

CANADA / JUDGMENT

Kotsopoulos v. Toronto (City)

2026 ONCA 206

COURT

Court of Appeal for Ontario

DECIDED

19 March 2026

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

Kotsopoulos v. Toronto (City) Collection Decisions of the Court of Appeal Date 2026-03-19 Neutral citation 2026 ONCA 206 Docket numbers COA-25-CV-0424 Judges Sossin, Lorne; Copeland, Jill M.; Madsen, Lene Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Kotsopoulos v. Toronto (City), 2026 ONCA 206 DATE: 20260319 DOCKET: COA-25-CV-0424 Sossin, Copeland and Madsen JJ.A. BETWEEN Eva Kotsopoulos and John Kotsopoulos Plaintiff (Appellants/ Respondents by way of cross-appeal) and The City of Toronto*, Alice Yoon Mun Mak, Maintenance Company X, John Doe, Naveed Munawar and Kausar Jehan Defendants (Respondent/ Appellant by way of cross-appeal*) Alex Wolfe and Amanda Enwright, for the appellants/respondents by way of cross-appeal Stuart Zacharias and Nadia Marotta, for the respondent/appellant by way of cross-appeal Heard: February 4, 2026 On appeal from the judgment of Justice Grant R. Dow of the Superior Court of Justice, dated February 28, 2025, with reasons reported at 2025 ONSC 1356. COSTS: REASONS FOR DECISION

- [1] In a decision released February 19, 2026, this court allowed the appeal, set aside the motion judge's judgment, and dismissed the summary judgment motion. The court also dismissed the cross appeal: 2026 ONCA 121.
- [2] The parties agreed on costs of the appeal. The court received written submissions from the parties regarding costs of the motion in the Superior Court. We have now reviewed those submissions. These are our reasons.
- [3] The respondent concedes that the appellants are entitled to costs of the motion. The issues in dispute are the scale of costs and the quantum. The appellants seek costs on a substantial indemnity basis in the amount of \$96,158.17 (inclusive of disbursements and HST), plus post-judgment interest at the rate of 5% from February 28, 2025, the date of the motion judge's decision. In the alternative, they seek partial indemnity costs of \$66,575.44 (inclusive of disbursements and HST), plus post-judgment interest. In both of these calculations, the disbursements claimed are \$7,410, inclusive of HST. The appellants argue that substantial indemnity costs are justified because of two offers to settle made by them prior to the hearing of the motion.

- [4] The respondent argues that costs should be awarded on a partial indemnity basis. The respondent submits that substantial indemnity costs are not automatic under rule 49.10(1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, relying on *K.K. v. K.W.G.*, 2008 ONCA 489, 90 O.R. (3d) 481, at paras. 131-32. It asserts that there was no reprehensible or egregious conduct by the respondent that would justify the higher scale of costs. Finally, the respondent notes that the appellants' costs outline does not parse out what fees were incurred before the offers were served, making it impossible for the court to quantify the appropriate period for substantial indemnity costs under rule 49.10.
- [5] With respect to quantum, the respondent argues that costs should be fixed at \$40,000, inclusive of disbursements and HST, plus \$2,000 post-judgment interest for the approximately one-year period since the motion was decided. The respondent submits that the appellants' fees are excessive because the appellants' counsel spent more than double the time spent by counsel for the City on the motion. The respondent also relies on the appellants' failure to object to the scheduling of the motion at the time it was scheduled on the basis that partial summary judgment was inappropriate. In addition, the respondent contests two specific disbursements.
- [6] We address first the appropriate scale of costs, and then quantum.
- [7] The appellants' first offer to settle was made on October 9, 2024, approximately two months prior to the hearing of the motion, which was on December 16, 2024. The offer was for a dismissal of the motion without costs, and was open until October 18, 2024. The appellants' second offer to settle was made on November 29, 2024, just over two weeks prior to the hearing of the motion. This offer was for the respondent to withdraw its motion with \$20,000 in costs to the appellants, and was open until December 3, 2024. Neither offer was accepted by the respondent.[1]
- [8] Neither of the offers meet the criteria for the cost consequences set out in rule 49.10(1) because both offers expired before the commencement of the motion hearing. Nor are we persuaded that substantial indemnity costs are appropriate in the circumstances on a discretionary basis.
- [9] The parties do not significantly differ in terms of their assessment of the complexity of the motion and its importance to the parties. The primary disputes in relation to quantum relate to the time spent on the motion by the appellants' counsel, the fact that the appellants did not object to the scheduling of the summary judgment motion on the basis that it was inappropriate for partial summary judgment at the time it was scheduled, and the respondent disputing two disbursements.
- [10] With respect to hours spent preparing, although much of the work on the appellants' behalf was done by two associate lawyers – a reasonable way to mitigate cost – in our view, the hours spent by the associates were excessive in the circumstances.

- [11] Further, we agree that the failure of the appellants to raise the issue of whether partial summary judgment was appropriate at the time the motion was scheduled must be factored in. The appellants argue that they could not have known that the motion was for partial summary judgment at the time it was scheduled because they did not yet have the respondent's motion materials. We do not accept this, in light of the fact the judge presiding in Civil Practice Court was clearly alive to the issue.
- [12] Considering these factors, we reduce the fees portion of the appellants' claimed costs to \$40,000, plus HST, on a partial indemnity basis. This amount is consistent with the factors enumerated in rule 57.01(1), and is a fair and reasonable amount for the unsuccessful party to pay: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at para. 26.
- [13] Finally, with respect to disbursements, we are not persuaded by the respondent's submission that an expert report filed by the appellants was irrelevant to the motion. However, we do accept that it appears that entries for cross-examination transcripts have been duplicated in the listing of disbursements, resulting in a double counting of \$1,001.80. We, accordingly, reduce the claimed disbursements by that amount.
- [14] For these reasons, we award costs of the summary judgment motion to the appellants in the amount of \$51,600, inclusive of disbursements and HST. Post-judgment interest is payable on the costs award from February 28, 2025, at 5.0% per annum. "L. Sossin J.A." "J. Copeland J.A." "L. Madsen J.A."
- [1] In between the appellants' two offers, the respondent offered a without costs dismissal of the appellants' action, which the appellants rejected.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/coa/coa/en/item/24029/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/kotsopoulos-v-toronto-city-2026>

Prepared on 29 October 2026 · Esheria