

**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 MONTREAL,
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

COST SUBMISSIONS OF THE PLAINTIFFS/RESPONDING PARTIES

October 25, 2024

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Canadian Anti-Hate Network and Bernie Farber

1. Although the CAHN Defendants were successful on this anti-SLAPP motion, an award of full indemnity costs is not appropriate in the circumstances.
2. Notwithstanding the presumption under s.137.1(7) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the costs must still be reasonable.¹ There remains an “overriding judicial discretion to ultimately impose the order that is appropriate in all the circumstances”, according to what is fair and reasonable.²

A. Reason to Depart from the Statutory Presumption of Full Indemnity Costs

3. The CAHN Defendants state that full indemnity costs are required to reimburse out-of-pocket expenses. However, costs on an anti-SLAPP motion are not intended to compensate defendants for “out-of-pocket” expenses.³
4. Anti-SLAPP motion judges always retain the discretion to award costs as is seen fit in the circumstances of each case.⁴ Case law is clear that “the costs of [of an anti-SLAPP] motion should not generally exceed \$50,000 on a full indemnity basis”.⁵ It is submitted that in this case, there is good reason to award less than the maximum guideline amount.

B. The Costs Requested are not Fair or Reasonable

5. The Court is to apply the normal Rule 57.01 factors in exercising its discretion when awarding costs, and as an overriding objective, any costs order requires the award to be fair and reasonable.⁶ It is incumbent that the Court undertake the same type of analysis that is required when fixing costs in any other context.⁷ Such analysis reveals that the requested award is

¹ *Armstrong v Corus Entertainment Inc.*, 2018 ONCA 852 at para 1.

² *Fortress Real Developments Inc. v. Rabidoux*, 2018 ONCA 686 at paras 63-64 (“*Fortress*”).

³ *Fortress* at para 68.

⁴ *Boraks v. Hussen*, 2023 ONSC 6420, at para 26 (“*Boraks*”).

⁵ *Park Lawn* at para 39.

⁶ *Fortress* at para 63.

⁷ *Boraks* at para 24.

neither fair nor reasonable, especially where the action is one undertaken in the public interest, which can and should weigh against an award of full indemnity costs.⁸ For example, costs of \$10,000 were awarded in *Rainbow Alliance*, where \$37,996.25 was sought.⁹ This is a fair range of costs to be awarded.

6. The CAHN Defendants criticize the decision to cross-examine their affiants, however, such cross-examination is available by right.¹⁰ This criticism of cross-examination asks this Court to undermine the important truth-seeking function of the Court, which cross-examination serves. Cross-examination is unquestionably a core aspect of competent and diligent advocacy.
7. The CAHN Defendants elected to submit two affidavits on this motion.¹¹ The Respondents exercised their right to cross-examine the affiants, and notably took less time than is allotted by statute.¹² The Respondents relied on this evidence, and the evidence that will be relevant to the Court's decision cannot be predicted in advance. The cross-examinations were not unreasonable, improper, or vexatious, nor did they unnecessarily lengthen the duration of the proceeding.¹³ They were strategic decisions that should not be assessed with hindsight.
8. It is relevant that the CAHN Defendants devoted significant time, both in their written materials and in oral submissions, to an argument that an award of damages was appropriate.¹⁴ This argument was rejected, as there was no evidence of "active efforts to intimidate, to punish, or to inflict harm on the CAHN Defendants".¹⁵ While costs may address any harm arising from

⁸ *Rainbow Alliance Dryden et al. v. Webster*, 2024 ONSC 3056 at paras [17-18](#) ("*Rainbow Alliance*").

⁹ *Rainbow Alliance* at para [18](#).

¹⁰ *Rules of Civil Procedure*, RRO 1990, Reg 194 at Rule [39.02](#) ("*Rules of Civil Procedure*").

¹¹ Moving Parties' Motion Record, Affidavit of Richard Warman (Caselines B-1-112 to B-1-393) and Affidavit of Bernie Farber (Caselines B-1-294 to B-1-429).

¹² *Courts of Justice Act*, RSO 1990, c C.43 at s [137.2](#).

¹³ *Rules of Civil Procedure* at Rule [57.01\(e\), \(f\)](#).

¹⁴ Factum of the Defendants/ Moving Parties at paras 121-128 (CaseLines B-1-461 to B-1-463); *Cornell v Trudeau*, 2024 ONSC 5343 at paras [64-68](#).

¹⁵ *Cornell v Trudeau*, 2024 ONSC 5343 at para [68](#).


an anti-SLAPP motion,¹⁶ the Plaintiffs should not bear the costs of this unsuccessful argument.

9. Notably, it is difficult to effectively assess the reasonableness of the fees submitted by the CAHN Defendants, as they refer to 137.50 cumulative hours spent by two lawyers, one law clerk, and one articling student. While the number of hours is listed for each fee earner, there is no information about the division of work undertaken, and thus no ability to determine if the time spent was reasonable or if work was duplicated.¹⁷
10. On an assessment of the circumstances, along with the Rule 57.01 factors,¹⁸ it is fair and reasonable to award less than full indemnity costs in this matter.

C. The CAHN Defendants did not Reasonably Attempt to Settle the Matter

11. Both parties attempted to resolve this matter through non-compliant¹⁹ offers. The CAHN Defendants gave an extremely short window of only three days for acceptance.²⁰ By contrast, the Respondents put forth a reasonable offer for resolution that was open for a week prior to the hearing, that would have released Mr. Farber entirely, and substantially all the claims against CAHN.²¹ If the CAHN Defendants' offer is considered as having bearing on any costs awards,²² then so too should the offer of the Respondents, which would have avoided the hearing altogether.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 25th DAY OF OCTOBER 2024



Loberg Ector LLP

¹⁶ *Cornell v Trudeau*, 2024 ONSC 5343 at para [67](#).

¹⁷ *Rainbow Alliance* at para [18](#).

¹⁸ *Rules of Civil Procedure* at Rule [57.01](#).

¹⁹ Non-compliant in accordance with Rule 49.01.

²⁰ Costs Submissions of the Defendants/Moving Parties at Schedule B.

²¹ Costs Submissions of the Defendants/Moving Parties at Schedule C; *Paul v. Madawaska*, 2021 ONSC 7272 at para [191](#).

²² Costs Submissions of the Defendants/Moving Parties at para 14.

EDWARD CORNELL et al.

- and -

JUSTIN TRUDEAU et al.

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT OTTAWA**

**BILL OF COSTS FOR THE PLAINTIFFS/RESPONDING
PARTIES**

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