

CITATION: Menard v. CIGI, 2019 ONSC 2467
COURT FILE NO.: 1258/16
DATE: 2019-04-18

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: MARK MENARD, Plaintiff

AND:

THE CENTRE FOR INTERNATIONAL GOVERNANCE INNOVATION,
Defendant

BEFORE: Gray J.

COUNSEL: Andrew H. Monkhouse and Stephen LeMesurier, for the Plaintiff

Seann D. McAleese, for the Defendant

COSTS ENDORSEMENT

[1] I invited the parties to file written submissions with respect to costs. Those submissions have now been filed.

[2] Counsel for the plaintiff submits that his client should be awarded costs on a substantial indemnity basis in the amount of \$217,265.90.

[3] Among other things, the plaintiff relies on two Offers to Settle which were more favourable to the defendant than what he ultimately received as a result of my judgment. One Offer was made very shortly after the litigation was commenced, and another was made closer to trial.

[4] The plaintiff argues that the case was serious, and submits that the defendant refused to negotiate.

[5] Counsel for the defendant submits that the plaintiff's claim for costs is excessive. He points out that the plaintiff used two lawyers throughout, while the defendant used one lawyer, and its costs on a partial indemnity basis would have been \$81,599.88, and on a substantial indemnity basis would have been \$120,031.64.

[6] Counsel for the defendant submits that his client behaved reasonably throughout, and made an offer to settle in the amount of \$100,800. While I did not find the plaintiff's conduct to be sufficient to amount to cause for dismissal without notice, nevertheless I found that the plaintiff committed serious misconduct, and wrote a letter before commencing proceedings that amounted to an attempt to blackmail the defendant.

[7] Having regard to the Offers to Settle made by the plaintiff, there is no real dispute that the plaintiff is entitled to substantial indemnity costs throughout.

[8] However, I think the amount claimed must be discounted somewhat, particularly because the plaintiff elected to use two lawyers throughout the litigation. Inevitably, there will be some duplication of effort. The defendant was able to use one lawyer throughout, and their bill of costs is significantly lower.

[9] In the final analysis, my task is to fix costs that are reasonable in the circumstances: see *Boucher v. Public Accountants Council of Ontario* (2004), 71 O.R. (3d) 291 (C.A.).

[10] I order that the defendant pay costs to the plaintiff, fixed in the amount of \$175,000, all-inclusive.

Gray J.

Date: April 18, 2019