated to seriously pursue settlement and avoid unnecessary proceedings. *Mohr v. Sweeney*, 2016 ONSC 3238 (SCJ); *T.L. v. D.S.*, 2020 ONCJ 9 (OCJ); *Balsmeier v. Balsmeier*, 2016 ONSC 3485 (SCJ).

[104] I find that these latter comments are particularly applicable to Irene's action on this motion. It was brought on thin evidence. When it became apparent that the motion was unlikely to succeed on the initial basis on which it was brought, instead of negotiating her way out of the problem, she sought to monetize it, indicating that the motion would go away if Hans paid her for not pursuing it. When he did not do as she hoped, she doubled down and made a further spurious claim. This put Hans to greater legal costs.

[105] She got to this point by paying or being liable to pay a reasonably substantial sum to her own lawyer. She knew or ought to have known that, if she was not successful, she would

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[6] The subparagraph lettering that follows in this paragraph is only for this endorsement and does not match that contained in *F.K. v. A.K.*

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pay costs. Despite receiving a reasonable offer to back out of the fight that she had chosen, she ignored it and pressed on, all to no avail.

[106] Borrowing from the words of Justice Kraft at paragraph 35 of *Reichert v. Bandola*, there is no doubt that this matter was of significant importance to both parties and each party incurred significant legal fees. As a result, Irene should have expected to pay costs if she were unsuccessful.

[107] Another principle when setting costs is that "[t]he 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.'" (*Davies v. Clarington,* at para. 51)

[108] There is no doubt that the amounts being discussed in this endorsement are large. However, while I was not provided with either a citation or a copy of the costs decision, in his submissions, Mr. Smith indicated that, "in February 2025, Mathen J. in *Yacoub v. Serafini*,[7] on a removal motion, ordered $50,000.00 [against claimed costs of $60,000.00] against the spouse seeking removal."

[109] I have no reason to doubt the information provided to me by Mr. Smith.

[110] As a result, the costs that Irene should pay to Hans should be reflective of the many poor decisions she made in bringing and continuing to pursue her ultimately unsuccessful motion.

[111] Lastly, I have applied the suggestion made by Justice Polowin at paragraphs 58–59 in *Sommerard v. I.B.M. Canada Ltd.,* [2005] O.J. No. 4633 (S.C.J.), noted by Justice Chappel at para. 25 in *Thompson v. Drummond*, [2018] O.J. No. 4160, as follows:

> The fixing of costs is not a mechanical exercise of calculating hours times hourly rates. The overall objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding. In doing so, I must stand back from the fee produced by the raw calculation of hours spent times hourly rate and assess the reasonableness of the counsel fee from the perspective of the reasonable expectation of the losing party.

[112] In making my decision, I have done the analysis, then "stood back" and assessed the reasonableness of the overall costs award against what I consider ought to have been Irene's reasonable expectations of losing her motion.

[113] Having done that, I find that the amount that I am ordering Irene to pay meets all of the above criteria, and is both reasonable and proportional in the overall circumstances of the motion for which this costs order is being made.

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[7] Justice Mathen's reasons for dismissing the motion are found at 2025 ONSC 61.

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Order

[114] The Respondent, Irene Theodora Maria Slegers, shall pay to pay costs to the Applicant Hans Charles Jonckheere in the amount of $57,000.00, all inclusive, comprised of all-inclusive costs attributable to Lerners in the amount of $29,500.00 and all-inclusive costs attributable to HHR in the amount of $27,500.00.

"Justice T. Price"

Justice T. Price

Date: June 24, 2025

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