

[3] The Applicants submit they are entitled to their partial indemnity costs of the application payable by Dr. Fowlie, notwithstanding that the Award and Costs Award were set aside on the basis of procedural unfairness by the Arbitrator. In addition to Dr. Fowlie voicing support for the Arbitrator's unilateral decision to change the hearing format during the arbitration shortly after it was made, it was Dr. Fowlie's choice to vigorously contest this Application and defend how the arbitration was conducted. The court accepts this submission. By contrast, the other Respondent, WCL, did not oppose the relief sought and accordingly costs are not sought by the applicants against WCL.

[4] As the applicants were entirely successful on this application, they are prima facie entitled to their partial indemnity costs against the respondent, Dr. Fowlie.

[5] In terms of the quantum of costs, the court further accepts the applicant's submission that the amount sought by them is fair and reasonable in the circumstances, having regard to the factors set out in r. 57.01 of the *Rules of Civil Procedure*. In particular:

- The lengthy suspension given by the arbitrator would likely be career ending for the respondents Spinney and Shamiya, in terms of their coaching careers in amateur wrestling, and was thus a very important issue for them.
- The applicants' costs claim is very near to the costs awarded against them by the arbitrator and is reasonable for a hearing of 2.5 days duration.
- This was a factually complex application necessitating the review of a 7 volume voluminous and dense record, consisting of over 2,600 pages of documentary evidence, transcripts, correspondence, procedural orders, and legal submissions.
- On the courts review of the Bill of Costs, Applicants' counsel utilized billing rates and time management and docketing practices which are reasonable and appropriate.

Costs Submission of the Respondent, Dr. Frank Fowlie

[6] The respondent, Dr. Frank Fowlie, seeks an order for the parties to bear their own costs for the application. Dr. Fowlie says that although he responded to the application, “he was not responsible for Arbitrator Pound’s conduct, reasoning, and decision-making in the arbitration proceedings”.

[7] To be clear, Dr. Fowlie fully and actively opposed the applicants’ position in this application, arguing strongly the arbitrator took appropriate and lawful procedural steps to deal with obstructive conduct by the applicants. Moreover, during the arbitration Dr. Fowlie did not oppose or seek reconsideration from the arbitrator of the written procedure imposed on the applicants in the arbitrator’s procedural order (which converted the hearing to a written procedure).

[8] Dr. Fowlie’s alternative position that the applicants’ costs should at least be reduced as a result of their conduct during the arbitration, deserves serious consideration. It is apparent from the arbitrator’s reasons that he took the extraordinary step of converting the hearing to a written process (mid hearing) because of what he viewed as ongoing misconduct on the applicants part designed to delay and frustrate the hearing and to disqualify himself due to frivolous allegations of bias and conflict of interest. Arbitrator Pound’s view of the applicant’s conduct is supported by observations in the reasons of the jurisdictional arbitrators assigned to the matter by the SDRCC.

[9] This court recognizes that the applicants’ excellent counsel on this application were not applicant’s counsel in the arbitration proceeding. Indeed one or more of the 3 applicants were self represented for periods of time during the arbitration process, which contributed to ongoing communication and scheduling problems.

[10] I recognize that this Court has a narrow discretion to reduce costs where a successful litigant acts egregiously so as to “provoke” the litigation itself. However, in the present case, in the final analysis, the arbitrator took steps that created an unfair and unequal treatment of the parties in several respects, as set out in the court’s reasons. The applicants’ conduct did not necessarily cause the arbitrator to make the impugned procedural rulings. There were other available solutions had counsels’ submissions been sought or their requests to re-consider been allowed.

The WCL

[11] Lastly, Dr Fowlie submits that if costs are awarded against him, some reasonable portion of such costs should be born by or indemnified by the respondent WCL. WCL was designated a respondent in the arbitration by the SDRCC, rather than as a matter of WCL's own choice. The WCL took no active role in the arbitration, (to the understandable frustration of the arbitrator who was entitled to expect some helpful participation of the sport's governing body when the allegations involved the alleged harassment of one of its own officials). Before this court, the WCL sought to have the court strike out several paragraphs of the arbitral award that criticized it and was said to be outside the parameters of the appeal before the arbitrator.

[12] This relief was initially pursued by WCL in a separate application (CV-24-98189). Whatever the merits of that position, and this court rejected the settlement, it was relief sought on behalf of all parties and on consent. The application had the specific consent of Dr. Fowlie and the applicants. Given Dr. Foley's consent to the requested relief, he can not be heard to suggest the matter can be the basis to award costs to him.

[13] Similarly, the suggestion WCL should have sought the appointment of yet another jurisdictional arbitrator to review Arbitrator Pounds procedural ruling...a ruling not actively opposed by Dr. Fowlie, is clearly without merit. Dr. Fowlie himself could have sought the appointment of a jurisdictional arbitrator if he believed such a step was warranted.

[14] The court finds there is no basis to award costs against WCL.

Disposition

[15] In summary, the Applicants are awarded their costs of this application against the Respondent, Dr. Frank Fowlie, on a partial indemnity basis, in the amount of \$49,636.38, inclusive of HST and disbursements.

Justice Charles T. Hackland

Released: August 5, 2025

CITATION: Spinney v. Fowlie, 2025 ONSC 4547
COURT FILE NO.: CV-24-98074
DATE: 2025/08/05

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF AN APPLICATION
PURSUANT TO SECTION 46 OF THE
*ARBITRATION ACT, 1991, S.O. 1991, C. 17***

BETWEEN:

David Spinney, Ahmed Shamiya and Mara Shiavulli

Applicants

– and –

Dr. Frank Fowlie and Wrestling Canada Lutte

Respondents

REASONS FOR DECISION (COSTS)

Hackland J.

Released: August 5, 2025