

**CITATION:** McNeil v. Cebrowski, 2025 ONSC 6723  
**COURT FILE NO.:** CV-24-0049-00  
**DATE:** 2025-12-01

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Elvira Karen McNeil, Applicant/Responding Party  
v.  
Mark Cebowski, Respondent/Moving Party

**HEARD:** Written Submissions

**BEFORE:** Nieckarz J.

**COUNSEL:** Anna Chen, for the Applicant/Responding Party  
Jordan Lester, for the Respondent/Moving Party

**DECISION ON COSTS**

**Overview:**

[1] The Respondent (“Mark”) brought a motion for partial summary judgment, seeking to have certain claims of the Applicant (“Karen”) dismissed based on the expiry of a limitation period.

[2] The facts and my decision on the motion are set out in greater detail in *McNeil v. Cebrowski*, 2025 ONSC 4652. In short, I dismissed the motion, finding that this was not an appropriate case for partial summary judgment.

[3] Karen seeks her costs of the motion on a partial indemnity scale in the total amount of \$21,154.28, payable within 30 days.

[4] Karen argues she was entirely successful in the dismissal of the motion and there is no reason to deprive her of her costs or to defer the costs of the motion to a trial judge. She further argues that the amount claimed is fair and reasonable given the importance and complexity of the motion, the time required to defend the motion given the novel issue of when limitation periods expire for a challenge of a prior will, and given the experience of counsel.

[5] Mark argues that costs should be left to the trial judge to determine or *in the cause*. In the alternative, he argues that \$3,500 is an appropriate award of costs. He argues that the rates of Toronto counsel are excessive by Northwest Region standards. He attaches his Bill of Costs, showing partial indemnity fees of \$4,805.33. His total fees, disbursements, and H.S.T. on a partial indemnity basis are \$5,282.62.

[6] For the following reasons, Mark shall pay to Karen costs in the amount of \$6,000.

**Legal Principles:**

[7] Rule 57.03(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “Rules”) requires a judge to fix or assess the costs of a motion and order them paid within 30 days unless the court is satisfied that a different order would be more just.

[8] Pursuant to s. 131(1) of the *Courts of Justice Act*, an award of costs is in the discretion of the judge. It is a wide discretion, to be exercised taking into consideration the factors outlined in Rule 57.01 of the *Rules of Civil Procedure*.

[9] Furthermore, the Ontario Court of Appeal has made it clear that the fixing of costs is not simply a calculation of hours multiplied by rates. In assessing costs, the overriding principle is one of reasonableness. The court is tasked with fixing an amount that is fair and reasonable for the unsuccessful party to pay. Failure to follow this principle can produce a result that is contrary to the fundamental objective of access to justice (*Boucher v. Public Accountants Council for the Province of Ontario*, (2004), 71 OR (3d) 291 (Ont CA) at paras. 26 and 37).

**Analysis:**

*Should costs be awarded now or left to the trial judge?*

[10] At paragraph 39 of my Endorsement, I queried whether an award of costs was best left for determination by the trial judge or in the cause. This was merely a *query* given the nature of the issues in dispute. It was not a determination of the costs issue. The parties have addressed this issue in their submissions.

[11] Karen is the successful party on the motion. To deprive her of her costs I must conclude that a different order would be more just in the circumstances.

[12] Mark relies on *Intercontinental Forest Products SA v. Rugo*, 2004 CanLII3353 (ON Div. Ct.) at para. 5 in arguing that “in the usual case where a trial is a virtual certainty, the award of costs should be reserved to the trial judge.”

[13] *Intercontinental Forest Products* involved costs of a motion for an interlocutory injunction. A review of the case reveals that the above part of the sentence cited by Mark in support of the

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order he seeks is preceded by the words “...the judge on a motion for an interlocutory injunction should consider the principles in *Rogers Cable* that, in the usual case where a trial is a virtual certainty...”.

[14] Neither counsel pointed me to a case in which *Intercontinental Forest Products* was either accepted or rejected when dealing with costs of a partial summary judgment motion.

[15] In *Silver v. Imax Corporation*, 2010 ONSC 4017 (CanLII) at paras. 18 - 24, Justice van Rensburg (as she then was) reviewed the considerations unique to interlocutory injunctions and why the principles may be different from the class action motion she had heard. Her analysis is applicable to the case at hand.

[16] At paras. 15 – 17, she also reviewed an excerpt from the decision of Wright J. in *Sea Vision Marine Products Ltd. v. McKitrick*, 1998 CarswellOnt 373 (Gen. Div.) at para. 4 with respect to costs *in the cause*. Justice Wright noted that generally, costs in the cause are appropriate where the issue on the motion will be relitigated in the trial. He went on, however, to observe at paras. 5 and 6 that often, disposing with costs of the motion immediately following the motion, is preferable.

[17] At para. 17 of *Silver v. Imax*, Justice van Rensburg concluded that costs *may* be reserved to a trial judge where the appropriateness of a party’s conduct in bringing the motion in question may not be apparent until the litigation is concluded.

[18] Mark also cites *Mittal v. Jindal*, 2012 ONSC 4297, at para. 16, in support of his position. In that case, Justice Perell ordered costs *in the cause* where the success of one party on a motion

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was “technical”, finding that it would not be fair for the successful party to the motion to recover their costs unless they also succeed at trial.

[19] In *CIBC Investor Services Inc. v. Chan*, 2024 ONSC 2324, Conlan J., determined costs of an unsuccessful motion for partial summary judgment. CIBC, the unsuccessful party, asked that costs be ordered payable *in the cause*. At para. 4, noting that there is nothing precluding a judge from exercising their discretion to order costs in the cause after a decision for a motion for partial summary judgment, Justice Conlan concluded that it may not be the fairest disposition given the risk that the moving party accepts when bringing a motion for partial summary judgment in the face of the prevailing jurisprudence that has restricted the availability of same.

[20] I agree with the reasoning of Conlan J. While Mark’s argument is attractive that he *could* be the successful party on the limitation period issues at trial, therefore vindicating the position he took on the motion, the reality is that motions for partial summary judgment are risky and costly endeavours. Mark knew the risk and the limitations on such motions. Karen has incurred costs in defending the motion, with much (but not all) of the work done for the motion not being of use at the trial. I am unable to conclude that deferring costs to the trial judge or ordering them payable *in the cause* is the most just disposition.

*Quantum:*

[21] Karen’s partial indemnity costs sought are \$21,154.28. Marc says that his partial indemnity costs total \$5,282.62.

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[22] While I have no doubt that the costs claimed were incurred in good faith in successfully defending the motion, I find that the amount claimed is not a reasonable amount for the unsuccessful party to pay. In reaching this conclusion, I have considered the submissions of each party and the Rule 57.01 factors.

[23] With respect to the complexity of the motion, Karen's costs submissions are somewhat contradictory. In paragraph 12(a) of the submissions, she argues that the motion is "complicated" and involves a "novel issue". In her Amended Costs Outline, she notes that "[t]he proceeding is not overly complex and the legal arguments are not novel". The original Costs Outline filed by Karen described the matter as complex. Mark argues that the matter was not complex. I find that the matter was not factually complex, and the materials filed not voluminous. Having said this, there was some level of complexity to the legal arguments.

[24] The issues raised by the motion were of importance to Karen's claims.

[25] The amount claimed could not have been in the reasonable contemplation of Mark. While I note that Mark did not provide a costs outline at the hearing as Karen did, and therefore I have approached his Bill of Costs with some caution, the fees incurred by Mark are more reflective of what would be expected of a motion of this nature in the Northwest Region. I note:

- a. This was a short motion, argued within the one hour allotted in regular motions court. There were no cross-examinations on the short affidavits filed. The factums were not overly long.
- b. Nowhere does Ms. Chen specify the hourly rate for herself and her clerk. Counsel for Mark says that Ms. Chen's rate (2015 call) is \$795 per hour, while her law clerk's rate is \$395 per hour. I was unable to calculate a consistent rate from the costs outline. Nonetheless, it is clear that the lawyer's actual rate exceeds \$700,

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and the partial indemnity rate exceeds \$400. Both the lawyer rate and the law clerk rate significantly exceed the rates usually seen in the Northwest Region. As Lepere J., noted in *St. Joseph's Hospital v. Thunder Bay (City)*, 2025 ONSC 2024, at para. 27:

“While a client is free to retain whomever they wish, when it comes to a question of costs, the court should review hourly rates through the lens of what would be reasonable for the party against whom the order is made, which includes a consideration of the hourly rates where the party is ordinarily resident.”

Mr. Lester's rate (2013 call) is \$345 per hour.

- c. While my task is not to parse and examine the amounts claimed line by line, nor is it to second guess the effort that counsel felt was necessary to successfully defend the motion, without a more detailed Bill of Costs, I am unable to better assess the reasonableness of the hours claimed in relation to this relatively short matter.

[26] For the foregoing reasons, I find that a fair and reasonable amount for Mark to pay to Karen for her partial indemnity costs of the unsuccessful motion for partial summary judgment is \$6,000.

**Order:**

[27] The Respondent (Mark Cebrowski) shall pay to the Applicant (Elvira Karen McNeil) costs in the amount of \$6,000, payable within 30 days.

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“Original signed by”  
The Honourable Madam Justice T.J. Nieckarz

**RELEASE DATE:** December 1, 2025

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