

CITATION: Zuk v. Atkinson, 2014 ONSC 4708
COURT FILE NO.: CV-10-2296-00
DATE: 2014-08-15

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Zuk v. Atkinson

BEFORE: Lemon, J.

COUNSEL: Jillian Van Allen, for the Plaintiff

Frank Delgiudice, for the Defendants

COSTS ENDORSEMENT

[1] On July 8, 2014, I dismissed the plaintiff's motion to set aside an order of dismissal of the action. I have now received costs submissions from both parties. The defendants seek costs in the amount of \$27,702 plus disbursements of \$1,122.24. In response, the plaintiff acknowledges that costs are payable but submits that those costs should be in the range of \$13,000.

[2] I accept the plaintiff's submission but, without that submission, I may well have ordered costs far below that amount.

[3] The defendants submit "that the outcome of the within motion was clear based on the applicable case law". I agree. Yet the defendants submit that

they “were required to conduct extensive research of factually similar case law and apply it to the voluminous materials provided by the plaintiff in support of the motion”. Further, the defendants submit that, in order to do so, five lawyers were involved in reviewing the materials; three lawyers and a clerk were involved in the correspondence; two lawyers, one law clerk, and an articling student drafted the responding materials. A total of almost 70 hours of lawyers’ time was expended. A further 69 hours of clerk, articling student, and summer student time was expended. All before counsel walked into the court room to argue the case.

[4] Cross-examinations occurred on affidavits that were filed by the lawyers. That would, no doubt add to the time to prepare; however, the transcripts of the examination of three witnesses total only 80 pages.

[5] I agree that the outcome of the motion was predictable; however, I do not agree that so much legal talent was required to defend the motion.

[6] While it is entirely appropriate that the defendants divide the work amongst lawyers, clerks, assistants, and students of different levels of experience and seniority, it would seem to me that on a motion that was as clear as the defendants submit, one lawyer of less than 16 years of experience plus a clerk would be quite adequate to represent the defendants.

[7] It is noble and entirely appropriate that young counsel should be given an opportunity to obtain experience on interesting cases. It is not appropriate however, to expect that the losing party will pay those costs.

[8] Accordingly, an order shall go requiring the plaintiff to pay costs fixed in the amount of \$13,000.

Lemon, J.

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BEFORE: Lemon, J.

COUNSEL: Mikhail Shloznikov, for the
Plaintiff

Frank Delgiudice, for the
Defendants

COSTS ENDORSEMENT

Lemon, J.

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