CITATION: Cousins v. Healey 2026 ONSC 209
COURT FILE NO.: FC173/17
DATE: 2026/01/12

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Adam Michael Cousins, Applicant

AND:

Sarah Rachel Healey, Respondent

BEFORE: T. PRICE J.

COUNSEL: Rebecca Coyne - Counsel for the Applicant

Respondent – Self Represented

HEARD: In Chambers, on written submissions

COSTS ENDORSEMENT

[1] Family Law Rule 24(3) is the starting point in a costs analysis.

[2] It provides that "Except as otherwise provided in this Rule, there is a presumption that a successful party is entitled to the costs of a step in a case."

[3] A trial is a step in a case, and this costs determination relates primarily to the trial in this matter, which includes preparation for trial.

[4] The presumption in Rule 24(3) can, however, be rebutted in the following circumstances:

a. success has been divided (Rule 24(4));

b. a successful party has behaved unreasonably (Rule 27(7)); or

c. a party has acted in bad faith (Rule 24(10)).

[5] Each of the parties, Mr. Cousins and Ms. Healey, claim to have been the successful party in this proceeding. Because of their disagreement on a key factor pertinent to the issue of costs, I must first consider whether there was one, or whether success was divided.

Determining Success

[6] To support their claims that they were the successful party, both parties have pointed to their offers to settle and how they compare to the trial decision. This is consistent with what

has been suggested in caselaw. For example, Justice Pazaratz wrote the following about this process at paragraph 22 of *Jackson v. Mayerle*, (2016), 130 O.R. (3d) 683*:*

> "To determine whether a party has been successful, the court should take into account how the order or eventual result compares to any settlement offers that were made (*Lawson v. Lawson*, [2008] O.J. No. 1978, 2008 CanLII 23496 (S.C.J.)).

[7] However, at paragraph 66 in *Jackson v. Mayerle*, Justice Pazaratz also wrote that**,** "[d]ivided success" does not necessarily mean "equal success." And "some success" may not be enough to impact on costs."

[8] Justice D. Chappel articulated the court's task at this point as follows in paragraph 14 of *Arthur v. Arthur,* [2019] O.J. No. 3494:

> The determination of whether success was truly "divided" does not simply involve adding up the number of issues and running a mathematical tally of which party won more of them (*Brennan v. Brennan*, 2002 CarswellOnt 4152 (S.C.J.)). Rather, it requires a contextual analysis that takes into consideration the importance of the issues that were litigated and the amount of time and expense that were devoted to the issues which required adjudication (*Jackson v. Mayerle,* 2016 ONSC 1556 (S.C.J.); *Slongo v. Slongo,* 2017 ONCA 687 (C.A.))

The Parties' Pleadings

[9] Before I review the parties' offers to settle, it is necessary to identify exactly what was in issue in this proceeding. To do that, I begin with the parties' pleadings, which define the issues. In this case, Mr. Cousins' sole offer and the last of Ms. Healey's three offers extended to a number of issues which were neither pleaded nor addressed during the trial.

Application

[10] In his application, Mr. Cousins only sought an order for what was then referred to as access, and costs. He more specifically defined the access order sought in the following terms:

> "Regular, unsupervised access every other weekend and one day per week" and "reasonable unsupervised access[1] during holiday periods" to the parties' two children.

Answer and Claim by Responding Party

[11] In her Answer, Ms. Healey requested that Mr. Cousins' claim be dismissed with costs. She filed no Claim by Responding party, so she made no claim of her own, other than the costs that might accompany the dismissal of Mr. Cousins' claim.

---

[1] "Access" shall hereafter be referred to as "parenting time"

The Parties' Offers to Settle

Mr. Cousins

[12] Mr. Cousins relies on a single comprehensive, severable, multi-part Offer to Settle dated November 16, 2024. It complied with the formal requirements required by Rule 18(4) in that it was signed by both Mr. Cousins and his counsel.

[13] It withdrew all previous offers to settle (none of which were provided to me for review), and was open for acceptance until five minutes after the commencement of trial unless previously withdrawn. No prior withdrawal was suggested by either party.

[14] The offer provided that any of its eight parts could be accepted in any combination, from one part to all of them, but that any part or parts which might be accepted had to be accepted in their entirety.

[15] The parts, which were lettered, addressed the following matters, taken from the titles to the parts:

Part A: Decision Making

Part B: Communication

Part C: Remedy for [Ms. Healey's] Breach of Orders

Part D: Parenting Time & Review of Parenting Time

Part E: Therapy

Part F: [Mr. Cousins'] Travel with the Children

Part G: Children's Passports and Health Cards

Part H: Case Management

[16] Because the matters addressed in parts A, B, F and G were not issues in the trial, and were severable from the other parts, I can and do disregard them in assessing which party was the successful party. That leaves Parts C, D, E, and H for consideration, below.

Ms. Healey

[17] Of Ms. Healey's three offers to settle, only one – the last - fully complied with the signature requirement of Rule 18(4). The first offer was contained in Ms. Healey's settlement

conference brief dated January 5, 2022. It was not signed by Ms. Healey. Only her first solicitor, Ms. Fox, signed it.

[18] The second offer was contained in a letter dated June 5, 2023 from Mr. Pentz, Ms. Healey's then-solicitor, to Ms. Coyne, Mr. Cousins' solicitor.

[19] Ms. Healey's third offer, which was not severable, addressed the sole pleaded, and trial, issue – Mr. Cousins' claim for parenting time with the children. This offer, however, like that of Mr. Cousins, also addressed a number of matters that were neither pleaded nor part of the trial. These included: decision making responsibility; the children's primary residence; entitlement to information about the children; giving the children the unrestricted right to seek counselling or therapy; the quality of communications between the parties; and Ms. Healey's right to travel with the children. As I will be doing in respect of Mr. Cousins' offer, those issues will form no part of my assessment of success at trial.

Rule 24(12)

[20] This Rule is a reformulation of former Rule 18(14). It establishes costs consequences of failing to accept an offer to settle.

[21] Since neither party accepted the offer of the other or, in the case of Mr. Cousins' offer, any part thereof, this Rule potentially affects both parties. Hence, I am considering it at this point because, if it does apply, it may have an impact on the costs awarded to the successful party, once determined.

[22] In order to qualify as an offer which might attract enhanced costs of a trial if not accepted, the offer must:

a. be made at least seven days before the trial [Rule 24(12).2];

b. not expire or be withdrawn before the trial begins [[Rule 24(12).3]; and

c. not have been accepted by the other party [[Rule 24(12).4].

[23] Mr. Cousins' offer fails to meet the criterion set out in Rule 24(12).2. The offer is dated November 16, 2024. The trial commenced on November 18, 2024. Thus, it is not eligible for the prospect of enhanced costs under Rule 24(12).

[24] Ms. Healey's three offers meet the three listed criteria noted above. However, her first two offers do not qualify as offers to settle under Rule 18 because they were not signed by both her and her lawyer.[2] Hence, they cannot be considered for the enhanced costs provided for under Rule 24(12).

[2] *Riss v. Greenhough,* [2003] O.J. No. 1574 (S.C.J.); *M.A.B. v. M.G.C.*, [2023] O.J. No. 2848 (S.C.J.)

[25] Her third offer, however, remains eligible for consideration.

[26] The requirement to be eligible for enhanced costs is set out in Rule 24(12).5. It requires that the party who made the offer must "obtain an order that is as good or better than the offer."

[27] In assessing this offer, however, I cannot disregard the fact that it was non-severable because, in the case of a non-severable offer, "to trigger full recovery costs a party must do as well or better than *all* the terms of any offer."[3]

[28] Because Ms. Healey's third offer was non-severable and included several terms that were not before the court, it was impossible for her to have a achieved a result better than her offer because those terms were unaddressed in the judgment.

[29] In the result, I conclude that none of the offers in this case are eligible to trigger the enhanced costs provision of Rule 24(12).

[30] However, those offers can and will be considered, despite not complying with Rule 24(12), when costs are set, as permitted under Rule 24(14)(a)(iii).

[31] They also continue be a factor in my determination of who was the successful party in this matter, to which I now return.

Mr. Cousins' Offer

Part C: Remedy for [Ms. Healey's] Breach of Orders

[32] While this claim was not pleaded, it arose from the fact that, at trial, Mr. Cousins sought orders under Rule 1(8) because of Ms. Healey's alleged failure to have complied with various interim orders made as this matter made its way to trial.

[33] Rule 1(8) is a procedural remedial authority, arising from "a person [failing] to obey an order in a case…"

[34] Because Ms. Healey's alleged acts of non-compliance arose only after the application was started, I find that it was not necessary for Mr. Cousins to amend his application with each alleged act of non-compliance.

[35] Although Mr. Cousins sought an order for parenting time in his application, the trial was ultimately about how that parenting time might be accomplished. Mr. Pentz, trial counsel for Ms. Healey, did not object to the trial proceeding in that manner.

---

[3] *Di Raimo v. Di Raimo*, [2020] O.J. No. 4482 at para. 21 (S.C.J.)

[36] In fact, the trial was the only feasible way that the temporary primary residence reversal advocated for by Mr. Cousins could have been placed before the court. This was clearly not a case for a long motion or even a focused hearing, given the parties' positions that the court needed to fully examine why the children were refusing to attend parenting time with Mr. Cousins before determining whether he was entitled to an order that it occur.

[37] Under this part of the offer, Ms. Healey would have immediately caused the children to return to and remain in Mr. Cousins' care. On this issue, Mr. Cousins did not succeed.

Part D: Parenting Time & Review of Parenting Time

[38] The requirements of this step were built on the assumption that Ms. Healey would have accepted and complied with Part C, or that the court would have required her to do so.

[39] Ms. Healey's parenting time would have been suspended for 90 days, and there would have been restrictions on her contact and communications with them.

[40] A review of the arrangement would have occurred after the children had been in Mr. Cousins' care for a period of 90 consecutive days, provided that Ms. Healey was in therapy to gain insight into her actions and was working to support reconciliation between Mr. Cousins and the children.

[41] Again, Mr. Cousins did not succeed on these issues.

Part E: Therapy

[42] This part addressed individual therapy for Ms. Healey. It also continued the family reconciliation therapy that had originally been ordered by Justice Campbell, and imposed the obligation on both parties to exercise "full parental authority" over the children to ensure that they attended and meaningfully participated in the therapy. It also addressed the division of costs of the family therapist. The order contained no such provisions.

Part H: Case Management

[43] Under the terms of this offer I, as the trial judge, would have remained seized of the case to monitor the family's progress toward reestablishing a relationship between Mr. Cousins and the children. Given the nature of the final order, Mr. Cousins did not succeed on this issue.

Conclusion as to Mr. Cousins' Offer

[44] Thus, using *only* the approach of comparing the outcome at trial to the terms of Mr. Cousins' severable offer which touched on parenting time or the enforcement of prior orders under Rule 1(8), I cannot conclude that he was the successful party.

Ms. Healey's Offers

[45] Ms. Healey's first offer was for Mr. Cousins to either withdraw his application or, in the alternative, agree to having "reasonable parenting time subject to the wishes and preferences of the children."

[46] In her second offer, Ms. Healey proposed a graduated schedule for parenting time visits between Ms. Cousins and the children. At all stages, the comfort of the children was a significant factor, although not made a necessary requirement to move from one stage to the next. At Stage 4, however, Mr. Cousins would still not have overnight parenting time. To move beyond that, the offer indicated that "the parties would then need to canvass the comfort level of the children and whether a more permanent parenting time arrangement could be put in place."

[47] Ms. Healey's third offer included clauses which: granted the child N. "substantial weight in determining his personal and familial relationships, with his preferences being given appropriate consideration;" made the children's "discretion" the sole determining factor for whether Mr. Cousins would be able to have parenting time with them; and addressed the exchange of information about the children's extracurricular activities.

[48] Neither of Ms. Healey's first two offers indicated whether they were to expire. Her second offer, in turn, made no mention of the first offer, not did her third offer make mention of her first or second offers.

[49] Knowing the effect of such omissions is necessary to determining which offer or offers made by Ms. Healey are to be considered in assessing success for the purposes of Rule 24(12).

How to determine if an offer supersedes a prior offer?

[50] This issue has been addressed by courts on previous occasions. Justice M. Sharma noted in *Lang-Newlands v. Newlands*, [2025] O.J. No. 2083, at paragraph 57, that the Family Law Rules are "silent" on the issue of "whether the making of a subsequent offer had the effect of revoking a prior offer" where the prior offer did not have an expiry date.

[51] Justice Sharma further held, at paragraph 58, that the combined effect of Rules 18(9) and 18(10) is that "a party may accept an offer before it is withdrawn (or the court begins to give a decision), even if the party has previously rejected the offer or made a counter-offer," which "suggests that until an offer has been withdrawn, it remains open for acceptance even if a subsequent offer is made…"

[52] One limitation to Justice Sharma's "suggestion," which he cited in his judgment, was articulated by the Court of Appeal in *Mortimer v. Cameron*, 17 O.R. (3d) 1, which held that "[i]n some circumstances a subsequent offer may, by necessary implication, constitute the withdrawal of a previous offer." One such circumstance, according to the Court of Appeal, would arise when the subsequent offer was more onerous or less generous to the person receiving the offer than the prior offer had been.

[53] While these statements related to offers made in accordance with Rule 18, I see no reason why the principles cannot apply to all offers in general. The costs consequences of Rule 24(12) exist independently of the question of whether a later offer automatically withdraws an earlier offer, although the two concepts merge in circumstances where the conditions of Rule 24(12) have been satisfied and its costs consequences must be considered. As I have already held, is not the case here.

[54] In my view, Ms. Healey's second offer was more generous to Mr. Cousins than her first offer. Her first offer's alternate proposal, that Mr. Cousins would have "reasonable parenting time subject to the wishes and preferences of the children" contained no proposal for how that might be achieved, and the children were the sole judges of whether or not the parenting time would occur.

[55] In her second offer, however, Ms. Healey set out a process by which Mr. Cousins' parenting time with the children might begin and expand through the involvement of her current partner, Mr. Lammiman, with whom the children have a good relationship, according to the evidence at trial. In fact, Mr. Cousins was inclined to accept a similar proposal later made to him in the context of the Family Therapy, but he backed away on the advice of Ms. DeVeto.

[56] Clearly, Mr. Cousins saw some advantage to the later similar proposal, so I conclude that the proposal in the second offer to settle was more advantageous to him than the first. Thus, I find that Ms. Healey's second offer did not withdraw her first offer. Consequently, subject to the effect on them by Ms. Healey's third offer, each remained an appropriate comparator to the outcome at trial for determining success.

[57] The parenting time provisions of Ms. Healey's third offer, somewhat akin to the first, made the children's "discretion" the sole determining factor for whether Mr. Cousins would be able to have parenting time with them. This was clearly a downgrade from the second offer's proposal that only required that the children's "comfort" be considered at each stage of the process proposed, without raising it to the status of a veto. Moreover, in the second offer, Ms. Healey committed to "insist[ing]" that the children attend the parenting time visits with Mr. Cousins and "encourag[ing]" them to do so.

[58] Given that downgrade from Mr. Cousins' perspective, I conclude that Ms. Healey's third offer, "by necessary implication," revoked her second offer as well as her first, given their similarities, the only differences between the two being semantic. In the first, Mr. Cousins' parenting time was subject to the children's "wishes and preferences" whereas in the third it was subject to their "discretion."

Conclusion as to the Comparator Offer for Measuring Success at Trial

[59] Consequently, I find that the only offer of the three served by Ms. Healey against which the outcome of the trial can be measured for success under Rule 24(12) is her third one.

Analysis and Conclusion on Success at Trial

[60] In his claim, Mr. Cousins sought an order for parenting time. At trial he sought, preliminary thereto, an order under Rule 1(8), alleging that Ms. Healey was not complying with interim orders that required her and the children to participate in reconciliation therapy as a step toward achieving the result that he sought in his application.

[61] It is clear that if I had acceded to his request for mandatory therapy orders under Rule 1(8), I would have had to remain seized of this matter and, ultimately, determine whether he was entitled to an order for parenting time, assuming that the reconciliation therapy worked. Otherwise, any order to that effect would have proven to be without effect.

[62] As I have noted, none of what he offered in order to settle his claim went to the ultimate relief that he sought. Those parts that addressed parenting time all related to the preliminary steps. He did not achieve success on those issues.

[63] Ms. Healey's sole offer against which the outcome of the trial can be measured for success ceded to the children the sole discretion to determine whether or not Mr. Cousins would have any parenting time with them. Had she succeeded, it is almost a certainty that no parenting time would ever have occurred given the children's attitudes, as detailed in the judgment. This offer fully aligned with the position taken by Ms. Healey in respect of the reconciliation therapy. As a result, I concluded, correctly, that there was no sense continuing the reconciliation therapy.

[64] However, my judgment did two things that were not to the advantage of Ms. Healey or the children.

[65] First, I declared her to be "mainly responsible" for the children having no relationship with Mr. Cousins, "primarily due to her deliberate and long-term failure to support the development and maintenance of such a relationship."

[66] Second, I specifically ordered that Mr. Cousins had an "absolute right to attend such, and as many, children's sports or other public events as he chooses to do, whenever he wants to do so, as part of his efforts to build a relationship with them" and, while there, to approach and speak to the children and to remain in their presence at the location, for as long as he wanted, for the purpose of attempting to speak with them.

[67] In other words, my judgment came closer to the result sought by Mr. Cousins in his Application than it came to the relief sought by Ms. Healey in her Answer, which was to have the whole proceeding dismissed. It was also less advantageous to Ms. Healey than her offer because it removed from the children the power to determine whether they would have any contact with Mr. Cousins, and vested that power in him.

[68] I specifically reject Ms. Healey's submission that the declaratory order that was made ought not to be considered when assessing success because it was not sought by Mr. Cousins in his application. It was a remedy available to me under Rule 1(8) and was made because the children made clear that they would not return to therapy with Mr. Cousins. Their positions drove that result only because of their ages. Consequently, the range of options available to the court to render a judgment in Mr. Cousins' favour were greatly

reduced. The purpose of the declaration was to make clear to Ms. Healey and the children that Mr. Cousins' past actions or behaviours were not the main reason for the children's rejection of him. The declaration and the related provisions of the order constituted a partial success for Mr. Cousins.

[69] I also found, however, that Mr. Cousins contributed to the children's unwillingness to have a relationship with him, although to a much lesser degree than the alienating actions of Ms. Healey.

[70] Moreover, had Ms. Healey complied with the orders that she meaningfully participate in the reconciliation therapy and had she "insisted" on the children attending parenting time with their father as she offered to do in her second offer, neither of which she did, it is more likely than not that Mr. Cousins and the children would have had a real opportunity to develop a relationship which might have meant that, in exercising their discretion, the children would have opted to spend some time with him. Ms. Healey thwarted that possibility.

[71] For those reasons, I find that success was divided between the parties, although not equally. Overall, Mr. Cousins was the more successful party. His success on the issue of alienation as a barrier to ultimately achieving an order for meaningful parenting time, however, must be tempered by the finding about his contribution to the children's unwillingness to have a relationship with him.

[72] When I determine costs, therefore, the following comments of Justice Chappel at paragraph 14 of *Arthur v. Arthur* will be of significance:

> Where the court concludes that success was in fact divided, it may award costs to the party who was more successful on an overall global basis or on the primary issue, subject to adjustments that it considers appropriate having regard for the lack of success on secondary issues and any other factors relating to the litigation history of the case (*Gomez-Pound v. Pound,* [2009] O.J. No. 4161 (O.C.J.); *Boland v. Boland,* [2012] O.J. No. 1830 (O.C.J.))

Rule 24(7) – Successful Party Behaving Unreasonably[4]
Rule 24(8) – Considerations for Whether a party Behaved Unreasonably

Mr. Cousins

[4] Without specifically attributing the actions to either unreasonable behaviour or bad faith, both parties made reference to different events alleged to have occurred, or not, following the release of my judgment. I have ignored those submissions when now addressing unreasonable behaviour and later addressing bad faith since, subject to comments that I may make regarding claims made in their Bills of Costs, I remain seized only to address the issue of costs up to and including trial. Moreover, it is inappropriate for counsel to try to place evidence before the court by means of their submissions.

[73] Despite finding him to be primarily successful, I also find that Mr. Cousins' failure to:

a. diligently and persistently press Ms. Healey to comply with the parenting time provisions of the parties' separation agreement of December 2015; and

b. to provide him with expanded, unsupervised parenting time in the period between the sale of the matrimonial home and the commencement of the litigation in September 2017, when the children were younger and more easily managed,

was unreasonable "behaviour in relation to [the issue of his parenting time]" that occurred after "the time that [this issue] arose." (Rule 24(8)(a), rephrased)

[74] In other words, Mr. Cousins' early contribution to the children's ultimate unwillingness to have a relationship with him constituted unreasonable behaviour.

[75] He did, however, attempt to mitigate the effects of that unreasonable behaviour, plus the compounding negative actions of Ms. Healey, by seeking a mechanism for the remediation of his situation, which included: commencing this litigation; obtaining an order for OCL involvement; requesting a court order in December 2019 for the children to attend the agreed-upon counselling with Ms. McIntyre, about which Ms. Healey was stalling; and obtaining the court order, on consent, in October 2022 which put into place the reconciliation therapy overseen by Ms. DeVeto.

Ms. Healey

[76] I find that, although she was partially successful through my finding that Mr. Cousins contributed to the children's unwillingness to have a relationship with him, Ms. Healey also behaved unreasonably by:

a. failing, from and after the sale of the matrimonial home, to exercise parental authority over the children by insisting that they attend regularly for parenting time with Mr. Cousins;

b. consistently and irrationally abdicating decision-making responsibility about parenting time with Mr. Cousins to such young children;

c. rejecting the recommendations of Ms. Dewar, the OCL clinical investigator;

d. engaging in stalling tactics with respect to the children's counselling with Ms. McIntyre; and

e. failing to comply with the advice of Ms. Hill.

Conclusion About Unreasonable Behaviour

[77] I also find that, as with the division of success and the declaratory order, the extent of Ms. Healey's unreasonable behaviour in this case largely surpasses that of Mr. Cousins.

Rule 24(10) – Bad Faith

[78] Counsel for Mr. Cousins made the claim that Ms. Healey's behaviour throughout this proceeding was also marked by bad faith. Most pertinent of the examples relied upon, she cited Ms. Healey:

a. repeatedly failing to comply with orders made in the case;

b. engaging in alienating actions which were found to be the primary cause of the children's rejection of a relationship with Mr. Cousins;

c. exposing the children to her contempt for Mr. Cousins;

d. nurturing the children's anger;

e. undermining and ignoring participation directives;

f. making disparaging comments online about the therapist, the therapy process and the court;

g. falsely presenting herself as supporting the process while doing the opposite and fostering resistance by the children;

h. colluding with the children to withdraw their consent to continue therapy; and

i. engaging in a charade by repeatedly bringing the children's luggage to Mr. Cousins' residence knowing that they had no intention of going there.

[79] In response, Ms. Healey claimed that her actions throughout the litigation "were guided by a genuine desire to protect her children and shield them from emotional and psychological harm."

[80] The difficulty with that submission is that it sets up Ms. Healey as the arbiter of what actions are in the children's best interests. In litigation over unresolved parenting issues, it is the judge, not the litigants, who decides those issues. Ms. Healey was subject to court orders - some made on consent. She could have appealed or sought leave to appeal any orders with which she took issue, but did not.

[81] Her submission clearly indicates that she had no respect for the court about which she wrote disparagingly or its authority.

[82] There is a difference between bad faith and unreasonable behaviour.[5] While repeatedly failing to comply with court orders seems to be a prime example of unreasonable

[5] *Jackson v. Mayerle, supra, para. 6, at paragraph 59*

behaviour, given Ms. Coyne's submission, I must consider if it rises to the level of evidencing bad faith.

[83] In *C.S. v. M.S.*, [2007] O.J. No. 2164 (S.C.J.), Justice Perkins discussed "bad faith" as follows:

> **16** … "Bad faith" has been explained as "not simply bad judgment or negligence but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity ... it contemplates a state of mind affirmatively operating with furtive design or ill will." … The definition of "bad faith" in *The Concise Oxford Dictionary of Current English* (5th ed., 1964, ed. by H.W. Fowler and F.G. Fowler) is simply "intent to deceive". The essence of bad faith is the representation that one's actions are directed toward a particular goal while one's secret, actual goal is something else, something that is harmful to other persons affected or at least something they would not willingly have supported or tolerated if they had known. However, not all bad faith involves an intent to deceive. It is rare, but not unknown in family law cases, for bad faith to be overt -- an action carried out with an intent to inflict harm on another party or a person affected by the case without an attempt to conceal the intent.
>
> **17** In order to come within the meaning of bad faith in subrule 24(8), behaviour must be shown to be carried out with intent to inflict financial or emotional harm on the other party or other persons affected by the behaviour, to conceal information relevant to the issues or to deceive the other party or the court. A misguided but genuine intent to achieve the ostensible goal of the activity, without proof of intent to inflict harm, to conceal relevant information or to deceive, saves the activity from being found to be in bad faith. The requisite intent to harm, conceal or deceive does not have to be the person's sole or primary intent, but rather only a significant part of the person's intent. At some point, a party could be found to be acting in bad faith when their litigation conduct has run the costs up so high that they must be taken to know their behaviour is causing the other party major financial harm without justification.

[84] These comments would suggest that not complying with court orders is not evidence of bad faith. However, at paragraph 21 of *C.S. v. M.S.*, Justice Perkins also discussed his finding that some aspects of the father's case did fall within "bad faith" as intended by then Rule 24(8), the predecessor to current Rule 24(12).

[85] In doing so, he singled out the father "deliberately not obeying court orders in the case, including orders to which he had consented," and "most significantly,…wag[ing] a campaign against the mother, both through and with the children, to alienate the children from her…" Justice Perkins' finding that the father had engaged in bad faith conduct were upheld by the Court of Appeal.[6]

---

[6] *C.S. v. M.S.*, [2010] O.J. No. 1064 at para. 12

[86] More recently, in a comprehensive review of bad faith conduct, Justice D. Chappel noted that it can be found in cases "made out by evidence that the party…has engaged in conduct aimed at alienating a child or otherwise undermining their relationship with the other party without justification."[7]

[87] I found, at paragraph 349 of my judgment, that there had been "overwhelming evidence of [Ms. Healey's] multiple failures to comply with orders in this case," and cited six instances of that having occurred.

[88] I also found, at paragraph 366 of my judgment, that "the evidence supporting" a "conclusion that [Mr. Cousins had been] deprived of a relationship with the children as a result of Ms. Healey's alienating actions" was "substantial." I concluded that Ms. Healey's alienating actions were "a cause of the children's total rejection of a relationship with" Mr. Cousins. In the end, I found Ms. Healey to be "mainly responsible" for the lack of relationship between the children and Mr. Cousins, "primarily due to her deliberate and long-term failure to support the development and maintenance of such a relationship."

[89] These findings support a conclusion that Ms. Healey engaged in bad faith actions.

[90] Even if that were not the case, I would find that Ms. Healey's repeated failures to comply with court orders constitute unreasonable behaviour, which can also result in costs being ordered on a full recovery basis, even in the absence of bad faith.[8]

[91] Consequently, whether it be bad faith, as I have found, resulting in costs being payable on a full recovery basis pursuant to Rule 24(10), or an example of extremely unreasonable behaviour driving an order for full recovery costs in accordance with *Jackson v. Mayerle*, I find that Ms. Healey should pay costs to Mr. Cousins on a full recovery basis.

[92] What does that entail? Justice Perkins wrote the following about the process at Paragraph 24 of *C.S. v. M.S.*:

> **24** The wording of the rule (for which I must take some responsibility, I acknowledge) is brief and leaves some unanswered questions. If a party has acted in bad faith on one occasion, are the costs of the whole case to be awarded against the party on a full recovery basis? What if it was a small act of bad faith? What if it was only in relation to one issue, and on the other issues the party behaved properly? Are the costs to be a full recovery only in respect of the consequences of the bad faith? **What impact do the factors and the discretion in subrule 24(11) have on the full recovery mandated by subrule 24(8)? My tentative conclusion is that full recovery costs should be awarded in relation to the issues affected by the bad faith and then the whole picture should be looked at again in light of the considerations in subrule 24(11)**

---

[7] *M.A.B. v. M.G.C.*, [2023] O.J. No. 2848 at para. 49

[8] *Jackson v. Mayerle, supra, para. 6, at paragraph 62*

> **and the discretion in that provision should be used as necessary to produce the correct overall result. [Bolding added]**

[93] At paragraph 26, Justice Perkins wrote that "the father has acted in bad faith over a long period of time, in relation to more than one issue, and on many occasions. The consequences of his bad faith have been a vastly prolonged and more expensive court case and vastly increased emotional damage." He concluded that the mother was "entitled to full recovery of her costs throughout, so long as the costs were reasonably incurred and bear some reasonable proportionality to the matters in issue." Justice Perkins awarded the mother her full costs as claimed. This finding, too, was upheld by the Court of Appeal.[9]

[94] Again, more recently in *M.A.B. v. M.G.C.*, Justice Chappel addressed the process of determining costs when there has been a finding of bad faith. She wrote, at paragraphs 68 and 69:

> **68** There is no provision in the *Rules* or presumption in the case-law favouring a general approach of awarding full or close to full recovery costs in Family Law litigation (*Beaver*, at paras. 9-11). However, as discussed in further detail below, Rule 24(8) directs that costs be ordered on a "full recovery" basis if a party has acted in bad faith…These provisions raise the question of what is meant by the phrase "full recovery costs."
>
> **69** The notion of "full recovery costs" under the *Rules* is distinct from the actual total costs that a lawyer or legal team has charged the party. **The principles of reasonableness and proportionality come into play when the court decides to grant a full recovery award. In *M.(C.A.)*, the Ontario Court of Appeal emphasized that in awarding full recovery costs under the *Family Law Rules*, the trial judge must ensure that the costs sought by the successful party are reasonable having regard for the issues involved in the case (at para. 43). Accordingly, the phrase "full recovery costs" means the total reasonable and proportional amount that a court determines the party should have appropriately spent in dealing with the case** (*Jackson*, at para. 91; *Arthur v. Arthur*, 2019 ONSC 938 (S.C.J.), at para. 40). **[Bolding added]**

[95] To this, I must also have regard to the divided success in this case, with whatever amount I award to Mr. Cousins for his full recovery costs, as defined by Justice Chappel, being reduced by an amount to account for my finding that the children were also partially estranged as a result of Mr. Cousins' actions early on in the years following the parties' separation, which constitutes a partial success for Ms. Healey.

The Parties' Claims for Costs

---

[9] *C.S. v. M.S.*, [2010] O.J. No. 1064 at para. 12

[96] Mr. Cousins seeks "full indemnity costs" of $159,970.62, inclusive of HST and disbursements.

[97] Ms. Healey, who claimed to have incurred total costs of $148,567.13 for the litigation, sought costs in her initial submission of $74,004.65, inclusive of "legal costs," lost earnings and disbursements, all predicated on her being the successful party. In her reply submission, she suggested that each party should bear their own costs if the court did not agree that she was the successful party.

Rule 24(14) – Setting Costs Amounts

[98] This Rule sets out a number of factors that the court may consider in setting the amount of costs in relation to a step in the case.

[99] The key factors to be considered when setting the amount of costs are reasonableness and proportionality. Closely tied to these are the importance and the complexity of the matters in issue.

[100] The issue in this case was of vital importance to both parties. Given the need to review the role of reconciliation therapy as a step toward determining a final outcome, the complexity of the issues under review was raised from average to above average. Accordingly, when assessing the costs factors set out under Rule 24(14)(a), I do so with these factors in mind.

Rule 24(14)(a)(i) – Each Party's Behaviour

[101] My conclusions about this factor are detailed earlier in this endorsement.

Rule 24(14)(a)(iii)[10] – Any Written Offers to Settle, including those not meeting the conditions set out in subrule (12) or the requirements of Rule 18

[102] Similarly, I have earlier discussed the parties' offers to settle.

[103] I do add, however, that Mr. Cousins' comprehensive offer sought to resume the reconciliation process upon which the parties had agreed as a means to work on reducing the barriers that existed between him and the children. While the children's resistance to participating in the process was, in the end, the factor that led to the result at trial, it is important to note that, had Ms. Healey, at any point, seriously and meaningfully acted as a parent to the children and exercised authority over them, particularly when they were younger, instead of acting like their friend/enabler, it is entirely possible that the reconciliation process would have been successful. Alternatively, she could have suggested a return, with the children's consent obtained with her approval, to Ms. McIntyre, who

[10] I am rearranging the order in which I consider the factors listed in Rule 24(14)(a) because, in my view, those set out in Rules 24(14)(a)(ii) and 24(14)(a)(iv) are closely related. As a result, I am referring to Rule 24(14)(a)(iii) before Rules 24(14)(a)(ii) and 24(14)(a)(iv.)

followed a different reconciliation process than did Ms. DeVeto, whose continued involvement was not even suggested in Mr. Cousins' offer. The point is that it was the obstinate refusal of Ms. Healey and the children, with her approval and encouragement, to engage in the reconciliation process that made Mr. Cousins' offer to resume the reconciliation process futile.

Rule 24(14)(a)(ii) - Time Spent by Each Party

[104] There is a connection between the time that a lawyer spends on a file and the legal fees both billed to the lawyer's client and sought, on behalf of a successful party, from the other party. As the Court of Appeal wrote in *Apotex Inc. v. Eli Lilly Canada Inc.*, [2022] O.J. No. 3632:

> **66** The party seeking costs bears the burden of proving them to be reasonable, fair, and proportionate. The absence of dockets is not an automatic bar to proving or receiving an award of costs: *Leonard v. Zychowicz*, 2022 ONCA 212, at para. 33. However, **absent dockets, a description of the activities for which fees and disbursements are claimed must be sufficient to permit for the kind of close scrutiny that the court is required to undertake. The material provided for the assessment must allow the court to come to a conclusion as to the amount of time reasonably required by the party seeking costs to deal with all aspects of the proceedings for which costs are claimed, including whether there was over-lawyering or unnecessary duplication of legal work**: *Restoule*, at para. 355. **(Bolding added)**

[105] In my judgment, I ordered that, if counsel would be seeking costs on behalf of their client, they were to file costs submissions which were to include "a list of all persons who worked on any portion of this proceeding for whose efforts a claim for costs is being made, their position, a complete and clear description of the work undertaken by each such person, and the amount being sought for costs in respect of the efforts of each such person."

[106] In the Bill of Costs that she filed, Ms. Coyne included an entry for ""all services rendered…from June 2022 to October 3, 2024." She allocated 107 hours of her time to those endeavours.

[107] In my view, the description of her endeavours ("all services rendered") neither complies with my endorsement for "a complete and clear description of the work undertaken by" her, nor does it allow for the "close scrutiny" of her efforts during that period that the Court of Appeal referred to in *Apotex Inc. v. Eli Lilly Canada Inc.* which would allow me to determine whether the time expended was "reasonably required," or whether there had been "over-lawyering or unnecessary duplication of legal work."

[108] Additionally, in the period between June 2022 to October 3, 2024 there were at least two motions which resulted in costs orders against Ms. Healey. I have no idea if any of Ms. Coyne's efforts in respect of those motions are included in the 107 hours that she claims were expended over the entire 28 month for which the claim is made.

[109] In that circumstance, I am unable to allow any part of the 107 hours claimed by Ms. Coyne in the Bill of Costs included with her costs submissions for the period between June 2022 to October 3, 2024.

[110] A similar complaint was made about the balance of the costs claimed by Ms. Coyne on behalf of Mr. Cousins. The other entries on the Bill of Costs do provide some of the information that the judgment required: the persons who worked on any portion of this proceeding for whose efforts a claim for costs is being made; their position; and the amount being sought for costs in respect of the efforts of each such person.

[111] In place of the mandated "complete and clear description of the work undertaken by each such person" the Bill of Costs presented more general information. For instance, in respect of Ms. Coyne, her time was broken down by category. These consisted of: "Communications," such as emails, letters and telephone calls; "Preparation of Trial Materials," including briefs and legal argument; "Reviewing of Materials re Witnesses," which included witness preparation; "Trial Management Conferences," of which there was more than one with Justice King; and general preparation for and attendance at trial. Of these, the largest time expenditure was the last, at 152.4 hours.

[112] I have also been able to compare Ms. Coyne's time claim for trial preparation and attendance at trial against the similar efforts expended by Mr. Pentz on behalf of Ms. Healey, as reflected in the Bill of Costs that she submitted. In addition to her Bill of Costs, Ms. Healey provided Mr. Pentz's time dockets. From my review of them, I have determined that Mr. Pentz appears to have devoted 156.4 hours to preparation for and attendance at trial, a figure remarkably close to the 152.4 hours claimed by Ms. Coyne.

[113] On that basis, I am satisfied that Ms. Coyne did not inflate her time claim for the largest component of her Bill of Costs – preparation for and attendance at trial.

[114] While Ms. Coyne's Bill of Costs does not fully comply with the requirements of the trial judgment, to disallow any costs for Ms. Coyne's efforts, as Ms. Healey submitted in her reply submissions should be done, would be unfair to Mr. Cousins.[11] Instead, I will take the lack of more specific information in respect of the other entries into account when determining costs. None, I should note, seem grossly disproportionate to the others.

[115] In a similar vein, Ms. Coyne's Bill of Costs includes 48.7 hours allocated to her Senior Law Clerk for tasks involved in trial preparation including, inter alia, assembly of briefs, preparing required Evidence Act notices, assembling case briefs and motion materials, and making arrangements for meetings and attendances of witnesses. As was the case with Ms. Coyne's claim for a period that included motions, the reference to motions in Ms. Ferguson's entry in the Bill of Costs requires a cautionary reduction to avoid possible

[11] *Didham v. Didham*, 2025 ONSC 15 at para. 121

duplication of earlier efforts already compensated by a costs order. I have reduced her claim by 3 hours.

[116] Lastly, in her bill of Costs, Ms. Coyne has included a claim for 50.1 hours of effort by Patricia Corneil, a lawyer associated with Ms. Coyne. Ms. Corneil's efforts extended to: conducting legal research and drafting statements of law. The difficulty with Ms. Corneil's efforts has nothing to do with the quality of her work. Her time is included, however, for efforts, some of which, in my view, should not be claimed against Ms. Healey.

[117] For example, at the outset of trial, a motion was filed by on behalf of the children by a lawyer from a legal clinic called Justice for Children and Youth for the purposes of addressing how the children's views and preferences might best be placed before the court. The suggestion of the lawyer who appeared was that the children be judicially interviewed or that a Voice of the Child Report be obtained.

[118] In response to this motion, Ms. Corneil undertook research and drafted a statement of law about the issues raised on behalf of the children.

[119] The motion was dismissed on the basis that there was likely to be plenty of evidence about the children's views and preferences (which I later found to be the case), given their involvement with two therapists.

[120] There was no evidence that Ms. Healey had anything to do with the motion brought by this organization, and counsel for the organization confirmed that it had been contacted by the children, one of whom was 15 years of age at the time.

[121] Accordingly, the costs claimed in respect of this motion on behalf of Mr. Cousins, reflected in the total time claimed by Ms. Corneil, are being disallowed.

[122] I am reducing Ms. Corneil's time claim from 50.1hours to 30 hours. The reduction reflects the fact that she prepared materials for the motion by Justice for Children and Youth, including a Statement of Law. The Statement of Law later formed, with revisions, a part of the Statement of Law that was submitted in support of Ms. Coyne's final submissions. Ms. Corneil's efforts in respect of the latter Statement of Law are reflected in the Bill of Costs and shall be allowed as part of Mr. Cousins' claim for costs.

[123] Lastly, in the post-trial period, two motions were brought on behalf of Mr. Cousins. Both related to Ms. Healey having secured counselling for the parties' son, N. at a time when the extant order required that all counselling be undertaken by Ms. DeVeto. At the return of the first motion, I ordered Ms. Healey to not further involve that counsellor. I also approved of the issuance of a judgment without the approval of Ms. Healey since Mr. Pentz had ceased representing her.

[124] However, a second motion was brought later by Mr. Cousins, again relating to the therapist with whom Ms. Healey had involved N. By the time of this motion, it was clear that animosity had broken out between the therapist and, Ms. Coyne over allegations that the

therapist had some sort of previous connection with Ms. Healey. I refused to hear that motion since it was focused on issues that had nothing to do with the trial.

[125] There is nothing in Ms. Coyne's Bill of Costs that informs me who worked on the second motion. I was not told that a claim was not being made for the costs of that motion. At least two, possibly three, affidavits by Mr. Cousins were prepared for the motion.

[126] In the absence of information abut the materials for this motion, and the attendance before me to address it, I will be reducing the overall total claimed on behalf of Mr. Cousins by $1,700.00 (inclusive of HST) to account for work on the motion not clearly attributed to anyone in the Bill of Costs.

Rule 24(14)(a)(iv) – Any Legal Fees, including the Number of Licensed Representatives and Their Rates

[127] As I have noted, the three persons identified as having been involved with Mr. Cousins' file and for whom costs claims have been made are Ms. Coyne, Ms. Corneil and Law Clerk Laura Ferguson, who is not a licensed representative, meaning she is neither a lawyer nor a paralegal who is authorized under the Law Society Act to provide specific family legal services.

[128] Ms. Coyne, who has been a lawyer since 2000, charged for her services at $385.00/hour. Ms. Corneil, who has been a lawyer since 2003, charged for her services at $300.00/hr. Ms. Ferguson, who has 19 years' experience, provided services for which Mr. Cousins was charged $225.00/hr.

[129] The rates charged by Ms. Coyne and Ms. Corneil are appropriate. Given the rate charged by Ms. Corneil, I have reduced the rate attributable to the service of Ms. Ferguson to $175.00/hr.

Rule 24(14)(a)(v) – Any Expert Witness Fees, including the Number of Experts and Their Rates

[130] Paula DeVeto was qualified as a participating expert to provide evidence at trial about reunification counselling/therapy, its processes, and goals.

[131] Ms. Coyne seeks reimbursement of the amount that she paid to have Ms. DeVeto prepare for and attend trial to testify about the reunification therapy in which the parties and their children were to be involved as a result of the consent order made by Justice Campbell in October 2022.

[132] The amount claimed by Ms. Coyne is divided into two parts. First, she is claiming $24,744.50 for trial preparation, attendance at trial and a report about the course of the therapy in which the parties and their children were involved. She is also claiming $4,593.00 for the uninsured cost of the reunification therapy that was overseen by Ms. DeVeto.

[133] As to the former, Ms. DeVeto's account indicates that her hourly rate for preparation and attendance at trial was $250.00, with a minimum half-day rate of $1,000.00. These rates were consistent with the "Family Treatment and Intervention Agreement" signed by the parties in October 2022, which was entered as Exhibit 11 at trial.

[134] Ms. DeVeto's account covers the period between August 6, 2024 and December 2, 2024. The entries that appear to be most pertinent to the issue of preparation for and attendance at trial begin on November 19, 2024 and continue to December 2, 2024. Her fees over that period amount to $8,925.00.

[135] Additionally, pursuant to an order of Justice King dated October 21, 2024, Ms. DeVeto prepared a report which was to include an update on the process of Family Reconciliation Therapy, the initial cost of which was to be borne by Mr. Cousins, with "the ultimate cost to be apportioned by the Trial Judge." Ms. DeVeto's fee for preparing the report, as reflected in her invoice to Mr. Cousins, was $14,750.00, accumulated at an hourly rate of $250.00 for her efforts, and $350.00 for the joint efforts of her and a later-added co-therapist, Ms. Murie.

[136] Given the language of Justice King's order, it is clear that the cost of preparing the written report can be apportioned between the parties. I intend to do so, especially since I have found that Mr. Cousins was not wholly successful at trial. Similarly, the costs of Ms. DeVeto's attendance at trial will be divided between the parties given that divided success.

[137] Thus, the sum of $23,675.00 shall be divided between the parties in accordance with their relative degrees of success at trial.

[138] In arriving at this determination, I reject the bare, unexplained submission of Ms. Healey that Ms. DeVeto's four days of trial attendance and her time of preparation were "unnecessary." No objection was raised at trial to the time it took for Ms. DeVeto to testify.

[139] As to the amount claimed for "uninsured" Reunification Therapy costs, which Ms. Coyne placed at $4,593.00, I disagree that these costs are recoverable by Mr. Cousins as a result of the trial for three reasons.

[140] Firstly, paragraph 25 of the "Family Treatment and Intervention Agreement" signed by the parties provided that the parties were to share all costs equally "unless otherwise agreed or by a court order."

[141] Secondly, the original order of Justice Campbell dated October 11, 2022 which appointed Ms. DeVeto on consent of the parties as the reconciliation therapist did not address any costs issue.

[142] Lastly, the only court order that I could find addressing this issue, since none was brought to my attention, is embodied in an endorsement made by Justice Sah on August 22, 2024 during a case management meeting. She wrote: "The parties agree that Ms. DeVeto's bills should be divided on a per party basis. The parties shall request that future bills are prepared

in this fashion and shall ensure that bills to date are paid equally and promptly after exhausting their benefit plans."

[143] As I read the endorsement, uninsured therapy bills were to be divided equally between the parties, in accordance with the "Family Treatment and Intervention Agreement" from its date of inception until August 22, 2024, at which time each party was to pay Ms. DeVeto for services related to that party, with joint services, presumably, being divided between them.

[144] Regardless, these uninsured therapy costs are not covered by my costs order. The parties are going to have to negotiate who owes how much to whom to resolve that issue.

Rule 24(14)(a)(vi) – Any Other Expenses Properly Paid or Payable

[145] Ms. Coyne produced an invoice in the amount of $565.00 (inclusive of HST) for securing the attendance at trial, virtually, of Jenna Hill, a therapist with whom Ms. Healey had met on the recommendation of Ms. DeVeto following one of Ms. Healey's attempt to halt the therapeutic process.

[146] I reject Ms. Healey's submission that Ms. Hill's half-day testifying was "excessive and unnecessary." To the contrary, I found her evidence to be helpful. The fee paid to her is reasonable.

[147] Ms. Coyne also produced invoices in the amount of $614.95 (inclusive of HST) for photocopying Ms. DeVeto's notes for use at trial, and in the amount of $84.75 (inclusive of HST) for the cost of serving a summons to witness on OCL Clinical Investigator Jennifer Dewar. Both disbursements were properly paid.

Law

[148] The law with respect to the setting of costs is well-established. It is contained in several Court of Appeal decisions including:

Beaver v. Hill, [2018] O.J. No. 5412 (C.A.)

> **12** As the wording of [Rule 24(12)] makes clear, proportionality and reasonableness are the touchstone considerations to be applied in fixing the amount of costs.
>
> …
>
> **19** What is most important, however, is that the motion judge did not consider the principle of proportionality. Proportionality is a core principle that not only governs the conduct of proceedings generally, but is specifically applicable to fixing costs in family law matters, as I have set out above.
>
> …

21 There is a final factor to which the motion judge appears to have given only passing consideration: the respondent's motion that sought a wide variety of relief, almost all of which she was unsuccessful in obtaining and which greatly extended the hearing time. The motion judge did not make any adjustment to the costs award arising from this element of divided success.

Apotex Inc. v. Eli Lilly Canada Inc., [2022] O.J. No. 3632 (C.A.)

60 A proper costs assessment requires a court to undertake a critical examination of the relevant factors as applied to the costs claimed and then "step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable": *Restoule v. Canada (Attorney General)*, 2021 ONCA 779, 466 D.L.R. (4th) 2, at para. 356, citing *Boucher v. Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (C.A.), at para. 24. However, as this court recently reiterated in *Restoule*, at para. 357, referencing *Murano v. Bank of Montreal* (1998), 163 D.L.R. (4th) 21 (Ont. C.A.), at para. 100, "this overall sense of what is reasonable 'cannot be a properly informed one before the parts are critically examined.'" (Bolding added)

61 The overarching objective is to fix an amount of costs that is objectively reasonable, fair, and proportionate for the unsuccessful party to pay in the circumstances of the case, rather than to fix an amount based on the actual costs incurred by the successful litigant: *Boucher*, at para. 26.

62 While the reasonable expectation of the parties concerning the amount of a costs award is a relevant factor that informs the determination of what is fair and reasonable, it is not the only, determinative factor and cannot be allowed to overwhelm the analysis of what is objectively reasonable in the circumstances of the case. To hold otherwise would result in the means of the parties artificially inflating costs with the concomitant chilling effect on access to justice for less wealthy parties. As this court cautioned in *Boucher*, at para. 37:

> The failure to refer, in assessing costs, to the overriding principle of reasonableness, can produce a result that is contrary to the fundamental objective of access to justice.

…

64 … Again, the question is, as *Boucher* instructs, whether the costs are reasonable, fair, and proportionate for the losing party to pay in the particular circumstances of the case or whether the magnitude of the costs "generally exceeds any fair and reasonable expectation of the parties".

65 Costs that are reasonable, fair, and proportionate for a party to pay in the circumstances of the case should reflect what is reasonably predictable and warranted for the type of activity undertaken in the circumstances of the case, rather than the amount of time that a party's lawyer is willing or permitted to expend. The party required to pay the successful party's costs "must not be faced with an award that does

> not reasonably reflect the amount of time and effort that was warranted by the proceedings": *Gratton-Masuy Environmental Technologies Inc. v. Building Materials Evaluation Commission* (2003), 170 O.A.C. 388 (Div. Ct.), at para. 17.

[149] In considering proportionality, I remind myself that, in her submissions, and predicated on the finding that she was the successful party, Ms. Healey claimed costs from Mr. Cousins in the amount of $74,004.65.

[150] Having regard to the requirements that I "step back and consider the result produced and question whether, in all the circumstances, the result is fair and reasonable" while also considering whether the costs to be awarded are reasonable, fair, and proportionate for Ms. Healey, as the unsuccessful party, to pay in the particular circumstances of this case or whether the magnitude of those costs "generally exceeds any fair and reasonable expectation of the parties," I have come to the conclusion that Mr. Cousin's "full recovery costs," as defined by Justice Chappel in *M.A.B. v. M.G.C.*, supra, amount to $120,910.21, inclusive of HST and disbursements.

Divided Success

[151] As I have noted throughout, Mr. Cousins' success was not complete. I found that he was also a contributor to reasons why the children did not want to have a relationship with him.

[152] The question is, to what extent does he bear responsibility, and what effect does that have on his "full recovery costs"?

[153] Having carefully considered the events and actions which led to the trial, including the entirety of the parties' post-separation conduct, to account for divided success of both parties having contributed to the reasons why the children do not have a relationship with Mr. Cousins, while still holding Ms. Healey "mainly" to account "primarily due to her deliberate and long-term failure to support the development and maintenance of such a relationship", I am applying a reduction factor of 33% to Mr. Cousins' full recovery costs as I have determined them to be.

[154] As a result, and subject to "any other relevant matter" that I find to apply pursuant to Rule 24(12)(b), Ms. Healey's costs payable to Mr. Cousins amount to $81,009.84, which I round down to $81,000.00.

Rule 24(12(b) – Any Other Relevant Matter

[155] In her reply submissions Ms. Healey, perhaps anticipating that the costs decision may not favour her, made the following two submissions.

[156] In the first, citing *JLD v. JHS*, 2023 ONSC 5802, she wrote:

> "The financial means of the parties, their ability to pay a costs order, and the effect of any costs ruling on the parties and the children are relevant considerations in reaching a determination on the issue of costs. In making an order for costs, we want to ensure

> that litigation expenses do not impoverish the household where the child resides. The children are now 14.5 and 17 years of age. The eldest, is preparing to attend post-secondary education. Imposing a costs award would be detrimental to the Respondent's ability to save for and contribute to the children's postsecondary studies and provide for the day-to-day needs of N."

[157] In the second, she wrote:

> "As indicated in the Respondent's Costs Submissions, the Respondent has incurred significant expenses related to this litigation. The Respondent's resources are limited. The Respondent currently earns $26.99 per hour. The Respondent will be paying $200.00 per week pursuant to the payment plan with Mr. Pentz to pay the remaining $33,319.57 owing as of October 1, 2025 plus interest."

[158] The Ontario Court of Appeal has determined that, under the umbrella of the term "any other relevant matter" can be found a requirement that "in fixing costs, courts cannot ignore the best interests of the child and thus cannot ignore the impact of a costs award against a custodial parent that would seriously affect the interests of the child."[12]

[159] I addressed this issue in *Macnamara v. Weaver,* [2023 O.J. No. 63, where I wrote:

> **109** I am also mindful of the following comments made by Justice D. Chappel in *Arthur v. Arthur,* [2019] O.J. No. 3494:
>
> > **37** As I have indicated, the financial means of the parties is a relevant factor in the quantification of an award. Costs awards must take into consideration the reasonable prospects of a party being able to pay and the impact of an award on the ability of the party to meet their basic needs and those of any children in their care. This factor is properly considered at the end of the costs analysis. The court may in the exercise of its overriding discretion reduce the quantum of costs that a party would otherwise have to pay on the basis of their financial condition (*Beaver* at para. 18) ...
> >
> > **38** A litigant's limited financial means will be given less weight in the costs analysis than the court's determination regarding overall success in the litigation (*Biant v. Sagoo,* [2001] O.J. No. 3693 (S.C.J.); *Gobin v. Gobin*, 2009 CarswellOnt 3452 (O.C.J.)). Furthermore, ability to pay alone cannot override the other factors set out in Rule 24(11) (*Peers v. Poupore,* 2008 ONCJ 615 (O.C.J.)). A party's constrained financial means will also be accorded less weight in quantifying costs if the court finds that the party acted unreasonably. As Curtis J. stated in *Mooney*, "[i]t must be made clear to family law litigants that there is no right to a day in court, or at least, that the right to a day in court is tempered by the requirement that

[12] *C.A.M. v. D.M.*, [2003] O.J. No. 3707 at paragraph 42 (C.A.)

> the parties take a clear-headed look at their case before insisting on their day in court." (underlining added)
>
> **110** I have also weighed against these directions the fact that I am making an award of costs as a component of an order against a person who repeatedly and wilfully chose to disobey a court order.

[160] Ms. Healey has been found to have been both unreasonable and to have acted in bad faith in this proceeding.

[161] As to Ms. Healey's financial circumstances, Ms. Coyne noted that:

a. Ms. Healey *returned* child support payments made by Mr. Cousins toward C.'s support, even whilst C. continued to reside with her;

b. under cross-examination, Ms. Healey described herself as "financially secure;" and

c. Ms. Healey testified to having conveyed joint ownership of her current residence to her partner, Mr. Lammiman, for no consideration.

[162] Ms. Coyne further submitted that "there is no reason that [Ms. Healey] cannot obtain a job that employs her 12 months of the year, or provides more security. [She] chooses to earn less income than she could because her circumstances are such that she does not need to pursue more stable or gainful employment."

[163] Ms. Healey is a healthy 45-year-old. She is or has recently been actively involved in sports. She has no young children in her care. She has experience working in a commercial office environment. In 2018, she was qualified as an Early Childhood Educator. She testified at trial that she was not working full time "due to the current circumstances" when she "needs to be available." She neither defined "the current circumstances," which I took to mean the trial, nor did she indicate why or for what reason she needed "to be available." In any event, the trial is now over, so it is no longer an impediment to her working full-time.

[164] I am satisfied that Ms. Healey is not impecunious.

[165] I am also not especially moved by a submission that the amount that Ms. Healey must pay for costs should be reduced because she has upcoming expenses for the very children who she failed to encourage to have a relationship with their father, and who so vigorously opposed efforts to spend time with him.

[166] As Justice Pazaratz wrote in *Enyedy-Goldner v. Goldner*, [2024] O.J. No. 2112 at paragraph 38(e): "Costs consequents typically have a negative impact on the unsuccessful party. Those consequences should be anticipated at the very outset of the litigation - and revisited on an ongoing basis - to encourage efficient and economical resolution."

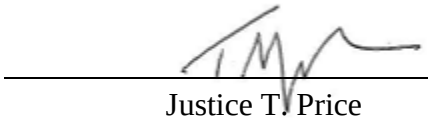
[167] Ms. Healey ought to have done that throughout this proceeding. She received warnings and ignored from multiple judges and therapists that the position she was taking was not in the children's best interests.

[168] In the result, I am not persuaded that I should further reduce the already reduced costs award due to Ms. Healey's financial circumstances.

[169] **In the result, I make the following order as to costs:**

1. The Respondent Sarah Healey shall pay costs to the Applicant Adam Cousins in the amount of $81,000.00, all inclusive.

2. The costs in Paragraph 1 are in addition to any costs awarded against Ms. Healey earlier in this proceeding, and in addition to the penalties imposed upon her by Justice Sah and the terms of the judgement.



Justice T. Price

Date: January 12, 2026