

**CITATION:** Cornell v. Trudeau, 2025 ONSC 543  
**COURT FILE NO.:** CV-24-00095074-0000  
**DATE:** 20250127

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

EDWARD CORNELL, VINCENT  
GIRCYS, LINDSAY MILNER, SHAUN  
ZIMMER, ANDREW MILLER, JONKER  
TRUCKING INC., ANDREW FERA,  
WAYNE NARVEY, CLAYTON  
MCALLISTER, KATHLEEN MARKO,  
NICOLA FORTIN, ARIELLE FORTIN,  
THOMAS QUIGGIN, TIMOTHY  
TIESSEN O’JAY LAIDLEY, ERIC  
BUECKERT, PETER TERRANOVA,  
NANCY TERRANOVA, RICHARD  
OCELAK, and KERRI-ANN HAINES

Plaintiffs

**– and –**

JUSTIN TRUDEAU, CHRYSTIA  
FREELAND, DAVID LAMETTI,  
DOMINIC LEBLANC, BILL BLAIR,  
MARCO MENDICINO, ATTORNEY  
GENERAL OF CANADA, JODY  
THOMAS, ROYAL CANADIAN  
MOUNTED POLICE, DENIS  
BEAUDOIN, BRENDA LUCKI, STEVE  
BELL, ROBERT BERNIER, OTTAWA  
POLICE SERVICES BOARD, OTTAWA  
POLICE SERVICE, THE TORONTO-  
DOMINION BANK, CANADIAN  
IMPERIAL BANK OF COMMERCE,  
BANK OF MONTRÉAL, NATIONAL  
BANK OF CANADA, ROYAL BANK OF  
CANADA, BANK OF NOVA SCOTIA  
(SCOTIABANK), CANADIAN TIRE  
SERVICES LTD. doing business as  
CANADIAN TIRE BANK, MERIDIAN

Blair Ector, Lorne Honickman, and Brendan  
Hill, for the Plaintiffs (Responding Parties)

Jeff G. Saikaley and Albert Brunet, for the  
Defendants Canadian Anti-Hate Network  
and Bernie Farber (Moving Parties)

CREDIT UNION, ASSINIBOINE CREDIT )  
 UNION, GULF & FRASER CREDIT )  
 UNION, STRIDE CREDIT UNION, )  
 SIMPLII FINANCIAL, CANADIAN )  
 ANTI-HATE NETWORK, BERNIE )  
 FARBER, JOHN DOE, and ABC CORP. )  
 )  
 Defendants )  
 )  
 )  
 )  
 )

**HEARD:** In writing

**COSTS ENDORSEMENT ON S. 137.1 MOTION**

**RYAN BELL J.**

**Overview**

[1] On September 27, 2024, I released my reasons for decision granting the motion of the Canadian Anti-Hate Network and Bernie Farber (the CAHN defendants) under s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and dismissing the action against them: *Cornell v. Trudeau*, 2024 ONSC 5343.

[2] The CAHN defendants request costs of the action and the motion in the amount of \$49,319.13 on a full indemnity basis.

[3] The plaintiffs submit that an award of full indemnity costs is not appropriate in the circumstances and that the costs requested are neither fair nor reasonable. The plaintiffs submit that a costs award of \$10,000 would fall within a “fair range.”<sup>1</sup> The plaintiffs’ bill of costs reflects full indemnity fees and disbursements in the amount of \$95,881.29.

[4] For the following reasons, I conclude that the CAHN defendants are entitled to their costs on a full indemnity basis in the amount of \$49,319.13, all-inclusive.

**Discussion**

*(i) Scale of costs*

[5] When an action is dismissed under s. 137.1, the statutory presumption is that the successful moving party will be awarded costs on a full indemnity basis unless the judge determines that such an award is not appropriate: *CJA*, s. 137.1(7); *Levant v. DeMelle*, 2022 ONCA 79, at para. 75. The

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<sup>1</sup> The plaintiffs rely on *Rainbow Alliance Dryden et al v. Webster*, 2024 ONSC 3056, where \$37,996.25 in costs were sought and \$10,000 in costs were awarded.

full indemnity starting point for the assessment of costs established by s. 137.1(7) is intended to disincentivize “this kind of litigation” and is not predicated on the basis upon which the defendant succeeds on the motion: *Fortress Real Developments Inc. v. Rabidoux*, 2018 ONCA 686, at paras. 66, 71. The plaintiffs have the burden to demonstrate why a departure from the full indemnity presumption is appropriate.

[6] The plaintiffs have not identified any factors that would justify departing from the statutory presumption of full indemnity costs. “Countervailing determinations” on some of the factors to be considered under s. 137.1 do not detract from the full indemnity presumption: *Levant*, at para. 77. In any event, all the s. 137.1 considerations were determined in favour of the CAHN defendants. The fact that I did not award damages does not detract from the full indemnity presumption.

[7] The plaintiffs submit that “especially where an action is undertaken in the public interest, [that factor] can and should weigh against an award of full indemnity costs.” The plaintiffs rely on *Rainbow Alliance*, at paras. 17-18. However, in *Rainbow Alliance*, the motion judge dismissed the anti-SLAPP motion, allowing the action to continue. In this case, I found the action against the CAHN defendants “is precisely the type of claim that s. 137.1 is intended to weed out”: *Cornell*, at para. 63.

[8] The plaintiffs have not persuaded me that a costs award on a full indemnity basis is not appropriate in the circumstances.

(ii) *Quantum of costs*

[9] When determining the quantum of costs under s. 137.1(7), there remains an obligation on the motion judge to undertake the same type of analysis that is required when fixing costs in any other context. As explained by the Court of Appeal for Ontario in *United Soils Management Ltd. v. Mohammed*, 2019 ONCA 128, at para. 42,

Just because the award is on a full indemnity basis does not mean that the successful party is entitled to whatever costs were incurred. The quantum must still be fair and reasonable for what was involved in the particular proceeding: *Boucher v. Public Accountants Council for the Province of Ontario*. The award must also be proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding: see r. 1.04(1.1). [citations omitted]<sup>2</sup>

[10] The plaintiffs rely on the Court of Appeal’s comments in *Park Lawn Corporation v. Kahu Capital Partners Ltd.*, 2023 ONCA 129: “With this direction in mind [that the motion is a screening procedure and that at the weighing exercise, a technical, granular analysis is not required] and recognizing that an anti-SLAPP motion is meant to be efficient and economical, I would suggest that, as a guideline, the costs of such a motion should not generally exceed \$50,000 on a full indemnity basis.” But in the same sentence, the Court of Appeal went on to recognize that “there will be exceptions and motion judges always have the power to award less, more or nothing

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<sup>2</sup> See also *Fortress Real*, at para. 63.

as they see fit in the circumstances of each case”: *Park Lawn*, at para. 39. The amount the CAHN defendants seek in full indemnity costs is less than the \$50,000 guideline set out in *Park Lawn*.

[11] The plaintiffs claimed a total of \$44,000,000, on a joint and several basis, against the defendants, including the CAHN defendants. This litigation is, in a word, “massive.”<sup>3</sup> In addition to the CAHN defendants, the named defendants include government actors, government agencies, police defendants, and various financial institutions. The motion addressed important issues. In addition to the complexity inherent in a motion brought under s. 137.1 of the *CJA*, the plaintiffs sought to “look past” the statement of claim to allegations set out in the affidavit of Mr. Gircys. Out of an abundance of caution, the CAHN defendants addressed those allegations in their factum. The plaintiffs cross-examined Mr. Farber and Mr. Warman on their affidavits. While the plaintiffs were entitled to do so, the CAHN defendants incurred costs as a result.

[12] The CAHN defendants offered to settle the motion on June 11, 2024, by requesting the payment of \$10,000 (the costs of preparing the notice of motion and affidavits) and the dismissal of the action against them. Although the offer is not r. 49 compliant, it is an additional factor that I have considered in assessing whether the costs requested are fair and reasonable. The plaintiffs’ offer to settle (which involved the dismissal of certain aspects of the claim against the CAHN defendants but which provided that the claim in civil conspiracy would survive and that no costs would be paid by the plaintiffs) does not impact my analysis of the costs to be awarded to the CAHN defendants.

[13] The plaintiffs do not take issue with the hourly rates of legal counsel for the CAHN defendants. I find the hourly rates are reasonable, having regard to their years of experience. The plaintiffs submit that it is difficult to assess the reasonableness of the fees of the CAHN defendants because the bill of costs refers to 137.5 cumulative hours spent by two lawyers, one law clerk, and one articling student. While it would have been preferable for the CAHN defendants’ bill of costs to reflect the division of work undertaken, I note that the plaintiffs’ bill of costs adopts the same “cumulative” approach. In any event, the costs incurred by the CAHN defendants would have been well within the reasonable expectation of the plaintiffs, having regard to their own costs of the motion in the amount of \$95,881.29.

## **Conclusion**

[14] Taking into consideration all the above, the factors set out in r. 57.01(1) of the *Rules of Civil Procedure*, and the plaintiffs’ reasonable expectations, I find that \$49,319.13, all-inclusive is a fair, reasonable, and proportionate award for the motion and the action. This amount is to be paid by the plaintiffs to the CAHN defendants within 30 days.

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<sup>3</sup> As described by one of the plaintiffs in Exhibit BB to the affidavit of Richard Warman.

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Plaintiffs

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JUSTIN TRUDEAU, CHRYSTIA FREELAND, DAVID LAMETTI, DOMINIC LEBLANC, BILL BLAIR, MARCO MENDICINO, ATTORNEY GENERAL OF CANADA, JODY THOMAS, ROYAL CANADIAN MOUNTED POLICE, DENIS BEAUDOIN, BRENDA LUCKI, STEVE BELL, ROBERT BERNIER, OTTAWA POLICE SERVICES BOARD, OTTAWA POLICE SERVICE, THE TORONTO-DOMINION BANK, CANADIAN IMPERIAL BANK OF COMMERCE, BANK OF MONTRÉAL, NATIONAL BANK OF CANADA, ROYAL BANK OF CANADA, BANK OF NOVA SCOTIA (SCOTIABANK), CANADIAN TIRE SERVICES LTD. doing business as CANADIAN TIRE BANK, MERIDIAN CREDIT UNION, ASSINIBOINE CREDIT UNION, GULF & FRASER CREDIT UNION, STRIDE CREDIT UNION, SIMPLII FINANCIAL, CANADIAN ANTI-HATE NETWORK, BERNIE FARBER, JOHN DOE, and ABC CORP.

Defendants

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**COSTS ENDORSEMENT ON S. 137.1 MOTION**

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Ryan Bell J.

**Released:** January 27, 2025