

Costs ordered against self-represented litigants who agreed to timetable and failed to comply (Erkman v. Perry)

Costs | Litigation & Dispute Resolution

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Litigants who are unresponsive, fail to attend court appearances, or do not diligently pursue their case may face procedural consequences and court sanctions. Self-represented litigants are no exception and remain subject to the same rules, deadlines, and court orders as represented parties.

In *Erkman et al. v. Perry et al.* (Court File No. CV-22-578301, Toronto) (not on CanLII), the Superior Court ordered \$6,500 in costs against self-represented plaintiffs who failed to comply with a consent timetable, causing unnecessary delay and requiring the defendants to bring a motion to advance the litigation.

The plaintiffs commenced the action in 2022. The defendants defended the action and delivered their affidavit of documents in May 2023. Thereafter, despite repeated requests from the defendants' counsel, the plaintiffs failed to provide their own productions or take any steps to advance their action.

In July 2024, the court granted an order on consent establishing a timetable of the action. Among other things, the timetable required the plaintiffs to deliver their affidavit of documents by August 30, 2024.

The plaintiffs failed to meet this deadline.

The defendants' counsel contacted the plaintiffs regarding their outstanding productions, but the plaintiffs were unresponsive. The defendants' counsel subsequently scheduled a case conference, but the plaintiffs failed to attend.

At the defendants' request, the court scheduled a motion to strike the plaintiffs' claim under [Rule 60.12](#) of the *Rules of Civil Procedure* for their failure to comply with the order establishing the timetable.

The plaintiffs did not attend the scheduled motion and instead requested an adjournment in writing. The court granted the request and adjourned the matter first to April 2025 and then to May 20, 2025. On the rescheduled motion date, the plaintiffs attended court under the mistaken belief that the motion would proceed in person. As a result, the motion was further adjourned to May 29, 2025.

The plaintiffs attended on May 29, 2025, and advised that they had served their affidavit of documents, but had encountered formatting and filing issues. They also advised that they intended to consult a lawyer in the near future regarding their claim and wished to amend their Statement of Claim. The court adjourned the matter to June, peremptory on the plaintiffs, to allow them an opportunity to obtain independent legal advice.

On the Friday before the new motion date of June 23, 2025, the plaintiffs delivered their affidavit of documents as well as an Amended Statement of Claim. The defendants were satisfied with the plaintiffs' documentary production and, as a result, elected not to proceed with the motion to dismiss the action. However, the defendants sought costs of \$11,206 on a partial indemnity scale for those thrown away on the motion.

The parties were asked to submit cost submissions of no more than 5 pages. The plaintiffs instead filed 28 pages of submissions and sent the court numerous emails, many with voluminous attachments, most of which were unrelated to the issue of costs. The cost submissions themselves had little to do with costs and instead focused on the impact of a writ registered against their property, which they claimed had delayed the delivery of their affidavit of documents (a claim that the court rejected), together with various allegations of fraud and misconduct against lawyers and other individuals.

The court noted that generally, costs are not awarded when a motion is resolved on consent. However, there are circumstances where costs are appropriate, including where the parties agree to resolve all issues except for costs or where the motion would not have been resolved if an opportunity to seek costs was not provided.

Given that the motion did not proceed, neither party was successful and there was no success to measure. Therefore, pursuant to [Rule 57.01](#), the primary considerations in determining costs were whether:

- a. there was any conduct of the parties which tended to shorten or unnecessarily lengthen the duration of the proceeding;
- b. any steps were improper, unnecessary, or taken through negligence or mistake, and
- c. a party's denial of or refusal to admit anything it should have admitted.

In this matter, the court held that the defendants were entitled to some costs given the plaintiffs' conduct. The plaintiffs had consented to the court ordered timetable, advising the court that they wished to move their action forward as efficiently as possible. Thereafter, despite the court's numerous indulgences and adjournments, the plaintiffs failed to comply with the timetable for almost one year.

As the plaintiffs of the action, they were obligated to move the matter forward. The court held that it was not acceptable for the plaintiffs to unilaterally hold their action in abeyance, consent to the timetable and then take no steps to comply with it, or remain unresponsive for extended periods.

In the circumstances, the court found that it was reasonable for the defendants to move to dismiss the plaintiffs' action, and that, had the defendants not done so, the plaintiffs would not have complied with the timetable.

The court considered the plaintiffs' submissions regarding their financial difficulties, but noted that this was no excuse for their behaviour, specifically stating:

I accept the Plaintiff's submissions regarding their financial difficulties, however, it was not open to them to consent to the Timetable then not take steps to comply with it for an extended period of time.

Considering the factors set out in [Rule 57.01](#), and the facts of the matter, the court held it was fair and reasonable for the plaintiffs to pay the costs of the motion to the defendants, in the amount of \$6,500 within 120 days. This would balance the objectives of indemnifying the defendants for their costs, facilitating access to justice, and deterring non-compliance with court orders.

This decision demonstrates the factors the court will consider when a litigant fails to comply with a consent timetable and causes unnecessary delay in the litigation. It also underscores that self-represented litigants are held to the same procedural obligations as represented parties and may be required to bear the cost consequences of their non-compliance where their conduct necessitates unnecessary steps by the opposing party and leads to inefficient use of court resources. A PDF version is available for download [here](#).

Representation by Gardiner Roberts LLP

The successful defendants were represented by [Alexander Melfi](#), a partner, and [Michael Lauricella](#), an associate, of the Dispute Resolution Group at Gardiner Roberts LLP.

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