

**CITATION:** Furney v. Robins Appleby, LLP, 2025 ONSC 1073  
**COURT FILE NO.:** CV-23-00696858-0000  
**DATE:** 20250218

**ONTARIO SUPERIOR COURT OF JUSTICE**

**RE:** MARYAM FURNEY, AIDAN ALEX FITZGERALD FURNEY Plaintiffs/  
Responding Parties

-and-

ROBINS APPLEBY LLP, IRVING MARKS, ELLAD GERSH, JONATHAN  
PREECE, JOEY JAMIL, Defendants/Moving Parties

**BEFORE:** L. Brownstone J.

**COUNSEL:** Maryam Furney, self-represented, for the plaintiffs/responding parties

*Michael R. Kestenberg*, for the Defendants/Moving Parties

**COSTS ENDORSEMENT**

[1] On February 3, 2025, I released my decision and reasons granting the defendants’/moving parties’ motion for summary judgment and dismissing the plaintiffs’ claim against them. This is my decision on costs in relation to that motion.

[2] Fixing costs is a discretionary exercise under s. 131 of the *Courts of Justice Act*, R.S.O. 1990 c. C. 43. Rule 57 outlines, in a non-comprehensive list, factors that guide the exercise of this discretion. Relevant factors include the results of the proceeding, the principle of indemnity, the amount an unsuccessful party could reasonably expect to pay, the complexity of the proceeding and the importance of the issues.

[3] Ultimately, I must fix an amount of costs that is proportionate, and that is fair and reasonable for the unsuccessful party to pay: *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (ONCA) at para. 26. A costs award should “reflect what is reasonably predictable and warranted for the type of activity undertaken in the circumstances of the case, rather than the amount of time that a party’s lawyer is willing or permitted to expend”: *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587 at para. 65.

[4] The moving parties sent costs submissions on February 6, 2025, seeking costs on a partial indemnity basis in the amount of \$45,604.77. Ms. Furney advised Mr. Kestenberg that he had wrongly included a claim for cross examinations and transcript review, when no cross examinations had occurred. Mr. Kestenberg acknowledged the error, advising the court that 3.8

hours had been mis-docketed, and revised his costs outline accordingly. The revised costs sought were \$44,620.31.

[5] The moving parties argue that the action was devoid of merit from the outset, and that the plaintiffs increased the costs at every step, requiring multiple court attendances, seeking delay, and threatening motions they did not pursue. They argue that their rates are already discounted, as the case involves a LawPro-funded defence, that the Furneys, as regular litigants, should have contemplated a costs award of this quantum, that the litigation claimed about 10 million dollars against the defendants, making it very important to them. In addition, allegations of negligence are, by their nature, of great importance to the defendant lawyers.

[6] Ms. Furney provided responding submissions on February 11, 2025, well in excess of the permitted page numbers specified in my reasons. She asks that no costs, or significantly reduced costs, be awarded to the moving parties because, in part, they had made “false claims for cross-examination and transcripts that never occurred, which constitutes a material misrepresentation to the court.” The Furneys rely on *Young v. Young*, 1993 4 SCR 3 for this proposition. I do not find that the *Young* case stands for that proposition. More importantly, I do not find the moving parties intentionally misrepresented anything to the court. As stated above, counsel immediately acknowledged the error in the costs outline, advising the court that 3.8 hours had been mis-docketed, and revised the costs outline accordingly. The amount in issue was under \$1,000. I do not view the mistake in docketing and the costs outline as a misrepresentation, but as an error that was immediately corrected and explained.

[7] The Furneys also argue the defendants have been oppressive and intimidating. The Furneys allege the defendants have participated in coordinated efforts with others to destroy their family. They repeat many of the unsubstantiated bald allegations made in their statement of claim, now extending those allegations to counsel on this motion and threatening further claims.

[8] The Furneys deny their conduct was vexatious. They also assert the amount claimed by the defendants is disproportionate. They argue that self-represented parties should not be subjected to excessive cost awards, as this would undermine access to justice. They rely on *Davies v. Clarington (Municipality)*, 2009 ONCA 722. There, the Court of Appeal reiterated the importance of assessing the overall reasonableness of costs awards to ensure they do not produce a result contrary to the objective of access to justice.

[9] I note that in the defendants’ original costs outline, “review of transcripts” was included as part of the description in a portion of the time spent preparing the factum. Although that description was removed from the revised costs outline, the hours spent remained the same. I have determined that, to be certain that there has been no undiscovered docketing error in that time period, that portion of the costs outline should be reduced by an amount similar to that included by mistake and attributed to attendance at the cross-examination.

[10] In all other respects, the costs claimed are reasonable and proportionate. The statement of claim was lengthy and posed some challenges to navigate. Last-minute requests were made by the plaintiffs, including a last-minute request in respect of fresh evidence. Reviewing the claim,

preparing a defense, preparing and reviewing motion materials, attending CPC court and a case conference, were all necessary steps. The time spent at each stage, subject to the reduction I have made in respect of transcript review, was reasonable. There is no reason to reduce the fees.

[11] The Furneys are experienced, regular litigants. They are aware that costs generally follow the cause. The amount of costs claimed here should have been in their contemplation for a motion of this nature, given the nature and extent of the pleadings and the motion materials. Given the reasonableness and proportionality of the costs sought, they do not present an access to justice issue.

[12] I order the plaintiffs to pay costs to the defendants of \$43,500, on a partial indemnity scale, inclusive of disbursements and HST, within 30 days.

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L. Brownstone J.

**Date:** February 18, 2025