

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** INDER GOYAL, Plaintiff

**AND:**

NOREEN ASGHAR, MIRZA CHAUDHARY, JACK FRYMER,  
WAGDY BISHAY, 2425779 ONTARIO INC. and 2623559  
ONTARIO INC., Defendants

**BEFORE:** Parghi, J.

**COUNSEL:** *Gregory M. Sidlofsky*, for the Plaintiff

*Jonathan Rosenstein*, for the Defendants Noreen Asghar and Mirza Chaudhary

*Jake Newton*, for the Defendants Wagdy Bishay and 2623559 Ontario Inc.

**HEARD:** February 11, 2026 (in writing)

**ENDORSEMENT ON COSTS**

- [1] By Reasons for Judgment dated October 10, 2025 (*Goyal v. Asghar*, 2025 ONSC 5195), I found the defendants Mirza Chaudhary and Noreen Asghar liable for oppression and fraud against the plaintiff, Mr. Goyal. I did not find the defendants Wagdy Bishay or 2623559 Ontario Inc. (“262”) liable for fraud. I dismissed the counterclaims commenced by Mr. Chaudhary, Ms. Asghar, and 262. The parties were unable to resolve the issue of costs and a schedule was accordingly established for the exchange of costs submissions.
- [2] Regrettably, some of the submissions from Mr. Goyal and Mr. Bishay/262 were unduly combative. Some of the submissions from Mr. Bishay/262 were inappropriate in tone, accusing opposing counsel, for instance, of “lazily” taking a particular approach to an issue. Mr. Bishay/262’s submissions were also egregiously long: their initial, responding, and reply submissions totaled 128 pages, excluding attachments. This was neither reasonable nor helpful to the court. It placed an unjustified burden on judicial resources.
- [3] On top of all this, Mr. Bishay/262 and Mr. Goyal inappropriately attempted to provide sur-reply and sur-sur-reply submissions via emails sent to my judicial assistant. These submissions were neither requested nor proper, and I have disregarded them altogether.
- [4] Having provided that background, I now issue this Endorsement on Costs.

### **Overview of positions**

- [5] Mr. Goyal seeks costs on the action from Mr. Chaudhary and Ms. Asghar, jointly and severally, on a full indemnity scale or alternatively a substantial indemnity scale. He also seeks a “top-up” by Mr. Chaudhary and Ms. Asghar of certain costs awards previously granted in his favour and a reimbursement of a costs award made against him during the litigation. Finally, he asks that 262 be held jointly and severally liable for half of his costs, with Mr. Chaudhary and Ms. Asghar remaining jointly and severally liable for the entirety of the costs amount.
- [6] Mr. Chaudhary and Ms. Asghar do not contest that they are responsible for some of Mr. Goyal’s costs, but take issue with the scale and quantum proposed by Mr. Goyal and say that the costs of an omnibus motion should not be included in the overall costs award.
- [7] Mr. Bishay/262 seek their costs from Mr. Goyal on a substantial indemnity basis for April to May 2018, and a full indemnity basis for July 2019 onward. Alternatively, they seek costs on a partial indemnity and substantial indemnity basis, respectively, for each of those time frames.

### **Costs principles**

- [8] In exercising my discretion to fix costs under section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, I may consider the factors enumerated in rule 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. Those factors include the result achieved, the amounts claimed and recovered, the complexity and importance of the issues in the proceeding, the principle of indemnity, the reasonable expectations of the unsuccessful party, and any other matter relevant to costs.
- [9] In *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 60, the Court of Appeal for Ontario restated the general principles to be applied when courts exercise their discretion to award costs. The Court held that, when assessing costs, a court is 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”.
- [10] In considering costs as between Mr. Goyal and Mr. Chaudhary/Ms. Asghar, and as between Mr. Goyal and Mr. Bishay/262, I have considered the rule 57.01 factors and the overall objective of arriving at a costs award that is fair, reasonable, and within the reasonable expectations of the unsuccessful party to pay.

### **Costs as between Mr. Goyal and Mr. Chaudhary/Ms. Asghar**

- [11] I first consider Mr. Goyal’s claim for costs as against Mr. Chaudhary and Ms. Asghar.

### Entitlement to costs

- [12] Mr. Goyal was successful in his claim against Mr. Chaudhary and Ms. Asghar. They were unsuccessful in their counterclaim against him. As such, Mr. Goyal is presumptively entitled to recover his costs from them. Mr. Chaudhary and Ms. Asghar do not contest this.

### Scale of costs

- [13] The parties disagree as to the appropriate scale of costs. Mr. Goyal seeks his costs for the action on a full indemnity basis, or, in the alternative, on a substantial indemnity basis, due to what he calls Mr. Chaudhary’s reprehensible conduct.
- [14] Outside of the context of Rule 49 offers to settle, elevated costs are to be ordered only where a party has engaged in “reprehensible, scandalous or outrageous conduct” (*Young v. Young*, [1993] 4 S.C.R. at p. 134). That conduct may include the circumstances giving rise to the litigation, and not just the conduct in the proceeding itself (*Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2018 ONCA 239, 140 O.R. (3d) 81, at para. 43). There have been numerous cases in which fraudulent conduct has given rise to an order for elevated costs (see, for example, *Growth Capital Corp. v. 2221448 Ontario Inc. d.b.a. Caliber Express*, 2020 ONSC 3063, at para. 12; *Trustees of the International Brotherhood v. Shojaei et al.*, 2014 ONSC 3656, at para. 12; *Elekta Ltd. v. Rodkin*, 2012 ONSC 2062, at paras. 39-41; *Canadian Premier Life Insurance Company v. Ho*, 2016 ONSC 496, at para. 49; and *Bank of Montreal v. Sakara Wood Inc.*, 2023 ONSC 1570, at para. 31).
- [15] In my view, Mr. Chaudhary and Ms. Asghar engaged in conduct that was so “reprehensible, scandalous or outrageous” as to warrant an order for substantial indemnity costs.
- [16] In respect of the oppression claim, I found that Mr. Chaudhary denied Mr. Goyal his rights to participate in the management of 2425779 Ontario Inc. (“242”) and sell the property “deliberately and flagrantly, through concerted effort and over some period of time” (Reasons for Judgment, at para. 129). Mr. Chaudhary’s oppressive conduct was “deliberate, deceitful, and wrongful, and a visible departure from standards of proper conduct and fair dealing with Mr. Goyal” and a “wrong of the most serious sort” (at para. 132).
- [17] In respect of the fraud claim, I found that Mr. Chaudhary concealed important facts from Mr. Goyal (at paras. 19, 20, 41, 88), attempted to take advantage of Mr. Goyal (at para. 41), and falsely presented the sale of the property to Mr. Goyal as a *bona fide* arms-length transaction when, in reality, it was a fraud (at paras. 130, 141, 188). I found some of Mr. Chaudhary’s conduct to be reprehensible and his lies and concealment of information to form a marked departure from ordinary standards of decent behaviour (at para. 274). Regarding the fraudulent sale of the property, I found as follows (at para. 189):

Mr. Chaudhary conceived of the sham purchase; privately and secretly arranged for his longtime client, Mr. Bishay, to make an unconditional and uninformed offer with a short closing and for an

artificially low purchase price; arranged for Mr. Bishay to use another longtime contact, Mr. Akram, as his counsel and attended Mr. Bishay's first meeting with him; had his longtime contact, Mr. Frymer, who relied on him for referrals and his own business, act as counsel on the sale; facilitated the preparation of transfer documents containing false statements as to the consideration paid; and concealed the sale altogether from Mr. Goyal until after it was concluded.

- [18] In addition, Ms. Asghar refused to pay her share of the expenses on the property, even after a court order was issued requiring her to make those payments. She did not pay them until the start of trial. As I indicated in the Reasons for Judgment, "Their counsel describes this as handing out 'rough justice' for the hardship that they felt Mr. Goyal had put them through. I would characterize it as a failure to comply with a court order" (at para. 258). In my view, Ms. Asghar's willful and sustained refusal to comply with a court order was flagrantly abusive of the court's process.
- [19] I find that the forementioned conduct warrants a costs award on an elevated scale.
- [20] Mr. Goyal states that full indemnity costs are appropriate. He cites the defendants' repeated efforts to challenge the CPL registered on the property, their "drastic change in position" to consent to set aside the property transfer after opposing it for a year and a half, their refusals to sell the property once 242 regained title to it, their maintaining their counterclaims that contested the CPLs, their position that their actions were appropriate "in the face of overwhelming statutory and factual arguments to the contrary", and the "repeated examinations" of Mr. Goyal over five days. Mr. Goyal also points to Mr. Chaudhary's and Ms. Asghar's conduct at trial – namely, "not conceding anything", calling Mr. Goyal as a defence witness without giving proper notice, and collaterally attacking Mr. Elmaleh's evidence – as warranting full indemnity costs.
- [21] I do not award full indemnity costs. Mr. Goyal bases his request for full indemnity largely on the fact that Mr. Chaudhary and Ms. Asghar advanced positions with which he strenuously disagrees. That is not a basis for granting full indemnity costs. Nor is Mr. Chaudhary's and Ms. Asghar's conduct during the trial itself: they did not conduct their trial defence in a way that was abusive of process, or which tended to unnecessarily lengthen the trial.
- [22] I conclude that Mr. Goyal is entitled to recover costs for the action from Mr. Chaudhary and Ms. Asghar on a substantial indemnity basis.

#### **Inclusion of costs from omnibus motion**

- [23] Mr. Goyal, Mr. Chaudhary, and Ms. Asghar disagree on how I should address the costs of the "omnibus motion" argued before Chalmers J., in which costs were reserved to the trial judge. Mr. Goyal says that Mr. Chaudhary and Ms. Asghar should pay his costs on that

motion. Mr. Chaudhary and Ms. Asghar say that Mr. Goyal should pay their costs on that motion.

- [24] I am of the view that Mr. Goyal was successful in the omnibus motion overall and that the results of the trial vindicate his positions in the omnibus motion. I therefore include the omnibus motion in the costs award to be paid to him.
- [25] At the omnibus motion, Mr. Chaudhary did not obtain the relief he sought: an order winding up 242 and selling the property. He suggests that Mr. Goyal's opposition to the winding up order was tactical. But I am unable to see how a winding up order could have been granted as interim relief. Indeed, this was part of the basis on which Chalmers J. declined to grant it. Chalmers J. also took the view that a winding up order was unavailable based on the jurisprudence and was not necessary.
- [26] Nor was a winding up order granted at trial.
- [27] Mr. Goyal sought an order at the omnibus motion removing Ms. Asghar as an officer of 242 and granting exclusive management of the company to Mr. Goyal. While Chalmers J. did not grant that motion, he did enjoin Mr. Chaudhary from holding himself out as a signing officer or director of 242. Moreover, the Reasons for Judgment vindicate Mr. Goyal's allegations regarding the impropriety of the conduct of both Ms. Asghar and Mr. Chaudhary in respect of 242's affairs.
- [28] I therefore find that Mr. Goyal is entitled to his costs on the omnibus motion on a substantial indemnity basis.

#### **Inclusion of costs from sale motion**

- [29] Mr. Goyal seeks his costs of the motion to compel the sale of the property. That motion, which he brought in late 2021, resulted in a costs award against him. In effect, he asks me to reverse that prior costs order. He also asks to be reimbursed what he paid in costs on that motion.
- [30] I do not grant either of these requests. By granting them, I would be sitting in appeal of the prior costs award and would, effectively, be allowing Mr. Goyal to bring a collateral attack on it (*Rana v. Unifund Assurance Company*, [2016 ONSC 2502](#), at para. [50](#)).

#### **Top-up of costs awards from CPL motions**

- [31] Mr. Goyal also asks that the previously ordered partial indemnity costs awards made at the CPL motions be "topped up" to reflect any award of substantial indemnity costs made at the trial stage.
- [32] I decline to order any such top-up. The costs awards in question were made as against Mr. Bishay/262. They were not made against Mr. Chaudhary and Ms. Asghar, who in fact were

not parties to the CPL proceedings. I cannot now order that Mr. Chaudhary and Ms. Asghar pay costs to “top up” a costs award that was not made against them.

### **Quantum of costs**

- [33] Having found that Mr. Goyal is entitled to his costs of the action from Mr. Chaudhary and Ms. Asghar on a substantial indemnity basis, I now consider the quantum of costs.
- [34] On a substantial indemnity basis, Mr. Goyal seeks \$404,977.25 in costs for the action. This amount consists of legal fees of \$346,522.73, HST on that amount of \$45,047.96, and disbursements of \$13,406.56 (inclusive of HST). It does not include the costs amounts I have declined to award, namely the “top-up” of the CPL cost orders and costs on the motion to compel the sale.
- [35] Mr. Chaudhary and Ms. Asghar state that this amount should be discounted by 30% because the costs claimed by Mr. Goyal are excessive and not within their reasonable expectation, as borne out by the fact that the defendants’ costs were significantly lower than Mr. Goyal’s.
- [36] I do not agree. In my view, having regard to the costs factors set forth in rule 57.01, the costs claimed are reasonable and appropriate.
- [37] First, Mr. Goyal was entirely successful as against Mr. Chaudhary and Ms. Asghar, and they were entirely unsuccessful as against him.
- [38] Additionally, this matter was relatively complicated and time consuming to litigate, given the issues at stake (claims of fraud and oppression), the two counterclaims, numerous examinations (Mr. Goyal was either cross-examined or examined for discovery five times and Mr. Chaudhary and Ms. Asghar also examined three non-party witnesses on a motion), and the significant interlocutory proceedings (including the motions and appeal on the CPL, and the omnibus motion). Mr. Goyal’s costs claimed include the time spent on pleadings, affidavits of documents and further productions, examinations for discovery, the omnibus motion, mediation, the pretrial conference, and preparation for and the conduct of an 11-day trial, including preparing written closing submissions. Generally, the costs incurred in respect of these various steps strike me as reasonable, with the exception of the costs claimed for preparing costs submissions (\$17,842.50 on a substantial indemnity basis), which strike me as somewhat high, without even including the additional \$7,530 plus HST that Mr. Goyal seeks for his reply costs submission.
- [39] The disbursements are also reasonable and reasonably incurred, with the exception of the charge of \$843.22 for Westlaw case searches, which in my view is properly considered to be part of law firm overhead, rather than a recoverable disbursement, in the absence of evidence showing otherwise (*Crosslinx v. Ontario Infrastructure*, 2021 ONSC 4364, at para. 24).

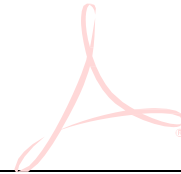
- [40] The comparison of Mr. Goyal's costs to the relatively lower costs incurred by the defendants is not instructive. They do not compare apples to apples, since Mr. Bishay/262's cited costs do not include the costs they incurred on the CPL motions and appeal, and Mr. Chaudhary and Ms. Asghar did not participate in the CPL motions and appeal. In any event, in the circumstances of this case, the defendants should have reasonably expected that Mr. Goyal would incur meaningfully higher costs than they did. He had to develop and litigate a relatively complex case against two sets of defendants, and, of necessity, his counsel took on a prominent role at trial.
- [41] I see no basis for imposing the sizeable discount of 30% advocated for by Mr. Chaudhary and Ms. Asghar. I do, however, reduce the overall fees and disbursements based on the concerns identified above about the time spent on costs submissions and the Westlaw disbursements.
- [42] I accordingly order Mr. Chaudhary and Ms. Asghar, jointly and severally, to pay Mr. Goyal \$385,353.72, reflecting Mr. Goyal's legal fees on a substantial indemnity scale of \$330,000, HST on that amount of \$42,900, and disbursements of \$12,453.72 (inclusive of HST).

#### **Costs as between Mr. Goyal and Mr. Bishay/262**

- [43] I next consider Mr. Goyal's and Mr. Bishay/262's claims for costs from one another.
- [44] Mr. Goyal did not make out his claim of fraud against Mr. Bishay/262. Nor did Mr. Bishay/262 make out their counterclaim against Mr. Goyal in relation to what they considered an improper CPL on the property.
- [45] Importantly, however, Mr. Goyal did prevail on the contract rescission issue, and in my view, he is entitled to some costs from Mr. Bishay/262 as a result. The action was started in April 2018. From the beginning, Mr. Goyal sought to have the contract rescinded and the property returned to 242. 262 opposed that request. Eventually, in January 2020, only after its various efforts to challenge the CPL had proven unsuccessful, 262 amended its defence to consent to the contract rescission. The only reasonable way to view this development is as a capitulation by 262 and a victory for Mr. Goyal. In my assessment, therefore, Mr. Goyal was successful on this issue as against Mr. Bishay/262, while Mr. Bishay/262 were not successful on any issues as against him. Mr. Goyal therefore is entitled to some amount for costs.
- [46] I also observe that 262 maintained its counterclaim against him, and at trial once again advanced the position that the CPL was improperly granted. That claim had been rejected in the earlier proceedings and was rejected again at trial. Mr. Goyal incurred costs defending a claim that had been repeatedly advanced against him in the litigation, without success. This, too, supports granting him costs.

- [47] In light of Mr. Goyal's clear success on the contract rescission claim, and Mr. Bishay/262's defeat on its counterclaim, it would or should have been within the reasonable expectation of Mr. Bishay/262 that they would have to pay some amount in costs to Mr. Goyal.
- [48] Mr. Goyal submits that, ordinarily, he would ask for Mr. Bishay/262 to pay half of his costs on the action, but given his presumption that 262 is a shell company that has likely disbursed whatever funds it once held, there is no likelihood of recovering costs from it. Instead, he submits, Mr. Chaudhary and Ms. Asghar, who "were ultimately responsible for the litigation", should remain jointly and severally liable for the entire costs award, and 262 should be jointly liable for 50% of it.
- [49] Mr. Bishay/262 claim that Mr. Goyal should be paying them their substantial indemnity costs for the time frame of April to May 2018, and full indemnity costs for July 2019 onward. In the alternative, they seek partial and substantial indemnity costs, respectively, for those two time frames. They make three submissions in support of this position.
- [50] The first is that they were successful in their defence of Mr. Goyal's claims against them. But as noted above, Mr. Goyal was also successful in defeating their counterclaim against him, so this argument does not really assist them.
- [51] The second reason why they say they should get costs is that unsuccessful allegations of fraud and dishonesty will "ordinarily, but not invariably" lead to substantial indemnity costs.
- [52] I reject this submission. An unsuccessful claim of fraud or dishonesty "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'" (*Young*, at p. 134). I do not see anything "reprehensible, scandalous or outrageous" in Mr. Goyal's conduct in advancing this claim. He did not succeed at the end of the day, and he invited me to draw an adverse inference that I did not consider appropriate to draw. But that was not reprehensible conduct by any stretch of the imagination.
- [53] The third basis on which Mr. Bishay/262 seek costs is Rule 49. Mr. Bishay/262 made two offers to settle, in July 2019 and December 2024. They say the offers in substance gave Mr. Goyal what he obtained at trial. They urge me to impose cost consequences on Mr. Goyal that are even more severe than those that would ordinarily apply under the Rules. Under rule 49.10(2), when a defendant makes an offer that the plaintiff does not accept, and the plaintiff obtains a trial judgment that does not beat the defendant's offer, the plaintiff is entitled to partial indemnity costs to the date the offer was served, and the defendant is entitled to partial indemnity costs thereafter. Mr. Bishay/262 urge me not to apply this rule, and to instead impose full or substantial indemnity costs on Mr. Goyal as if he were a defendant, they were plaintiffs, and rule 49.10(1) applied. They urge me to take this approach based on rule 49.13, which allows me to take into account any written offer to settle when exercising my discretion with respect to costs.

- [54] Even if I took the view that rule 49.10(1) can rightly be applied, that rule calls for partial indemnity costs to the date of the offer and substantial indemnity costs thereafter. Mr. Bishay/262 seek substantial indemnity and full indemnity costs instead. They offer no plausible explanation for seeking such elevated costs.
- [55] In any event, I reject Mr. Bishay/262's claim that their offers bested Mr. Goyal's result at trial. While the offers made by Mr. Bishay/262 would have resolved some of the substantive issues in dispute (such as rescinding the sale transaction or dismissing the claim and counterclaim), neither offer would have given Mr. Goyal anything for costs. I have found that Mr. Goyal is entitled to some costs from Mr. Bishay/262 in light of his success on the contract rescission claim. On this basis alone, Mr. Goyal's outcome at trial beats the offers served by Mr. Bishay/262, and neither rule 49.10 nor rule 49.13 has any application.
- [56] I grant Mr. Goyal substantial indemnity costs against 262, although I am of the view that 262 should be jointly and severally liable for 35% of the costs award, rather than 50%.
- [57] I accordingly find that 262 is jointly and severally liable for 35% of Mr. Goyal's substantial indemnity costs, or \$134,873.80, and that Mr. Chaudhary and Ms. Asghar are jointly and severally liable for those costs in their entirety, i.e. \$385,353.72. In my view, stepping back and considering all the circumstances, this is a fair and reasonable result.



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**Date:** February 19, 2026