

**CITATION:** Sekulovski v. Arkin, 2021 ONSC 1401  
**COURT FILE NO.:** CV-20-2184  
**DATE:** 2021 02 24

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Michael [REDACTED] and Christopher [REDACTED] Plaintiffs

**AND:**

Benjamin Arkin, Maria Salman, Angela Casey, Adam Giancola, Rob Levesque,  
Cory A. Gilmore, Bernadette Dietrich, David Mills, Marshall Swadron, and  
Brendan Donovan, Defendants

**BEFORE:** Coats J.

**COUNSEL:** Michael [REDACTED] and Christopher [REDACTED] Self-Represented

Mr. L. Glenn Frelick, Counsel for the Honourable Justice Corey A. Gilmore and  
the Honourable Justice Bernadette Dietrich

Mr. Lucas E. Lung, Counsel for Rob Levesque, Marshall Squadron, David Mills,  
Adam Giancola, Brendan Donovan, Benjamin Arkin and Maria Salman

**HEARD:** In chambers

**STYLE OF CAUSE ACTUALLY USED BY PLAINTIFFS:**

**Court File No.: CV-20-00002184-0000**

in

**'Sekulovski Court'**

at

Ontario Superior Court of Justice  
491 Steeles Ave Milton, ON  
L9T 1Y7  
Ph: 905-878-7281

i:man: Michael [REDACTED]  
i:man: Christopher [REDACTED]

prosecutors

Benjamin Arkin: [a man];  
Maria Salman: [a woman];  
Angela Casey: [a woman];  
Adam Giancola: [a man];  
Rob Levesque: [a man];  
Cory A. Gilmore: [a woman]  
Bernadette Dietrich: [a woman];  
David Mills: [a man];  
Marshall Swadron: [a man];  
Brendan Donovan: [a man];

people

### **COSTS ENDORSEMENT**

#### **Background**

[1] In paragraph 33 of my endorsement dated January 21, 2021, I have provided for written submissions as to costs. I have since received and reviewed the following:

- i. Written Costs Submissions from Mr. Frelick dated January 29, 2021 and Bill of Costs; and
- ii. Costs Submissions from Mr. Lung dated January 27, 2021 with Costs Outline attached.

[2] I have received no responding submissions from the Plaintiffs regarding costs.

[3] In my endorsement of January 21, 2021, I dismissed the proceeding against all Defendants under Rule 2.1.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

#### **Position of the Defendants**

[4] On behalf of the Defendants Mr. Frelick represents, he is requesting costs on a substantial indemnity basis. These Defendants submit that they were entirely successful and that costs shall not be disallowed or reduced simply because the costs claimed relate to the time of a lawyer who is a salaried employee of the Ministry of the Attorney General.

[5] The submissions refer to the five purposes modern costs rules are designed to advance in the administration of justice with reference to para. 1-.37 of Perrell, P.M. and Morden, J.W., *The Law of Civil Procedure in Ontario* (4th ed)(LexisNexis Canada Inc: 2020), which provides as follows:

Modern costs rules are designed to advance five purposes in the administration of justice: (1) to indemnify successful litigants for the costs of litigation, although not necessarily completely; (2) to facilitate access to justice, including access for impecunious litigants; (3) to discourage frivolous claims and defences; (4) to discourage and sanction inappropriate behaviour by litigants in their conduct of the proceedings; and (5) to encourage settlements. [Citations omitted.]

[6] With respect to purposes (3) and (4), these Defendants refer to para 10.39 of *The Law of Civil Procedure in Ontario*, which provides as follows:

The exposure to costs awards discourages inappropriate behaviour because the court uses costs as a tool to protect the integrity of its process and to regulate the behaviour of litigants and their legal representatives before the court.

[7] These Defendants submit that substantial indemnity costs are justified “to discourage harassment of another party by the pursuit of fruitless litigation...particularly where a party has conducted itself improperly in the view of the court”: *Davies v. Clarington (Municipality)*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 45 [Davies], quoting from *Apotex v. Egis Pharmaceuticals* (1991), 4 O.R. (3d) 321 (Ont. Gen. Div.).

[8] These Defendants submit that elevated costs awards have been found to be an appropriate response by the courts to OPCA concepts, arguments or strategies: *Meads v. Meads*, 2012 ABQB 571, 543 A.R. 215, at paras. 594-599. These Defendants also refer to *Hayhurst v. Her Majesty the Queen*, 2018 ONSC 1211, at para. 3(vii), wherein Healey J. noted that elevated costs have been awarded where there is a need to impress upon litigants that courts are not to be used for vexatious litigation.

[9] *Hayhurst* was a Rule 2.1.01(1) case. Substantial indemnity costs were awarded in *Jarvis v. Morlog*, 2016 ONSC 5061, at paras. 7-8, another Rule 2.1 case. In cases under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, elevated costs have also been awarded

against “sovereign man” or OPCA-type litigants: substantial indemnity costs were awarded in *Myers v. Blackman*, 2014 ONSC 5226, 2 P.P.S.A.C. (4th) 318, at para. 36, and full indemnity costs were awarded in *MBNA Canada Bank v. Luciani*, 2011 ONSC 6347, at paras. 16-17.

[10] These Defendants submit that substantial indemnity costs are warranted in this case given the express findings in my January 21, 2021 endorsement. These Defendants request costs in the amount of \$6,300, all inclusive.

[11] On behalf of the Defendants Mr. Lung represents, he is requesting costs on a substantial indemnity basis in the amount of \$2,982.07.

[12] These Defendants submit that pursuant to section 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, costs are in the discretion of the Court. In *Boucher v. Public Accountants Council (Ontario)* (2004), 71 O.R. (3d) 291 (C.A.), at paras. 24 and 37, the Ontario Court of Appeal, stated that, in awarding costs, the court will seek to arrive at an outcome that is fair and reasonable in the circumstances.

[13] The Defendants submit that the court will consider, among other factors, those factors specifically set out in Rule 57.01(1) of the *Rules of Civil Procedure*. These Defendants submit that a consideration of all relevant factors justifies an award of substantial indemnity costs in this case. The Plaintiffs’ allegations included allegations of fraud, theft and other professional misconduct against these Defendants. These Defendants submit that baseless allegations of improper conduct attacking a party’s character and reputation may give rise to substantial indemnity costs: see *Catalyst Capital Group Inc. v. Moyse*, 2016 ONSC 6285, at para. 3, and *Manning v. Herb Epp*, 2006 CanLII 35631 (Ont. S.C.), at para. 7.

[14] In addition, these Defendants submit that my determination that the proceeding was an abuse of process may justify costs on a substantial indemnity basis. The Defendants reference *Close Up International Ltd. v. 1444943 Ontario Ltd.*, 2006 CanLII 35615 (Ont. S.C.), at paras. 12-14, and *Davies*, at paras. 29-31, in this regard.

**Analysis**

[15] Pursuant to section 131 of the *Courts of Justice Act*, I exercise my discretion to award costs to the Defendants represented by Mr. Frelick and the Defendants represented by Mr. Lung. The Defendants were entirely successful. The proceeding was dismissed in whole. The Defendants are entitled to costs.

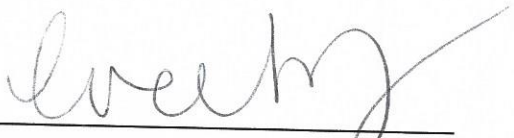
[16] In my view, these Defendants represented by Mr. Frelick and Mr. Lung are entitled to substantial indemnity costs. This elevated level of costs has been awarded in similar cases under Rule 2.1.01(1) as set out in paras. 8-9 above.

[17] The Plaintiffs made serious allegations against the said Defendants including fraud, theft and other professional misconduct. The *Catalyst* and *Manning* cases are directly applicable.

[18] I did determine that the claims were frivolous, vexatious and an abuse of the process of the court. The cases of *Close Up International Ltd.* and *Davies* support the awarding of substantial indemnity costs in these circumstances.

[19] The amounts claimed are fair and reasonable. The Bill of Costs and Costs Outline are appropriate and proportional to the steps taken.

[20] In conclusion, the Plaintiffs' shall pay to the Defendants represented by Mr. Frelick the sum of \$6,300 all inclusive and to the Defendants represented by Mr. Lung, the sum of \$2,982.07, all inclusive.

  
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Coats J.

**Date:** February 24, 2021