

**CITATION:** Wentworth Condo Corp. No. 21 v. Robertson et al.,  
2026 ONSC 2595  
**COURT FILE NO.:** CV-25-90182  
**DATE:** 2026/05/01

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Wentworth Condominium Corporation No. 21, Applicant

**AND:** Marc Robertson and Kim Robertson, Respondents,

**BEFORE:** Justice A. J. Goodman

**COUNSEL:** K. Mitchell, for the Applicant

S. Pulver and K. Bartlett, for the Respondents

**HEARD:** In Chambers

**COSTS ENDORSEMENT**

- [1] This costs endorsement follows a motion (with reasons reported at 2026 ONSC 1393), wherein the respondents were substantially successful in the motion, in which the applicant was denied relief and the parties were directed to enter into a s. 98 agreement. Since the issue of costs could not be resolved by the parties, I have received and reviewed the materials filed.
- [2] The respondents seek substantial legal costs and disbursements totalling \$25,398.27. The actual amount of their legal fees total \$29,331.41, and their disbursements total \$1,257.69.
- [3] The respondents submit that this decision sets an important precedent within the condominium law industry. This Court found that the applicant, had expressed its acquiescence by failing to address the breach of the *Condominium Act, 1998*, S.O. 1998, c.19 (“the Act”) in the years before the respondents purchased their unit. The Court also accepted that the respondents would suffer detriment if the enforcement were now permitted and they were required to remove the Pad entirely.
- [4] The respondents submit that the applicant was found entirely liable. The applicant was found not to be entitled to the business judgment rule. The applicant did not otherwise attempt to mediate or negotiate this dispute,

despite there being a clearly obvious resolution to bring the Pad into compliance with s. 98 of the *Act*. The Court found that the applicant and its Board did not act reasonably or in good faith in addressing this issue.

- [5] The respondents also say that the applicant's conduct unnecessarily lengthened the proceeding. The respondents have been willing to enter into a s. 98 agreement with the applicant since at least 2024. Ultimately, the parties were ordered to enter into the agreement. The entire hearing and the litigation would have been unnecessary had the applicant simply agreed to enter into a s. 98 agreement from the outset. The agreement could have addressed any of the issues of access, liability, and indemnification for the Pad, which concerns formed the basis for the applicant requiring the Pad's removal in the first place. The respondents submit that as a result of the foregoing, it is appropriate for them to be awarded their costs on a substantial indemnity scale.
- [6] The applicant responds that that the respondents were largely successful in this Application and would, in a typical matter, be awarded costs on a partial indemnity basis. It is well established law that costs awards should reflect "what the court views as a fair and reasonable amount that should be paid by the unsuccessful parties", not what the successful counsel is entitled to charge their client. The applicant submits that the respondent is only entitled to cost on a partial indemnity scale which should not exceed \$15,000 along with their disbursements.
- [7] The applicant argues that the respondents' costs are high given the comparative work put into the matter. This was, in part, caused by the fact that two counsel attended on behalf of the respondents instead of the applicant's one, with Ms. Bartlett's attendance adding an additional \$2,500.00 those costs. Ms. Bartlett's attendance was not necessary and the costs associated with same are, therefore, excessive, and unnecessary.
- [8] The applicant says that its refusal to enter into a s. 98 agreement, and the courts finding that the applicant "did not act reasonably or in good faith", does not entitle the respondent to substantial indemnity costs. This Court noted that the applicant had actual or constructive knowledge of the Pad for decades and acquiesced, only acting after a correlative litigation matter arose, which was deemed unreasonable and not in good faith. This finding of unreasonable conduct and lack of good faith on the part of the applicant was considered by the Court when awarding the respondents the equitable relief it ultimately received. It would be unreasonable to rely upon this same behaviour in support of the respondents' claim for substantial indemnity costs.

[9] The respondents have referenced the novelty of the issues in this Application, justifying their request for increased costs. However, the applicant submits that the respondents' submissions fail to attribute any specific costs arising directly from these novel arguments or complexity. The applicant says that a mere suggestion is not sufficient to justify any increased costs.

**Discussion:**

[10] As a general principle, costs are in the absolute discretion of the court. The fixing of costs is not simply a mechanical exercise. The overall objective is "to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding, rather than an amount fixed by the actual costs incurred by the successful litigant.

[11] The Court of Appeal, in *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579, (2004) 71 O.R. (3d) 291, articulated the principles that govern costs assessments. In that case, Armstrong J.A. noted that Rule 57.01(3) provides: "When the court awards costs, it shall fix them in accordance with subrule (1) and the tariffs." He continued: "...Subrule (1) lists a broad range of factors that the court may consider in exercising its discretion to award costs under s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[12] It is a well-settled principle that the successful party should have its costs and there is no good reason in the present circumstances to depart from this legal principle.

[13] The court must, first and foremost, be fair and reasonable when exercising its discretion to award costs. Proportionality is of fundamental import.

**Factors to be Considered in Fixing Costs:**

[14] Rule 57.01(1) contains what amounts to a non-exhaustive checklist of factors that should guide the court in its reasoning when awarding costs in the exercise of its discretion under section 131 of the *Courts of Justice Act*. Rule 57.01(1) provides, in part:

[15] In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider...

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

(a) the amount claimed and the amount recovered in the proceeding;

...

(c) the complexity of the proceeding;

(d) the importance of the issue;

(e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;

(f) whether any step in the proceeding was

(i) improper, vexatious or unnecessary, or

...

(i) any other matter relevant to the question of costs.

[16] The amount of costs on a motion varies widely depending on the circumstances, including the complexity of the issue, of facts, and the witnesses from whom evidence is required.

[17] There is no reason to depart from the well-established practice to award costs to the successful party in the ordinary course following a motion.

[18] The respondents advance an interesting argument. They suggest that s. 134(5) of the *Act*, which entitles the applicant to all of its costs and that this implication should “cut both ways”. While this section allows the condominium to recover “additional actual costs” incurred in obtaining an order, the applicant contends that this provision neither grants an unlimited expense account to the successful party, nor an enhanced award of costs to the party opposite, *per se*.

- [19] While this section may have entitled the applicant to more than an ordinary award of costs, the reasonableness of the costs sought remains the touchstone. The applicant contends that it is clear that the respondents are still only entitled to their reasonable and justifiable costs.
- [20] In this case, I determined that the equitable doctrine of *laches* applied and that applicant could not benefit from the business judgment rule. Of significance, I held that the applicant did not act in good faith in relation to their conduct with the respondents throughout, including the overriding issue of a s.98 agreement.
- [21] There is no doubt in my mind that had the applicant been successful, they would have sought full indemnity costs in accordance with their bylaws and other authorities. In this particular case, given the applicant's conduct, I agree with the respondents and find that this is a circumstance where they are entitled to their reasonable, substantial indemnity costs.

**Bill of Costs:**

- [22] It is widely accepted that the appropriate quantum of costs is not determined by multiplying hours by rates. Rather, "the objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding, rather than an amount fixed by the actual costs incurred by the successful litigant.
- [23] There must be practical and reasonable limits to the amounts awarded for costs and those amounts should bear some reasonable connection to the amount that should reasonably have been contemplated. I note that it is not necessary for me to have to go through the hours, or disbursements, line by line, in order to determine what the appropriate costs are. Nor is the court to second-guess the amount of time claimed unless it is clearly excessive or overreaching. I must consider what is reasonable in the circumstances, and all the relevant factors.
- [24] However, when appropriate and necessary, a court ought to analyze the Bill of Costs in order to satisfy itself as to the reasonableness of the fees and expenses submitted for consideration. That presupposes that a party has filed a detailed Bill of Costs to be analyzed.
- [25] I have taken into account each of the subparagraphs of *Rule 57.01* along with a review of the respondents' Bill of Costs.

- [26] The substantial issues for this motion before me was argued by Mr. Pulver, counsel for the respondents. He was ably assisted by Ms. Bartlett. Mr. Pulver was called to the bar in 2005 and his hourly rate is \$525.00. Ms. Bartlett was called to the bar in 2016 and her hourly rate is \$415.00.
- [27] The proceeding was a case of moderate complexity, involving issues of fact, as well as the legal interpretation of condominium law. There is also some time associated with the lawyers' review, preparation and attendance for the motion. There may have been some duplication of effort. While this proceeding was of the utmost importance to the parties, it may also have broader implications in the proper case.
- [28] Both respondents' counsel are competent with varying years of experience. There appears to have been considerable time expended by counsel and staff who billed at various hourly rates. Their respective rates and hours expended are, for the most part, reasonable.
- [29] I note that the applicant's Bill of Costs reflect similar amounts sought by the respondents at the partial and substantial indemnity rate.
- [30] I accept the respondents' position that the amount of substantial indemnity costs sought, is an amount which an unsuccessful party could reasonably expect to pay. The parties had pleadings prepared, attended cross-examinations, drafted facta and compendiums, and prepared and attended a half day hearing.
- [31] The respondents submit that the amount of costs being sought on a substantial indemnity basis, is reasonable. I agree. The ruling reflects what had transpired between the parties, the history of their relationship, and the conduct of the parties, warranting an enhanced award of costs.

**Other issue: Preparation of the Section 98 Agreement:**

- [32] Finally, there remains an outstanding dispute as to which party ought to prepare the s. 98 agreement. Upon review, I agree with the applicant that the respondents, having earlier agreed to initiate such an agreement, ought to do so now.
- [33] Section 98 Agreements allocate the cost of the alteration and outlines the parties' respective duties and responsibilities, including for paying the repair, maintenance, and insurance costs. This avoids the Condominium bearing any undue financial or maintenance burdens which impact the other owners.

These agreements bind the owner's unit and are enforceable against the owner's successors and assigns.

- [34] The modification is approximately 40 years old, and the applicant only recently took steps with respect to same. This finding, at least in part, led to my granting equitable relief and ordering a s. 98 Agreement. The applicant says that it has already suffered the consequence of its failure to enforce and should not be further prejudiced by having to incur these costs, even if such costs "will not be onerous" as submitted by the respondents.
- [35] In this regard, I agree with the applicant that it is reasonable to expect, as a condition of that ongoing benefit, that the respondents be responsible for the costs associated with ensuring the modification complies with legal and regulatory requirements, including the preparation and registration of a s. 98 agreement. Especially since the respondents have previously acknowledged they would agree to be.
- [36] Thus, the respondents are directed to prepare the s. 98 agreement in order to implement same for their exclusive benefit, in accordance with para. 77 of my ruling. Any and all costs related to the associated to the preparation, implementation and registration of the s. 98 agreement shall be borne by the respondents.

**Conclusion:**

- [37] The objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay in the particular proceeding.
- [38] In the exercise of my discretion under *Rule 57.01*, it is ordered that the applicant pay substantial indemnity costs in favour of the respondents fixed at \$22,000 (plus applicable HST), and disbursements of \$1,257.69, all payable forthwith.

---

A. J. Goodman J.

**Released:** May 1, 2026