

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: BABAK PAYAMI, KAMNOOSH SHAHABI, MEHRDOKHT HADI, AN
SHAYAN MOIN, Applicants

AND:

IRANIAN CANADIAN CONGRESS, Respondent

BEFORE: Mr. Justice Cavanagh

COUNSEL: *Atoosa Mahdavian*, for the Applicants and Moving Parties

Daniel Fridmar, for the Respondent and Responding Party

Mitchell S.T. Wise for Soudeh Ghasemi, Pouyan Tabasinejad, Babak Amin
Tafreshi, Younes Zangiabadi, Saman Tabasinejad, Mohsen Khaniki, Sholeh
Khalili, and Amir Moazzami, Responding Parties

HEARD: November 2, 2020

COSTS ENDORSEMENT

[1] The applicants brought a motion on an urgent basis for, among other relief, an order removing the directors of the Iranian Canadian Congress (“ICC”) and appointing an interim Board of Directors until the December 13, 2020 meeting of members of the ICC has been held. In my endorsement issued on November 3, 2020, I dismissed this motion.

[2] This is my endorsement with respect to costs.

Costs claimed by ICC against applicants and by applicants against ICC

[3] The ICC seeks costs of this motion on the basis that the ICC was entirely successful on the motion. The ICC contends that costs should be awarded on a substantial indemnity scale because the motion was not necessary and the ICC attempted to settle the motion. The ICC seeks costs in the amount of \$10,237.80.

[4] The offer to settle made by the ICC and the directors provided that the motion be vacated and dismissed without costs as well as other terms dealing with governance of the ICC and payment of debts of the ICC. The terms of this offer do not, in my view, affect how costs of this motion should be determined.

[5] The applicants and moving parties submit that their motion was necessary to prevent the ICC from holding a special meeting before the December 13, 2020 meeting. The applicants rely on the fact that at the hearing of this motion, the ICC undertook not to call a special

meeting. The applicants submit that until this motion, the ICC directors failed to act transparently, flouted court orders, ignored their legal obligations and arbitrarily exercised their discretion. They submit that this is a proper case where costs should be awarded against the ICC and the ICC directors, the successful parties, pursuant to rule 57.02.

- [6] In the costs outline of the applicants, their partial indemnity costs were for fees of \$14,497.90 including fees of \$1,220.40 for a law student who conducted legal research. The applicants seek costs in the amount of \$8,000 which is less than their partial indemnity costs. In the alternative, the applicants submit that the motion was necessary and there was divided success, such that each side should bear its own costs.
- [7] I am satisfied that the rule that costs ordinarily follow the event should apply to this motion. The ICC was successful in opposing what I described in my endorsement as the “extraordinary intervention” of the court requested by the applicants through replacement of the board just a few weeks before the meeting at which a new board would be elected. The fact that the ICC gave an undertaking not to call a special meeting before the scheduled annual meeting does not mean that success on the motion was divided. The applicants’ motion was dismissed.
- [8] Costs on a substantial indemnity scale are reserved to cases where the unsuccessful party engaged in reprehensible conduct which warrants the sanction of the court through an award of costs on an elevated scale. The conduct of the applicants towards the ICC does not, in my view, rise to this level. Costs should be awarded to the ICC on a partial indemnity scale.
- [9] The ICC amount of costs on a partial indemnity scale claimed by the ICC is \$7,678.35 comprised of fees of \$6,795 plus HST on fees of \$883.35. This is based on a partial indemnity hourly rate for counsel of \$150. The hourly rate is reasonable. The overall amount claimed is fair and reasonable and within the range of costs that the applicants would expect to pay if they were unsuccessful on their motion.
- [10] I fix costs to be paid by the applicants to the ICC in the amount of \$7,768.35. These costs are to be paid within 30 days.

Costs claimed by non-party directors and by applicants against them

- [11] On their motion, the applicants sought relief against the eight directors of the ICC and against their legal counsel for costs. The directors were separately represented at the hearing of the motion.
- [12] The directors submit that they are entitled to costs because they were successful in opposing the relief sought against them.
- [13] The directors point to assertions made on behalf of the applicants in the affidavit evidence and in the factum for this motion in which the directors were accused of putting their personal interests and agendas ahead of those of the ICC and of “dealing in bad faith”. They submit that the allegations made against them in the context of a not-for-profit-board are akin to accusations of fraud in other settings and, therefore, an award of costs on a

substantial indemnity scale is warranted. They seek costs on this scale in the amount of \$17,916.87 inclusive of fees, HST and disbursements.

- [14] The applicants submit that they should be awarded costs to be paid by the directors, jointly with the ICC, in the amount of \$8,000 pursuant to rule 57.02.
- [15] The applicants submit that the statements made concerning the conduct of the directors related to their “misconduct and mismanagement”, not fraud, and that the allegations were supported by the evidentiary record. They submit that if costs are awarded to the directors, they should be fixed according to the partial indemnity scale. They contend that the costs claimed are excessive because (i) counsel was only retained one week before the motion, (ii) a factum was delivered but no affidavits, and (iii) costs are sought for senior counsel and an associate, which is not reasonable for this case. The applicants suggests that if costs are awarded, an award in the amount of \$5,000 all-inclusive would be appropriate.
- [16] When I view the statements made by the applicants against the directors in the context of the events that transpired and the overall circumstances, including how the motion was argued at the hearing before me, I am not satisfied that the statements made about the conduct of the directors rise to such a level as to constitute reprehensible conduct which justifies sanction through an award of costs on a substantial indemnity scale. Costs should be awarded on a partial indemnity scale.
- [17] Counsel for the directors agrees that he was retained only a week before the motion was heard, but contends that he had to work intensively to prepare for this motion, including assisting with drafting affidavits from the eight directors. The directors’ claim for costs on a partial indemnity scale is \$10,495.70 for fees, disbursements of \$116.64, and applicable HST for a total of \$11,991.94. Lead counsel for the directors is a very experienced lawyer, and his hourly rate for this case of \$495 is reasonable. The delegation of legal research to an associate was reasonable.
- [18] I am satisfied that the costs claimed by the directors are fair and reasonable in the circumstances and fall within the range of costs that the applicants would expect to pay if they were unsuccessful on their motion. This conclusion is supported by the applicants’ costs outline.
- [19] I fix costs to be paid by the applicants to the directors on a partial indemnity scale in the amount of \$11,991.94. These costs are to be paid within 30 days.



Cavanagh J.

Date: December 30, 2020