

CITATION: Howell v. Sun Life Assurance Company of Canada, 2025 ONSC 113
COURT FILE NO.: CV-23-92405
DATE: 2025/01/06

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Joseph Todd Howell, Plaintiff

AND:

Sun Life Assurance Company of Canada, Attorney General of Canada (Transport Canada) and Francois Collins, Defendants

BEFORE: Somji J

COUNSEL: Daria A. Strachan for the Plaintiff

Patricia Betts for Sun Life Assurance Company of Canada

Heather Kennedy for the Defendant, Attorney General and Francois Collins

HEARD: In writing

COSTS ENDORSEMENT

[1] The Attorney General of Canada (AGC) seeks substantial indemnity costs in the amount of \$18,139.15 following their success on a motion to strike the Plaintiff's claim: *Howell v. Sun Life Assurance Company of Canada*, 2024 ONSC 3908. The Defendant Sunlife Canada did not participate in the motion.

[2] The Plaintiff argues the hours claimed are excessive and that costs should be awarded on a partial indemnity basis in an amount that does not exceed \$5,000.

[3] As the successful party on the motion, AGC is entitled to costs. The only issue to be decided is what is a fair and reasonable costs award in the circumstances of this case.

[4] Courts have broad discretion to determine whom costs should be paid and the quantum: s. 131(1) *Courts of Justice Act*, R.S.O. 1990, c. C.43, as am.

[5] In exercising their discretion, judges may consider the factors set out in Rule 57.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 and governing jurisprudence. These factors include the following: the experience of counsel and rates charged, the amount an unsuccessful party could reasonably expect to pay, the reasonableness of the amounts claimed, apportionment of liability, importance of issues, complexity of the proceedings, and the conduct of the parties.

[6] There was nothing in the conduct of the AGC that would disentitle them to a costs award.

[7] However, in determining the quantum of costs, I agree with Plaintiff's counsel that the amounts billed were excessive and that a substantial indemnity costs award is not warranted.

[8] AGC counsel are salaried lawyers employed by the Federal Department of Justice (DOJ). DOJ bills its clients on a cost-recovery basis. AGC argues that the rate of \$225.82/hour charged for the two DOJ counsel who are a four or under four year call is substantially less than that charged by a private law firm. I agree with Plaintiff's counsel that there is insufficient evidence to establish that these rates are substantially less than private law firms to support the AGC's suggestion that the Plaintiff is benefiting from reduced rates.

[9] Furthermore, AGC's costs' outline does not specify the exact year of call for each counsel, and DOJ charges the same rate for each counsel irrespective of their years of experience. There is a distinction between a four-year call and a one-year call. In this case, I also note of the total 89 hours billed, 40 hours of work was performed by the more junior of the two counsel whose year of call I have not been provided.

[10] The issue on the motion was whether section 236 of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2 removes the Superior Court of Justice's jurisdiction to hear the Plaintiff's civil action. Plaintiff's counsel argues the issue on the motion was not complex. I disagree. There has been considerable emerging jurisprudence in 2024 on the issues raised in the motion, and consequently both counsel were requested to provide further legal arguments following the motion hearing. The issue was also significant in that it effectively determined the continuation of the civil action in the amount of \$1,200,000 against the Defendants Transport Canada and Francois Collins as represented by AGC.

[11] Having said this, I agree with Plaintiff's counsel that 89.25 hours for a motion to strike is excessive and have reduced the amount to 60 hours. The Plaintiff's own counsel billed 50 hours.

[12] Defendant's counsel suggests that the Plaintiff engaged in unreasonable conduct warranting substantial indemnity costs. I do not find that an elevated costs award is warranted. The Plaintiff had been dismissed from his employment because of actions by his employer and consequently has been without income for several years. As explained in my decision, the Plaintiff understood he had a right to bring the civil action in the forum that he did: *Howell* at paras 44-50. Having filed the action, the Plaintiff took certain steps to advance the civil suit. I am not satisfied based on the submissions provided that these steps taken by the Plaintiff were unreasonable warranting an elevated or substantial indemnity costs award. I find that costs should be awarded on a partial indemnity basis.

[13] Ultimately, in determining quantum, the overall objective is to fix an amount that is fair and reasonable for the unsuccessful party to pay in the circumstances rather than the amount of actual costs incurred by the successful party: Rule 57.01 (1) (0.b); see also *Boucher v Public Accountants Council for the Province of Ontario*, (2004) 71 O.R. (3d) 291 (C.A.) at paras 37-38; *Deonath v Iqbal*, 2017 ONSC 3672 at paras. 20-21.

[14] Considering the relevant factors including the Respondent's success on the motion, complexity, the importance of the issues, the time and rates charged, the conduct of the parties, and proportionality, I find that partial indemnity costs for 60 hours of legal fees (\$8,129) and disbursements (\$339) in the fixed amount of \$8,468 is fair and reasonable.

Order

[15] There will be an Order that the Plaintiff pay AGC fixed costs of \$8,468 in 30 days.

Somji J.

Date: January 6, 2025

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COSTS ENDORSEMENT

Somji J.

Released: January 6, 2025