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ORKIN ON THE LAW OF COSTS

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This is a unique looseleaf service that covers all costs issues in legal proceedings, with relevant decisions analyzed and rules of court and tariffs referenced for every jurisdiction. This practical all-in-one resource provides coverage of the awarding and fixing or assessment of costs between party-and-party and between solicitor-and-client; costs in both civil and criminal proceedings; and costs awards in bankruptcy and insolvency proceedings and construction liens.

What's New in this Update

This release includes updates to Chapter 2 (Party-and-Party Costs).

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Highlights

- **Party-and-Party Costs—Definition—Generally—**The judge in this case in the Superior Court of Justice for Ontario dismissed a motion by the plaintiffs for summary judgment against the defendant on their claim for damages of \$113,000. The judge granted the summary motion of the defendants and dismissed the action. The purchasers' claim was for the return of a "revival fee" on an expired agreement of purchase and sale for a home built by the defendant. The defendant sought its costs of the motion and the action which costs total \$57,953.69 inclusive of taxes and disbursements. Most of this amount, namely \$50,269.50, was substantial indemnity fees for the period after the defendant served its offer to settle. The defendant's partial indemnity costs for the period before it made its offer was \$855. The rest was taxes and disbursements. The defendant argued that its offer of \$1000.00 plus costs of \$750 should have been immediately accepted. The purchasers say that the defendants' costs should be no more than \$15,000. The goals of an award of costs are not limited to indemnity. There are broader, discretionary considerations involved, which are articulated in rule 57.01 of the Rules of Civil Procedure (Ont.). In discussing rule 51.07(7) of the Rules of Civil Procedure, the judge stated... "the court is to "... devise and adopt the simplest, least expensive and most expeditious process for fixing costs....". The general principles for the exercise of my discretion in determining costs are set out in rule 57.01(1). Considering all of the factors the judge found a fair and reasonable amount that should be paid by the purchasers to be \$30,000 for costs all-inclusive: *Correa v. Valstar Homes (Oakville Sixth Line) Inc.*, 2024 ONSC 5184, 2024 CarswellOnt 14131, 64 R.P.R. (6th) 333 (Ont. S.C.J.).
- **Party-and-Party Costs—Several Defendants—The Hague Convention—**In April 2024, the trial judge, in this case before the Court of King's Bench of Alberta, following a hearing of the father's application under the Convention on the Civil Aspects of International Child Abduction, 1343 UNTS 89, Can TS 1983 No 35, 19 ILM 1501 ("Hague Convention"), found in favour of the father's application. The father sought costs against the mother. The father requested costs on a full indemnity basis in the total amount of \$41,426 or alternatively, party-party costs. As the trial judge noted, "The starting point for costs award in a Hague Convention proceeding is Article 26. The court notes: "Article 26 expressly provides the court authority to award costs outside those ordinarily provided for in family law litigation under the Rules of Court. However, the word "may" in Article 26 reinforces the discretionary nature of the costs award in

Article 26. The discretion granted in Article 26 is broad. The broad discretion under Article 26 to order costs must be exercised judicially.” The judge then addressed costs principles in Alberta. The judge confirmed that Alberta courts have considerable discretion in setting reasonable and proper costs under rules 10.29, 10.31, and 10.33 of the Alberta Rules of Court. In this case, the judge found that there was an imbalance of power and significant financial disparity between the parties. In the judge’s view, the significant imbalance of power and means warranted a cost award that would achieve a more equitable result. The judge concluded on the balance of probabilities that this was not an appropriate case for costs on a full indemnity or solicitor-client basis under the rules. The judge did not find conduct of the mother that would justify the higher costs award. The judge also did not find that the father’s offer to settle satisfied the provisions of the rules. The judge found that the mother’s limited financial circumstances was a relevant factor among others in the rules and considered structuring a just and equitable costs award in this case. In the end, the judge awarded the father’s 60 % of his Canadian legal fees. The judge denied the father’s United States legal fees. The judge also denied the father’s claim for trial attendance costs and only allowed a portion of the travel expenses for return of the children. The judge allowed the mother to pay the costs award at the rate of \$1000.00 a month: *LY v. RY*, 2025 ABKB 12, 2025 CarswellAlta 43, 11 R.F.L. (9th) 350 (Alta. K.B.).