



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV- 22-00688496-00CL

DATE: 7 March 2023

NO. ON LIST: 2

TITLE OF PROCEEDING: **Vietnamese Association Toronto V. Duong Et. Al**

BEFORE JUSTICE: **Steele**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

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Name of Person Appearing	Name of Party	Contact Info


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**ENDORSEMENT OF JUSTICE STEELE:**

1. Further to my judgment, dated January 30, 2023, the parties made costs submissions.
2. The applicants seek costs on a substantial indemnity basis in the amount of \$57,844, or in the alternative, on a partial indemnity basis in the amount of \$45,167. VAT claims that it was largely successful in the application. VAT states that the application was only necessary because the respondents hijacked the 2022 AGM to appoint themselves as the “interim board” and took certain self-help measures. VAT also argues that the respondents have taken a “scorched earth” approach to the litigation, which has unnecessarily complicated the application.
3. VAT further argues that the respondents’ conduct during the application has been vindictive and vexatious. VAT argues that the respondents made bald allegations against VAT’s executive director, board of directors and lawyer. VAT submits that there is ample authority to award full indemnity costs where “unsubstantiated allegations of dishonesty, illegality, and conspiracy are advanced without merit:” *Baryluk v. Campbell*, 2009 ONSC 34041, at para. 10.
4. The respondents submit that there has been split success and no costs should be awarded. The respondents argue that while the Court found that the “interim board” was not properly constituted under VAT’s by-laws and relevant legislation, the Court made findings of fact and orders that addressed the respondents’ concern about maintaining an inclusive approach to VAT membership.
5. The respondents argue that VAT’s legal fees have been paid by VAT, which is funded in part by members. Accordingly, they state that there are members who support the respondents who have indirectly paid VAT’s legal fees in this proceeding. The applicants’ position is that if VAT cannot recover its losses, its membership will have effectively subsidized the respondents.
6. The issues were not overly complex. However, they were important to both parties. The respondents state that the outcome of the decision gives clarity to all VAT members and the Board.
7. The fixing of costs is a discretionary decision pursuant to section 131 of the *Courts of Justice Act*. Rule 57.01(1) of the *Rules of Civil Procedure* sets out certain factors that the Court may consider in the exercise of such discretion. The factors in Rule 57.01 include the principle of indemnity, the amount of costs that an unsuccessful party could reasonably expect to pay, the conduct of any party that tended to shorten or lengthen unnecessarily the duration of the proceeding, whether any step in the proceeding was improper, vexatious or unnecessary, and the complexity of the proceeding.
8. As set out in my judgment, “the Board and the respondents all appear to care deeply for the organization and its future.” The VAT Board has now taken steps to expel some of the respondents from VAT membership. This dispute arose, in part, as a result of the VAT Board taking steps to reduce membership of VAT and the unilateral termination of certain members for failure to file a form. As I stated at paragraph 25 of the judgment: “It is clear that some of the issues in the organization have arisen due to changes in membership protocol that have been implemented by the Board, but not

reflected in the constating documents.” The respondents, unhappy with some of the changes to the organization, took certain “inappropriate self-help measures.”

9. In my view although the applicants were largely successful in this matter, the respondents also had some success. However, the respondents have taken some steps, which have unnecessarily complicated the litigation, such as filing over 200 pages of new evidence after the deadline set out in the consent timetable and refusing to consent to even the simples of requests from the applicants, such as the form of judgment, which mirrored the language of the decision.
10. The Court’s overall objective is to fix an amount of costs that is fair and reasonable, bearing in mind the nature of the matter and the costs that an unsuccessful party would expect to pay in the circumstances of the case: *Boucher v. Public Accountants Council (Ontario)*, 2004 CanLII 14579 (ON CA), at paras. 26 and 38.
11. Having regard to the submissions of the parties and the factors set out in Rule 57.01, the respondents shall pay the applicants’ partial indemnity costs fixed in the amount of \$20,000 (inclusive of taxes and disbursements) forthwith.