

CITATION: RBC v. John, 2025 ONSC 5073
COURT FILE NO.: CV-23-00001229-0000
DATE: 2025-09-04

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Royal Bank of Canada, Plaintiff

AND:

Joseph Avwarute John, Defendant

BEFORE: Kurz J.

COUNSEL: Natalie Marconi agent for counsel Gregory Bowden for the Plaintiff

Joseph Avwarute John, Self-represented

COSTS ENDORSEMENT

[1] On March 10, 2025 I granted the Plaintiff bank (“RBC”) summary judgment against the Defendant, Joseph Avwarute John (“John”) on three unpaid loans totalling \$274,311.33 plus interest. I further granted RBC summary judgment regarding John’s counterclaim against RBC; dismissing that counterclaim. On each, I found no genuine issue for trial.

[2] RBC seeks costs totalling \$15,569.41 for the action and summary judgment motion. It does not ask me to grant costs for those motion attendances in which costs were already awarded, or costs in the Divisional Court regarding John’s appeal of my earlier adjournment order.

[3] But RBC’s request for costs does include the costs of the attendance before Mills J., in which Mr. John was granted a further adjournment pending his unsuccessful appeal to the Divisional Court. Costs of that attendance were reserved to the judge hearing the summary judgment motion.

[4] I have not been provided with any costs submissions by John.

[5] This endorsement comes late because of both an error in court administration which brought RBC's costs submissions to my attention about three months after they were filed and my own caseload since I received those submissions.

[6] For the reasons set out below, I award costs of the motion and action, fixed at \$15,000.

Authorities Regarding the Award of Costs of a Proceeding

[7] In *Halton Condominium Corp. No. 61 v. Kolarovaliev*, 2023 ONSC 6036, I set out the relevant authorities which apply to the determination of costs of a proceeding. I wrote at para. 6-11 as follows:

6 Section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 grants this court the discretion to determine the costs of a proceeding or step in a proceeding. It states:

131(1) Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

7 The Court of Appeal for Ontario has stated that "[m]odern cost 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 behaviour by litigants": *Fong v. Chan* (1999), O.J. No. 4600 (Ont. C.A.) at para. 22.

8 In *394 Lakeshore Oakville Holdings Inc. v. Misek*, [2010] O.J. No. 5692 (Ont. S.C.J.), at para. 10 Perell J. of this court reformulated and supplemented those purposes as follows: (1) to indemnify successful litigants for the costs of litigation, although not necessarily completely; (2) to facilitate access to justice, including access for impecunious litigants; (3) to discourage frivolous claims and defences; (4) to discourage the sanctioning of inappropriate behaviour by litigants in their conduct of the proceedings; and (5) to encourage settlements. (See also: *Talwar v. Grand River Hospital Board of Directors*, 2018 ONSC 6645 (Ont. Div. Ct.).

9 It is important to note that both decisions articulated the view that the goals of an award of costs are not limited to indemnity. There are broader, discretionary considerations involved, which are articulated in r. 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

10 Under Rule 51.07(7) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the court is to "... devise and adopt the simplest, least expensive and most expeditious process for fixing costs ...". The general principles for the exercise of my discretion in determining costs are set out in r. 57.01(1). They include:

- * The result of the proceeding; i.e. success. It is trite that there is a presumption that the successful party is entitled to their costs.
- * However, a court is entitled to award costs against the successful party in the appropriate circumstances (r. 57.01(2)). That may particularly be so when the court grants an indulgence to a party. In the oft-repeated comment of Hawkins, D.C.J., in *Fox v. Bourget*, [1987] O.J. No. 2326 (Ont. D.C.): "the price of a granted indulgence is the payment of the costs of those who have sought, unsuccessfully, to prevent its being granted."
- * offers to settle,
- * the principle of indemnity,
- * the reasonable costs expectations of the unsuccessful party for the step for which costs are claimed,
- * the amounts claimed and recovered in the proceeding,
- * the apportionment of liability,
- * the complexity of the proceeding,
- * the importance of the issues,
- * the conduct of any party that tended to shorten or unnecessarily lengthen the proceeding,
- * whether any step in the proceeding was taken improperly, vexatiously, unnecessarily, through negligence, mistake, or unnecessary caution,
- * a party's denial or refusal to admit anything that should have been admitted,
- * whether the dispute between the parties had been unnecessarily divided into more than one proceeding,
- * any other matter relevant to the determination of costs.

11 Those factors reflect the general principle set out in *Boucher v. Public Accountants Council for the Province of Ontario*, [2004] O.J. No. 2634 (O.C.A.). There, the Ontario Court of Appeal stated at para. 24 that costs awards should reflect "what the court views as a fair and reasonable amount that should be paid by the unsuccessful parties." That amount is not necessarily based on what the

successful counsel is entitled to charge their client: *Coldmatic Refrigeration of Canada v. Levtek Processing*, [2005] O.J. No. 160 (Ont. C.A.),

Authorities regarding the Award of Enhanced Costs Based on a Contractual Term

[8] RBC seeks its costs on a “solicitor and his own client” scale, which is a contractual term of two of the three loans which are the basis of my summary judgment ruling. The third loan agreement calls for costs on a solicitor and client basis.

[9] In making its request for enhanced costs, RBC relies on the decision of the Ontario Court of Appeal in *Adelaide Capital Corp. v. Pretoro Developments Inc.*, [1999] O.J. No. 1725. There, at paras. 3 – 4, the Court indicated that there must be sufficient evidence on the record before the court to justify ignoring a contractual term calling for an elevated scale of costs.

[10] In a previous decision, *Toronto-Dominion Bank v. Berthin*, [1994] O.J. No. 2590 (Gen. Div.), at para. 6, Winkler J., as he then was, made a similar finding. He stated that the court should defer to a contractual enhanced costs term “except where there has been conduct that militates against it”.

[11] An example of the type of conduct which merits a lower scale of costs in the face of a contractual term calling for elevated costs is *Toronto-Dominion Bank v. Defenders Transport Inc.*, 2024 ONSC 5689. There, Leach J. reduced the scale of costs to partial indemnity because of her concern with the plaintiff’s venue shopping. She found that the Plaintiff brought the action before her in a venue “lacking any discernible connection [with] the underlying disputes”.

[12] Here, I have been offered no reason to depart from the contractual costs terms, although I recognize that “solicitor and his own client”, being full indemnity, is a somewhat higher scale of costs than solicitor and client costs. In differentiating between the two scales of costs, I rely on past practice and *Davies v. Clarington (Municipality)*, 2009 ONCA 722. There, Epstein J.A., writing for the Court of Appeal of Ontario, summarized the difference between those two scales of costs. She wrote:

[14] Rule 57.01(4) allows for elevated levels of costs:

57.01(4) Nothing in this rule or rules 57.02 to 57.07 affects the authority of the court under section 131 of the Courts of Justice Act,

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(c) to award all or part of the costs on a substantial indemnity basis;

(d) to award costs in an amount that represents full indemnity

[15] "Substantial indemnity costs" is defined in rule 1.03 as "costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A". This part of Tariff A was once the prescribed grid for "partial indemnity costs", but is no longer in effect. "Full indemnity costs" is not a defined term but is generally considered to be complete reimbursement of all amounts a client has had to pay to his or her lawyer in relation to the litigation: see M. Orkin, *The Law of Costs*, 2nd ed., looseleaf (Aurora, Ont.: Canada Law Book, 1993) at para. 219.05.

[13] Where Epstein J.A. was referring "Part I of Tariff A", she was referring to what is understood to be partial indemnity costs.

Discussion

[14] This should have been a relatively simply collection matter. John delayed the hearing of this motion a number of times and offered a number of novel but unsupported arguments, including frustration of contract. I add that his counterclaim was, as stated by RBC, devoid of merit.

[15] I agree with RBC that it is entitled to enhanced costs on the basis of its contractual relationship with John. The hourly fees charged by RBC's lawyer on a "actual rate" (or full indemnity) are most reasonable: \$275 per hour for two lawyers with over 30 years of experience. They would be reasonable, even at a lower scale of costs.

[16] I have reviewed RBC's costs submissions and attachments. I find that they are fair and appropriate. They reflect the result, the various indulgences granted to John in the form of contested adjournments when RBC counsel was ready to argue this motion, and the lack of merit of various arguments he raised. However I find, in light of the fact that one of the loan contracts between the parties calls for solicitor and client rather than

solicitor and own client costs, that a slight decrease from the \$15,569.41 claimed by RBC, to \$15,000 would be fair, reasonable and proportional in the circumstances.

[17] I cannot speak to John's reasonable expectations as he filed no submissions. But on October 17, 2024, when I granted him the indulgence of an adjournment and RBC counsel sought costs of \$1,000 for the aborted attendance, he sought costs of his own. He sought \$3,175, based on what he claimed to be an hourly fee he charges to his clients as an immigration consultant of \$145 per hour as well as a \$1,000 counsel fee. In light of John's professed legal acumen, his own billing claims, and the number of court attendances before this matter was finally argued, RBC's costs request should have been within John's reasonable expectations.

[18] Thus, John shall pay costs of this motion and action, fixed at \$15,000 to RBC forthwith.

Kurz J.

Date: September 4, 2025