

CITATION: Wallace v. Questrade Inc., 2025 ONSC 5494
COURT FILE NO.: CV-22-00687828-00CP
DATE: 20250926

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: MAXWELL WALLACE, Plaintiff

– and –

QUESTRADE INC., Defendant

BEFORE: Justice E.M. Morgan

COUNSEL: *Kirk Baert, James Sayce, Caitlin Leach, Elie Waitzer, Paul Bates, and John Archibald*, for the Plaintiff

Joseph Groia and Kevin Richard, for the Defendant

HEARD: Cost submissions in writing

ENDORSEMENT

[1] The Plaintiff is discontinuing this proposed class action. The Defendant takes no issue with the discontinuance, but seeks costs for having defended itself.

[2] The Plaintiff submits that the costs sought by the Defendant are too high. The Defendant asks for costs on a partial indemnity basis in the amount of \$149,957.64. In their Reply Factum, Plaintiff's counsel put their objection as follows:

11. The costs incurred by Questrade on an aborted certification motion – \$248,055.20 on a full indemnity basis, and \$149,957.64 on a partial indemnity basis – are not reasonable. The only step taken against Questrade in these actions was the Plaintiff's Certification Motion. Questrade was one of twelve defendants responding to that motion. Questrade delivered a responding motion record of only 100 pages and a factum of 28 pages, and attended a short initial hearing of the Certification Motion, of less than half a day, before the motion was adjourned and Questrade removed from its ambit.

[3] Although there is only one Defendant in the present action, the case against the Defendant began its life as part of a larger claim in which the Defendant was one of 12 defendants sued by

the Plaintiff. Like the present Defendant, the other defendants were discount brokerages alleged to have improperly retained trailing commissions. It was the Defendant's position that it was differently situated than the other defendants as it had rebated the commissions directly to its clients, which would have been a complete defense to the action.

[4] In their factum, Defendant's counsel have provided a brief summary of the proceedings:

8. Following various case conferences before Justice Belobaba, a timetable was set, and the plaintiffs' certification motion was scheduled to be heard on February 10 and 11, 2022. The plaintiffs delivered their motion record for certification, being approximately 2450 pages long, in or around December 2020. Questrade and the other defendants responded with their respective evidence in mid 2021. Cross-examinations were conducted in the fall of 2021. Questrade cross-examined Mr. Wallace and two of the experts relied upon by the plaintiffs. The plaintiffs delivered their written submissions at the end of November 2021 and Questrade and the other defendants delivered their respective written submissions in January 2022. Counsel for all parties attended the certification motion hearing on February 10, 2022, ready to argue the motion. The certification motion was adjourned pursuant to the Direction of Justice Belobaba.

9. The plaintiffs subsequently moved to sever the claims against Questrade in the Main Action and advanced a separate proposed class action against Questrade as the sole defendant on September 26, 2022, asserting a subset of the same causes of action plead in the Main Action.

[5] As it turned out, the main action resumed on September 26, 2022, and on January 20, 2023 Justice Belobaba denied certification. That decision was appealed to Divisional Court, which dismissed the appeal. The Plaintiff then sought leave to appeal the Divisional Court's decision to the Court of Appeal, which dismissed the request for leave on September 6, 2024.

[6] The action against the present Defendant has never proceeded any further. The Defendant seeks costs up to its attendance before Justice Belobaba on February 10, 2022.

[7] The Defendant has submitted a Costs Outline in support of its request. There is no reason for me to think that the costs it is seeking are inflated, or that it spent unnecessary hours in preparing its defense to certification. It had to respond to a lengthy motion record of more than 2,000 pages, conduct cross-examinations of the Plaintiff and two expert witnesses, prepare written submissions, and prepare oral submissions for the subsequently aborted certification hearing.

[8] Counsel for the Plaintiff argue that the Plaintiff incurred partial indemnity costs of only \$38,572.35 "proportionate to Questrade's role in the action". Their own Costs Outline indicates that their partial indemnity costs up to the date of the Defendant's last appearance came to a total of \$332,692.23. In other words, Plaintiff's counsel has arrived at this figure by taking its total costs and somehow dividing it among the many defendants that the Plaintiff sued.

[9] Defendant's counsel submit in their Sur-Reply that there is no logic to the Plaintiff's approach to calculating its costs. I agree; in fact, it seems to be a somewhat artificial exercise. A proposed representative Plaintiff who prepares a 2,000+ motion record against twelve different investment dealers making what he characterizes as a common claim against each must expect each one of his targets to respond in full. It is not a shared exercise among unrelated defendants; each of them has to take into account the entire record presented by the Plaintiff. It is not the case that the more defendants a plaintiff sues, the less each one will incur in defending itself.

[10] I am prepared to consider the extent to which the factors set out in s. 31(1) of the *Class Proceedings Act*, SO 1992, c. 6 – an action that promotes access to justice, that raises a novel point of law or a matter of public interest, or that constitutes a test case – would justify a reduction in the Defendant's costs. I am not in a position to determine whether there was a legally novel or genuine public interest component to the claim, as I have no judgment to review and the merits are not before me. That said, there is always an access to justice component to class action litigation, and costs should not be at such a high level that future class proceedings are effectively chilled.

[11] A discontinued claim gives rise to costs thrown away. Although the Defendant was not the successful party in the usual sense, it was put to the expense of defending itself without anything but unproven allegations being levelled against it.

[12] Given that the Defendant is not seeking costs for its own success but rather for the Plaintiff's failure to proceed, and given the general access to justice concerns in class actions, I am prepared to reduce the Defendant's request by roughly 25%. The remaining amount of the Defendant's partial indemnity costs reflects an acknowledgment that the Defendant was put to significant costs but the merits of the Plaintiff's motion remain undetermined as certification was never adjudicated.

Disposition

[13] Using round numbers for the sake of convenience, the Plaintiff shall pay the Defendant costs in the all-inclusive amount of \$110,000.

Morgan J.

Date: September 26, 2025