CITATION: *Blood Bunge et al v. Findlay*, 2025 ONSC 751
COURT FILE NO.: CV-21-86798
DATE: 20250205

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
SUSAN BLOOD BUNGE and STEVEN BUNGE Plaintiffs/Respondents	Andrew West, for the Plaintiffs/Respondents
– and –	
VALARIE FINDLAY Defendant/Moving Party	Andrew Paterson, for the Defendant/Moving Party
	HEARD: January 8, 2025

DECISION ON RULE 21 MOTION

MCVEY J.

Overview

[1] The plaintiffs (collectively, the "Bunges") commenced a defamation action against the defendant, Valarie Findlay, in June 2021. Ms. Findlay asks me to strike the claim because it discloses no reasonable cause of action. In the alternative, Ms. Findlay seeks to have the action dismissed because it is frivolous, vexatious, or otherwise an abuse of the court's process. Finally, Ms. Findlay asks me to remove Andrew West as the Bunges' lawyer of record on the basis that he is personally pursuing a parallel action against her and therefore has a disqualifying conflict of interest.

[2] Ms. Findlay also moves to dismiss the Bunges' claim pursuant to Rule 25.11 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. However, in oral submissions, counsel for Ms. Findlay fairly acknowledged that his arguments on this ground were entirely subsumed by those advanced under Rule 21.01(3)(d). Therefore, I need not independently address the applicability of Rule 25.11.

[3] The Bunges oppose Ms. Findlay's motion and seek relief of their own. Specifically, they seek a court-ordered timetable for future steps in the litigation; an Order prohibiting Ms. Findlay from bringing future motions without leave of the Court; and an Order requiring that a single judge be seized of all pretrial matters.

[4] For reasons given below, Ms. Findlay's motion is denied. I also decline to grant the relief sought by the Bunges except for the court-ordered timetable.

Litigation History

[5] A lengthy litigation history between the parties informs the issues before me. The Bunges live across the street from Ms. Findlay in Woodlawn, Ontario. Susan Blood Bunge is a retired nurse and special education teacher's assistant. Steven Bunge is a retired elementary and high school teacher. A dispute arose between Ms. Findlay and many of her neighbours in 2016. The dispute led to Ms. Findlay launching legal proceedings against a family who lived in the area, her local councillor, the Ottawa Police Services Board, and some local veterinarians.

[6] During that time, Ms. Findlay unfortunately became the target of violent, sexist, and misogynistic comments through a Facebook page operating under the name of "Josh Lee." Ms. Findlay eventually identified "Josh Lee" as the teenage son of one of her neighbours. In 2016, Ms. Findlay sued the family. After protracted litigation, the matter was settled.

[7] In 2017, Ms. Findlay launched an action in defamation against the Bunges in Small Claims Court. This matter was settled in July 2018. The Bunges admitted no wrongdoing.

[8] In March 2018, Ms. Findlay launched a second claim against the Bunges in Small Claims Court seeking $12,500 for breach of privacy. She later amended her claim to increase the amount sought to $25,000. The Bunges defended the action and brought a defendants' claim seeking damages for harassment.

[9] On two occasions, Ms. Findlay brought a motion to strike the Bunges' claim. Both attempts were unsuccessful. In May 2024, Ms. Findlay's 2018 action in Small Claims Court was administratively dismissed for delay. In August 2024, the defendants' claim launched by the Bunges was permitted to proceed as a separate action.

[10] In March 2018, in addition to launching a claim against the Bunges in Small Claims Court as set out above, Ms. Findlay also filed a complaint against Ms. Blood Bunge with the College of Nurses of Ontario. The College quickly closed their file after speaking with Ms. Blood Bunge. Later, in 2018, Ms. Findlay sued the College.

[11] On March 6, 2021, Ms. Findlay posted comments about the Bunges on Twitter (now X). The Bunges commenced a claim against Ms. Findlay in the Superior Court seeking damages for defamation and various forms of injunctive relief. This action is the subject of the current motion before me.

Issues

[12] This motion raises the following issues:

1) Should I dismiss Ms. Findlay's Rule 21 motion because it was not raised in a timely manner?
2) Does the Bunges' statement of claim disclose a reasonable cause of action in defamation?
3) Is there another proceeding between the parties pending in Ontario in respect of the same subject matter?
4) Is the Bunges' claim frivolous, vexatious, or otherwise an abuse of the court's process?
5) Should I prevent Ms. Findlay from bringing further motions without leave of the Court?
6) Should the same judge hear all pretrial matters in this action?
7) Should I remove the Bunges' lawyer of record based on a conflict of interest?

Should I dismiss Ms. Findlay's Rule 21 motion because it was not raised in a timely manner?

[13] The Bunges argue that I should decline to hear Ms. Findlay's Rule 21 motion on the merits because she did not bring it "promptly" as required by Rule 21.02. Ms. Findlay did not file her notice of motion until May 2024, twenty-six months after the close of pleadings. The Bunges maintain that though Ms. Findlay was representing herself during the pleading stage, she has been represented by counsel since September 2023 and her self-represented status should attract little weight given that Ms. Findlay is well-familiar with motions to strike as she has brought three such motions in the Small Claims Court.

[14] Rule 21.02 states that a motion "under rule 21.01 shall be made *promptly*." There are diverging lines of authority regarding the interpretation of Rule 21.02. One line of cases finds that the Court may dismiss a motion brought under Rule 21.01 solely for delay: *Fleet Street Financial Corp. v Levinson*, [2003] O.J. No. 441, at para. 16; *Cetinalp v Casino*, [2009] O.J. No. 5015, at para 7. The second line of cases holds that a failure to move promptly is relevant to costs: *Williams Beauty Products v State Farm Fire and Casualty Co.*, [2001] O.J. No. 1387; *Degroote v CIBC*, [1996] O.J. No. 3993.

[15] In *Dominion of Canada General Insurance Company v Nelson*, 2023 ONSC 386, the Divisional Court recently addressed this issue. The Court held that the motion judge erred when dismissing for delay the Appellant's motion challenging the Court's jurisdiction over the subject matter of the claim. In *Dominion*, the Appellant was the Respondent's insurer. After the Respondent's home was destroyed by fire, the parties could not agree on the precise quantum of the required payout. Pursuant to the *Insurance Act*, the parties agreed to proceed before an Insurance Umpire to decide the issue. The Umpire ultimately sided with the Appellant. The Respondent then launched a civil action in the Superior Court claiming damages for breach of contract.

[16] The Appellant brought a Rule 21 motion challenging the Superior Court's jurisdiction to hear the claim. The Appellant maintained that if the Respondent was dissatisfied with the Umpire's decision, her only recourse was an application to the Divisional Court for judicial review. The motion judge dismissed the motion solely on the grounds of delay. On appeal, at paras. 40-42, the Court held that the motion judge erred by doing so because the motion called into question the Court's very jurisdiction to hear the claim:

> If, as is the case here, the trial judge lacks jurisdiction to set aside or vary the appraisal, waiting until trial to deal with that issue would be a waste of time, money and judicial resources.
>
> …
>
> The commencement of an action in a court that lacks jurisdiction over its subject matter cannot be overlooked or treated as a mere irregularity, even if one of the parties fails to immediately bring the issue to the attention of the Court.

[17] In so doing, however, the Court did not definitively rule out the ability to dismiss a Rule 21 motion for delay in the proper case. The Court cited *Schellenberg v International Brotherhood of Electrical Workers*, 2014 ONSC 7305, where the motion judge dismissed a Rule 21 motion on the grounds of delay because it was brought more than three years after the commencement of the proceedings and six weeks before the first day of trial.

[18] I distill the following principles on review of the various cases on this issue:

- Where *jurisdiction* is challenged pursuant to Rule 21.01(3)(a), the motion cannot be dismissed solely on the grounds of delay because the motion calls into question the very jurisdiction of the Court to hear the claim: *Dominion of Canada*; *Brillon v General Dynamics Land Systems – Canada*, 2018 ONSC 7442. However, the failure to move promptly pursuant to Rule 21.01(3)(a) may attract negative costs consequences.

- Where a Rule 21 motion is brought on a basis other than a challenge to the Court's jurisdiction, the decision to dismiss the motion based on delay is a discretionary one to be made after a consideration of all the circumstances: *McConnell v Loomis Armored Car Service Ltd*., [1995] O.J. No. 3023; *Cetinalp v Casino*, [2009] O.J. No. 5015, at para 7.

- Determinations on whether to dismiss a Rule 21 motion because of delay must seek to promote the proper, efficient, and cost-effective use of limited court resources. Dismissing motions for delay is also a mechanism through which to deter litigants from raising Rule 21 motions after much time and money has been spent on the litigation. A Rule 21 motion brought to strike out a claim on the ground that it discloses no reasonable cause of action should generally be brought at the pleading stage to ensure it does not disrupt the progress of the proceedings and its resolution saves time and expense: *Cetinalp*, at para. 9. Raising

a Rule 21 motion after discoveries have occurred and a trial date is set is wasteful and must be deterred: *Schellenberg*; *Fleet Street Financial Corp. v Levinson,* [2003] O.J. No. 441.

- With that said, where a Rule 21 motion has the potential to *finally* dispose of an action, a Court may find it preferable to decide the motion on the merits rather than dismiss it for delay: *Williams Beauty Products v State Farm Fire and Casualty Co.*, [2001] O.J. No. 1387; *Degroote v CIBC,* [1996] O.J. No. 3993. Permitting a claim to proceed where it has no prospect of success simply because the defendant delayed in raising the issue undermines the efficient use of limited judicial resources, particularly where discoveries and other steps in the litigation have not yet taken place. In those circumstances, it may be more economical to hear the matter on the merits and address the delay and objective of deterrence through cost consequences.

- However, if a successful motion would only result in parts of a claim being struck, delay may play a more significant role in the analysis: *Fleet Street Financial Corp*., at para. 18.

- A Court must consider all the circumstances, including any explanation for the delay, whether the moving party is or was self-represented, and any recent change in the law that may call into fresh question the validity of the pleadings.

- The balancing of all the above factors is a discretionary decision for the motion judge.

[19] Applying the above principles, I decline to dismiss Ms. Findlay's motion for delay. Ms. Findlay was self-represented until September 2023, and throughout that time she was dealing with numerous outstanding legal matters. Ms. Findlay's motion has the potential to finally dispose of the action therefore hearing it on the merits could potentially save valuable resources. Finally, no discoveries or other steps in the litigation have taken place since the close of pleadings. In these circumstances, in my view, a proper balancing of all the interests would have the tardiness of the motion addressed through costs.

Does the statement of claim disclose a reasonable cause of action in defamation?

[20] The Bunges claim they were defamed by the following Twitter posts made by Ms. Findlay in March 2021:

> In honour of [International Women's Day 2021] this is for any victim who has gone through the same. When my dogs were poisoned in 2015, I was committed in finding out who was behind it. I put up reward posters and talked to anyone who may know something. My posters were ripped down…
>
> …certain neighbours threatened me, called me a liar to anyone who would listen and called [Ottawa city councillor Mr. Eli El-Chantiry's] office begging that he stop the police investigations. When I didn't "back down" I was targeted and sexually harassed over and over by an anon [Facebook] account for months…

> That ruined a US volunteer rescue network many people worked very hard at and that saved a lot of dogs. Later, I found out Matthias Yagminas was Josh Lee and his father Kevin and their friends (Bunges, Cannings, etc.) were encouraging his attacks on me.
>
> An interview with me, [Youth Services Bureau] and ironically Chief Bordeleau, meant to show kids who were struggling that they could succeed, as I did, is how [the Defendant's neighbours, the Yagminas family] scrapped up the information. According to Susan Bunge I was homeless, dangerous, crazy and she, as a nurse, had diagnosed me as such:

[21] Pursuant to Rule 21.01(1)(b), Ms. Findlay argues that I should strike the Bunges' claim because it discloses no reasonable cause of action. A court should only strike a claim if it is "plain and obvious" that the pleading discloses no reasonable cause of action against the moving party: *R. v. Imperial Tobacco Canada Ltd*., 2011 SCC 42, at para. 17. On the motion, I must accept as correct the facts as pleaded in the statement of claim. There is a presumption at this stage that they are capable of proof at trial.

[22] The Bunges' action is grounded solely in defamation. The law concerning defamation is well-settled. A plaintiff must establish 1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; 2) that the words in fact referred to the plaintiff; and 3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff: *Grant v Torstar Corp*., 2009 SCC 61, at para. 28.

[23] In determining whether a statement is defamatory, the impugned words "are to be construed in context, according to the meaning they would be given by reasonable persons of ordinary intelligence, knowledge and experience": *Guergis v Novak*, 2013 ONCA 449, at para. 56. The question is whether the impugned words "might tend to expose the plaintiff to hatred, contempt, or ridicule or whether they lower the plaintiff in the estimation of reasonable persons who have common sense and who are reasonably thoughtful and well-informed but who do not have an overly fragile sensibility": *Guergis*, at para. 56.

[24] Ms. Findlay acknowledges that the impugned tweets referred to the Bunges and were published. She argues, however, that no reasonable person could construe them as defamatory.

[25] Only in the clearest of cases should a court strike out a statement of claim at this stage of the proceedings. If there is a chance that the Bunges might succeed, I must permit their action to proceed. In my view, there is such a chance. From my perspective, the most troubling post is that which accused the Bunges of having encouraged the online sexual harassment of Ms. Findlay. I agree with the Bunges that reasonably thoughtful and well-informed individuals might think less of the Bunges if under the apprehension that they actively encouraged a third party to harass Ms. Findlay sexually. This is a particularly vile accusation, in my view.

[26] In oral submissions, counsel for Ms. Findlay also focused on the fleeting nature of the posts. He submitted that even were they technically defamatory, the associated damages would be

nominal at best. I am not concerned with damages at this stage nor what Ms. Findlay argues is the de minimis nature of the alleged defamation. The words are arguably defamatory. That is sufficient for the Bunges to survive the motion. Damages are an issue for trial.

[27] Ms. Findlay also argues that "truth" is a complete defence and therefore the Bunges' action cannot possibly succeed. This argument does not persuade me for two reasons. First, what is "true" is an issue for trial and cannot be determined on a Rule 21 motion. Ms. Blood-Bunge denies the comments attributed to her in the "transcript" that was posted on Twitter. Second, the availability of a defence is not a valid consideration on a Rule 21 motion. In *Hunt v Carey Canada Inc*., [1990] 2 S.C.R. 959, at para. 13, the Court stated:

> …If there is a chance a plaintiff might succeed, the novelty of the action and the potential of the defendant presenting a vigorous defence are not factors which enter into a consideration of whether the statement of claim should be struck as disclosing no reasonable cause of action.

[28] In my view, the pleadings disclose a reasonable cause of action.

Is there another proceeding between the parties pending in Ontario in respect of the same subject matter?

[29] Pursuant to Rule 21.01(3)(c), a defendant may move before a judge to have an action stayed or dismissed where another proceeding is pending in Ontario between the same parties in respect of the same subject matter. Ms. Findlay argues that the Bunges' claim mirrors their ongoing matter in Small Claims Court. Ms. Findlay maintains that to the extent the Bunges have a valid defamation claim, in the circumstances, the Small Claims Court is the only appropriate forum in which to raise it. I disagree.

[30] The Bunges' Superior Court claim against Ms. Findlay differs both in form and substance from their ongoing Small Claims matter. In Small Claims Court, the Bunges seek damages for harassment. They claim that Ms. Findlay repeatedly commenced legal proceedings against them in addition to launching complaints about them to professional bodies. The Bunges seek damages and other forms of injunctive relief for defamation in their Superior Court action. The alleged defamation occurred years *after* the Bunges filed their defendants' claim in 2018 in Small Claims Court. In short, the Bunges plead different causes of action in the two proceedings and rely on entirely different factual foundations.

[31] The Bunges are not required to sue Ms. Findlay in Small Claims Court for *a separate wrong* simply because they have an ongoing matter against her in that forum. The Bunges are entitled to seek injunctive relief against Ms. Findlay, relief that is not available to them in Small Claims Court. The Bunges are also entitled to sue in the Superior Court for damages exceeding the Small Claims Court jurisdiction. Ms. Findlay argues that given the de minimis nature of the alleged defamation, the Bunges cannot possibly secure such damages. That argument does not assist Ms. Findlay on this motion. Determining a likely award of damages at this stage would be premature. The Bunges

have not yet had an opportunity to lead evidence on the extent of their loss. Should the Bunges not ultimately obtain a judgment exceeding what could have been awarded in Small Claims Court, they could face costs consequences. However, I cannot dismiss the Bunges' claim on a Rule 21 motion because I have predetermined, without any evidence on the issue, that damages cannot possibly exceed $35,000.

Is the Bunges' claim frivolous, vexatious, or otherwise an abuse of the court's process?

[32] Ms. Findlay also contends that the Bunges' action forms part of a multiplicity of proceedings intended to harass and intimidate Ms. Findlay through costly and unmeritorious litigation. Ms. Findlay emphasizes that the Bunges already have an outstanding claim against her, and their lawyer has sued Ms. Findlay twice in his personal capacity.

[33] I am not satisfied that the Bunges' claim forms part of a campaign to harass Ms. Findlay. The record before me tells a different story. Ms. Findlay has proven herself highly litigious. In a short time, Ms. Findlay launched numerous lawsuits against various entities, including the College of Nurses of Ontario when it closed their file against Ms. Blood Bunge. She reported the Bunges' lawyer to the Law Society of Ontario repeatedly. Ms. Findlay reported Ms. Blood Bunge to the College of Nurses of Ontario. I also note that the Bunges' ongoing matter in Small Claims Court *commenced as a defendants' claim* after Ms. Findlay sued them a second time in the span of a year.

[34] The Court shall only dismiss an action as being an abuse of process "in the clearest of cases." This is not such a case. Undoubtedly, Ms. Findlay faces several claims. There is the current Superior Court matter, an ongoing matter in the Small Claims Court for harassment, and the Bunges' lawyer has an outstanding claim against her as well. However, I am not satisfied that these proceedings form part of a vexatious pattern. Arguably, the number of proceedings reflects Ms. Findlay's own relentless conduct.

[35] I am not satisfied that the Bunges' claim is frivolous, vexatious, or an abuse of the court's process.

Should I prevent Ms. Findlay from bringing further motions without leave of the Court?

[36] Rule 37.16 permits me to prohibit Ms. Findlay from bringing further motions in the proceeding without leave. To do so, I must be satisfied that she is attempting to delay or add to the costs of the proceeding or otherwise abuse the process of the court by a multiplicity of frivolous or vexatious motions: *Sprenger v. Paul Sadlon Motors Inc*., [2005] O.J. No. 1934, at para. 10. Orders of this nature should be made sparingly.

[37] I appreciate why the Bunges sought this restriction. Ms. Findlay has launched many claims in Small Claims Court and brought numerous motions in the context of those proceedings. I agree that her history is relevant although it occurred in a different forum.

[38] Nonetheless, I find that the Order sought is premature. This is the first motion that Ms. Findlay has raised in the Superior Court. She now has counsel who made reasonable concessions at the motion and promptly agreed to a litigation timetable on consent. Currently, I am not satisfied that the Order is appropriate. The Bunges are of course free to seek this relief in future should Ms. Findlay's conduct become problematic.

Should the same judge hear all pretrial matters in this action?

[39] Pursuant to Rule 37.15, the Bunges seek an Order that the same judge hear all future motions in this proceeding. First, I do not have the authority to make such an Order. Rule 37.15 grants that authority to the Chief Justice or the Associate Chief Justice of the Superior Court of Justice, a regional senior judge of the Superior Court of Justice or a judge designated by any of them. I do not possess this delegated authority.

[40] Second, I would not refer this matter to a judge possessed of the power to make the Order. An Order of this nature is appropriate "where a proceeding involves complicated issues or where there are two or more proceedings that involve similar issues." This test is not met on the facts before me. Though the litigation history between the parties is lengthy and acrimonious, the legal issues raised by the Bunges' statement of claim are not complicated. The Bunges plead only one cause of action concerning conduct that occurred on one occasion, and the legal test for defamation is well-established.

[41] In my view, the Bunges' real concern is Ms. Findlay's litigiousness and her potential to cause unnecessary delay moving forward. If needed, that issue can be addressed by an Order pursuant to Rule 37.16. As noted above, the Bunges can renew their request for such an Order should the circumstances call for it.

Should I remove the Bunges' lawyer of record based on a conflict of interest?

[42] In 2019, Ms. Findlay allegedly defamed the Bunges' counsel of record, Andrew West. Ms. Findlay also filed multiple complaints against him with the Law Society of Ontario. All such complaints were closed. In 2019, Mr. West commenced a defamation action against Ms. Findlay. Ms. Findlay did not defend the action and was noted in default. Ms. Findlay purportedly continued to defame Mr. West so he commenced a second action as he could not amend the first. The matters were consolidated after Ms. Findlay successfully set aside her default status.

[43] Ms. Findlay argues that because Mr. West has an outstanding claim against her in his personal capacity, he can no longer represent the Bunges in their ongoing action. I disagree.

[44] Litigants should not be deprived of their lawyer of choice without good reason. Counsel should only be removed where doing so is necessary to prevent the imposition of a more serious injustice, and the risk of real mischief: *Rice v Smith et al*., 2013 ONSC 1200, at para. 15. Courts must jealously guard both a party's right to their lawyer of choice and the high standards of the legal profession and the integrity of the administration of justice. Each case must be decided on its

own merits as there are an infinite variety of circumstances where concerns regarding conflicts of interest could arise.

[45] I appreciate that these circumstances are unusual and less than ideal, but I am not prepared to remove Mr. West as the Bunges' lawyer of record. First, any conflict that arises on these facts was created by Ms. Findlay when she allegedly defamed Mr. West during the Bunges' litigation. This is not a situation where a pre-existing relationship between Mr. West and Ms. Findlay gives rise to a conflict.

[46] Second, any concerns arising from these facts relate solely to the Bunges who have twice signed a Waiver of Potential Conflicts of Interest. Many months before launching his first claim against Ms. Findlay, Mr. West met personally with the Bunges to explain the potential for a conflict of interest. The Bunges signed a Waiver of Potential Conflicts on August 12, 2019. Mr. West met with them again before launching his second claim against Ms. Findlay. The Bunges signed a second waiver on August 3, 2021. These waivers go some distance in addressing concerns regarding the repute of the administration of justice and demonstrate that Mr. West has been diligently complying with his duty of candour.

[47] Third, though the claims overlap in terms of the parties involved and some of the contextual facts, they remain independent and distinct. The Bunges' claim is limited solely to tweets purportedly posted by Ms. Findlay on one day in March 2021. Mr. West's claim relates to comments that Ms. Findlay allegedly made about his professionalism on some other occasion.

[48] Finally, the Bunges are very happy with the legal representation they have received. Mr. West has been upfront and transparent with them at every stage. They are confident in his abilities. Mr. West knows the lengthy history between the parties, a fact well on display during submissions on this motion. Replacing their counsel now would visit upon the Bunges a significant hardship. The Bunges want Mr. West to continue as their lawyer. Given the Bunges' high level of sophistication and their long professional history with Mr. West, their wishes weigh heavily in the balance.

[49] In my view, though natural concerns regarding a potential conflict of interest arise in these circumstances, on the unique facts of this case, the Bunges' right to counsel of choice outweighs any countervailing factors.

Conclusion

[50] The Bunges also asked me to impose a timetable for further steps in the litigation if I dismissed Ms. Findlay's motion. Both parties are represented by counsel. Based on answers received during oral submissions, I was confident that the lawyers could work together and propose a timetable for my consideration should I dismiss the motion. The parties submitted a proposal in writing not along after the motion was heard. I thank them for their collaboration.

[51] I have no difficulty imposing the following timetable on consent of all parties:

- The parties shall exchange their Affidavits of Documents within two months of the release of these reasons;
- Examinations for discovery are to be completed within two months of the exchange of Affidavits of Documents;
- Undertakings are to be completed within two months of examinations for discovery;
- Motions regarding undertakings and refusals are to be completed within three months of examinations for discovery; and
- Mediation shall be completed within four months of examinations for discovery.

Costs

[52] The Bunges are the successful party on the motion and entitled to costs. They seek costs of $11,766.75 on a partial indemnity basis. Though the Bunges did not secure all the procedural relief they sought, I do not consider the parties to have enjoyed divided success.

[53] Costs are quintessentially discretionary: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 131(1); *Restoule v Canada (Attorney General)*, 2021 ONCA 779, at para. 344. Costs are intended to foster a number of fundamental purposes: 1) indemnify the successful party of the legal costs they incurred; 2) encourage settlement; 3) deter frivolous actions and defences; and 4) discourage unnecessary steps that unduly prolong the litigation: *1465778 Ontario Inc. v. 1122077 Ontario Ltd.* (2006), 82 O.R. (3d) 757 (C.A.).

[54] Rule 57.01(1) of the *Rules* delineates factors the court may consider when determining an appropriate amount of costs. Ultimately, the costs fixed by the Court "should reflect more what the court views as a fair and reasonable amount that should be paid by the unsuccessful parties rather than any exact measure of the actual costs to the successful litigant": *Boucher v Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 281 (C.A.), at para. 24. The overall objective of fixing costs is to fix an amount that is objectively reasonable, fair, and proportionate for the unsuccessful party to pay in the circumstances of the case: *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, at para. 61.

[55] The issues raised in the motion were particularly significant to the Bunges as they were potentially dispositive of their claim in its entirety. Ms. Findlay was also seeking to unseat the Bunges' counsel of choice. I find that both parties spent a reasonable amount of time on the litigation and charged hourly rates that are imminently reasonable for the jurisdiction. I also consider that the Rule 21 motion was not made promptly as required by the *Rules*; however, I am mindful that this is not a scenario where costly steps were taken in a matter only to have the action dismissed pursuant to a late Rule 21 motion. The costs analysis in that scenario may very well be different. Here, no steps have been taken in the proceeding since the close of pleadings.

[56] I find that fixing costs in the amount of $10,000, inclusive of HST and disbursements, is fair, proportional and ought to have fallen within the reasonable expectation of Ms. Findlay. This is particularly so given that her lawyer claimed costs of $8250 on a partial indemnity basis. Costs are payable by Ms. Findlay to the Bunges forthwith.

McVey J.

Released: February 5, 2025

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