

SUPREME COURT OF NOVA SCOTIA
Citation: *Fraser v. MacIntosh*, 2024 NSSC 63

Date: 20240305
Docket: 522091
Registry: Halifax

Between:

Donn Fraser and DLF Law Practice Incorporated

Plaintiffs

v.

Bruce Tait MacIntosh, K.C.

Defendant

DECISION

Judge: The Honourable Justice Mona Lynch

Heard: October 18, 2023, in Halifax, Nova Scotia

**Final Written
Decision:** March 5, 2024

**Written
Submissions:** Defendant's Costs Submissions – November 10, 2023
Plaintiff's Costs Submissions – November 28, 2023
Defendant's Rebuttal Costs Submissions – December 6, 2023
Plaintiff's Correspondence – January 29, 2024

Counsel: Donn Fraser, for the Plaintiffs
Bruce MacIntosh, KC for the Defendant

By the Court:

Introduction:

[1] This is a decision on costs from motions heard in Chambers on October 18, 2023, for the full day. There was also an Appearance Day appearance which lasted over an hour, a telephone conference, and an issue which arose after October 18, 2023.

[2] The Defendant was successful in the three motions heard with the exception of part of one of the motions. The Court ordered that the parties conduct themselves with civility and all other attributes required of Officers of the Court in dealings with the Court but declined to order civility between the parties in their dealings.

[3] Having found that the costs amount in the Tariff C is not appropriate in this case, the court awards costs to the Defendant in the amount of \$20,000 plus disbursements.

Background:

[4] The individual parties in this action are members of the Nova Scotia Barristers' Society. At the time of the motions, the individual Plaintiff was a practising member. The corporate Plaintiff is the law practice corporation for the individual Plaintiff. The Defendant has retired and is a non-practising member. The Plaintiffs were self-represented. The Defendant had legal counsel on a limited retainer for the motions. The Defendant is not represented for the determination of costs.

[5] The Plaintiffs filed a Notice of Action on March 10, 2023, but it was not served immediately on the Defendant. The Statement of Claim was amended as was the Notice of Defence.

[6] The Defendant filed a motion to strike portions of the Statement of Claim on April 28, 2023, which was amended on May 12, 2023. The Plaintiffs filed a notice of motion for summary judgment on July 27, 2023. The Defendant's motion to strike portions of the Statement of Claim was scheduled for December 12, 2023. The Plaintiffs' motion for summary judgment was scheduled for the next day, December 13, 2023. The scheduling of these two motions involved multiple emails and other exchanges between the parties, much of it copied to the court's scheduling office.

[7] On August 17, 2023, the Plaintiffs filed an Appearance Day notice seeking a date for the Defendant to produce his Affidavit Disclosing Documents. This resulted in two Appearance Day appearances being scheduled. The first Appearance Day appearance was adjourned and the second lasted for more than one hour.

[8] On September 8, 2023, the Appearance Day Judge determined that the matter was not appropriate for Appearance Day and set the matter over to a full day hearing. The Appearance Day Judge also provided instructions that briefs be filed which included caselaw from other jurisdictions dealing with the proper timing of disclosure of documents and striking of pleadings. The Plaintiffs submitted that the Affidavit Disclosing Documents had to be provided although there was a motion to strike large portions of the Statement of Claim. The Defendant's submission was that the pleadings had to be finalized before the Affidavit Disclosing Documents was required. The Appearance Day Judge also directed that any other issues which needed to be dealt with before the December dates were to be put on October 18, 2023.

[9] On September 25, 2023, the Defendant filed a Notice of Motion requesting:

- (a) an extension of the timeline for production of the Affidavit Disclosing Documents and Electronic Documents until after the pleadings were finalized;
- (b) directing the Prothonotary to appoint a case management judge to assist in managing the action;
- (c) leave to further amend his motion for Summary Judgment on the Pleadings and Abuse of Process;
- (d) directing that the Plaintiff, Donn Fraser, refrain from personally attending the Defendant's residence for any purpose connected with the proceeding; including for the purpose of serving documents;
- (e) directing that the parties conduct themselves in all dealings between them and with the Court regarding the action and its interlocutory proceedings with civility and all other attributes required of Officers of the Court; and
- (f) costs of the motion.

[10] The Plaintiffs did not file a motion for October 18, 2023.

[11] On October 3, 2023, a telephone conference was held with the parties and filing deadlines were provided. The Plaintiffs consented to adjourn, without day, their motion for summary judgment, agreed to the extension of time to provide the Affidavit Disclosing Documents, and agreed to the motion for leave to amend the Notice of Motion for Summary Judgment on the Pleadings and Abuse of Process.

[12] The Plaintiffs filed notice of cross examination of the Defendant on his affidavits and sought to strike portions of the Plaintiffs' affidavits.

[13] The matters of the striking of portions of the affidavit, appointment of a case management judge, not attending the Defendant's property, and civility were heard on October 18, 2023, and lasted the full day. The Court ordered that a case management judge be appointed, that the individual Plaintiff, Donn Fraser, refrain from personally attending the Defendant's property for any purpose connected with the proceeding including service of documents, and that the Parties conduct themselves in all dealings with the Court regarding the action and its interlocutory proceedings, with civility and other attributes required by Officers of the Court.

[14] The Court provided filing deadlines in relation to costs.

[15] Issues arose after October 18, 2023, as the Court had failed to rule on the striking of portions of the Defendant's affidavits. After receiving briefs from the parties, the Court directed that the Order be amended to include a provision that the motion to strike portions of the Defendant's affidavits be dismissed pursuant to *Rule* 78.08(b).

Issue:

What is the appropriate award of costs in this matter?

Position of Parties:

[16] The Defendant seeks an order for costs on a solicitor and client basis because of rare and exceptional circumstances. The Defendant's counsel provided an affidavit and invoices showing discounted legal fees of \$47,168 before HST. The rare and exceptional circumstances put forward by the Defendant are the conduct of the individual Plaintiff, particularly the incivility and allegations made against the Defendant and the Defendant's counsel. The Defendant asserts that the individual Plaintiff is an Officer of the Court and knows better than his behaviour and conduct

have shown. In the alternative the Defendant seeks a substantial indemnity of his costs in the form of a lump sum award.

[17] The Plaintiffs' position is that the costs billed by the Defendant's lawyer are excessive. If solicitor and client costs or a lump sum award as a percentage of the bill are to be awarded, the Plaintiffs asked that they be given an opportunity to cross-examine the Defendant's counsel on the billings and that the bills be taxed. However, when asked whether they wanted the opportunity to cross-examine the Defendant's counsel, the Plaintiffs declined that opportunity. The Plaintiffs' position is solicitor and client costs are not appropriate, nor is a lump sum award. The Plaintiffs point to the fact that the Defendant was not successful in relation to an order for civility between the parties and that the Plaintiffs agreed to two of the Defendant's motions. The Plaintiffs' position is that the Plaintiffs were reasonable in their dealings and the Defendant and his counsel behaved in an unreasonable manner. The Plaintiffs also submit that the amount of costs requested by the Defendant is outside reasonable expectations. The Plaintiffs suggest that the conduct of the Defendant's lawyers was wasteful and inefficient which added significant time and expense to the matter. The Plaintiffs also point to an offer that they made to settle the matter on October 4, 2023, as a reason not to award either solicitor and client or lump sum costs. The Plaintiffs submit that the matters were not complex, there was no public interest, and no pre-Chambers processes involved in the matter. The Plaintiffs ask that if any award of costs is made that it be based on the tariffs in the amount of \$2,000 with a negative adjustment because the Defendant was not completely successful.

[18] In the costs submissions filed with the court on November 28, 2023, at para. 19 which has the heading "PRELIMINARY POINT – ASSUMED NO RECUSAL" the Plaintiffs refer to a letter to the court dated October 27, 2023. I did not interpret the letter as a motion to recuse myself in relation to costs of the motions and I will not recuse myself in relation to costs.

The Law:

[19] Costs are dealt with under *Rule 77*, and *Tariff C* is to be used for costs on a motion unless a judge orders otherwise (*Rule 77.05(1)*). A judge may increase or decrease the tariff amount based on relevant factors (*Rule 77.07(2)*) some of which include:

- (b) a written offer of settlement;

- (e) conduct of a party affecting the speed or expense of the proceeding;
- (f) a step in the proceeding that is taken improperly, abusively, through excessive caution, by neglect or mistake, or unnecessarily;
- (g) a step in the proceeding a party was required to take because the other party unreasonably withheld consent;
- (h) a failure to admit something that should have been admitted.

Tariff C indicates that in the exercise of discretion, a Judge may award costs that are just and appropriate in the circumstances. A judge may award lump sum costs instead of tariff costs (*Rule 77.08*). The general principle (*Rule 77.02(1)*) is to make any order about costs as a judge is satisfied will do justice between the parties and an award of costs is in the discretion of the judge.

[20] The tariffs are the norm, and there must be a reason to consider a lump sum. The tariffs have the benefit of predictability by limiting the use of subjective discretion. The basic principle is that a costs award should afford substantial contribution to the party's reasonable fees and expenses (*Armoyan v. Armoyan*, 2013 NSCA 136, paras. 15 and 16).

[21] An award of solicitor and client costs may be awarded in exceptional circumstances (*Rule 77.01(1)(b)*) and in exceptional circumstances recognized by law (*Rule 77.03(2)*). Solicitor and client costs are engaged in rare and exceptional circumstances as when misconduct has occurred in the conduct of or related to the litigation (*Williamson v. Williams*, 1998 NSCA 195).

[22] In *Liu v. Atlantic Composites Ltd.*, 2014 NSCA 58, the Court of Appeal discussed solicitor and client costs and reiterated the principle that they should be awarded only in rare and exceptional cases. The Court of Appeal also quotes from *The Law of Costs*, Orkin, (2nd Edition) which cautions that solicitor and client costs should not be awarded unless there is some form of reprehensible conduct which make such costs desirable as a form of chastisement. In this case, the Defendant submits that the Plaintiffs' conduct falls into that category.

Conduct of the Plaintiffs:

[23] The Defendant points to what he calls the "vitriolic, harassing and intimidating opinions and allegations" made by the individual Plaintiff. The Defendant attached an Appendix to his submissions on costs to show the conduct of the individual Plaintiff. While the communications from the individual Plaintiff

show conduct well below a civil standard, I must remind myself that I am not deciding the costs in relation to the underlying proceeding. Many of the communications complained of relate to the underlying action. The costs in question are in relation to motions which were before the court on Appearance Day, a telephone conference, a full day hearing, and submissions in relation to *Rule 78.08*.

[24] The motions that were before the Court were matters that should have been agreed to between the parties. The individual Plaintiff blames counsel for the Defendant and the Defendant himself for not providing him, prior to filing, the motion to extend the timeline for disclosure and the motion to amend the motion to strike portions of the Statement of Claim. However, I do not find that unreasonable in this case. The individual Plaintiff complained that counsel for the Defendant would not respond to his phone calls. Counsel for the Defendant's response was that he did not speak on the phone to people who were threatening to sue him. At the time of the filing of the motions by the Defendant, the Plaintiffs were not agreeable to any of the requests made by the Defendant. It is not surprising that the counsel for the Defendant and the Defendant did not provide the Plaintiffs with the documents ahead of time and request his consent.

[25] At the telephone conference on October 3, 2023, the Plaintiffs agreed to the motion for the extension of time for disclosure and to the motion to amend the Defendant's previously filed motion.

[26] The Defendant points to incivility in the submissions and correspondence from the Plaintiffs. Some examples of the individual Plaintiff's incivility were attached to the individual Plaintiff's Affidavit filed on October 11, 2023. In emails to counsel for the Defendant on June 12, 2023, the Plaintiffs accuse the lawyer of being "uncooperative", "you acted afoul of your professional responsibilities"; and "if Mr. MacIntosh in particular has acted shamefully and unethically yet again (as I am left to infer) that is simply one of the uncomfortable problems with you having chosen to act for disreputable and unethical people". Those comments were made when the Plaintiffs were asking counsel for the Defendant whether he or his clients had contacted the media.

[27] Also attached to the individual Plaintiff's affidavit filed October 11, 2023, is an email of September 12, 2023, to the Defendant responding to filing deadlines for October 18, 2023: "You are obligated to actually bring **a motion or motions seeking to be excused from the default obligations under the Rules (which you are disrespecting and flaunting)** ... [bold in original]; and "I would admonish you

yet again: do not again attempt to mislead the Court, make false statements to the Court, and/or outright lie to the Court, as you have done through your inappropriate conduct in response to Appearance Day”. In an email to counsel for the Defendant and the Defendant on September 21, 2023, the individual Plaintiff sets out his understanding of what can be placed before the Court on October 18, 2023:

Further, I repeat once again my admonishment to Mr. MacIntosh that he not – directly or through counsel – dare again provide false information to the Court. Even more specifically, do not dare again offer false information concerning encounters at the Defendant’s designed [*sic*] address for deliver, for the purpose of delivery.

The Plaintiffs’ view of what could be before the Court on October 18, 2023, was found to be incorrect.

[28] In correspondence to the Court on August 30, 2023, the Plaintiffs accused the Defendant of having “inappropriately written, misrepresented and attempted to mislead the Court”. In further correspondence to the Court on August 30, 2023, the Plaintiffs described communication from the Defendant as: “offensive and raving communications and false representations”; “nothing short of lies”; “indicative example of, frankly, a level of derangement if not insanity”. Also, “No party should be subject to the malicious, vindictive lies”.

[29] In correspondence to the Court on September 6, 2023, accusations that the Defendant was, “attempting to mislead the Court to outright lying to the Court (the word ‘lying’ not being used lightly)”. The Plaintiffs go on to assert his entitlement to disclosure and discovery of the Defendant in advance of the motion to strike portions of the Statement of Claim. In that same correspondence the Plaintiffs referred to the Defendant as “incompetent”.

[30] In a September 13, 2023, letter to Chief Justice Smith, the Plaintiffs referred to “offensive, inappropriate and/or misleading, if not completely false content” provided to the court by the Defendant.

[31] There are other examples of incivility on the part of the Plaintiffs. Most disturbing to the Court was the email sent to one of the more junior counsel for the Defendant on September 26, 2023, which contains:

I acknowledge receipt of your confusing and rambling letter to the Court, showing an absolute disrespect for the Court’s time despite the mess the inappropriate tendering of proposed motion amendments has caused.

...

Your assertions around what was to be the docket [*sic*] are false and irresponsible. You and Mr. Rogers acted improperly, with lack of integrity and in breach of the Rules, by sneaking on additional issues with no request or advanced notice before your filings on Friday.

Furthermore, your characterizations of my communications which Mr. Rogers and Mr. MacIntosh ignorantly and it seems with further lack of integrity “laid in the weeds” over, have also been inappropriate. Do not again make another misplaced comment like that about civility, let alone one that tries to excuse inappropriate and integrity lacking conduct by those within your “camp”. The comment you made raises concerns that you are incompetent yourself around the law on this issue and more broadly that when there is communication there is an obligation to respond in a timely way (regardless of how your sensitivities may be impacted) and (even more broadly and relevant here) an obligation act [*sic*] with integrity and in good faith. “Laying in the weeds”, as Mr. Rogers and Mr. MacIntosh did, was inappropriate on any number of fronts. It was sneaky and lacking in integrity, and in breach of even the Rules of Civil procedure. Raising umbrage now that the earlier communications crying out for notice of what Mr. MacIntosh, Mr. Rogers sand [*sic*] you had planned did not meet their alleged sensitives is no excuse.

Conduct yourself better, please.

The above comments made by a senior lawyer to a lawyer who was a member of the Bar for less than three years were disturbing and astonishing to the Court. When the Court asked the individual Plaintiff if he thought that the above correspondence was appropriate for a senior member of the Bar to send to a junior member of the Bar, his response was that he thought his correspondence was reasonable.

[32] This is but one example of the Plaintiffs not being able to comprehend that there could be another way to interpret the facts, the evidence, or the circumstances other than how they perceived them. The accusation of “laying in the weeds” was in relation to the Defendant putting other motions before the Court for October 18, 2023, which had not been before the Court on Appearance Day. The Appearance Day Judge had told the parties to put any issues which needed to be heard before the December hearing dates on October 18, 2023. The Defendant correctly did so and was subjected to the above abuse from the Plaintiffs.

[33] The Plaintiffs point to an offer to settle which they made to the Defendant on October 4, 2023, the day after the telephone conference, and after the Defendant’s brief and affidavit were filed. The Plaintiffs agreed to a case management judge being appointed but on conditions which included that the case management judge not be a judge who had prior involvement in the proceeding. The Plaintiffs wanted

other matters put over for the case management judge to deal with and that costs of the motion be addressed as costs in the cause. The Plaintiffs would not agree to a provision in the order which prohibited the individual Plaintiff from going on the Defendant's property but agreed not to go on the property if the Defendant agreed to the other terms proposed. The Plaintiffs put this offer forward as a reason not to award costs against them and certainly not solicitor and client costs or a lump sum award.

[34] I do not find the offer to settle made by the Plaintiffs was reasonable. The parties cannot tell the Court, or the Chief Justice, which judges can or cannot be the case management judge any more than they can tell the Court which judge can or cannot be the trial judge. The Defendant's motions, affidavit and brief had already been filed by the Defendant before the Plaintiffs made the offer to settle. The Plaintiffs were proposing putting off the hearing of any remaining motions for the case management judge. The Plaintiffs were not agreeing to a provision in an order that the individual Plaintiff not go on the property of the Defendant nor were they agreeing to anything in the order in relation to civility.

[35] Civility in our courts was discussed by the Supreme Court of Canada. The Court spoke of trials as the primary mechanism for the just, peaceful, and orderly resolution of disputes (*Groia v. Law Society of Upper Canada*, 2018 SCC 27, para. 1). And they said:

To achieve their purpose, it is essential that trials be conducted in a civilized manner. Trials marked by strife, belligerent behaviour, unwarranted personal attacks, and other forms of disruptive and discourteous conduct are antithetical to the peaceful and orderly resolution of disputes we strive to achieve.

(*Groia*, para. 2)

The Court noted that trials are not nor are they meant to be tea parties (*Groia*, para.3) and later said:

...Uncivil communications with opposing counsel can cause a breakdown in the relationship, eliminating any prospect of settlement and increasing the client's legal costs by forcing unnecessary court proceedings to adjudicate disputes that could have been resolved with a simple phone call.

(*Groia*, para.64)

Incivility can erode public confidence in the administration of justice (*Groia*, para. 67).

And:

Maintaining a reputation for practicing with integrity is a lifelong challenge. Once sullied, a lawyer's reputation may never be fully restored. ... The consequences for the opposing lawyer's reputation are simply too severe to require anything less than a reasonable basis for allegations impugning his or her integrity.

(*Groia*, para. 86)

I have seen nothing in relation to these motions which provide a reasonable foundation for the allegations of misconduct alleged by the Plaintiffs. The Plaintiffs had a different view than the Defendant as to what could be before the Court on October 18, 2023. Instead of trying to resolve the difference of opinion in a civilized, peaceful, and orderly manner, the Plaintiffs repeatedly accused the Defendant and his counsel of all manner of unethical behaviour and misconduct.

[36] The conduct of the Plaintiffs in the proceeding relevant to costs is not just in relation to incivility. Both parties filed affidavits and the Plaintiffs filed a motion to strike portions of the Defendant's affidavit. The objections to the affidavits were mostly in relation to relevance. It was another example where the Plaintiffs did not or could not recognize that there was another interpretation of the facts, evidence, or circumstances. The portions of the affidavit were not struck as they were relevant to the relief requested in relation to the individual Plaintiff going to the property of the Defendant and they were relevant in relation to civility. Time was spent on October 18, 2023, dealing with the request to strike portions of the affidavit. That time was needlessly spent.

[37] The Plaintiffs prolonged the proceeding on October 18, 2023, by insisting on cross-examination of the Defendant. The court limited the time for cross-examination and told the individual Plaintiff of the limit prior to the cross-examination. Cross-examination of the Defendant was another portion of time needlessly spent on October 18, 2023, as there was no evidence from the individual Plaintiff's cross-examination that was helpful to his case. In fact, the cross-examination led the Court to accept the Defendant's description of the events between the parties on August 17, 2023, when the individual Plaintiff went to the Defendant's home despite being asked not to.

[38] The Plaintiffs also interrupted the submissions of the Defendant with baseless objections that counsel for the Defendant was misstating the evidence. Defendant's counsel had an interpretation of the evidence different from the Plaintiffs'

interpretation. The individual Plaintiff's inability to accept that there could be another interpretation lead him to make baseless objections.

[39] The Plaintiffs submit that because the Court refused to put a provision in the Order dealing with civility between the parties that the Plaintiffs' conduct cannot be considered in relation to costs. I do not agree.

[40] The Plaintiffs point to their reasonable expectations, and they could not have anticipated that there would be a cost award in the amount of \$47,000 for a one day hearing in chambers. I would also note that the Nova Scotia Court of Appeal in *Armoyan* said that the basic principle is that costs should substantial contribution to the party's reasonable fees and expenses. As such, an award of costs includes a determination of what is reasonable.

[41] The question becomes whether this case is of the rare and exceptional circumstances where an award of solicitor and client costs is appropriate. Was the Plaintiffs' conduct reprehensible? Reprehensible, according to the Merriam-Webster online dictionary synonyms for reprehensible include blamable, culpable, blameworthy, reproachable and censurable. The Collins online dictionary offers synonyms of blameworthy, bad, disgraceful, and shameful.

[42] The motions before the court would have been agreed upon in a telephone conversation if the Plaintiffs had behaved in a reasonable manner, but they did not. The Plaintiffs inability to see any other point of view but their own led them not to agree to a case management judge, not to agree to stay away from the Defendant's property and not to agree to a direction in the order for the parties to conduct themselves in a civil manner in all dealings with the Court. The Plaintiffs' late agreement on the two other motions meant that counsel for the Defendant was required to conduct the research requested by the Appearance Day Judge. The late agreement also meant that counsel for the Defendant had to research and prepare for the motions which the Defendant later agreed to. The positions taken by the Plaintiffs were not reasonable.

[43] The Plaintiffs' unwarranted allegations of misconduct against the Defendant and Defendant's counsel in relation to these motions put the reputations of two senior and one junior member of the Bar at risk of being sullied. As I said on October 18, 2023, in my entire judicial career, I have never seen anything like the lack of civility displayed by the Plaintiffs towards the Defendant and his counsel.

[44] While I am very tempted to find this case to be one of the rare and exceptional circumstances to award solicitor and client costs, I am reluctant to do so. The Plaintiffs' conduct comes as close as possible to being reprehensible, but I am not prepared to go as far as finding it reprehensible. An award of party and party costs will be made.

[45] The persistent unfounded and unsupported allegations of professional misconduct made by the Plaintiffs significantly increased the work of the Defendant to deal with these motions. That will be reflected in the costs award.

[46] Tariff C is the starting point for an award of party and party costs. Tariff C would provide for costs of \$2,000 for a full day matter in Chambers. In this case there was an hour-long Appearance Day appearance, a telephone conference, a full day hearing, and time to deal with the issue which arose after October 18, 2023.

[47] For these motions an award in the amount of Tariff C would not afford a substantial contribution to the Defendant's fees and expenses. But consideration of the legal fees comes after a decision whether to award a lump sum or the Tariff amount. In this case, the conduct of the Plaintiffs both in relation to incivility and making the proceeding longer than necessary takes it outside of the Tariff amount. I do not find that an award of the amount in Tariff C would do justice between the parties. I will award a lump sum.

[48] The Plaintiffs submit that the legal fees incurred by the Defendant were not reasonable. I find that counsel for the Defendant acted in a reasonable manner throughout the proceeding and did so in a skillful manner. In deciding what is reasonable I must consider that: counsel for the Defendant had to prepare quickly for the full day hearing; the parties were directed by the Appearance Day Judge to conduct and provide research on the interplay between disclosure and striking of portions of pleadings; and the Plaintiffs' conduct made the proceedings longer and more contentious. All of those increased the legal costs to the Defendant. The motion to strike portions of the Defendant's affidavit and the cross-examination of the Defendant were unnecessary. The motions themselves were filed because the Plaintiffs would not agree to the relief sought by the Defendant. The agreement of the Plaintiffs came too late to reduce the work which had to be done by Defendant's counsel.

[49] The Plaintiffs' allegations of misconduct added to the Defendant's costs as nothing could be accomplished by telephone.

[50] The Defendant not providing the Plaintiffs with the amended motion ahead of time was not unreasonable in the circumstances. I do not find that the Plaintiffs' offer to settle was reasonable.

[51] In making an order for costs that will do justice between the parties, I have to consider the discounted legal fees of the Defendant which were \$47,168 along with \$131.72 in disbursements.

[52] In *Armoyan* the Court of Appeal awarded costs in the amount of 66% before a settlement offer and 80% after a settlement offer. Even with the discounts to the fees, I find that the Defendant's legal costs are high for the motions being considered. It is necessary to make an award that is just and appropriate in all of the circumstances of this case.

[53] I find that an appropriate award of costs to the Defendant is \$20,000 with disbursements of \$131.72.

[54] *Rule 77.03* allows the Court to order payment in a number of ways. In this case, the Plaintiffs are to be paid immediately.

[55] In making this award, I am aware that such a high award for a full day of motions, Appearance Day, a telephone conference, etc., is exceptional. It should not be considered the norm. The award is justified here due to the Plaintiffs' inexplicable conduct, which turned routine motions into a needless, time-consuming, and contentious battle.

Conclusion

[56] Costs in the amount of \$20,000 with disbursements of \$131.72 are awarded. They are payable forthwith.

Lynch, J.