

Costs: An Effective Tool to Address Frivolous Claims

Costs | Full Indemnity | Litigation | Litigation & Dispute Resolution

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The Department of Justice states that Canadian Courts help people resolve disputes fairly, that they interpret and pronounce law, set standards, and decide questions that affect all aspects of Canadian society.

Litigation can be the most expensive way to resolve a dispute. The expense is widespread and is carried not only by the parties to a lawsuit but also by the common taxpayer who supports an increasingly overburdened judiciary.

The court mitigates the spiralling costs of litigation by ordering “costs” after the outcome of a matter is determined. An award of costs is the court’s way of compensating the winning party in a lawsuit (as the losing party is usually ordered to pay a portion of the winning party’s legal bill). Costs are usually ordered on a “partial indemnity” or, more exceptionally, on a “substantial indemnity” basis. Neither of these examples fully reimburse a winning party for their legal bill.

In any event, I would think that the threat of costs exposure deters many from advancing spurious claims with no chance of success. Sounds great in principle, doesn’t it?

Theory does not always translate into practice nor does it apply perfectly in every situation. There are many lawsuits with merit to which our current costs regime works well. On the other hand, there are many lawsuits that are frivolous, vexatious, and an abuse of the court’s process. These lawsuits are clogging up our court system. Recently, the Ontario Superior Court of Justice has taken a stand against frivolous lawsuits, many of which are advanced by self-represented litigants who trudge onward irrespective of any obstacle.

In *De Cruz Lee v. Lee*, 2015 ONSC 2012, the court held that it will use “the hammer of a cost’s award” to address self-represented litigants whose aim it is to advance scurrilous allegations without any evidentiary foundation and who protract court proceedings unnecessarily. In *Lee*, Justice Myers awarded two solicitors full indemnity costs against the plaintiff who, among other things, made horrible, abusive allegations and attempted to extort money from them. This reasoning was recently affirmed in *Irmya v. Mijovick*, 2016 ONSC 5276.

Are we seeing a trend towards costs awards on a full indemnity basis when the circumstances call for it? It appears to be so. The importance of an effective and independent judiciary cannot be understated. Clearly, the courts are eager to address these kinds of claims head-on to make room for others who have genuine lawsuits to bring before the court.

(This blog is provided for educational purposes only, and does not necessarily reflect the views of Gardiner Roberts LLP).

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