CITATION: McCorkell v Roos, 2026 ONSC 536
COURT FILE NO.: CV-25-1000359/CV-23-48749-ES
DATE: January 27, 2026

SUPERIOR COURT OF JUSTICE – ONTARIO

IN THE ESTATE OF IRENE FLORENCE LAVENDURE, deceased.

RE: Stewart McCorkell, Applicant (Respondent)

AND:

Karen Roos, Respondent (Applicant)

BEFORE: Muszynski J.

COUNSEL: Philip Burger, for Mr. McCorkell

Raymond Murray, for Ms. Roos

HEARD: Costs submissions in writing

COSTS ENDORSEMENT

MUSZYNSKI J.

[1] These combined applications related to a dispute between siblings, Stewart McCorkell and Karen Roos, with respect to Ms. Roos' actions as attorney for property for their mother, Irene Lavendure, and later, Ms. Roos' actions as estate trustee.

[2] Mr. McCorkell initially sought various relief within the estates file Ms. Roos commenced to obtain the certificate of appointment of estate trustee. After an attendance with an Associate Judge, Mr. McCorkell then bought a fresh application seeking largely the same relief.

[3] Mr. McCorkell's main objective in both court files was to obtain judgment in the amount of $29,417.82 that he calculated as being his residual entitlement as a beneficiary named in his mother's will. Alternatively, Mr. McCorkell sought an order compelling Ms. Roos to pass accounts. Ms. Roos did not dispute Mr. McCorkell's status as beneficiary under their mother's

will. Rather, she did not accept Mr. McCorkell's calculation of his entitlement – which did not adequately consider compensation for her role as attorney for property or estate trustee, and did not account for an outstanding loan of $22,000 that Mr. McCorkell owed to his mother.

[4] After two full days of hearing, I released written reasons finding in favour of Ms. Roos: See 2025 ONSC 6432.

[5] In my reasons, I requested that the parties attempt to resolve the issue of costs. Given the animosity between these siblings, requesting they reach an agreement on anything was perhaps overly optimistic on my part. Each party has now filed written cost submission and bills of costs for my consideration.

Positions of the Parties

[6] Ms. Roos seeks full indemnity costs in the amount of $79,439.23 inclusive of HST and disbursements. Ms. Roos submits that her complete success on the application, three offers to settle, the unfounded allegations of fraud, and the requirement to respond to a last-minute failed motion by Mr. McCorkell to adduce expert evidence all support her claim for costs in this amount.

[7] Mr. McCorkell takes the primary position that he should not be ordered to pay any costs. Alternatively, he submits that costs should be payable out of the Estate. In support of his position, Mr. McCorkell states that he raised legitimate concerns about the administration of the Estate that necessitated this litigation. Further, he submits that the court did not make a finding one way or another with respect to the fraud allegations and that he had offered to adjourn the hearing date to allow Ms. Roos an opportunity to obtain a responding expert report.

Analysis

[8] In the context of estate litigation costs are generally determined in accordance with s. 131 of the *Courts of Justice Act* R.S.O. 1990 c. C. 43 and r. 57.01 of the *Rules of Civil Procedure* R.S.O. 1990 Reg.194: *Sawdon Estate v. Sawdon*, 2014 ONCA 101 at para 84.

[9] The successful party in a civil case in Ontario is presumptively entitled to recover a portion of their legal costs from the unsuccessful party. Ms. Roos was the successful party and is

therefore entitled to recover a portion of her legal costs from Mr. McCorkell. I reject Mr. McCorkell's submission that no costs should be awarded to Ms. Roos or that her costs should be payable entirely by the Estate. To accept Mr. McCorkell's position would be to insulate him entirely from any negative consequences of his unsuccessful application.

[10] To determine the appropriate amount of costs to award in this case, I am guided by the following factors set out in r. 57.01 of the *Rules of Civil Procedure*:

Offers to settle

[11] Ms. Roos served formal offers to settle on December 4, 2024 and September 15, 2025 as well as an informal offer to settle on September 24, 2025.

[12] All three offers to settle were more favourable to Mr. McCorkell than the result.

[13] Mr. McCorkell submits that he tried to accept Ms. Roos' informal offer of September 24, 2025, which involved a $3,500 payment to Mr. McCorkell in satisfaction of his entitlement under the Estate and that Ms. Roos' costs be payable by the Estate. The triggering event for Ms. Roos' September 24, 2025 offer was my request that the parties try and resolve the application before the hearing commenced. I made this suggestion after realizing the amount in dispute was not proportionate to the legal costs that the parties would incur.

[14] Mr. McCorkell did not accept Ms. Roos' final offer before the commencement of the hearing. It was after the first day of hearing, and before the second day of hearing, that Mr. McCorkell purported to accept Ms. Roos' offer. Counsel for Ms. Roos clarified that the offer had expired after the hearing commenced and invited Mr. McCorkell to make an offer of his own. No such offer was made.

[15] Ms. Roos' two formal offers to settle trigger the cost consequences of r. 49.10 and entitle Ms. Roos to substantial indemnity costs from the date the first offer was served. Ms. Roos' offer from the first day of the hearing was not a formal offer but demonstrates her continued attempts to avoid litigation.

Principle of indemnity, experience of the lawyers, rates charged, hours worked

[16] Ms. Roos claims costs on a full indemnity scale. In support of her position, Ms. Roos submits that Mr. McCorkell's unfounded allegations of fraud entitles her to the highest scale of costs. Mr. McCorkell takes the position that the court did not decide on the issue of the forgery, and thus it was an appropriate accusation to make. I want to be clear – Mr. McCorkell did not prove that Ms. Roos committed forgery. The comment in my reasons related to the handwriting expert were meant to explain that I found her report to be problematic. It may not have been helpful to Mr. McCorkell even had I allowed it into evidence.

[17] I have reviewed the cases relied upon by Ms. Roos. I do find that the unfounded, serious allegations of fraud should attract an enhanced scale of costs, however, I do not agree that full indemnity costs are appropriate in this case. In my view, costs payable on a substantial indemnity scale is appropriate in this case.

[18] Mr. McCorkell does not take any issue with the rates charged by counsel for Ms. Roos. Nor do I have any issue with the rates given the experience of counsel.

[19] Mr. McCorkell does take issue with the hours docketed, noting that counsel adopted a litigation strategy of extensive reply materials and other choices that increased fees for which he should not be responsible. I do not find the time docketed by counsel for Ms. Roos to be excessive nor do I perceive the reply materials to have been unwarranted. Ms. Roos' materials were responsive to the very serious allegations made against her.

[20] It is often helpful to compare the bills of costs filed by each side. Unfortunately, in this case Mr. McCorkell filed a bill of costs only after the outcome of the application was known. This is not preferable. I note that Ms. Roos' bill of costs was filed on the second date of the hearing, before the result was known. In any event, Mr. McCorkell's full indemnity costs, inclusive of HST and disbursements, is $45,502.16.

Complexity and importance of the issues

[21] The monetary value involved in this litigation was not significant. That said, it was complicated by widespread allegations of impropriety and fraud that Ms. Roos had no choice but to respond to in detail.

The conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding

[22] Mr. McCorkell takes the position that the first court attendance ended up being a waste of time as Ms. Roos retained new counsel shortly before the hearing and an adjournment was requested. To a certain extent, I agree with this position. It would have been preferable for Ms. Roos to retain litigation counsel earlier and to communicate this retainer to counsel for Mr. McCorkell.

[23] On both hearing dates, with some prompting from the court, Mr. McCorkell made various concessions that allowed the hearing to proceed on a more focused basis. While this was helpful, it is unfortunate that such concessions were not made earlier and before Ms. Roos was compelled to respond to each allegation.

Whether any step in the proceeding was improper or unnecessary

[24] I consider Mr. McCorkell's late retainer of a handwriting expert and his motion to admit this expert evidence at the hearing of the application to have been improper.

[25] From an early stage in this litigation, Mr. McCorkell advanced the theory that the handwritten note documenting the $22,000 loan was forged by Ms. Roos. There was no discussion of a handwriting expert until after cross-examinations took place. I do not accept Mr. McCorkell's explanation that he could not retain an expert until he had access to the entire notebook.

[26] Mr. McCorkell's actions as it relates to the handwriting expert is in direct conflict with the *Rules of Civil Procedure*. His offer to adjourn the hearing to permit Ms. Roos an opportunity to retain her own expert misses the mark. Ms. Roos had to respond to the motion. Approximately half of the first day of the hearing was spent arguing the improperly brought motion.

[27] Further, it was unnecessary to litigate this dispute in the Superior Court of Justice. The monetary value of the dispute falls within the jurisdiction of Small Claims Court. The alternative relief sought by Mr. McCorkell, that being an order compelling Ms. Roos to pass accounts, was never a realistic possibility considering Ms. Roos had produced all of the accounts informally and Mr. McCorkell did not dispute the numbers aside from a few isolated transactions.

Conclusion

[28] As noted in my reasons for judgment, there were several offramps to this litigation that were not taken. Mr. McCorkell should incur the consequences personally.

[29] Having considered the offers to settle, the unfounded allegations of fraud, the failed motion to admit the report of a handwriting expert, the time spent, the adjournment of the first appearance, and all of the remaining factors set out in r. 57.01, I fix costs in the amount of $60,000 inclusive of HST and disbursements, which shall be payable by Mr. McCorkell to the Estate forthwith. This represents costs on a substantial indemnity scale with a slight reduction to account for the first adjournment and initial issues with the administration of the Estate. The fees owing above and beyond what Mr. McCorkell has been ordered to pay are proper expenses of the Estate.

Muszynski J.

Released: January 27, 2026