

**CITATION:** Al-Shawi v. Al-Hakim et al., 2026 ONSC 983

**COURT FILE NO.:** CV-17-60601

**DATE:** 2026-02-17

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** AL-SHAWI, Imad, Plaintiff/Defendant by Counterclaim

**AND:**

HASSEN AL-HAKIM A.K.A. HASSEN EL-HAKIM, HAZEM TAIEY A.K.A. HAZEM EL-TAIEY, and 1635003 ONTARIO LIMITED O/A VIDA LA PITA, Defendants/Plaintiffs by Counterclaim

**BEFORE:** Bordin J.

**COUNSEL:** Al-Shawi, Imad – Self-Represented

Dobrogeanu, Andrei – plaintiff/defendant by counterclaim/responding party

**HEARD:** February 17, 2026

**ENDORSEMENT**

[1] The defendants seek costs of this February 2017 action which was administratively dismissed on November 6, 2025. They have filed an affidavit and factum. The defendants seek costs of \$38,535.66 on a substantial indemnity basis.

[2] The plaintiff sought damages exceeding \$3.7 million. The plaintiff made allegations at paragraphs 26 and 28 of the Statement of Claim that the defendants made fraudulent representations and acted fraudulently and in bad faith. The allegations were repeated in an affidavit filed on behalf of the plaintiff in a motion.

[3] In submissions, Mr. Al-Shawi asserted that the defendants forged documents and were dishonest.

[4] The corporate plaintiff counterclaimed for \$100,000. The defendants acknowledge they are not entitled to the costs of their counterclaim.

[5] There were two rounds of discoveries and documents exchanged. During the plaintiff's examination for discovery, he admitted that he had omitted relevant documents from his affidavit of documents.

[6] The plaintiff brought motions which were partially resolved on consent but never brought back to resolve costs. The plaintiff brought motions to extend the time to set the action down for trial but did not set it down.

[7] The plaintiff has prepared a four paragraph responding affidavit which simply states that the defendants delayed the action for many years, he was hospitalized in October 2024, and that he made an offer to settle to dismiss the action without costs. The offer was not accepted. The plaintiff then delivered a notice of intention to act in person and took no further steps.

[8] The defendants say that the plaintiff incurred costs of \$55,367.64. This is based on invoices the plaintiff received from his lawyer which he provided to the defendants. In an offer dated September 11, 2024, the plaintiff sought \$145,000 in costs. In submissions he said he incurred about \$120,000 in costs.

[9] The plaintiff submits that he could not continue with the litigation because of the delays caused by the defendants. He asserts he had to spend a lot of time and money to move the litigation forward. The plaintiff submits he ran into health issues which he says were caused by the litigation. He says he spoke to his lawyer about not proceeding with the fraud allegations. Finally, he says that he ran out of money.

[10] The plaintiff asserts that the defendants avoided discovery for four years. However, the examination for discovery of the plaintiff occurred in July 2018, and the defendants in July 2018 and December 2021.

[11] Subject to the provisions of an Act or the rules of this court, costs are in the discretion of the court: s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. In exercising that discretion, I may consider, in addition to the result in the proceeding and any offer to settle, the factors enumerated in rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg 194.

[12] A costs award should reflect what the court views as a fair and reasonable amount that should be paid by the unsuccessful party rather than any exact measure of the actual costs to the successful litigant: *Zesta Engineering Ltd. v. Cloutier* (2002), 21 C.C.E.L. (3d) 161 (Ont. C.A.), at para. 4.

[13] In fixing costs, the overriding principle is reasonableness. As stated in *Davies v. Clarington (Municipality) et al.*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 52: “Rather than engage in a purely mathematical exercise, the judge awarding costs should reflect on what the court views as a reasonable amount that should be paid by the unsuccessful party rather than any exact measure of the actual costs of the successful litigant”.

[14] The fixing of costs is not simply a mechanical exercise. It is necessary to step back and consider the result produced and question whether, in all the circumstances, the result is fair and

reasonable: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at paras. 24 and 26.

[15] Absent an operative rule 49 offer to settle, an award of costs on an elevated scale is justified in only very narrow circumstances - where an offer to settle is engaged or where the losing party's conduct is worthy of sanction: *Davies v. Clarington (Municipality) et al.*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 28.

[16] The court in *Davies* went on to consider conduct worthy of sanction:

[29] In *Young v. Young*, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3, [1993] S.C.J. No. 112, at p. 134 S.C.R., McLachlin J. described the circumstances when elevated costs are warranted as "only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties".

[30] The same principle was expanded upon in *Mortimer v. Cameron* (1994), 1994 CanLII 10998 (ON CA), 17 O.R. (3d) 1, [1994] O.J. No. 277 (C.A.), at p. 23 O.R., where Robins J.A., speaking for the court, set out the restricted circumstances in which a higher costs scale is appropriate with reference to *Orkin*, at para. 219. [page75]

An award of costs on the solicitor-and-client scale, it has been said, is ordered only in rare and exceptional cases to mark the court's disapproval of the conduct of a party in the litigation. The principle guiding the decision to award solicitor-and-client costs has been enunciated thus:

[S]olicitor-and-client costs should not be awarded unless there is some form of reprehensible conduct, either in the circumstances giving rise to the cause of action, or in the proceedings, which makes such costs desirable as a form of chastisement.

[31] The narrow grounds justifying a higher costs scale were further reinforced by Abella J.A. in *McBride Metal Fabricating Corp. v. H. & W. Sales Co.* (2002), 2002 CanLII 41899 (ON CA), 59 O.R. (3d) 97, [2002] O.J. No. 1536 (C.A.) where, at para. 39, she said:

Apart from the operation of rule 49.10 (introduced to promote settlement offers), only conduct of a reprehensible nature has been held to give rise to an award of solicitor and client costs. In the cases in which they were awarded there were specific acts or a series of acts that clearly indicated an abuse of process, thus warranting costs as a form of chastisement. See, also, *Walker v. Ritchie*, 2005 CanLII 13776 (ON CA), [2005] O.J. No. 1600, 197

O.A.C. 81 (C.A.), at para. [105](#), and [2006 SCC 45 \(CanLII\)](#), [2006] 2 S.C.R. 428, [2006] S.C.J. No. 45.

[17] In *Nazarinia Holdings Inc. v. 2049080 Ontario Inc.*, [2010 ONSC 2559 \(CanLII\)](#), Strathy J. (as he then was) set out the approach in assessing enhanced costs where fraud is alleged:

[10] I start with the proposition that substantial indemnity costs are very much the exception and should only be awarded in "rare and exceptional cases to mark the court's disapproval of the conduct of the party in the litigation": *Hunt v. TD Securities Inc.* (2003), [2003 CanLII 3649 \(ON CA\)](#), 66 O.R. (3d) 481, [2003] O.J. No. 3245 (C.A.) at para. [123](#). The conduct in question must be "reprehensible, scandalous or outrageous": *Young v. Young*, [1993] 4 S.C.R. 3, [1993 CanLII 34 \(SCC\)](#), [1993 CanLII 34](#), at para. [250](#); *United States of America v. Yemec* (2007), [2007 CanLII 65619 \(ON SCDC\)](#), 85 O.R. (3d) 751, [2007] O.J. No. 2066 (Div. Ct.) at para. [30](#).

[11] I also note that it is not every case of unsuccessful allegations of fraud that will result in an award of substantial indemnity costs. In *Hamilton v. Open Window Bakery Ltd.*, [2004 SCC 9 \(CanLII\)](#), [2004] 1 S.C.R. 303, [2003] S.C.J. No. 72, Arbour J., after referring to *Young v. Young*, stated at para. [26](#):

An unsuccessful attempt to prove fraud or dishonesty on a balance of probabilities does not lead inexorably to the conclusion that the unsuccessful party should be held liable for solicitor-and-client costs, since not all such attempts will be correctly considered to amount to "reprehensible, scandalous or outrageous conduct". However, allegations of fraud and dishonesty are serious and potentially very damaging to those accused of deception. When, as here, a party makes such allegations unsuccessfully at trial and with access to information sufficient to conclude that the other party was merely negligent and neither dishonest nor fraudulent (as Wilkins J. found), costs on a solicitor-and-client scale are appropriate: see, generally, M. M. Orkin, *The Law of Costs* (2nd ed. (loose-leaf)), at para. 219.

[12] I respectfully adopt the observations of Lax J. in *Manning v. Epp*, [2006] O.J. No. 4239 (S.C.J.) at paras. 7 - 9:

Costs on the higher scale can be awarded as a form of chastisement and as a mark of the court's disapproval of a litigant's conduct. This is intended to punish as well as to deter others from engaging in similar conduct. Unproved allegations of fraud frequently attract awards on the higher scale. Unproved allegations of breach of trust, conspiracy, misrepresentation,

breach of fiduciary duty, and the like, may also attract this kind of award: *Beaver Lumber Co. v. 222044 Ontario Ltd.* (1997), 5 C.P.C. (4th) 253 (Ont. Gen. Div.) at p. 256.

Cost sanctions are imposed for these kinds of unproved allegations because they are rooted in assertions of dishonesty and deceit and go to the heart of a person's integrity: *Bargman v. Rooney* (1999), 30 C.P.C. (4th) 259 (Ont. Gen. Div.) at pp. 268-269; *Dyer v. Mekinda Snyder Partnership Inc.* (1998), [1998 CanLII 14847 \(ON SC\)](#), 40 O.R. (3d) 180 (Gen. Div.) and see cases referred to at pp. 184-185. Where serious allegations of dishonest or illegal acts are made, but are so inadequately pleaded that they are not permitted to go forward, costs consequences should likewise follow. These allegations have stood in the public record and over the heads of the defendants. The plaintiffs admitted that the allegations were akin to or as serious as fraud. The allegations were made against public officials in the course of carrying out their public duties. To strike recklessly at the integrity of a person occupying a position of public trust is a serious matter.

The task for the court is to punish and deter unwarranted allegations and egregious conduct, but without discouraging the tenacious pursuit and advancement of serious claims of impropriety in a proper case. This was not a serious claim of impropriety. Essentially, the plaintiffs sought to recover damages in respect of a solicitor's retainer in which they had no prospective economic interest and made unsupported allegations of illegal conduct on the part of the Mayor and his co-defendants. The allegations were designed to harm and embarrass. It is appropriate to award costs to the Epp defendants on a substantial indemnity scale.

[18] The plaintiff alleged fraud and then did not bring the matter to trial. He continues to allege fraud and forgery. In submissions he asserted he had a strong case. However, instead of proceeding with the case, he delayed repeatedly by extending the time to set the action down for trial, but never set it down for trial. After seven years he offered to walk away with neither party paying costs. Then he let the action sit dormant until it was administratively dismissed. Meanwhile, the defendants had the allegations of fraud hanging over their heads.

[19] I do not accept the plaintiff's explanations for why he abandoned the case. In submissions he asserted that it took four years to get the defendants to discovery, but this is not borne out by the evidence. The plaintiff withheld relevant documents from his affidavit of documents. He initiated motions which were not brought to a conclusion. His submissions about the costs he incurred conflict with the sworn evidence of his actual costs. The costs he sought in an offer was

significantly more than the costs he told the court today that he had incurred. This conduct is worthy of sanction and chastisement.

[20] The defendants are entitled to costs. Substantial indemnity costs are appropriate.

[21] I have considered the costs claimed by the plaintiff, the costs incurred by the defendants, the above principles, the r. 57.01 factors including the importance of the issues to the defendants, the amount claimed, that the defendants advanced a \$100,000 counterclaim, the steps taken, the costs the plaintiff could reasonably expect to be paid, and what is fair and reasonable in the circumstances. I fix the costs payable by the plaintiff to the defendants for the action at \$38,535 on a substantial indemnity basis.

[22] The defendants seek costs of the motion in the amount of \$4,209 on a partial indemnity basis as two appearances were required and the entire file had to be reviewed to prepare the motion materials. The plaintiff relies on his submissions made with respect to the costs of the action. He submits that costs should be what is fair. He does not think it is fair that he should pay costs of the motion given how the litigation proceeded. He submits each party should bear their own costs.

[23] The defendants were successful on the motion and are entitled to costs. I find that costs of the motion should be fixed in the amount of \$3,750 all-inclusive on a partial indemnity basis.

[24] This endorsement is to be sent to the plaintiff at [alshwi65@gmail.com](mailto:alshwi65@gmail.com).

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**Bordin J.**

**Released:** February 17, 2026