**CITATION:** Gashaw v. Riddell, 2025 ONSC 4614
**COURT FILE NO.:** DC-25-0000007-0000
**DATE:** 2025 08 11

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**

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| **B E T W E E N:** | ) | |
| | ) | |
| Matthew Riddell | ) | The Plaintiff/ Respondent, Self-Represented |
| | ) | |
| Plaintiff/ Respondent | ) | |
| | ) | |
| **- and -** | ) | |
| | ) | |
| Asrat Gashaw | ) | Theresa Hartley, for the Defendant/ Appellant |
| | ) | |
| Defendant/ Appellant | ) | |
| | ) | **HEARD:** In Writing |

## REASONS FOR JUDGMENT

**LEMAY J**

[1] The underlying action in this case is a slip and fall. There have been issues in having the claim adjudicated. On January 6th, 2025, the Deputy Judge dismissed the Appellant's motion to set aside a noting in default and granted judgment to the Respondent. The Appellant appealed. In reasons set out at 2025

ONSC 3689, I granted the appeal and set aside the noting in default. The matter will now proceed to adjudication on its merits. I am now required to fix the costs for the appeal and the proceeding before the Deputy Judge.



**Positions of the Parties**

[2] The Appellant argues that he should be entitled to partial indemnity costs in the sum of $5,764.38 along with the costs of the motion before the Deputy Judge in the sum of $500.00. The Appellant argues that the costs are reasonable because of the experience of counsel, the amount claimed in the statement of claim, the importance of the issues and the conduct of the Respondent.

[3] The Respondent argues that no costs should be ordered or, in the alternative, costs of $2,000 should be ordered payable to the Appellants but only if they are successful in the underlying action. In support of this position, he argues:

a) That the Appellant raised eleven issues in its' notice of appeal but was only successful on three of them.

b) That the time expended by the Defendant's lawyers is disproportionate to the simplicity of the issues in this case.

c) The Respondent is on social assistance and, as a result, his reasonable expectations would have been the payment of disbursements only.

d) The Appellant evaded service and breached the *Rules*.

[4] With those arguments in mind, I will now consider the relevant law and apply it to this case.

**The Law and Application**

[5] Rule 57.01 sets out a series of factors that I must consider in assessing the costs of this action. The most relevant of those factors are:

a) The results of the proceeding.

b) The amount claimed in the proceeding

c) The amount of costs that an unsuccessful party could reasonably be expected to pay.

[6] I start with the question of success. The Respondent argues that the Appellant was only partially successful because the Appellant did not succeed on every ground of appeal. I reject that argument. In *Scipione v. Scipione*, 2015 ONSC 5982, there is a discussion of who the successful party is. In short, the successful party is the party that got what they were asking for. In this case, the Appellant wanted the opportunity to defend the action. The Appellant was successful and is presumptively entitled to his partial indemnity costs.

[7] Then, there is the amount claimed in the proceeding. The claim is for $35,000 plus costs. It is at the top end of the limit for small claims court proceedings and, as a result, it is reasonable to expect that costs will be incurred to defend the action and to appeal orders that end the action on a procedural basis.

[8] This brings me to the question of whether the amounts claimed by the Appellant are reasonable. I start with the Respondent's observation that the amount sought "far exceeds any fair and reasonable amount for Small Claims Court proceedings." The problem with this statement is that this is a Divisional Court proceeding. The costs sought by the Appellants are well within the normative range of what the Divisional Court would award for a simple appeal or even a leave to appeal application.

[9] Then, there are the rates that are claimed. The amounts are entirely reasonable. Senior counsel, who was called in 2003, has a partial indemnity rate of $247.00 per hour. Junior counsel, called last year, has a partial indemnity rate of $110.50 per hour. These rates are entirely reasonable.

[10] Then, there is the amount of time that was spent by the Appellant's counsel on this case. The Respondent states that these hours are "by any objective measure, excessive, exaggerated and unreasonable." I disagree. The total amount of time spent on this file was 22.9 hours. That time included review of the record below, preparation of the appeal book and compendium, research and preparation of a factum and the attendance at the hearing. This appeal was prepared and presented in an efficient and cost effective manner. There is no reason to reduce the amounts sought by the Appellant.

[11] I also reject the Respondent's assertion that it was unreasonable to assign two lawyers to this matter. The distribution of time between the two lawyers is a logical and reasonable one. The only issue that I have with the time claimed is that a counsel fee for attending the hearing should not have been claimed by the second lawyer. I am disallowing that amount. However, I am of the view that the Appellant should be entitled to claim costs for the completion of the costs submissions. Counsel has not claimed that time. As a result, I will add the time that I am disallowing for two counsel attending at the hearing back in to the amount claimed to account for the preparation of the costs submissions. The overall number sought appears entirely reasonable.

[12] I am also of the view that the costs sought by the Appellant are reasonable given the nature of the issues. The interplay between the decision under appeal and the decision of Anderson D.J. in the same case made this matter more complicated. Similarly, the multitude of arguments advanced by the Respondent

made this appeal more complicated. This is a factor that justifies a higher award of costs.

[13] The Appellant also claims that he is impecunious and on social assistance. In support of that assertion, he has attached what appears to be a statement from the Government of Ontario showing that the Appellant appears to be in receipt of Ontario Works. He has also relied on the decisions in *Green (225 Davisville Ave.) v. Marois* [2018] O.J. No. 4622 (Div. Crt.) and *Kimae v. Social Services Department (City of Toronto)*, 2020 ONSC 1281 (Div. Ct.). The Appellant concedes that I have the jurisdiction to consider impecuniosity in exercising my discretion but that I should not consider it in this case.

[14] I do have a discretion to decline to award costs on the basis of an inability to pay: *Belvedere v. Brittan Estates*, 2009 ONCA 691. In the cases cited by the Respondent, the Court declined to make an Order as to costs but did not provide any reasons for their decisions. As a result, it is difficult to draw anything from those decisions beyond the fact that I have the jurisdiction to consider impecuniosity as a factor in making a costs award.

[15] In *Aguas v. The Estate of Curtis Rivard*, 2018 ONSC 401, Daley J. sets out some of the considerations in respect of when, and how, a Court should address impecuniosity:

> 13. Having considered several decisions where impecuniosity was examined while at the same time weighing all of the factors and considerations under Rule 57.01 (1), it appears that the courts consider whether or not the unsuccessful, impecunious litigant's avoidance of costs would send a message that one can avoid the rules of the court with impunity simply based upon impecuniosity.
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> 14 In *Jeremiah v. Toronto Police Services Board*, 2009 ONCA 671 (Ont. C.A.), the Court of Appeal stated that "the trial judge must consider all relevant factors and while impecuniosity is certainly an important one it can't be the only one." The court held that the trial judge had erred in permitting impecuniosity to completely absolve the unsuccessful plaintiff of any cost consequences as to do so would ignore the objective of cost awards, including indemnification and deterrence.

[16] In this case, there are two reasons why I am not prepared to consider impecuniosity in my assessment of the costs for this appeal. First, the Respondent has provided no information on his financial situation other than a statement that he is currently on Ontario Works. I have no information on his underlying financial circumstances, how long he has been in receipt of Ontario Works benefits, what his employment prospects might be or what other resources he has access to. In the absence of this evidence, I simply cannot conclude that the Respondent is impecunious.

[17] Further, as noted by Daley J., the Court must also be concerned with the effect of an award of no costs. In this case, the Respondent has taken a hard line position and then complicated the matter with the arguments that he advanced, particularly in respect of the decision of Anderson D.J. (see paragraph 33 of the merits decision). He also sought a self-help remedy by withholding his rent before there was any Court order permitting him to obtain money. Accordingly, I am of the view that an award of costs should be made against the Respondent in this case as that award will compensate the Appellant for the trouble he has been put to.

[18] On that point, I note that the Respondent argues that the Appellant is being defended by the multi-billion dollar insurance company TD Insurance. The fact that the Appellant has insurance and the insurer is defending him is not a reason to deny the Appellant his costs. He has been put to the time, trouble and expense of pursuing this appeal and should be entitled to his costs in the usual course.

[19] In *BeneFACT v. Nanotek*, 2014 ONSC 4409, the Court determined that the costs should be payable in the cause. This is an exercise in judicial discretion. In this case, I am not prepared to exercise my discretion to delay the payment of the costs. This is an appeal, and the *Nanotek* decision involves the motion to set aside a default judgment. In *Nanotek*, the party seeking the indulgence had not been

forced to take the matter to an appeal in order to obtain the opportunity have the merits of the matter heard. In this case, the appeal was not only necessary, but it was vigorously resisted by the Respondent. As a result, the Appellant should be entitled to his costs payable in the usual course.

[20] Finally, I must consider the costs in the Court below. I am of the view that the Deputy Judge ought to have granted the motion to set the noting in default aside. However, that motion would have been an indulgence and should have been granted without costs. As a result, the Appellant should not be entitled to any costs of the motion in the Court below.

[21] I note that the Respondent has accused the Appellant's counsel of misleading and hoodwinking him in respect of the set-off of the costs before Anderson D.J. and the Deputy Judge on this motion. While I do not see any facts to support that argument, I also do not see any reason for this Court to address it as an appeal (or judicial review) of that decision is not before me. The costs order of Anderson D.J. is a separate matter and I make no order in respect of it.

**Conclusion**

[22] For the foregoing reasons, the Respondent is to pay the Appellant the sum of $5,764.38 inclusive of HST and disbursements on account of the costs of this appeal within thirty (30) days of today's date.

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LEMAY J

**Released:** August 11, 2025

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**B E T W E E N:**

Matthew Riddell

Plaintiff/Respondent

**- and -**

Asrat Gashaw

Defendant/ Appellant

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**REASONS FOR JUDGMENT**

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LEMAY J

**Released:** August 11, 2025