CITATION: *The Ottawa Hospital v. Hôpitel Inc.*, 2026 ONSC 596
OTTAWA COURT FILE NO.: CV-20-83716
DATE: 2026/01/30

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: THE OTTAWA HOSPITAL

Applicant

AND

HÔPITEL INC.

Respondent

BEFORE: Madam Justice S. Corthorn

COUNSEL: David Sherriff-Scott and Benedict Wray, for the applicant

No one appearing for the respondent

HEARD: In writing

COSTS ENDORSEMENT

Introduction

[1] The parties were before the court for a determination of the end date of a contract for the supply and management of telephones, televisions, and terminals for inpatient use at the applicant's multiple hospital sites ("the Contract"). The applicant's position was that the term of the Contract concluded in March 2020; the respondent's position was that the end date is January 2031.

[2] The applicant prevailed, with the court concluding that the end date of the Contract was in March 2020: *The Ottawa Hospital v. Hôpitel Inc.*, 2025 ONSC 4364, at para. 59 ("*Reasons*"). In addition, the court declared that the applicant complied with the notice requirements in the Contract, as a result of which the Contract in fact ended in March 2020: at para. 108.

[3] The court found that the applicant was entirely successful on the application and was, therefore, presumptively entitled to its costs of the proceeding: at para. 109. The parties were given an opportunity to resolve the issue of costs, failing which they were to deliver costs submissions in accordance with a prescribed timetable: at para. 109.

[4] The parties did not resolve the issue of costs of the proceeding. The applicant delivered the requisite costs materials in accordance with the above-mentioned timetable. The respondent did not deliver any costs materials.

[5] The applicant seeks costs on the substantial indemnity scale in the amount of $99,855 or, in the alternative, on the partial indemnity scale in the amount of $66,780[1].

[6] Pursuant to s. 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the court has the discretion to determine by which party and in what amount costs of a proceeding shall be paid. In this endorsement, I address the issues of (a) entitlement to costs; (b) the scale on which costs, if awarded to the applicant, are payable; and (c) the amount in which costs, if awarded to the applicant, are payable.

[7] For the reasons that follow, the respondent shall pay to the applicant its costs of the proceeding and of the post-hearing work, on the substantial indemnity scale, in the amount of $99,855.00.

A Preliminary Issue – The Respondent's Assignment in Bankruptcy

[8] The *Reasons* were released in July 2025. In mid-August 2025, the respondent made an assignment in bankruptcy. In its costs submissions, the applicant addresses the stay of proceedings that arises pursuant to s. 69(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

[9] The applicant relies on the decision of Healey J. in *Nouri v. Negravi*, 2015 ONSC 5695. The applicant's position is that the court is not, in the circumstances of this matter, precluded from fixing and making an award of costs. I agree with the analysis in *Nouri*; find that the analysis is applicable to the matter before this court; and am satisfied that the court is not precluded from addressing the issue of costs of the proceeding.

Entitlement to Costs

[10] As stated in the *Reasons*, at para. 109, the applicant is entirely successful on the application and is presumptively entitled to its costs of the proceeding. The applicant submits, and I agree, that there is no evidence of conduct on the applicant's part to support a finding that the presumption of entitlement to costs is rebutted. The respondent shall pay the applicant's costs on the scale and in the quantum determined below.

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[1] Both amounts are based on the amount of costs the applicant seeks, rounded to the next highest whole number ending in "5" or "0".

The Scale on Which Costs are Payable

[11] In support of its requests for costs to be awarded on the substantial indemnity scale, the applicant asks the court to consider two aspects of the respondent's conduct. First, that the respondent took inconsistent positions throughout the parties' dispute – both prior to and during the litigation. Second, that the respondent failed to engage in meaningful settlement discussions – both in writing and regarding settlement meetings. The applicant submits that the consequences of that alleged conduct are that the litigation was prolonged and the potential for settlement was negated.

[12] In *Davies v. the Corporation of the Municipality of Clarington et al.*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 40, the Court describes, as follows, the breadth the discretion pursuant to which costs may be awarded on an elevated scale:

> In summary, while fixing costs is a discretionary exercise, attracting a high level of deference, it must be on a principled basis. The judicial discretion under rules 49.13 and 75.01 is not so broad as to permit a fundamental change to the law that governs the award of an elevated level of costs. Apart from the operation of rule 49.10, elevated costs should only be awarded on a clear finding of reprehensible conduct o the part of the party against which the cost award is being made.

[13] What type of conduct constitutes "reprehensible" conduct? In *Thompson v. Carleton University*, 2020 ONSC 3479, at para. 7, MacLeod identifies strategies that should not be rewarded in the context of determining costs of a construction lien action. Those strategies include "advancing arguments that complicate and prolong the proceeding".

[14] I start with the applicant's position that the respondent took inconsistent positions throughout the dispute – both before and during the litigation. From January 2013 through the hearing of the application, the applicant's position was consistent – that the Contract ended in March 2020: see the Reasons, at para. 31. The respondent, on the other hand,

- initially took the position that the Contract ended in January 2031 (*Reasons*, at para. 33);
- then, in an effort to obtain reimbursement of an alleged overpayment to the applicant of commissions, resorted to reliance on a March 2020 end date for the Contract (*Reasons*, at paras. 89-102); and
- after the application was commenced, reverted to its original position that the Contract end date is in January 2031.

[15] The respondent's flip-flopping in its position did not, however, result in any prejudice to the respondent's right to continue to provide services to the applicant, in the form of the supply and management of telephones, televisions, and terminals, all pending a resolution of the dispute through litigation or a negotiated settlement. The applicant was left with no choice but to pursue litigation to resolve the dispute with the respondent.

[16] The strategy adopted by the respondent, including the flip-flopping on its position, is not the type of strategy that should be encouraged in commercial dealings. I also take into consideration that the entity on the receiving end of the respondent's strategy is, at least in part, a taxpayer-funded public healthcare institution.

[17] I turn next to the applicant's submission that the respondent failed to meaningfully engage in settlement negotiations.[2] The respondent's failure in that regard includes (a) making an unrealistic, unreasonable, and unsupported proposal for the applicant to buyout the Contract in 2015; and (b) attempting to re-negotiate the terms of the Contract to facilitate a long-term relationship with the applicant, after it was patently obvious that the parties' relationship was damaged beyond repair.

[18] For those reasons, the applicant is entitled to its costs on the substantial indemnity scale.

[19] The respondent's conduct, as summarized in this section of the endorsement is also relevant to the task of fixing the amount of costs payable: see rr. 57.07(1)(e), (g) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Fixing the Amount of Costs Payable

[20] Three costs outlines are before the court. Both parties filed a costs outline at the outset of the hearing. In addition, and in accordance with the timetable prescribed in the *Reasons*, the applicant delivered an updated costs outline to reflect costs incurred to the conclusion of the multi-day hearing of the application. The respondent did not deliver an updated costs outline.

[21] The applicant seeks costs on the substantial indemnity scale in the total amount of $99,853.75. That amount is broken down as follows:

Fees	$	73,073.25
Appearance fees (two counsel)	$	8,379.00
	$	6,615.00

[2] See paras. 6-10 of the applicant's costs submissions.

Sub-total (fees)	$	88,067.25
HST on fees	$	11,448.74
Disbursements (incl. HST)	$	337.76
Total	$	99,853.75

[22] I note two matters related to the fees claimed. First, as I calculate it, the fees, excluding appearance fees, identified in the updated costs outline total $73,200.19. I am uncertain as to why the applicant's total for that same portion of the fees is $73,073.25. Regardless, I rely on the calculations in the applicant's updated costs outline.

[23] Second, the above-noted $73,073.25 includes $3,780 for the post-hearing work, of mid-level counsel, on a draft order and costs submissions. Work done regarding the issue of costs is typically addressed independent of costs of the proceeding proper. I therefore deal with the $3,780 independent of costs of the proceeding proper.

[24] The time related to the preparation of a draft order (typically part of the proceeding proper) is a small portion of the work resulting in fees of $3,780. For efficiency, I include that portion of the work in the post-hearing portion of costs.

[25] The total of fees, which the applicant seeks on the substantial indemnity scale, for the proceeding proper is $84,287.25 ($88,067.25 – $3,780.00). The applicable HST is $10,957.34 ($84,287.25 x 0.13). By my calculation, the total fees, disbursements, and HST, which the applicant seeks on the substantial indemnity scale for the proceeding proper is $95,582.35 ($84,287.25 + $10,957.34 + $337.76). For the purpose of this endorsement, I round that amount to $95,582.50.

[26] In their updated costs outline, the applicant reviews the factors listed in r. 57.01(1). I will not touch on every factor, choosing instead to highlight the following findings (i.e., in addition to the findings made in the previous section of this endorsement):

- The original costs outlines filed by the parties, when considered together with the applicant's updated costs outline, support a finding that the respondent could reasonably have expected to pay the costs now claimed by the applicant (r. 57.01(1)(0.a);

- The monetary amounts involved, in terms of both the potential revenue to the respondent and the commission payments to the applicant, are in the six-figure range on an annual basis and in the seven-figure range over multiple years, with the overall amount involved dependent on the duration of the parties' contractual relationship (rr. 57.07(1)(a), (d)); and

- The application raised issues of contractual interpretation and whether the doctrine of election applied in the circumstances, all within a complex factual matrix (r. 57.01(1)(c)).

[27] The lawyers whose time is reflected in the updated costs outline are all experienced in the area of commercial litigation and include two senior counsel and a mid-level counsel. I am satisfied that the hourly rates charged by all lawyer timekeepers are reasonable. The updated costs also identifies a "Law Clerk" as a timekeeper on the file. None of that individual's time is, however, included in the fees detailed in the costs outline.

[28] The updated costs outline includes fees for preparation and attendance on the return of the application on three occasions. The application was adjourned from October 2023; the hearing commenced in April 2024. The application was not completed in a single day; the second day of the hearing was in August 2024. With a delay of six months from October 2023 to April 2024, I am satisfied that it would be necessary for counsel to re-do much of the preparation initially done. I also note that for the April 2024 attendance, a cost-effective approach was taken, with the workload divided between senior and mid-level counsel.

[29] More generally, I am satisfied that the time docketed by each of the lawyer timekeepers is reasonable given the nature of the litigation.

[30] The disbursements claimed are minimal and include a court fee (related to the commencement of the application) and small amount for courier services. I am satisfied that the disbursements are reasonable.

[31] I fix the applicant's costs of the proceeding proper, on the substantial indemnity scale in the amount of $95,580.

[32] For the post-hearing portion of the proceeding, the applicant seeks costs on the substantial indemnity scale in the amount of $3,780 (based on eight hours of time docketed by mid-level counsel). Both the written costs submissions and the updated costs outline are well-written; both documents efficiently address the requisite points (with the former document doing so in the space of five pages). I am satisfied that the time docketed regarding the costs materials and the preparation of a draft order is reasonable.

[33] I fix the applicant's post-hearing costs, on the substantial indemnity scale in the amount of $4,271.40 ($3,780.00 + $491.40).

Disposition

[34] The respondent shall pay to the applicant its costs of the proceeding, including the post-hearing portion of the proceeding, all on the substantial indemnity scale, and fixed in the total amount of $99,855.00 ($95,528.50 + $4,271.40).

Date: January 30, 2026

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Madam Justice S. Corthorn

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Madam Justice Sylvia Corthorn

Released: January 30, 2026