

CITATION: Robinson v. Richardson International Limited, 2026 ONSC
COURT FILE NO.: CV-23-3777-0000
DATE: 2026 03 04

SUPERIOR COURT OF JUSTICE – ONTARIO

491 Steeles Avenue East, Milton ON L9T 1Y6

RE: Peter Robinson, Plaintiff
AND:
Richardson International Limited, Defendant
BEFORE: Associate Justice J. Glick
COUNSEL: Krysten Fisher, for the Plaintiff
Nicole Jakobek, for the Defendant
HEARD: February 25, 2026, Via Video (ZOOM)

ENDORSEMENT

[1] This is a wrongful dismissal action. The Plaintiff’s employment was terminated for alleged cause without notice or pay in lieu of notice. The Plaintiff alleges he was terminated because he had raised concerns about the workplace environment. The Defendant claims the Plaintiff participated in the theft of a case of toilet paper that warranted his termination.

[2] This motion by the Plaintiff was originally a motion to compel answers to undertakings. At the hearing of the matter the only issue remaining was costs. For the reasons that follow, I find that the parties should each bear their own costs of the motion.

Background

[3] The action was commenced on December 6, 2023. The Defendant filed a defence on January 8, 2024. The Plaintiff amended their claim on July 24, 2024. The Defendant did not file an amended defence.

[4] The parties had difficulty agreeing to a discovery plan. The point of contention was that the Defendant disagreed with the person selected by the Plaintiff to be examined for discovery as the Defendant's corporate representative. The Plaintiff wanted to examine Mr. Getty. The Defendant wanted the Plaintiff to examine Mr. Murphy. That issue was argued in front of Justice Doi on July 24, 2024. Justice Doi concluded that the Defendant had discharged its onus to displace the Plaintiff's *prima facie* right to select its discovery witness. Justice Doi substituted Mr. Murphy for Mr. Getty as the Defendant's representative. Justice Doi ordered costs payable to the defendant in the amount of \$3800 inclusive.

[5] Examinations for discovery took place on February 4, 2025. The Defendant's representative provided 4 undertakings and took 44 questions under advisement.

[6] The Defendant provided its undertakings chart on May 12, 2025. The majority of the answers taken under advisement were marked as refused.

[7] The Plaintiff provided his answers to undertakings by email on June 3, 2025. Plaintiff's counsel in that same email advised that the Defendant's chart was not satisfactory. Plaintiff's counsel stated: "please provide fuller and better answers by the end of the day, June 13, 2025, or we will proceed with an undertakings and refusals motion."

[8] On June 20, 2025, after receiving no response from Defendant's counsel, Plaintiff's counsel wrote another email. In that email she stated "we have provided additional time to provide satisfactory responses and have not received the same. As such, we have instructions to bring a motion. We will be in contact with respect to dates for the same shortly."

[9] On June 23, 2025, counsel for the Defendant responded to counsel for the Plaintiff. She wrote "I am currently reviewing our answers and will get back to you. Are there specific refusals you take issues with so I can narrow down our disagreement?"

[10] On June 25, 2025, Plaintiff's counsel provided a list of the answers taken under advisement that they stated were improper refusals or not properly answered. There were 30 under advisements noted.

[11] Counsel for the Defendant did not immediately respond to that email. On August 5, 2025, the Plaintiff served its motion record for this motion. Plaintiff's counsel on that same date proposed a timetable for the motion, including responding materials by August 26, 2025, reply materials if any by September 9, 2025 and a triage court attendance on September 18th.

[12] On August 11, 2025, Plaintiff's counsel followed up on the proposed timetable. Later that afternoon, Defendant's counsel wrote an email stating that she would be "sending an updated undertakings chart this week. My apologies for the delay. Once I send the updated chart we can discuss the motion."

[13] On August 14, 2025, Plaintiff's counsel served an offer to settle. The offer was for the Defendant to answer all outstanding under advisements within fourteen days of the offer. The Plaintiff also wanted the Defendant to pay the Plaintiff's partial indemnity costs of the motion less \$100, calculated to the date of the acceptance and payable within fourteen days.

[14] Counsel had a telephone conversation. On August 28, 2025, the Defendant provided a revised undertakings chart. The Defendant answered many of the under advisements but maintained refusals on some.

[15] That same day counsel for the Plaintiff took the position that the maintained refusals were not acceptable. Counsel for the Plaintiff advised that the motion could now be a short motion instead of a long motion. There were emails after asking for agreement on the question of a short motion.

[16] On September 25, 2025, counsel for the Defendant sent an updated undertakings chart.

[17] On October 10, 2025, counsel for the Plaintiff wrote to counsel for the Defendant stating that they would be requesting a triage court date. They stated that they had been

on vacation when the updated undertakings chart was sent “while the undersigned was on vacation, thereby buying your client additional time as our clerk had to await the return of the undersigned to review the same”. Counsel took the position that this “conduct is unreasonable and unnecessarily increases the costs of these matters.” It was her position that four refusals remained inappropriate and that more information was required on three points.

[18] Counsel in that letter also made the following statement:

Further, your client’s conduct in this litigation has been concerning. It is apparent that your client is willing to bend the truth to serve its purposes, and cares little for the rules or for the law. The inconsistencies in evidence, including the evidence your client has relied upon already before the Court, shall be highlighted at trial with respect to credibility and, ultimately, costs. This is a waste of the parties’ resources, as well as a waste of the court’s very limited and constrained resources.”

[19] Counsel for the Defendant was not available on the triage court date. Counsel for the Plaintiff did not agree to select a different date and asked that someone else from the Defendant counsel’s office attend. Defendant’s counsel stated this was not possible.

[20] The emails back and forth continued. The correspondence was adversarial in nature. Ultimately however the parties agreed on a timetable for exchange of materials and there was no triage court attendance.

[21] On November 10, 2025, counsel for the Defendant provided further answers. On November 13, 2025, counsel for the Plaintiff advised that although the issues were now largely resolved they would still need to seek costs of the motion.

[22] More emails were exchanged about the question of costs. Counsel for the Defendant took the position that the motion had not been required and that there was no basis for a costs order. Counsel for the Plaintiff disagreed. In a lengthy “With Prejudice” letter she stated, amongst other things, “it was like pulling teeth to get these answers, and to have your firm participate in the motion as required by the Rules and practice direction.” More emails were thereafter exchanged arguing the issue back and forth.

[23] The issue of costs was not resolved. The Plaintiff prepared a supplementary motion record and compendium. The Defendant prepared a responding motion record, factum and book of authorities. The parties then attended and argued this motion on the issue of costs only.

Positions of the Parties

[24] The Plaintiff takes the position that costs should be paid. They say the motion was necessary to obtain the answers to the refusals. They say the Defendant did not respond promptly to the initial request for better answers and so a motion was brought. They take issue with the lack of response to their requests to timetable the motion or move it forward. Counsel took me to a number of cases which she says support the assertion that in circumstances such as these, the Court ought to award costs even as the merits of the motion did not need to be argued.

[25] The Defendant argues that costs are not appropriate, or that, in the alternative, they should be awarded costs. The Defendant says that the motion was not a catalyst for compliance. The Defendant provided their answers a month before the Plaintiff provided theirs. They then worked to address the concerns raised by the Plaintiff. They point to what they say was a rigid and adversarial approach and a motion that was moot. The motion, they say, was unnecessary.

Law

[26] Subject to the provisions of an Act or the *Rules*, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent costs shall be paid (s. 131(1), *Courts of Justice Act* (Ontario)). In exercising this discretion, in addition to the result and any offer to settle made in writing, the court may consider the factors set out in Rule 57.01(1).

[27] As Associate Justice McGraw stated in *Big Brothers and Big Sisters Association of Peterborough Incorporated v. Edwardes-Evans*, 2021 ONSC 1910 at paragraph 4:

Fairness and reasonableness are the overriding principles in determining costs (*Boucher v. Public Accountants Council for the Province of Ontario*, (2004) 2004

CanLII 14579 (ON CA), 71 O.R. (3d) 291 (C.A.); *Deonath v. Iqbal*, 2017 ONSC 3672 at paras. 20-21). The general rule is that costs on a partial indemnity scale should follow the event which should only be departed from for very good reasons such as misconduct of the party, miscarriage in procedure or oppressive or vexatious conduct (*1318706 Ontario Ltd. v. Niagara (Regional Municipality)* (2005), 2005 CanLII 16071 (ON CA), 75 O.R. (3d) 405 (C.A.); *394 Lakeshore Oakville Holdings Inc. v. Misek*, 2010 ONSC 7238 at paras. 10, 12-14). In determining costs, the court must also consider Rule 1.04(1) to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits and Rule 1.04(1.1) to make costs orders which are proportionate to the importance and complexity of the issues and to the amount involved (*Deonath* at para. 21).

[28] As AJ McGraw went on to note at paragraph 6, “costs will not typically be awarded where a motion is settled on all issues except for costs unless there are exceptional circumstances (*Kearney v. Hill*, 2017 ONSC 6306 at paras. 27-31; *Muskala v. Sitariski*, 2017 ONSC 2842 at paras. 5-12). These include situations where the parties have agreed to resolve the motion on all issues except for costs and where it is unlikely that the motion would have proceeded on consent without deferring costs (*Kearney* at paras. 28-30).

[29] This was also the conclusion of Justice Myers in *Muskala v. Sitariski*, 2017 ONSC 2842 at paras. 5-12. Justice Myers stated “costs generally should not be awarded when parties settle “except for costs”” and went on to note that “costs are an incident of the determination of the rights of the parties. They flow from a decision. They are not themselves intended to be the subject of the dispute.” Justice Myers went on to state:

[9] Third, there is usually no way for the court to make the findings of fact that they parties need to support a costs determination. The parties essentially want me to pretend to hear the motion in my chambers on their material and decide what the outcome might have been without hearing from counsel and without the parties undertaking the risk of jeopardy associated with that decision. Then they ask me to assess whether bringing or defending the motion was reasonable. It is all hypothetical since there is no longer a true *lis* or dispute between the parties. Yet the parties ask the court to balance the factors under Rule 57.01, consider proportionality and reasonable expectations, and, in this and many other cases, ask the court to determine if a party’s conduct was reprehensible so as to justify an enhanced award of punitive costs. I cannot tell if the defendants ought to have consented in advance or if they had good reason not to consent until they did. One never knows why people settle without invading the privileged relationship between lawyer and client. Perhaps the defendants had very good defences to

the motions but chose to consent for other reasons – such as to establish their *bona fides* and to buy peace.

- [10] Finally, in my view, where the parties are not prepared to incur the time, cost, or risk to argue the motion on the merits just because they have not settled costs, then their efforts to upload the disembodied decision on to the court is equally not a proportional or efficient use of court time.
- [11] None of this is new. The relevant law and applicable policy have been discussed recently in a compelling decision written by Broad J. *Waterloo North Condominium Corporation No. 161 v. Redmond*, 2017 ONSC 1304. At para. 34 of his decision, Broad J. summarized the relevant considerations as flows:
- [34] In my view to embark upon this exercise would be, on the authority of *Dhillon*, *Anishinaabe*, *Blank* and *McLellan*, inappropriate and would risk being manifestly unfair. As noted by Justice MacKenzie in *Dhillon*, there may be many motivating factors for parties to enter into settlements and the reasonableness or unreasonableness of any party's position in either asserting a claim, abandoning a claim or abandoning a defence or answer to a claim can depend on a myriad of factors. Moreover to embark upon a full examination and adjudication of the merits of the parties' respective substantive claims and defences for the sole purpose of determining the question of costs, when those substantive issues have been settled by the parties, would run counter to the principle in *McLellan* that costs are incident to a determination of the rights of the parties and are not to be made themselves the subject matter of the litigation.
- [12] There may be exceptional cases where a settlement is reached and different considerations lead to a different outcome. But, in this case, I have reviewed the costs submissions and the underlying motion material and exercise my discretion to refrain from awarding costs. In my view the general rule against awarding costs on a settlement should apply in this case for all of the foregoing reasons.

Analysis

[30] I find, having regard to the record as well as the law, that this is not an appropriate case for costs. The matter was not argued in court. The Plaintiff answered all of the refusals that were the subject of this motion months before the return date. I also find that this motion was not the catalyst for providing the answers. Though the Defendant's responses to the Plaintiff's emails were delayed, the Defendant was willing to try to address the Plaintiff's concern without a motion. Even if it the motion was the catalyst, it ought to have been apparent by the end of August that answers would be forthcoming. The Plaintiff did not need to continue to push forward with the motion. The approach taken on this motion should not be rewarded by an order of costs.

[31] The Defendant provided their answers to undertakings a month before the Plaintiff provided their answers. The motion was clearly not required to compel answers to undertakings. The question is whether the answers to the under advisements, which became refusals, were compelled by the motion. I find that they were not.

[32] On the basis of the chronology set out in the fact section above, I find that the Defendant advised the Plaintiff before the motion record was served that they were willing to work with the Plaintiff to try to resolve the issue. I agree that the Defendant could have been more prompt in their correspondence. This however does not translate into a finding that the motion was necessary.

[33] Even if I am wrong in this finding, I find that by the end of August 2025 it was clear that a motion would not be required to resolve the dispute about refusals. The Defendant was providing answers and trying to resolve the issue. The Plaintiff continued to press forward with the motion. I find that there was no need to do so.

[34] The Plaintiff, in arguing that this is a circumstance warranting a costs order referred me to Associate Justice Robinson's decision in *Murphy v. Toronto and Region Conservation Authority*, 2020 ONSC 1709. That case though is distinguishable. In that case AJ Robinson did order costs in a refusals and undertakings motion where the undertakings portion of the motion wasn't argued. The refusals portion of the motion though was argued. The costs award applied to both portions of the motion. AJ Robinson found that the answers to undertakings were only provided in response to the motion, in the responding record.

[35] *Murphy* is a very different case than the one in front of me on this motion. On this motion nothing was argued, and the Defendant provided its undertakings chart before the Plaintiff. This motion was not necessary to obtain the answers. Put another way, there was no need for court intervention.

[36] The Plaintiff also refers me to paragraph 26 of *Hamilton Health Sciences and Resource Environmental*, 2011 ONSC 1157 (resource is misspelled in the case name). In that case though, there was a finding that the motion was the catalyst for the answers to undertakings, which had been outstanding for a year. The responding party in that

case also accepted liability for costs and the issue was the quantum. Neither is the case here.

[37] Finally, the Plaintiff referred me to the result in *Big Brothers and Big Sisters Association of Peterborough Incorporated v. Edwardes-Evans*, supra. In that case AJ McGraw found that there were exceptional circumstances which supported the granting of costs. The motion in that case would not have been resolved without the Plaintiff being provided with an opportunity to seek costs. Again, my finding in this case, is that the motion was not the catalyst for settlement.

[38] I have referred above to the correspondence back and forth between counsel. That correspondence shows the rigid and adversarial approach which was taken on this motion. This approach, which I discourage both parties from adopting going forward, led the parties to argue costs even after the substantive issue had been resolved. Even if the motion was initially necessary, I find having regard to the factors set out in Rule 57, that an award of costs to either the Plaintiff or Defendant would not be appropriate.

[39] For all of the reasons above, the parties are each to bear their own costs.

Glick, AJ.

Released: March 4, 2026

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ONTARIO

SUPERIOR COURT OF JUSTICE

PETER ROBINSON

Plaintiff

– and –

RICHARDSON INTERNATIONAL LIMITED

Defendant

ENDORSEMENT

Glick, A.J.

Released: March 4, 2026