

**ENDORSEMENT**

**SHORT STYLE OF CAUSE:**

**Donovan v. Waterloo Regional Police Services Board et al.**

**File No. CV-18-1938-00**


<b>Date</b>	<b>Counsel</b>	
Mar. 20, 2019	K.L. Donovan (Plaintiff)  D.B. Jarvis C. Ma (for the Defendants)	<p style="text-align: center;"><b>Costs Endorsement</b></p> <p>[1] On February 21, 2019, I granted the Defendants’ motion to strike the <u>Amended</u> Statement of Claim under Rule 21.01(1)(b), without leave to amend; <i>Donovan v. Waterloo Regional Police Services</i>, 2019 ONSC 1212. I subsequently received cost submissions from the parties.</p> <p>[2] The Defendants were wholly successful on the motion. Aware of the Plaintiff’s status as a self-represented litigant who claims financial hardship, they seek their costs fixed at an amount between \$5,000.00 and \$8,000.00. They submit that their proposed cost range falls below a reasonable partial indemnity scale for this motion given its nature and complexity.</p> <p>[3] I am satisfied that the lower end of the Defendants’ proposed cost range is reasonable and proportional to the issues raised on the motion, which was decided on fairly established legal grounds and on a somewhat complex record covering events over several years and in other related proceedings. In arriving at this determination, I am guided by ss. 131(1) of the <i>Courts of Justice Act</i>, Rules 57.01(1) and 1.04(1.1), and the principles in <i>Boucher v. Public Accountants Council for the Province of Ontario</i> (2004), 71 O.R. (3d) 291 (C.A.), as well as the following observations.</p> <p>[4] On August 2, 2018, the Defendants delivered a formal offer to settle the motion by dismissing the action on a “without costs” basis (i.e., without any order of costs made against the Plaintiff). Had it been accepted, the offer would have allowed the Defendants and the Plaintiff to avoid incurring the time and expense of arguing this motion. As the Defendants obtained an outcome on their motion that was essentially as favorable as their offer, I am prepared to take their offer into account under Rule 49.13 in determining an appropriate award of costs.</p>

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		<p>[5] I also observe that the Defendants proposed cost range is significantly lower than the Plaintiff's own estimate for her costs on this motion.</p> <p>[6] The Defendants submit that costs on an elevated scale are warranted as the Plaintiff is said to have engaged in procedural misconduct by her late delivery of a cross-motion for summary judgment and by her unsubstantiated negative personal comments against their lead counsel. However, the Defendants did not respond to her cross-motion, which was not heard due to its late delivery. I add that the Plaintiff's remarks about their lead counsel appeared to stem from an honest misunderstanding of certain procedural matters which lead counsel clarified during his submissions on this motion. In the circumstances, this is not a case for elevated costs.</p> <p>[7] Based on the foregoing, costs for the motion are fixed in the amount of \$5,500.00, inclusive of taxes and disbursements, and are payable by the Plaintiff to the Defendants within 120 days.</p> <div style="text-align: right;"> _____ Doi J.</div>