

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

EDWARD CORNELL, VINCENT GIRCYS, LINDSAY MILNER, SHAUN ZIMMER, ANDREW MILLER, JONKER TRUCKING INC., ANDREW FERA, WAYNE NARVEY, CLAYTON MCALLISTER, KATHLEEN MARKO, NICOLA FORTIN, ARIELLE FORTIN, THOMAS QUIGGIN, TIMOTHY TIESSEN O'JAY LAIDLEY, ERIC BUECKERT, PETER TERRANOVA, NANCY TERRANOVA, RICHARD OCELAK, and KERRI-ANN HAINES

Plaintiffs

-and-

JUSTIN TRUDEAU, CHRYSTIA FREELAND, DAVID LAMETTI, DOMINIC LEBLANC, BILL BLAIR, MARCO MENDICINO, ATTORNEY GENERAL OF CANADA, JODY THOMAS, ROYAL CANADIAN MOUNTED POLICE, DENIS BEAUDOIN, BRENDA LUCKI, STEVE BELL, ROBERT BERNIER, OTTAWA POLICE SERVICES BOARD, OTTAWA POLICE SERVICE, THE TORONTO-DOMINION BANK, CANADIAN IMPERIAL BANK OF COMMERCE, BANK OF MONTRÉAL, NATIONAL BANK OF CANADA, ROYAL BANK OF CANADA, BANK OF NOVA SCOTIA (SCOTIABANK), CANADIAN TIRE SERVICES LTD. doing business as CANADIAN TIRE BANK, MERIDIAN CREDIT UNION, ASSINIBOINE CREDIT UNION, GULF & FRASER CREDIT UNION, STRIDE CREDIT UNION, SIMPLII FINANCIAL, CANADIAN ANTI-HATE NETWORK, BERNIE FARBER, JOHN DOE, and ABC CORP.

Defendants

**COSTS SUBMISSIONS OF THE DEFENDANTS/MOVING PARTIES,
CANADIAN ANTI-HATE NETWORK AND BERNIE FARBER**

October 10, 2024

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Lawyers for the Defendants,
Canadian Anti-Hate Network and Bernie
Farber

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Lawyers for the Plaintiffs

1. The CAHN defendants were entirely successful on this anti-SLAPP motion. This Court found that this action “is precisely the type of claim that s. 137.1 is intended to weed out”¹. There is no reason to depart from the statutory presumption of full indemnity costs in the amount of \$49,319.13, which is nearly half what the Plaintiffs spent to unsuccessfully respond to this motion.

A. Scale: No Reason to Depart from Statutory Presumption

2. An award of full indemnity costs is the presumption established by s. 137.1 and is intended to “disincentivize this kind of litigation”.² The Plaintiffs have the burden to demonstrate why a departure from a complete reimbursement of the CAHN defendants’ legal fees is appropriate.³

3. It is relevant that the Court did not award damages in favour of the CAHN defendants: this increases the importance of a true full indemnity costs award to ensure that the CAHN defendants are fully reimbursed for the unmeritorious litigation initiated against them.⁴

4. The full indemnity provision is also meant to encourage counsel to take on the defence of defamation actions where defendants would be unlikely to be able to pay.⁵ CAHN does not have the resources to pay the legal fees that were required to bring this anti-SLAPP motion.⁶ As such, Mr. Warman personally advanced the funds to pay for the CAHN defendants’ motion.⁷ It is important that Mr. Warman be reimbursed for all the costs incurred so that he not be out-of-pocket.

B. Quantum: CAHN Defendants’ Fees are Reasonable

5. The CAHN defendants incurred full indemnity fees in an all-inclusive amount of \$49,319.13⁸. A copy of an updated Bill of Costs is attached as **Schedule A**.

¹ *Cornell v. Trudeau*, 2024 ONSC 5343, [at para 63](#) (“*Cornell v. Trudeau*”).

² *Fortress Real Developments Inc. v. Rabidoux*, 2018 ONCA 686, [at para 71](#) (“*Fortress*”).

³ *Joshi v. Allstate Insurance Company of Canada*, 2019 ONSC 5934, [at para 14](#).

⁴ *Cornell v. Trudeau*, [at para 67](#).

⁵ *Niagara Peninsula Conservation Authority v. Smith*, 2018 ONSC 127, [at para 12](#).

⁶ Moving Parties’ Motion Record, Affidavit of Richard Warman, at para 66 (Caselines B-1-121).

⁷ Moving Parties’ Motion Record, Affidavit of Richard Warman, at para 67 (Caselines B-1-122).

⁸ The CAHN defendants’ bill of costs provided at the time of the hearing in the amount of \$45,098.87 (all-inclusive), which included estimates for preparation and attendance at the motion, has been updated to include the actual costs

6. In exercising its discretion to determine whether it should award the amount sought by the CAHN defendants, the Court is to apply the normal Rule 57.01 factors.⁹

7. This was a \$44,000,000 action with damages sought on a joint and several basis against all defendants. In addition to the overwhelming damages sought, the risk of being dragged along in this “massive”¹⁰ litigation (even if defended successfully at trial) would have involved significant and unaffordable legal fees.

8. The Plaintiffs incurred full indemnity fees of \$95,881.29, nearly twice the fees incurred by the CAHN defendants. The amount incurred by the CAHN defendants is therefore not a surprise or outside what would have been reasonably expected.

9. The Court of Appeal has held that the guideline costs amount on an anti-SLAPP motion should be approximately \$50,000¹¹, although the courts have discretion to order more or less and have done so, including some that are far higher.¹²

10. The Plaintiffs refused to concede any point on the motion, including that the expressions were on a matter of public interest, when the caselaw was already conclusive.¹³

11. The Plaintiffs also sought, improperly and contrary to the case law, to “look past” the actual statement of claim to allegations set out in Mr. Gircys’ affidavit.¹⁴ This required the CAHN defendants to address those specific expressions in their factum and apply the various defences.

incurred, which is \$49,319.13 (all-inclusive). The increase is attributable to having under-estimated the preparation and attendance time for the motion itself.

⁹ *Fortress*, [at para 63](#).

¹⁰ Stated by one of the plaintiffs in the video included in the Moving Parties’ Motion Record, Affidavit of Richard Warman, at Exhibit BB 14:00-14:20 time marker (Caselines B-1-390).

¹¹ *Park Lawn Corporation v. Kahu Capital Partners Ltd.*, 2023 ONCA 129, [at para 39](#).

¹² See for example: *Gill v. Maciver*, [2022 ONSC 6169](#) (\$1.1M in costs in favour of multiple defendants, including several awards over \$100,000) aff’d [2024 ONCA 126](#); *Volpe v. Wong-Tam*, [2022 ONSC 4071](#) (\$383,877.66 in costs in favour of multiple defendants, including an award of \$110,442.90) aff’d [2023 ONCA 680](#); *Canadian Frontline Nurses v. Canadian Nurses Association*, [2023 ONSC 3529](#) (\$315,000 in costs in favour of multiple defendants, including an award of \$250,000). Some of these cases were affirmed by the Court of Appeal after its decision in *Park Lawn*.

¹³ *Cornell v. Trudeau*, [at para 30](#).

¹⁴ *Cornell v. Trudeau*, [at para 31](#).

12. The CAHN defendants chose not to cross-examine Mr. Gircys, thereby reducing the duration of the proceeding. The Plaintiffs cross-examined both Mr. Farber and Mr. Warman and sought various undertakings. None of the evidence “obtained” during the cross-examinations had any bearing on the Court’s decision. The cross-examinations were a complete waste of time.

C. Offers to Settle: CAHN Attempted to Resolve this Matter

13. The CAHN defendants offered to settle the motion on June 11, 2024, before they incurred most of their costs. At that time, the CAHN defendants requested the payment of \$10,000 (which had been the cost of preparing the notice of motion and affidavits) and the dismissal of the action against them. A copy of this offer letter is attached as **Schedule B**.

14. Although the offer is not Rule 49 compliant,¹⁵ the presence of this offer should weigh in favour of awarding the full costs sought.¹⁶ Had the offer been accepted on June 11, 2024, the CAHN defendants would not have incurred the additional \$40,000 in fees to prepare for and attend at cross-examinations, answer undertakings, prepare the factum, and argue the motion. Both the Plaintiffs and the Court would have saved valuable resources.

15. Although the Plaintiffs made a late offer to settle (attached as **Schedule C**) that involved the dismissal of certain aspects of the claim, this offer provided that the claim in civil conspiracy would survive and that no costs would be paid by the Plaintiffs. In light of this Court’s decision and the s. 137.1 framework, this was not a legitimate offer to settle.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10th DAY OF OCTOBER 2024



Caza Saikaley LLP

¹⁵ It is difficult to conceive how Rule 49 could be effectively applied in the anti-SLAPP framework.

¹⁶ The Court has the discretion to take into account offers to settle that do not meet the formalities of a Rule 49 Offer to Settle: *Rules of Civil Procedure*, RRO 1990, Reg 194, [s 49.13](#).

Schedule A

Court File No.: CV-24-00095074-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

EDWARD CORNELL, VINCENT GIRCYS, LINDSAY MILNER, SHAUN ZIMMER, ANDREW MILLER, JONKER TRUCKING INC., ANDREW FERA, WAYNE NARVEY, CLAYTON MCALLISTER, KATHLEEN MARKO, NICOLA FORTIN, ARIELLE FORTIN, THOMAS QUIGGIN, TIMOTHY TIESSEN O'JAY LAIDLEY, ERIC BUECKERT, PETER TERRANOVA, NANCY TERRANOVA, RICHARD OCELAK, and KERRI-ANN HAINES

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JUSTIN TRUDEAU, CHRYSTIA FREELAND, DAVID LAMETTI, DOMINIC LEBLANC, BILL BLAIR, MARCO MENDICINO, ATTORNEY GENERAL OF CANADA, JODY THOMAS, ROYAL CANADIAN MOUNTED POLICE, DENIS BEAUDOIN, BRENDA LUCKI, STEVE BELL, ROBERT BERNIER, OTTAWA POLICE SERVICES BOARD, OTTAWA POLICE SERVICE, THE TORONTO-DOMINION BANK, CANADIAN IMPERIAL BANK OF COMMERCE, BANK OF MONTRÉAL, NATIONAL BANK OF CANADA, ROYAL BANK OF CANADA, BANK OF NOVA SCOTIA (SCOTIABANK), CANADIAN TIRE SERVICES LTD. doing business as CANADIAN TIRE BANK, MERIDIAN CREDIT UNION, ASSINIBOINE CREDIT UNION, GULF & FRASER CREDIT UNION, STRIDE CREDIT UNION, SIMPLII FINANCIAL, CANADIAN ANTI-HATE NETWORK, BERNIE FARBER, JOHN DOE, and ABC CORP.

Defendants

UPDATED BILL OF COSTS OF THE MOVING PARTIES

October 10, 2024

CAZA SAIKALEY s.r.l./LLP
Lawyers | Avocats
1420 – 220 Laurier Avenue West
Ottawa, ON K1P 5Z9

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Tel: 613-565-2292

Lawyers for the Defendants,
Canadian Anti-Hate Network and Bernie
Farber

PROFESSIONAL FEES & DISBURSEMENTS INCURRED

In accordance with Form 57A, dockets can be provided in support of the fees claimed in this bill of costs.

	Full Indemnity (100%, inclusive of HST)	Substantial Indemnity (90%, inclusive of HST)	Partial Indemnity (60%, inclusive of HST)
Professional fees	\$48,587.74	\$43,728.96	\$29,152.64
Disbursements (inclusive of HST)	\$731.39	\$731.39	\$731.39
Grand total	\$49,319.13	\$44,460.35	\$29,884.03

PROFESSIONAL FEES

Correspondence between counsel and the clients; Reviewed materials; Internal conferences re Anti-SLAPP motion; Legal research; Correspondence with opposing counsel; Prepared and drafted notice of motion; Correspondence with the Court requesting long motion; Prepared and drafted motion materials including factum, motion record, affidavits of R. Warman and B. Farber, compendium, outline, etc.; Prepare for and attend at cross-examinations; Filed documents with the Court and uploaded to Caselines; Prepare answers to undertakings; Prepare for and attend at hearing.

YEAR/NAME/RATE	HOURS	FULL INDEMNITY (100%)	SUBSTANTIAL INDEMNITY (90%)	PARTIAL INDEMNITY (60%)
2024				
Jeff Saikaley				
\$495.00	35.10	\$17,151.50	\$15,436.35	\$10,290.90
Albert Brunet				
\$295.00	69.50	\$20,502.50	\$18,452.25	\$12,301.50
Law Clerk				
\$160.00	13.80	\$2,208.00	\$1,987.20	\$1,324.80
Articling Student				
\$160.00	19.10	\$3,136.00	\$2,822.40	\$1,881.6
TOTAL	137.50	\$42,998.00	\$38,698.20	\$25,798.80
HST		\$5,589.74	\$5,030.76	\$3,353.84
TOTAL	137.50	\$48,587.74	\$43,728.96	\$29,152.64

DISBURSEMENTS

TYPE OF DISBURSEMENT	TOTAL
Filing Fee	\$339.00
External Printing*	\$347.25
Subtotal	\$686.25
HST*	\$45.14
TOTAL	\$731.39

STATEMENT OF EXPERIENCE

Name of Lawyer	Year of Call
Jeff G. Saikaley	2002
Albert Brunet	2018

CERTIFICATE

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred and claimed.

October 10, 2024



CAZA SAIKALEY s.r.l./LLP

Lawyers | Avocats

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Lawyers for the Defendants,
Canadian Anti-Hate Network and Bernie
Farber

EDWARD CORNELL et al.
Plaintiffs

-and-

JUSTIN TRUDEAU et al.
Defendants

Court File No.: CV-24-94733

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Ottawa

BILL OF COSTS

CAZA SAIKALEY s.r.l./LLP
Lawyers | Avocats
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Lawyers for the Defendants,
Canadian Anti-Hate Network and Bernie
Farber



Jeff Saikaley
T 613-564-8268 | F 613-565-2087 | jsaikaley@plaideurs.ca

BY EMAIL

WITHOUT PREJUDICE

June 11, 2024

Blair D. Ector

Loberg Ector LLP
2525 Encor Place, 645- 7 Ave SW
Calgary, AB T2P 4G8

Dear Mr. Ector:

**RE: Cornell at al. v Trudeau et al.
CV-24-00094733 and CV-24-00095074**

Further to service of the affidavits in support of our clients' motion, and in anticipation of receiving the affidavits in response to the motion on Friday, June 14, 2024, we write to canvass whether your clients would be willing to consider resolving this matter.

We trust that your clients are well aware of the cost consequences of an action being dismissed pursuant to an anti-SLAPP motion. There is a presumption of full indemnity costs payable by the responding parties, which will rarely be displaced: *Levant v. DeMelle*, 2022 ONCA 79; *Volpe v. Wong-Tam*, 2023 ONCA 680; *The Catalyst Capital Group Inc. v. West Face Capital Inc.*, 2023 ONCA 381.

At this time, our clients offer that the matter be resolved by this dismissal of both actions (i.e. CV-24-94733 and CV-24-95074) as against our clients and the payment of \$10,000 to our firm in trust. This represents a significant, but not the full, amount of the costs that have been incurred up to the date of this letter. The offer is open for acceptance until this Friday, June 14, 2024, at noon EST. Should your clients fail to accept this offer, our clients may rely on this letter during submissions on costs.

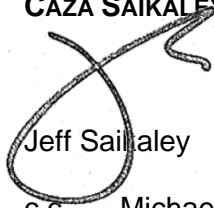
As indicated in Mr. Farber's affidavit, he is currently experiencing health challenges and this litigation negatively affects his ability to focus on his well-being. If your clients continue in this litigation, any further offers to settle will reflect not only the increased costs incurred, but also include a demand for damages on behalf of Mr. Farber.

Without commenting on the wisdom of the action against the other defendants, it is clear that our clients should not have been included in what is at its core litigation against government actors for alleged *Charter* violations and corollary litigation against certain financial institutions. Including our clients in this litigation clearly served a punitive function for CAHN speaking out against the protests that took place in Ottawa in 2022. We are confident that the Court will find in our clients'

favour and significant costs will be imposed. If that occurs, our clients will pursue full recovery of their costs without compromise.

Yours very truly,

CAZA SAIKALEY S.R.L./LLP

A handwritten signature in black ink, appearing to read "Jeff Saikaley". The signature is stylized with a large loop and a long tail.

Jeff Saikaley

c.c. Michael A. Loberg, Bath-Shéba Van Den Berg and Brendan Hill (Loberg Ector LLP)
Albert Brunet (Caza Saikaley LLP)

Schedule C

Albert Brunet

From: Blair Ector <bector@lobergector.com>
Sent: June 28, 2024 4:29 PM
To: Jeff Saikaley; Albert Brunet
Cc: Lorne Honickman; Brendan Hill; Sarah Hanks; Jennifer Procuik
Subject: Cornell et al v Trudeau et al (Settlement Offer)(With Prejudice)

Importance: High

Categories: Filed

External Email – Confirm Sender and Beware of Links and Attachments

WITH PREJUDICE

The following offer is being sent with prejudice and may expressly be referred to in our submissions in oral argument.

The Plaintiffs offer the following:

1. Discontinuance without costs as against the defendant Mr. Bernie Farber;
2. An Order dismissing defamation and negligence as against the Canadian Anti-Hate Network on a without costs basis;
3. The Canadian Anti-Hate Network withdraws their section 137.1 motion set for July 5, 2024, on a without costs basis; and
4. The claim for civil conspiracy as against the Canadian Anti-Hate Network remains extant.

In our opinion this offer is a real and substantial compromise to assist in narrowing issues, it also saves the court and the parties the unnecessary costs of the hearing on July 5th, 2024.

This offer remains open until **July 4, 2024 at 4:00 pm EST.**

Kind regards,



Blair D. Ector
Founding Partner

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This email is confidential and solicitor-client privileged.



EDWARD CORNELL et al.
Plaintiffs

-and-

JUSTIN TRUDEAU et al.
Defendants

Court File No.: CV-24-94733

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Proceeding commenced at Ottawa

**COSTS SUBMISSIONS OF THE
MOVING PARTIES
(Anti-SLAPP Motion)**

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