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Fiorenza v. Mitic, 2026 ONCJ 403

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CITATION: ***Fiorenza v. Mitic*****, 2026 ONCJ 403**
DATE: July 6, 2026
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ONTARIO COURT OF JUSTICE

2026 ONCJ 403 (CanLII)

B E T W E E N:	)	
	)	
CARLO FIORENZA		**ANDREA DI BATTISTA for the APPLICANT**
	)	
	)	
APPLICANT	)	
	)	
- and –	)	
SHANNON MITIC		**FEVEN GLAIZGHI, for the RESPONDENT SHANNON MITIC**
	)	
	)	
RESPONDENT	)	
	)	
- and -		
KATHERINE CASH		**ANTONIOS T. ANTONIOU AND MARIAM HANNA for KATHERINE CASH**
	)	
	)	
RESPONDING TO PERSONAL COSTS CLAIM AGAINST HER		

HEARD: JUNE 30, 2026

JUSTICE S.B. SHERR

COSTS ENDORSEMENT

Part One – Introduction

[1] This is an unusual costs decision. It was marked by parties taking extreme positions at trial (the trial stage) and during this costs proceeding.

[2] The trial took place over four days: September 11 to 13, 2024 and September 16, 2024. The trial was primarily about child support for the parties' then 2-year-old son (the child) and the applicant's (the father's) spousal support obligations to the respondent (the mother). The parties resolved the parenting issues prior to the trial except for the issue of travel terms. They agreed to a shared parenting arrangement and a comprehensive joint decision-making responsibility plan.

[3] At the conclusion of the trial, the court provided brief oral reasons for its decision on the travel issues. It reserved its decision on the support issues.

[4] The court released its written reasons for decision on September 20, 2024. See: *Fiorenza v. Mitic*, 2024 ONCJ 467. The court made final orders requiring that the father pay the mother child and spousal support. It determined that the father had overpaid spousal support to the mother in the amount of $27,575. It ordered that $300 each month be set off against the father's ongoing spousal support payments to her until it was repaid.

[5] The parties were invited to make written costs submissions. This was when the matter became much more complicated.

[6] On October 15, 2024, the father sought costs of $150,000 against the mother. He also sought these costs personally against her lawyer, Katherine Cash (Ms. Cash), claiming that she was personally responsible for wasting the court's time by taking unreasonable positions and being disorganized and unprepared for trial.

[7] On October 29, 2024, the mother responded with written costs submissions stating that the father should not receive any costs because he had engaged in a campaign of harassment and intimidation against her and Ms. Cash leading up to the trial. The trial did not start, as scheduled, on September 9, 2024, because the father was arrested at the courthouse and charged with criminal harassment of Ms. Cash.[1]

[8] On November 12, 2024, the court endorsed that a focused hearing with time limits for cross-examinations would likely be required to assess the credibility of the father, the mother and Ms. Cash to properly determine the issues raised in the costs submissions. The court strongly suggested that Ms. Cash obtain her own counsel.

[9] On November 29, 2024, the court conferenced the matter. The mother had new counsel and Ms. Cash had her own counsel. The court adjourned the matter, on consent, to allow counsel to familiarize themselves with the file, engage in discussions and discuss the process for the

[1] The trial started in the afternoon of September 11, 2024.

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determination of the costs issues.

[10] On April 4, 2025, unopposed, at the father's request, the court made a production order for police records regarding his involvement and Ms. Cash's involvement with the police in 2024. It dismissed a motion brought by the mother for disclosure of police records from 2022 when the police had laid charges against the father for allegedly harassing her. The court reserved the costs of that motion.

[11] There was some delay in obtaining the police records. Counsel appeared before the court on September 15, 2025, and asked to adjourn the matter. The father raised a concern about the authenticity of audiotapes provided by Ms. Cash to the police. He wanted to retain an expert to examine them. Ms. Cash indicated she might also retain an expert. Timelines were set for the mother, the father and Ms. Cash to file their affidavits for the costs hearing. The father and Ms. Cash both retained experts.

[12] On January 29, 2026, the process for the costs hearing was organized and the hearing date was set for a full day of submissions. Counsel agreed to time limits to cross-examine the father, the mother, Ms. Cash, two witnesses called by the father and the two experts. The cross-examinations were conducted out-of-court, and the transcripts were filed for the costs hearing.

[13] The father's criminal charges regarding Ms. Cash were recently resolved when, on May 17, 2026, he entered a one-year peace bond requiring that he have no contact with her. The father adamantly denies that he ever directly contacted Ms. Cash and denies all allegations that he harassed her or the mother.

[14] It was agreed that the court would determine the costs of the costs proceeding at the same time as it determined the costs of the trial stage. The father, the mother and Ms. Cash submitted sealed costs submissions, together with any offers to settle costs. The court did not review these submissions until after it determined the costs for the trial stage.

[15] The parties filed multiple affidavits and extensive documentation for the costs hearing, including phone records and police records. Counsel filed factums and referenced the portions of the transcripts it wanted the court to review in advance of the hearing.

[16] The father now seeks costs of $75,000 against the mother and $75,000 against Ms. Cash for the trial stage. He also seeks costs of $2,400 against the mother for an unsuccessful motion to strike his pleadings where costs had been reserved. The father asks that any costs be enforced as support by the Director of the Family Responsibility Office (the Director).

[17] The mother and Ms. Cash ask that no costs be ordered for the trial stage.

[18] There are many issues for the court to determine in assessing what costs are payable, by whom, and to whom, including:

a) Did any of the father's or mother's offers to settle attract the costs consequences set out in subrule 24 (12) of the *Family Law Rules* (all references to rules in this decision are to the *Family Law Rules*)?

b) If so, should the court exercise its discretion and not apply those costs consequences?

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c) Who was the successful party at the trial stage?

d) To what extent was there divided success at the trial stage?

e) Did the father harass and intimidate the mother and Ms. Cash, and if so, what, if any, costs should he receive?

f) Did Ms. Cash run up or waste costs without reasonable cause, and if so, should the court exercise its discretion to order costs personally against her?

g) Did the father or mother act unreasonably, and if so, how should that affect the costs award?

h) Should costs be awarded for the parenting issues when they were resolved prior to the start of the trial and costs were not reserved?

i) What, if any, costs should be awarded for time spent prior to the trial step in the case?

j) How should any costs be paid?

k) Does the court have the authority to order the Director to enforce a costs order in favour of the father as support under clause 1 (1) (g) of the *Family Responsibility and Support Arrears Enforcement Act, 1996* (*FRSAEA),* and if so, what percentage of the costs order should be attributed to support?

l) Did the mother, father or Ms. Cash make an offer to settle costs that attract the costs consequences set out in subrule 24 (12)?

m) Who was successful on the costs issue?

n) What amount of costs should be awarded to those who were successful in the costs proceeding?

Part Two – Brief background facts

[19] The father is 44 years old. The mother is 30 years old. They cohabited from the fall of 2020 until March 2022. They had the one child together.

[20] The father is the sole owner and operator of a truck haulage company.

[21] The father started this application in the Ontario Court of Justice in Brampton on March 24, 2022. The mother issued her answer/claim on June 1, 2022.

[22] The father was charged with criminal harassment regarding the mother in May 2022. Those charges were eventually resolved when the father agreed to a one-year peace bond on June 30, 2023. That peace bond has expired.

[23] On November 10, 2022, Justice Philip Clay made temporary support orders. He imputed the father's annual income at $109,000 and ordered him to pay the mother child support of $981

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each month and spousal support of $2,281 each month. He subsequently ordered the father to pay the mother costs of $5,271 for the motion.

[24] On June 15, 2023, Justice Clay transferred the case to Toronto.

[25] On August 6, 2024, on consent, Justice Curtis made final orders regarding multiple incidents of decision-making responsibility and holiday time. She also dismissed a motion brought by the mother to strike the father's application.

[26] On September 11, 2024, on consent, prior to the start of the trial, the court made final orders regarding decision-making responsibility and parenting time.

[27] On September 20, 2024, the court released its reasons for decision after the trial. The court imputed the father's annual income at $100,000 for 2022, $109,000 for 2023 and $126,000 for 2024. The court imputed the mother's annual income at $14,000 for 2022, $26,404 for 2023 and $32,499 for 2024.

[28] The court made the following orders:

a) The father shall pay the mother additional child support of $531, as calculated in the reasons for decision.

b) The father shall pay the mother child support, starting on October 1, 2024, in the amount of $838 each month.

c) Starting on October 1, 2024, the father shall pay the child's daycare costs directly to the daycare until the end of June 2025. It was expected that he would claim any tax benefit or credit available to him for these payments after October 1, 2024.

d) The father shall pay the mother child support of $1,000 each month, starting on July 1, 2025.

e) The father shall pay the mother spousal support of $1,200 each month, starting on August 1, 2022. This changes the terms of the temporary order and results in a spousal support overpayment by the father of $28,106.

f) The $531 the father owes for child support shall be set off against the spousal support overpayment, leaving a balance owing of $27,575.

g) The support overpayment shall be paid by the mother to the father at $300 each month until it is repaid. It is to be set off against the father's ongoing spousal support payments, starting on October 1, 2024.

h) If the parties are unable to refile their income tax returns to reflect the terms of this order, either may return the matter to court to determine if there should be any tax adjustment to the spousal support overpayment.

i) Either party may review the issues of child and spousal support (including the mother's entitlement to spousal support), after June 30, 2026.

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[29] The father's overpayment of spousal support was almost completely attributable to the mother's income being assessed at zero for the purpose of Justice Clay's temporary spousal support analysis in 2022.

Part Three – Legal considerations - General principles

[30] The Ontario Court of Appeal in *Mattina v. Mattina,* 2018 ONCA 867 set out that modern costs rules are designed to foster four fundamental purposes:

a) to partially indemnify successful litigants;

b) to encourage settlement;

c) to discourage and sanction inappropriate behaviour by litigants and;

d) to ensure that cases are dealt with justly under subrule 2 (2) of the rules.

[31] Costs can be used to sanction behaviour that increases the duration and expense of litigation, or is otherwise unreasonable or vexatious. In short, it has become a routine matter for courts to employ the power to order costs as a tool in the furtherance of the efficient and orderly administration of justice. See: *British Columbia (Minister of Forests) v. Okanagan Indian Band,* 2003 S.C.C. 71, paragraph 25.

[32] Costs awards are discretionary. Two important principles in exercising discretion are reasonableness and proportionality. See: *Beaver v. Hill,* 2018 ONCA 840.

[33] An award of costs is subject to the factors listed in subrule 24 (12), subrule 24 (4) pertaining to unreasonable conduct of a successful party, subrule 24 (8) pertaining to bad faith, subrule 18 (14) pertaining to offers to settle, and the reasonableness of the costs sought by the successful party. See: *Berta v. Berta,* 2015 ONCA 918, at paragraph 94.

Part Four – Offers to settle

4.1 Legal considerations

[34] Subrule 18 (4) sets out that an offer shall be signed personally by the party making it and also by the party's lawyer, if any.

[35] Subrule 24 (12) sets out the consequences of a party's failure to accept an offer to settle that is as good as or better than the trial result of the person making the offer. It reads as follows:

> **COSTS CONSEQUENCES OF FAILURE TO ACCEPT OFFER**
>
> 24(12) A party who makes an offer is, unless the court orders otherwise, entitled to costs to the date the offer was served and full recovery of costs from that date, if the following conditions are met:
>
> 1. If the offer relates to a motion, it is made at least one day before the motion date.
>
> 2. If the offer relates to a trial or the hearing of a step other than a motion, it is made at least seven days before the trial or hearing date.

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3. The offer does not expire and is not withdrawn before the hearing starts.

4. The offer is not accepted.

5. The party who made the offer obtains an order that is as good as or better than the offer.

[36] Subrule 24 (13) sets out that the onus of proving that the order is as good as or better than the offer to settle is on the party who claims the benefit of subrule 24 (12).

[37] Even if subrule 24 (12) does not apply, the court may take into account any written offer to settle, the date it was made and its terms when assessing the reasonableness and proportionality of a party's conduct under sub-clause (iii) of subrule 24 (14) (a).

[38] The court is not required to examine each term of the offer as compared to the terms of the order and weigh with microscopic precision the equivalence of the terms. What is required is a general assessment of the overall comparability of the offer as contrasted with the order. See: *Wilson v Kovalev*, 2016 ONSC 163.

[39] Close is not good enough to attract the costs consequences of 24 (12). The offer must be as good as or more favourable than the trial result. See: *Gurley v. Gurley*, 2013 ONCJ 482; *Axford v. Axford*, 2024 ONSC 2864.

4.2 Did any of the parties' offers to settle attract the costs consequences set out in subrule 24 (12)?

[40] After reviewing the parties' offers to settle, the court observes that it is very unfortunate that they did not settle the case. They were not that far apart and have spent considerably more than the difference between their offers since then.

[41] The father made multiple offers to settle. Many were severable. His first offer, dated March 28, 2024, was not more favourable to the mother than the trial result and did not attract the costs consequences set out in subrule 24 (12).

[42] The father's second offer to settle, dated June 14, 2024, was close to the trial result on the issue of child support. However, it was not as good as or better than it. The father proposed that he pay $981 each month for child support and 75% of the child's special and extraordinary expenses (section 7 expenses) under the *Child Support Guidelines* (the guidelines). The court reduced the father's guidelines table child support payments starting on October 1, 2024, to $838 each month. However, it also ordered him to pay all daycare expenses until the child finished daycare in June 2025, at which time child support would increase to $1,000 each month.

[43] The father's severable offer to settle spousal support in his June 14, 2024 offer was as good as or better than the trial result. The mother conceded this point during the costs hearing. The father offered to pay the mother a lump sum of $100,000 and waive any overpayment of spousal support. This lump sum payment would have been tax-free to the mother. The court ordered spousal support of $1,200 each month and found the father had overpaid spousal support in the amount of $28,106. It ordered that support could be reviewed after June 30, 2026.

[44] The father made a severable offer to settle the parenting issues dated August 16, 2024. This included an offer to settle the travel terms. His travel offer was as good as or better than the

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trial result.

[45] The father made a non-severable offer to settle dated August 21, 2024. He offered to pay $981 each month for child support, based on an annual income of $109,000, and to pay all the child's daycare expenses. This offer would have been as good as or better than the final result except that the father tied this proposal to the spousal support issue. He offered to pay $1,000 each month for spousal support to the mother for three years, at which time it would terminate. He also added a clause that the parties would recalculate their child support obligations in five years. This offer to settle was not as good as or better than the trial result. The costs consequences set out in subrule 24 (12) do not apply to it.

[46] The father made a non-severable offer to settle dated September 10, 2024 related to the parenting issues. It was made less than 7 days before the trial and did not meet the pre-conditions for applying the costs consequences in subrule 24 (12).[2] The costs presumption set out in subrule 24 (12) can have significant repercussions – full recovery costs from the date of the offer. That is why full technical compliance with subrules 18 (4) and (14) is required. See: *Mussa v. Iman*, 2021 ONCJ 92; *T.R. v. S.G.*, 2025 ONCJ 284.

[47] The father's offers to settle were considered under sub-clause (iii) of subrule 24 (14) (a). This clause directs courts to consider offers to settle when determining the reasonableness and proportionality of the parties' conduct and the appropriate amount of costs.

[48] The mother made one severable offer to settle dated May 24, 2024. She sought to impute the father's annual income at $150,000. She proposed that he pay $1,299 for child support starting on June 1, 2024, plus 75% of the child's section 7 expenses. She also proposed that he pay her a $150,000 lump sum in full satisfaction of all spousal support claims. This offer was not as good as or better than the trial result and did not attract the costs consequences set out in subrule 24 (12). The court considered this offer to settle under sub-clause (iii) of subrule 24 (14) (a).

4.3 Should the court order apply the costs consequences set out in subrule 24 (12)?

[49] Even if all the preconditions in subrule 24 (12) are met, the court still has the discretion not to apply the costs consequences in the subrule – to order otherwise. See: *Snelgrove v. Kelly*, 2017 ONSC 4625; *F.S. v. N.J.*, 2024 ONCJ 276; *Cullen v. Brennan*, 2024 ONCJ 375.

[50] If the court finds that the father intimidated and harassed Ms. Cash and the mother during this proceeding, this would be a good reason not to apply the costs consequences in subrule 24 (12). This would be litigation abuse that should not be tolerated and would warrant significant costs sanctions. The court will defer that analysis until later as there are other good reasons not to apply the costs consequences arising from the father's June 14, 2024 offer to settle spousal support.

[51] The court will not apply the costs consequences in subrule 24 (12) to the father's spousal support offer because the father took unreasonable positions regarding his income and support obligations at trial as follows:

[2] See paragraph 2 of subrule 24 (12).

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a) He asked the court to accept his income was $59,096 in 2022. The court imputed it at $100,000. He claimed his income was $67,000 in 2023. The court imputed it at $109,000.

b) The court found he was deliberately under-employed and chose to reduce his income once the mother made her support claim.[3]

c) His dire description of his business was contradicted by his accountant.

d) He provided late and incomplete disclosure of his 2024 income. He proposed assessing his 2024 income at $84,000. The court imputed it at $126,000.

e) He claimed he was in financial straits. The court did not make this finding. It also wrote at paragraph 71 of its reasons for decision:

> The father cannot expect the court to reduce his child and spousal support payments based on inability to pay when he has spent huge sums of money gambling.[4]

[52] The court would have applied the costs consequences in subrule 24 (12) if the father had taken a reasonable position at trial about his income. When someone is self-employed, there is a range of outcomes of what courts will assess for their income. However, the father's position at trial was well below the low end of a reasonable range of outcomes. He represented to the court that he was earning 40% less than what the court found he was earning in 2022, 38% less in 2023, and 33% less in 2024. A party cannot expect that a court will grant them full recovery costs when they so aggressively try to avoid their support obligations at trial.

[53] The court will apply the costs consequences in subrule 24 (12) to the father's offer to settle the travel issues, dated August 16, 2024, unless it finds that the father harassed and intimidated Ms. Cash and the mother. The mother should have accepted this offer. She took an unreasonable position on this issue.

Part Five – Success

5.1 Legal considerations

[54] Subrule 24 (3) creates a presumption of costs in favour of the successful party. Consideration of success is the starting point in determining costs. See: *Sims-Howarth v. Bilcliffe* [2000] O.J. No. 330 (SCJ- Family Court).

[55] To determine whether a party has been successful, the court should examine who was the successful party, based on the positions taken in the litigation. See: *Lazare v. Heitner*, 2018 ONSC 4861. This assessment includes the positions taken in the pleadings, and the specific relief sought at the hearing, if different. See: *Kyriacou v. Zikos*, 2022 ONSC 401.

[56] Once success is determined, the court may examine the parties' offers to settle to determine the extent of that party's success. See: *Gjorsovski v. Krajisnik*, 2026 ONSC 2202;

[3] See paragraphs 74 to 77 of the reasons for decision.
[4] The father lost over $50,000 gambling in 2023.

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Lynch v. Lewis, 2024 ONCJ 276.

5.2 Analysis

[57] The father was the more successful party at trial. However, there was some divided success, as will be set out below.

[58] The mother did not serve and file a draft order until the beginning of her closing submissions. She had been ordered to provide a draft order in advance of the trial by Justice Curtis. She was repeatedly asked for this during the trial.

[59] The court asked Ms. Cash during the trial to state what annual income she was seeking to impute to the father. She said $500,000. The mother's draft order delivered at the start of closing submissions was much different. She sought to impute annual income to the father of $1,781,550. She asked that he pay her child support of $13,046 each month starting on April 1, 2022, and spousal support of $35,412 each month, starting on July 15, 2022. The court wrote at paragraph 63 of its reasons for decision:

> The mother's claims about the father's income were fantastical, kept escalating during the trial, and were not supported in any way by the evidence.

[60] The mother's unreasonable and extreme positions about the father's income ensured he would be the successful party at trial.

[61] However, the father was not completely successful at trial. He was imputed with significant additional income as set out in paragraph 43 above. He was unable to terminate spousal support as he requested. The court did not order time-limited spousal support. It only gave him the right to review it.

[62] The father made closing submissions at trial that he should not be required to pay child support to the mother. He proposed that the parties equally share the child's daycare expenses.[5] Instead, the court made the order set out in paragraph 28 above.

[63] The court imputed income to the mother but nowhere close to the amounts sought by the father. A continuing theme in this case, and in this costs proceeding, was the extremity of positions taken by those involved. The father asked to impute the mother's income in 2022 at $60,928. The court imputed it at $14,000. He asked to impute her income in 2023 at $59,443. The court imputed it at $26,400. He asked to impute her income in 2024 at $122,871. The court imputed it at $32,900.

Part Six – Did the father harass and intimidate the mother and Ms. Cash, and if so, should he be disentitled to costs?

6.1 Legal considerations

[64] Subrule 24 (14) reads as follows:

[5] In his draft order for trial, he took a much more reasonable position. He proposed paying the full guidelines table amount for two years. He tied that to a termination of spousal support at the end of 2024.

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24 (14) In setting the amount of costs, the court shall consider,

a) the reasonableness and proportionality of each of the following factors as it relates to the importance and complexity of the issues:

b) each party's behaviour,

c) the time spent by each party,

d) any written offers to settle including offers that do not meet the requirements of rule 18,

e) any legal fees, including the number of lawyers and their rates,

f) any expert witness fees, including the number of experts and their rates,

g) any other expenses properly paid or payable; and

h) any other relevant matter.

[65] Subrules 24 (7) and (8) read as follows:

Unreasonable behaviour by successful party

(7) A successful party who has behaved unreasonably during a step in a case may be deprived of all or part of the party's own costs or ordered to pay all or part of the unsuccessful party's costs.

Same

(8) In deciding whether a successful party has behaved unreasonably, the court may consider,

(a) the party's behaviour in relation to the issues from the time they arose, including whether the party made an offer to settle;

(b) the reasonableness of any offer the party made; and

(c) any offer the party withdrew or did not accept.

[66] The mother did not make her own costs claim against the father. However, if the court finds that the father harassed and intimidated the mother and Ms. Cash, as alleged, this will constitute bad faith under subrule 24 (10) and will likely disentitle him to costs against them. That subrule reads as follows:

Bad faith

(10) If a party has acted in bad faith, the court shall decide costs on a full recovery basis and shall order the party to pay them immediately.

6.2 The parties' evidence

[67] Ms. Cash deposed that starting in June 2024, she was bombarded with phone calls from unknown phone numbers. She would sometimes get dozens a night. One night she received over 100 calls. Most often the caller would be silent. At other times, the caller would hurl profanities at her.

[68] Ms. Cash reported the incidents to the police. She believed the caller was the father. She deposed that she recognized his voice and the calls were more frequent when there were material events happening in the case. She said the calls did not happen before this case and she was not in conflict with anyone else.

[69] Ms. Cash recorded five of the calls and these were filed for the hearing.

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[70] The mother deposed that she recognized the father's voice on the calls recorded by Ms. Cash. She said the calls fit a pattern where he used to call and harass her from unknown phone numbers.

[71] The father retained an expert to determine the authenticity of the calls to Ms. Cash, as he felt they were suspicious. The expert found that the calls were authentic, not edited, and not AI generated. Ms. Cash also hired an expert who agreed with these findings.

[72] There is no issue that Ms. Cash was the victim of harassing and disturbing phone calls. She filed her phone records showing this. The issue is whether the father was responsible for them.

[73] Ms. Cash deposed that she has been traumatized by these calls and lives in fear of the father. She said she has been diagnosed with Post-Traumatic Stress Disorder. She attested that she has moved out of the Toronto area and is not practising law at this time.

[74] Ms. Cash said that she received harassing calls on August 21, 2024, and reported this to the police. She told the police she believed it was the father who made these calls.

[75] Ms. Cash called the police on September 8 and 9, 2024, asking about the progress of her report about the August 21, 2024 harassing call.

[76] The police arrested the father at court on September 9, 2024, prior to the start of the first scheduled day of trial.

[77] The father adamantly denied making any of the calls to Ms. Cash. He claimed he has never called her.

[78] The father asserts that Ms. Cash manufactured his arrest at court as a tactic because she was unprepared for the trial.

6.3 Analysis

[79] The court finds that Ms. Cash and the mother had good reason to suspect it was the father who was making the phone calls to Ms. Cash for the following reasons:

a) Ms. Cash did not receive harassing calls prior to June 2024, close to when the case was first called for trial.

b) This was a very high-conflict case.

c) The father was very angry at the mother.6

d) The father was very angry at Ms. Cash. This was apparent during the trial.

e) The court accepts Ms. Cash's evidence that she was not in conflict with anyone else.

f) The father had a history of calling the mother from unknown numbers. He was

[6] See paragraph 74 of the reasons for decision.

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> charged for harassing her in 2022 and entered a peace bond on June 30, 2023. He sent the mother some vile text messages in 2022 and 2023. The father denied he sent these messages, but some specifically referred to their child's abbreviated name. The court finds that he sent them.

[80] However, despite their reasonable suspicions, Ms. Cash and the mother were unable to establish on a balance of probabilities that it was the father, or anyone on his behalf, who was making these calls to Ms. Cash.

[81] The court treated the mother's evidence identifying the father on the audiotapes provided by Ms. Cash with caution. Her evidence about her income at trial was not credible and she had a vested interest in the court making a finding that the father had harassed Ms. Cash to reduce her liability for costs.

[82] The mother filed an undated videotape of a call with the father. The mother said it was evidence of the father breaching his peace bond with her. The call appeared to be staged. It was recorded surreptitiously. The mother points the phone at a camera early in the call. Instead of hanging up, the mother prolongs the conversation. The court gave little weight to this evidence.

[83] The mother did not meet her onus to show that the father harassed her after he entered the peace bond on June 30, 2023.

[84] The father undertook the exercise of comparing his phone records to Ms. Cash's phone records during the times she claimed the harassing calls were made to her.[7] He was able to identify 249 times when he was on other calls when the harassing phone calls were made to Ms. Cash.[8] He was also in Florida when some harassing calls were made to Ms. Cash. Calls from Florida would have appeared on her phone records.

[85] The father also provided evidence that he was hosting a barbeque at his home during the evening of August 21, 2024, when harassing phone calls were made to Ms. Cash. He provided evidence that he was on other calls at those times. He also had a friend provide his phone records showing he was on the phone with the father while harassing calls were being made to Ms. Cash.

[86] The court does not doubt Ms. Cash's sincerity when she asserts her belief that the father made these calls. The court heard the audio tapes played by Ms. Cash and the mother. The court does not have the ability to identify if it was the same person.

[87] Ms. Cash asked the court to draw an adverse inference because the father did not obtain a voice recognition expert, although his expert testified he had the expertise to do this. The court will not do this. First, Ms. Cash could also have retained a voice recognition expert. Secondly, the father's expert testified he would not be able to give an opinion with certainty because of the nature of the recording. Lastly, this was already an extremely expensive case. The court does not fault the father for not incurring more expenses.

[88] Ms. Cash also asked the court to draw an adverse inference because the father's credit report showed he had phone numbers in addition to those in the phone records produced by him.

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[7] The phone records were filed for this hearing.
[8] Ms. Cash and the mother provided no evidence contradicting this analysis.

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However, at trial, it was clear there were several errors in the credit report. The court cannot rely on it.

[89] The father claimed he last used one of the phone numbers in the credit report, with a 647 prefix, 30 years ago. Ms. Cash's counsel pointed out he would have been 13 years old then and the 647-area code did not start until six years later. This discrepancy does not affect the father's credibility. He was just emphasizing that he last used that phone a very long time ago. The court accepts his evidence.

[90] Is it possible that the father made phone calls to Ms. Cash while on calls with other people and used different phones? Yes. Could he have asked third parties to make these calls? Yes, but it is a stretch to find that he would have gone to those lengths to avoid detection in anticipation of being charged criminally and these calls being an issue for family court proceedings. The alternative explanations are speculation, with no real evidentiary foundation.

[91] The court will not reduce the father's costs award based on the allegation that he intimidated and harassed Ms. Cash and the mother.

[92] The court wants to emphasize that it is not making a finding that the father or his agents did not make any of these calls. It is only making a finding that the mother and Ms. Cash did not meet their onus of proving this on a balance of probabilities for the purpose of reducing the father's costs award.

Part Seven – Should costs be personally ordered against Ms. Cash?

7.1 Legal considerations

[93] Subrule 24 (11) permits the court to order a party's lawyer to pay the costs of another party if the lawyer has wasted costs. This subrule reads as follows:

> **Representative at fault**
>
> 24(11) If a party's representative has run up costs related to a step in a case without reasonable cause or has wasted costs, the court may, on motion or on its own initiative after giving the representative an opportunity to be heard, make one or more of the following orders:
>
> 1. That the representative shall not charge client fees or disbursements for work specified in the order.
> 2. That the representative must repay any money that the party has already paid toward costs.
> 3. That the representative must repay the party any costs that the party has been ordered to pay another party.
> 4. That the representative must personally pay the costs of any party.
> 5. That a copy of the order be given to the party.

[94] In *Hunt v. Worrod*, 2018 ONSC 2133, the court at paragraphs 33 and 34 set out the legal test for the court to follow in determining whether to order costs personally against a lawyer as follows:

> The courts have endorsed a two-part test for awarding costs against a lawyer personally:
>
> (i) Does the lawyer's conduct fall within the ambit of the rule in the sense that he or she caused

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> costs to be incurred or wasted unnecessarily and without reasonable cause, and
>
> (ii) As a matter for discretion, is an order for costs personally warranted in the circumstances?

[95] In *Galganov v. Russell (Township)*, 2012 ONCA 410, the court set out the following factors to consider in regard to the first part of the two-part test:

a) The first step is to determine whether the conduct of the lawyer comes within the rule; this is, whether his or her conduct caused costs to be incurred unnecessarily. To do so, the court must consider the facts of the case and the particular conduct attributed to the lawyer.

b) The rule allowing costs against a lawyer is not intended as punishment for professional misconduct. Rather, it is as indemnity for the time wasted and expenses unnecessarily expended as a result of the conduct of a lawyer.

c) Neither negligence nor bad faith is a requirement for imposing costs against a lawyer.

d) Mere negligence or conduct that does not meet the level of negligence may be sufficient to attract costs against a lawyer.

e) The costs rule is intended to apply " . . . only when a lawyer pursues a goal which is clearly unattainable or is clearly derelict in his or her duties as an officer of the court . . . "

f) In determining whether the rule applies, the court must examine "the entire course of the litigation that went on before the application judge". This requires a "holistic examination of the lawyer's conduct" in order to provide an "accurate tempered assessment". But a general observation of the lawyer's conduct is not sufficient. Instead, the court must look at the specific incidents of conduct that are subject to complaint.

[96] In *V.F. v. J.F.*, 2016 ONCJ 759, Justice Marvin Kurz applied *Galganov* and wrote the following at paragraph 12:

> 12 To be clear, and contrary to the submission of Mr. Fogelman, misconduct is not a prerequisite for the application of sub-rule 24(9) if counsel has caused the other side to incur wasted or unnecessary costs. As Justice Rene M. Pomerance of the Superior Court of Justice ("SCJ") succinctly put it in *D. (M.) v. Windsor-Essex Children's Aid Society*: "Compensation may be appropriate even if discipline is not." (my emphasis).

[97] A costs order against a lawyer is not restricted to a situation where the lawyer has acted in bad faith. See: *Covriga v. Covriga*, 2010 ONSC 3030, paragraph 14. However, the court should exercise extreme caution before ordering costs against a solicitor. See: *Rand Estate v. Lenton*, 2009 ONCA 251, paragraph 1; *Sambasivam v. Pulendrarajah*, 2012 ONCJ 711, paragraph 46.

[98] Lawyers are not gatekeepers for their client's causes and do not become the insurer against adverse costs awards for advancing difficult cases on their client's instructions. See: *Foley v. Victoria London Health Sciences Centre*, 2024 ONSC 2848, paragraph 28, citing

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Robertson v. Diegel, 2022 ONSC 7213, at paragraph 51.

[99] In controlling its own process, it may be necessary to sanction unacceptable conduct through the mechanism of costs, in part as a deterrent to others so as to maintain the integrity of the unspoken underpinnings of the processes that are so commonplace we may sometimes take them for granted. See: *Weening v. Weening* 2004 Canlii 45888 (Ont. SCJ); *Penton v. Brandao*, 2019 ONCJ 48, paragraph 15; *Sambasivam v. Pulendrarajah*, *supra*, paragraph 48. In *Weening*, the court wrote at paragraph 8 that the act of counsel cannot be attributed to the client and must have impeded the just progress of the case. It requires much more than simple dawdling or non-cooperation.

[100] With respect to the court's discretion, being step two of the two-part test, former Chief Justice McLachlin J. explained in *Young v Young*, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3 at para 263:

> Courts must be extremely cautious in awarding costs personally against a lawyer, given the duties upon a lawyer to guard confidentiality of instructions and to bring forward with courage even unpopular causes. A lawyer should not be placed in a situation where his or her fear of an adverse offer of costs may conflict with these fundamental duties of his or her calling.

[101] In *V.F., supra*, at paragraph 126, Justice Kurz outlines the extreme caution principle as follows:

> [126] In *Young v. Young*, the Supreme Court of Canada called upon courts to be "extremely cautious in awarding costs personally against a lawyer." In considering that broad injunction, I find that extreme caution must apply to all aspects of the determination of costs against a lawyer, including the determination of the quantum of costs. That is because, in addition to the reasons that generally explain the extreme caution test:
>
> a) Counsel may not be solely liable for the waste of time that raises a claim for costs. Their clients may bear some or most of the responsibility for the waste of time;
>
> b) Because courts are generally unaware of the communications between solicitor and client, and the extent to which counsel attempted to convince the client to act in a more reasonable fashion, it is difficult to apportion liability for costs between counsel and client;
>
> c) The quantum as well as the notion of granting of costs against counsel may chill future advocates from taking on difficult cases;
>
> d) Courts should be particularly reluctant to chill the exercise of appropriate advocacy in child protection cases. The stakes could not be greater in those cases: the state's intervention and the potential loss of a child. Parents need access to capable counsel, ones undaunted by pocketbook concerns. Without such counsel, they will be unable to properly assert their parental rights against institutional litigants buttressed by the resources of the state. Yet there is a paucity of counsel with the expertise to effectively respond for parents in child protection matters.
>
> e) The points set out above apply equally to the potential chill on advocates seeking to represent children in potentially difficult child protection contentious cases.

7.2 The first part of the two-part test – did Ms. Cash's conduct fall within the ambit of the rule in the sense that she caused costs to be incurred or wasted unnecessarily and without reasonable cause?

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7.2.1 The father's position

[102] The father alleges that Ms. Cash wasted costs because:

a) She was unprepared for trial.

b) Her wasteful conduct was not restricted to one event. It continued throughout the trial.

c) She was disorganized at trial. She could not find documents, or direct trial participants to the correct documents.

d) She made multiple requests for the same financial disclosure from him and his accountant. At trial, his accountant testified that disclosure requests from Ms. Cash were turning into a full-time job for him.

e) She did not respond in a timely manner to his counsel's requests to prepare a joint document brief. She only uploaded a link for the joint document brief an hour before they were due to be filed and she included no documents.

f) She did not prepare an index for her documents. His counsel had to organize the mother's documents and prepare an index and hard copies for the court.

g) She relied on few of the documents she included in the joint document brief at trial. In closing submissions, she said that she had sat down with a forensic accountant for the first time over the weekend to review the records and most of the documents she had filed were not helpful.9

h) She did not provide a draft order until her closing submissions. Her position kept changing.

i) She took unreasonable and unattainable positions based on the evidence. For instance, she tried to convince the court that the proceeds from the sale of the father's home should be included each year in his income.

j) She had difficulty formulating questions and had to be redirected by the court.

k) She wrote the trial coordinator on the third day of trial stating she was too stressed to attend court. She did not notify the father's lawyer or her own client about this. She came on by zoom and agreed to complete the mother's evidence that day remotely. An hour of court time was wasted to set this up.

l) She included privileged settlement discussions in her client's motion to strike materials.

[103] The father alleges that Ms. Cash acted in bad faith by engineering his arrest at court on the first day scheduled for trial – September 9, 2024. He said that Ms. Cash pressured the police

[9] Ms. Cash could not remember the name of the forensic accountant when asked during her examination.

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to have him arrested to obtain a litigation advantage and to delay the trial because she was unprepared. He pointed out that Ms. Cash called the police on September 8th and 9th when the harassment incident had allegedly taken place on August 21, 2024. The police would not have known he was at court that morning unless Ms. Cash had told them he could be arrested there. He submitted that time and expense was wasted by her actions. The trial did not start until the afternoon of September 11, 2024.

[104] The issue of the harassing phone calls and the potential arrest of the father was raised before Justice Curtis on August 28, 2024.[10] Justice Curtis told the parties the trial would proceed as scheduled. She asked Ms. Cash to keep the father's counsel updated about any developments. Ms. Cash did not do this, even though she was negotiating with the father's counsel during the evening before the trial. It is understandable why the father's counsel felt she was blindsided.

[105] The father deposed he was humiliated by being arrested and handcuffed in the public area at court. He feared what impact the criminal charges would have on him and how his arrest might influence the result of the family law case.

7.2.2 Ms. Cash's position

[106] Ms. Cash denied the father's allegations. She accused the father of dumping volumes of irrelevant documents on her and not providing the relevant disclosure about his income in a timely or organized manner. She claimed the father's lawyer sent her two different indexes and this accounted for any confusion in the presentation of documents at trial.[11]

[107] Ms. Cash denied weaponizing the police against the father. She deposed she was following up with them about the harassing calls she had received on August 21, 2024. She pointed out that it is the police's job to decide if charges are laid. She said there was no new information to report to the father's counsel until the father was arrested at court. She said she had been prepared to proceed with the trial that day.

[108] Ms. Cash asserts she did not waste time at trial. It was the father, she said, who wasted time.

7.2.3 Were any costs incurred or wasted unnecessarily by Ms. Cash?

[109] The court finds that some costs were incurred or wasted unnecessarily by Ms. Cash's conduct. She did not provide her documents for the joint document brief in a timely manner and did not provide an index. She was operating from a different index than the court and the father at the start of the case and there were delays because she could not consistently direct witnesses and the court to the proper documents. She initially rejected the efforts of father's counsel to use the index he provided to the court, leading to more confusion. She eventually agreed to use the proper index.

[110] Ms. Cash also wasted time by not providing a draft order prior to the trial as required by Justice Curtis. She did not deliver it until just before closing submissions. The mother's position

[10] The transcript of that attendance was filed for the costs hearing.
[11] The court reviewed the two indexes sent to Ms. Cash. There were only minor changes that were clearly explained by the father's counsel to Ms. Cash.

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at trial was a moving target.

[111] Ms. Cash wasted about an hour of time on the third day of trial by making an adjournment request through the trial coordinator's office without notifying the father's counsel and her client.

[112] Otherwise, the court does not find that Ms. Cash caused costs to be incurred or wasted unnecessarily for the following reasons:

a) The court finds she was prepared for trial – not as well prepared as the father's counsel, but that is not the standard the court should apply in deciding if personal costs should be ordered against counsel.

b) While she had trouble formulating proper questions at times, this is not unusual for counsel at trials. At times, she asked very good questions and elicited important evidence. She was able to establish that the father was earning much more income than he represented. This was not a basis to order personal costs against her.

c) She worked hard to resolve the case. The court was provided with the transcript of the August 28, 2024 appearance before Justice Curtis. She praised both counsel for the way they were working together to try and resolve the issues and narrow the time for trial. Ms. Cash actively negotiated with the father's counsel to resolve the parenting issues and save expense and court time.

d) While she advanced escalating and unreasonable positions about the father's income at trial, this did not waste much court time or create much additional expense for the father. It was the father's responsibility to establish his income and the court found he significantly and unjustifiably minimized it at trial. The mother's position that he was earning over 1.7 million dollars annually was only made in closing submissions and did not affect the duration of the trial or the time spent preparing for it. It is also important to note that the mother took a much more reasonable position in her offer to settle that was open until the start of the trial. She proposed assessing the father's annual income at $150,000.

e) The court finds that she did not act in bad faith with respect to the father's arrest at court on September 9, 2024. This will be discussed in more detail below.

[113] The court finds that Ms. Cash caused some costs to be incurred or wasted unnecessarily, but not to the extent alleged by the father.

7.2.4 Was there a reasonable cause for any costs incurred or wasted unnecessarily by Ms. Cash?

[114] The answer is yes.

[115] Ms. Cash's conduct must be examined in context. She was the victim of an active campaign of harassment. She was receiving dozens of phone calls, often in the middle of the

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night. One night she received over 100 calls.[12] The caller made vile and abusive comments to her. This caused her considerable stress and anxiety. She feared for her safety. The court accepts her evidence that she was traumatized by these events.

[116] The court finds that Ms. Cash had a reasonable basis to fear it was the father who was harassing and intimidating her.

[117] Layered on to this fear and stress was the anxiety Ms. Cash was under dealing with the police and preparing for a trial with voluminous documentation and high stakes for her client.

[118] This situation has parallels to family law cases where there is family violence between spouses. Victims of family violence often suffer from significant trauma associated with the abuse, which may affect their ability to provide a detailed, consistent and accurate recollection and timeline of the events in question. See: *S.V.G. v. V.G.*, 2023 ONSC 3206, at paragraph 104.

[119] The father pointed out that Ms. Cash never directly asked him if he had made these calls. Further, he points out that when Ms. Cash wrote to the trial coordinator on the third day of trial, she gave several excuses for not coming to court but did not mention him.

[120] The court draws no adverse inferences from Ms. Cash's actions. She was traumatized by the harassment, and like many victims of violence, not always acting in a linear or organized manner. Her email to the trial coordinator on September 13, 2024, reflected a person under considerable distress.

[121] In this context, the court finds that it was reasonable for Ms. Cash to call the police on September 8 and 9, 2024 to follow up on what they were doing about the harassing phone calls made to her on August 21, 2024. She was fearful of facing the father at court. The court does not find that she called the police because she was unprepared for trial or was trying to obtain a litigation advantage.

[122] The court also considered the following:

a) The evidence indicates that until June 2024, the father was not compliant with his financial disclosure obligations. The financial disclosure involved was voluminous and included his personal and corporate information. It is understandable that counsel might struggle to organize the documentation she had and identify the documentation she still needed in these circumstances.

b) While she should have provided an index for the joint document brief, the father was responsible for the organization of his own documents. Most of the documents in the joint document brief were the father's financial records – his personal and corporate bank and credit card statements, tax returns and notices of assessment. These documents were required to properly assess his income.

c) Some extra time was spent by the father preparing the index, but this is not a sufficient basis to order personal costs against opposing counsel. The father will

[12] Ms. Cash produced her phone records corroborating this. The audiotapes included abusive language by the caller to Ms. Cash.

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receive costs for this time spent against the mother.

[123] The court finds that Ms. Cash caused some costs to be incurred or wasted unnecessarily. However, viewed in the full context of the litigation, including the father's disclosure history, the volume of financial documentation, the stress caused by the harassment she experienced, and her reasonable basis for concern about the father, that conduct was reasonably explained. The father did not satisfy the first part of the two-part test to order personal costs against counsel.

7.3 The second part of the two-part test – should the court exercise its discretion and order personal costs against Ms. Cash, given the extreme caution principle?

[124] If the court is wrong and Ms. Cash's conduct fell within the first part of the two-part test, the court would still apply the extreme caution principle and decline to order personal costs against her under the second part of the test, for the reasons set out in Part 7.2.4 above.

[125] Ms. Cash's conduct and performance in this case cannot be the standard by which courts order personal costs against counsel.

[126] Family law is rewarding work for lawyers. It is also complex and challenging. There is a spectrum of how well counsel can manage those challenges. The reality is that time is unintentionally wasted by counsel in many trials. Conducting a trial is hard. Where there is voluminous documentation, as there was here, the chances of time being wasted by counsel increase. Counsel struggling to organize and present this volume of documentation should not, without more, be a basis for awarding costs against them.

[127] It is critical for families in Ontario that lawyers be supported in practising family law. In many jurisdictions in Ontario, there is a shortage of lawyers taking on this work because of its challenges. It is also important that lawyers obtain trial experience. This makes them better lawyers.

[128] Extreme caution must be exercised before ordering personal costs against counsel. It would have a chilling effect on lawyers who are practising family law or who are considering practising family law if this court found that the standard of conduct and performance required to order personal costs against them is this low.

[129] The court finds that a personal costs award is not necessary in these circumstances to serve as a deterrent function to maintain the integrity of justice. See: *MD v. Windsor-Essex Children's Aid Society,* 2010 ONSC 2831, paragraph 54.

[130] The court wants to emphasize that this was not a close call. Ms. Cash did the best she could in difficult circumstances. She persevered and advocated for her client while under considerable personal strain. At times, her presentation was effective. She successfully showed the father was earning or capable of earning much more income than he represented at trial. Her conduct and performance do not warrant ordering personal costs against her.

[131] The father's claim for costs against Ms. Cash will be dismissed.

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Part Eight – Behaviour of the mother and the father

8.1 Legal considerations

[132] The reasonableness of the parties' positions, arguments and conduct are relevant to the issue of costs. An important function of costs is to uphold the integrity of our justice system. Costs are one way of ensuring the resources of the justice system are not unduly drained by clearly unreasonable claims and ill-advised litigation strategy. See: *Weber v. Weber*, 2020 ONSC 6855.

[133] Conduct which unduly complicates or unduly lengthens and increases the cost of a proceeding constitutes unreasonable conduct under subrule 24 (4). See: *Goldstein v. Walsh*, 2019 ONSC 3174 (SCJ); *Hutchinson v. Peever,* 2021 ONSC 4587 (SCJ); *Jackson v. Mayerle*, 2016 ONSC 1556 (SCJ).

[134] A high or full recovery costs award may be justified where a party persists in advancing unreasonable claims or arguments. See: *Lawrence v. Lawrence*, 2017 ONCJ 431; *M.A.B. v. M.G.C.*, 2023 ONSC 3748.

[135] In considering the reasonableness of the parties' conduct, the judge deciding costs should also address their mind to whether they have complied with court orders and the *rules* during the proceeding. *Rules* 1(8)(a) and 1(8.1) provide that if a person fails to obey an order in a case or a related case or with the Rules, the court may deal with the failure by making an order for costs. See: *M.A.B. v. M.G.C., supra*.

8.2 The father's behaviour

[136] The father acted reasonably by making multiple severable offers to settle. The spousal support proposal in his June 14, 2024 offer to settle was as good as or better than the trial result, as was his proposal to settle the travel issues in his August 16, 2024 offer. He made many efforts to resolve this case without a trial.

[137] The mother asked the court to reduce the father's costs because he did not provide full or timely financial disclosure. Justice Clay made this finding against the father in his November 10, 2022 written decision. This was a factor in his ordering costs against him. The court is not revisiting the father's conduct at that time.

[138] However, the father did not start providing comprehensive financial disclosure until the case was placed on the assignment court list in June 2024. The father blamed his prior lawyers for this. He said, "I fired both of them for this". This was part of a pattern in this case where no one took personal responsibility for their actions.

[139] The court found in its reasons for decision that the father made extensive and timely disclosure of his 2022 and 2023 income ahead of the September 2024 trial dates. He also provided disclosure of his personal and corporate bank and credit card records, tax returns and notices of assessment. He provided extensive disclosure explaining the sale of his home and addressing other allegations of hidden income by the mother. The court wrote at paragraph 64 of its reasons for decision:

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> The father and the accountant were able to reasonably address the mother's concerns to the court's satisfaction. Their explanations were usually supported by documentation. It became apparent to the court that the father had provided these explanations and supporting documents several times to the mother prior to the trial.

[140] The father provided late disclosure of his 2024 income. This created extra costs for the mother and additional stress for Ms. Cash.

[141] The father took unreasonable positions about his income at trial. The court did not accept his evidence about the dire nature of his business.[13] He took an extreme position about the mother's income at trial.[14] He took an unreasonable position that he should not pay ongoing child support in closing submissions.

[142] The father was unsuccessful in asking the court to find the mother was no longer entitled to spousal support. However, that position was not unreasonable. Being unsuccessful does not necessarily equate to being unreasonable. See: *Wauthier v. McAuliff*, 2019 ONSC 5302; *W.H.C. v. W.C.M.C.*, 2021 ONCJ 363.

[143] The father's unreasonable behaviour was a factor in decreasing his costs award.

8.3 The mother's behaviour

[144] The mother acted reasonably by making an offer to settle.

[145] The mother took unreasonable positions about her income. The court found she had not reported cash income to the Canada Revenue Agency or to the court.

[146] The mother took unreasonable positions about the father's income at trial. Her allegations about his income escalated during the trial and were unsupported by the evidence. She insisted on including the sale proceeds of the father's home in each year of his income analysis.[15] She wanted to include the rent he paid each year in his income.[16]

[147] The mother made repetitive requests for financial disclosure from the father that had already been provided to her, costing him time and expense.

[148] The mother unreasonably delayed her preparation of the joint document brief. This resulted in the father preparing it and organizing her documents. This caused him additional time and expense.

[149] The mother unreasonably did not follow the court's direction to file a draft order for trial. Her position was a moving target.

[150] The mother's unreasonable behaviour was a factor in increasing the costs award.

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[13] See paragraph 78 of the decision.
[14] See paragraph 109 of the decision.
[15] See paragraph 67 of the decision.
[16] See paragraph 68 of the decision.

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Part Nine – Should the father receive costs for the parenting issues?

[151] The father is seeking costs related to the parenting issues in this case.

[152] On August 6, 2024, the parties executed a consent for final orders for incidents of decision-making responsibility and holiday parenting time. The issue of costs was silent. Justice Curtis endorsed the consent. No one asked her to reserve costs for these issues.

[153] On September 11, 2024, the parties presented a consent for final orders for decision-making responsibility and parenting time prior to the start of the trial. This court endorsed the consent. Again, the issue of costs was silent. No one asked to reserve costs for these issues.

[154] The court will not order costs for these issues at this stage. If the father wanted to reserve the issue of costs, he should have asked Justice Curtis and this court to do so. The mother reasonably assumed that these consents finalized the parenting issues. It is unknown if she would have consented to this relief if she knew she would later be facing massive costs for these issues. For the father to raise the issue at this stage is unjust.

[155] This court frequently receives settlements that identify that the issue of costs remains outstanding. This is proper practice. It puts everyone on notice about the parameters of the settlement. These are informed settlements.

[156] The court emphasizes that it would not have ordered costs for the parenting issues even if the parties had reserved the issue of costs in their consents.

[157] Courts have often held that when parties reach a settlement, the court should be slow to award costs in favour of one of the parties unless there are compelling reasons to do so. Courts want to encourage parties to settle their cases to avoid costs. It is also sometimes very difficult to determine who is the "winner" and the "loser" in a negotiated settlement. See *Witherspoon v. Witherspoon,* 2015 ONSC 6378; *Davis v. Davis,* [2004] O.J. No. 2256 (S.C.J.); *Talbot v. Talbot,* 2016 ONSC 1351.

[158] In *Frape v. Mastrokalos*, 2017 ONCJ 915, Justice Kurz, at paragraphs 50 to 56, summarized previous authorities, advancing the theme that there ought to be a compelling reason to make an award of costs in a situation where a matter settles. He relied on several decisions, and in the end, adopted the reasoning of Starr J. in *Shute v. Shute,* 2017 ONCJ 533, where she stated, at para. 33:

> Where a matter settles, the success and/or reasonableness of the conduct of the parties is a consideration but not the most important one. In such cases, the emphasis should be on discouraging inappropriate conduct and promoting settlement. Thus, instead of identifying a reason not to award costs, the court must identify a compelling reason to make an award.

[159] In *Goetschel v. Goetschel*, 2022 ONSC 5860 the court wrote:[17]

a) The determinations of success, reasonableness and proportionality presuppose the existence of objective benchmarks against which they can be measured. Those objective benchmarks are present when a court makes findings of fact and law and

[17] See paragraphs 13 to 16 of this decision.

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issues an order. It is for this reason that costs are generally regarded as "incident to a *determination* of the rights of the parties and ought not to be made themselves the subject matter of the litigation."

b) These objective benchmarks are absent when parties consent. There may be a myriad of reasons why parties may decide to compromise or settle their claims without necessarily conceding that positions previously held were wrong.

c) It therefore follows that, where parties compromise their claims and settle litigation, the award of costs is very much the exception rather than the rule. Another way of expressing this principle is that "when parties reach a settlement as between themselves, the court should be very slow to make an award of costs against one of them".

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[160] This is not a compelling case to order costs of the settled parenting issues. The court cannot assess whether anyone acted unreasonably on the parenting issues that were resolved. The parties actively negotiated and reached a comprehensive consent in two pieces, resulting in final orders by Justice Curtis and this court. They avoided the cost and uncertainty of a trial of these issues. It is very difficult for the trial court to determine the winner and the loser without a full understanding of the context in which the settlement was reached.

[161] The court will not order costs on the parenting issues, except for the travel issue that was still a live issue at trial.

Part Ten – Should the father receive costs for work done prior to the trial step related to the financial issues?

[162] The father's present counsel was retained shortly before the trial. She presented her bill of costs that only related to the trial step. The time claimed for the trial step will be considered below.

[163] The father also sought costs for time spent by his previous four counsel in the case. He presented the total amounts they charged him. They did not provide itemized bills of costs.

10.1 Legal considerations

[164] Subrule 24 (2) provides that the failure of the court to order costs in relation to a step in a case does not prevent it from awarding costs in relation to the step at a later stage in the case.

[165] However, courts continue to be cautious about awarding costs at the trial stage where costs were not awarded at earlier steps in a case. See: *Baezner v. Brunnenmeir*, 2018 ONCJ 956; *Nabwangu v. Williams*, 2019 ONCJ 171.

[166] In *Laidman v. Pasalic and Laidman*, 2020 ONSC 7068, at paragraph 14, Justice Alex Pazaratz set out that the presumption remains that costs should be determined at each stage, and there are good reasons for this. Parties should have an ongoing awareness of the cost consequences of litigation decisions they make. Reserving costs may impede final resolution by needlessly inflating and complicating the list of future issues still to be dealt with. A judge who has just completed a step in a case will usually be in the best position to evaluate all of the

relevant Rule 18 and 24 considerations. Reserving costs to a future event – often to a different judge – can result in later confusion and controversy about what really happened at the earlier step.

[167] In *Berge v. Soerensen*, 2020 ONCJ 265 Justice Roselyn Zisman, at paragraph 40, sets out the following circumstances where costs of a prior step should be awarded:

a) Costs have been reserved to the trial judge.

b) When, considering subsequent events, the trial judge is better situated to determine the costs of the prior step than the judge presiding over the step or

c) In exceptional circumstances

[168] In *Oretsky v. Viktyuk*, 2024 ONCJ 163, Justice Wiri Kapurura did not order costs for prior steps in a case as counsel did not adduce the necessary evidence to do this. At paragraph 44, he noted the following deficits in the costs submissions:

a) The submissions did not specify the prior steps that the father was seeking costs on.

b) There was no summary of each prior step for which costs were being sought.

c) There was no mention of any specific prior events where costs were addressed, sought, or reserved.

d) It was not clear why the father should be awarded costs for those prior steps.

e) The submissions mainly focused on the mother's unreasonableness. However, this consideration should have been tied to a specific prior event for which costs were being sought.

f) The submissions did not address if any special circumstances would support an award of costs for the prior steps.

[169] Costs accrued from activity not specifically related to a prior step in a case can be ordered at the end of a case. Activity not requiring judicial intervention is often better dealt with at the end of the case and not by the motions judge. See: *Houston v. Houston*, 2012 ONSC 233 (CanLII); *Walts v. Walts*, 2014 ONSC 98; *F.S. v. M.B.T.*, 2023 ONCJ 144. This can include time spent preparing and reviewing pleadings, preparing and reviewing financial statements, obtaining and reviewing financial disclosure, meetings with clients, meetings and discussions with professionals and discussions with opposing counsel. See: *Jansen v. DiCecco*, 2025 ONCJ 256.

10.2 Analysis

[170] There were multiple court appearances in this case prior to trial, both in Brampton and in Toronto. The only appearance where costs were reserved was the motion to strike the father's pleadings before Justice Curtis on August 6, 2024. The analysis of those costs will be set out below as they were argued separately at the costs hearing.

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[171] Costs will not be ordered for any prior step in the case attributable to the support issues for the following reasons:

a) Costs were not reserved for those steps. The father could have asked the court to do so.

b) The case management judges were in a better position to assess costs for those steps than the trial judge.

c) No exceptional reasons are present to order costs for those steps now.

d) The father had several lawyers before his present counsel. He provided their total accounts. Like the *Oretsky* case above, none of the accounts were itemized. There was no summary of each prior step for which costs were sought. The court has no way to assess what time was attributable to prior steps in the case and what time was not attributable to prior steps.

[172] The court also will not order costs for time spent on the support issues, not attributable to prior steps in the case prior to June 2024 for the following reasons:

a) The court has no way to assess what portions of the prior lawyer's accounts were attributable to parenting issues and what portions were attributable to support issues.

b) Justice Clay identified in his temporary decision of November 10, 2022 that the father had not provided transparent or timely financial disclosure. The evidence indicates this continued to be a problem until about June 2024, when the case was first called for trial. In his cross-examination for this hearing, the father blamed two of his prior counsel for not delivering his financial disclosure to the mother. The court is not willing to order any costs to the father prior to June 2024 when he was non-compliant with his financial disclosure obligations.

c) The court accepts the mother's evidence that she incurred additional costs because the father was frequently changing counsel. He did this five times in the litigation.

Part Eleven – Costs for the motion to strike the father's application

[173] The mother brought a motion to strike the father's application, returnable on August 6, 2024, because he was $4,662 in arrears of support and she said he was in default of his financial disclosure obligations.

[174] Justice Curtis dismissed this motion and reserved costs.

[175] The mother and the father agreed that this court should determine these costs at this costs hearing.

[176] The father was the successful party on the motion and is entitled to costs. The presumption that he is entitled to the costs of this step under subrule 24 (3) was not rebutted.

[177] The court agrees with the father that the mother acted unreasonably by including

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settlement discussions in her materials for the motion. Justice Curtis made an order that the affidavit be sealed.

[178] The father seeks about $2,400 for his costs for this step. This will not be ordered because he was in default of his child support obligations. The motion prompted him to bring his support payments into good standing. However, the mother should have withdrawn her motion once he did that. The father will be awarded costs of $1,200 for this step in the case.

Part Twelve – Other factors affecting the amount of costs

[179] The court must consider the importance, difficulty and complexity of the case. This case was important to the parties. It was made more difficult and complex due to the volume of documentation and the strain and conflict between the parties and counsel.

[180] The court reviewed the father's bill of costs. As set out above, the court will not award costs for the work done by his four previous lawyers.

[181] The father's present lawyer presented a full recovery bill of costs of close to $160,000. The court reviewed the bill of costs. The court recognizes that additional time had to be spent on the case to organize the voluminous joint document brief. The father should be compensated for this. However, like many of the positions taken by the parties throughout the trial stage and during this costs proceeding, the amount claimed was excessive, not reasonable and not proportionate, given the level of difficulty and complexity of the issues before the court.

[182] The court should take into consideration the ability of a party to pay costs. See: *MacDonald v. Magel* (2003) 67 O.R. (3d) 181 (Ont. C.A.). Further, in *Moreno v. Tuey*, 2019 ONCJ 418, the court wrote that when, "fixing costs the court cannot ignore the best interests of the child and thus cannot ignore the impact of a costs order against a custodial parent that would seriously affect the interest of the child".

[183] Here, the mother is in a shared parenting arrangement. She is also of very modest means. She said she still owes $15,000 to the law firm she retained prior to retaining Ms. Cash.

[184] However, ability to pay will be less of a mitigating factor when the impecunious party has acted unreasonably, or where their claim was illogical or without merit. See: *Gobin v. Gobin*, 2009 ONCJ 278; *D.D. and F.D. v. H.G.*, 2020 ONSC 1919.

[185] Those who can least afford to litigate should be most motivated to seriously pursue settlement and avoid unnecessary proceedings. See: *Mohr v. Sweeney*, 2016 ONSC 3338; *Balsmeier v Balsmeier*, 2016 ONSC 3485.

[186] In determining the appropriate quantum, the court should consider the amount that the unsuccessful party could reasonably have expected to pay in the event of lack of success in the litigation. See: *Arthur v. Arthur*, 2019 ONSC 938. The mother should reasonably have expected to pay the costs that will be awarded if she was unsuccessful.

Part Thirteen – Summary of the father's costs claim against the mother

[187] Overall, the father was more successful than the mother at the trial stage. This was

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mainly due to the extreme, changing and escalating positions taken by the mother about his income. He was fully successful on the travel issue. This issue did not take much time.

[188] However, there was divided success at trial. The court imputed significant income to the father. It made a finding that he was deliberately under-employed. He took an extreme position about the mother's income. The court did not terminate spousal support as he requested. He was ordered to pay significant child support to the mother, as set out in paragraph 28 above. In closing submissions, he had submitted that no child support should be paid by either party.

[189] Both parties acted unreasonably. The court is not equating their conduct. The mother acted more unreasonably than the father.

[190] The father made the more reasonable offers to settle. The mother should have accepted the father's offer to settle spousal support, dated June 14, 2024, once she received his financial disclosure. She should have accepted the travel terms in his August 16, 2024 offer.

[191] The fees claimed by the father were not reasonable and proportionate. Costs were not ordered for the parenting issues, for prior steps in the case, and for costs not attributable to prior steps in the case.

[192] The court considered the mother's ability to pay costs, her childcare obligations, and what her reasonable expectations would have been if she was unsuccessful.

[193] The court will order the mother to pay the father's costs of the trial stage fixed in the amount of $25,000, inclusive of fees, disbursement and HST. This includes the costs for the travel issue.

[194] The court will also order the mother to pay the father $1,200 arising out of her failed motion to strike the father's application.

[195] The mother will be permitted to pay these costs at $500 each month, starting on August 1, 2026.

Part Fourteen – Request for enforcement by the Director of the Family Responsibility Office

[196] The father asks that the entire amount of costs be payable as support and enforced as an incident of support by the Director pursuant to clause 1(1) (g) of the *FRSAEA.* This clause reads as follows:

> 1 (1)"support order" means a provision in an order made in or outside Ontario and enforceable in Ontario for the payment of money as support or maintenance, and includes a provision for,
>
> …….(g) interest or the payment of legal fees or other expenses arising in relation to support or maintenance,

[197] The court's authority to make orders directing that legal fees be included as a support order and enforced by the Director is limited to costs arising out of support decisions. See: *Clark v. Clark*, 2014 ONCA 175.

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[198] Where the decision involves a mix of support and other issues, the court has the discretion to determine what portion of the costs should be allocated to the support issue. See: *Sordi v. Sordi*, 2011 ONCA 665.

[199] One advantage of an order that costs are enforceable by the Director as support is that the order is not discharged by a bankruptcy by virtue of clause 178 (1) (c) of the *Bankruptcy Act*. See: *R.H. v. S.C.*, 2025 ONCJ 309, per: Justice Sheilagh O'Connell.

[200] The father relied on the case of *S (C) v. S (M*), 2007 ONSC 1267 in support of his request to have the Director enforce this costs order as support. However, this case does not address whether the Director can enforce a costs award as support for a support payor.[18]

[201] It is outside the scope of clause 1 (1) (g) of the *FRSAEA* to characterize a costs award owing to a support payor as support. It is an enforcement procedure exclusive to support recipients. See: *MB v. SSB*, 2019 ONSC 3960, where Justice Heather McGee wrote at paragraphs 51 to 54:

> [51] The purpose of section 1(1) (g) is to support the efforts of dependant spouses, or parents who seek child support by creating a mechanism that recovers some or all of the costs necessary to obtain an Order. The court has discretion to allocate what portion of the costs are attributable to support, particularly when there are multiple issues being litigated.
>
> [52] In *Clark v. Clark*, Justice Cronk of the Court of Appeal wrote that it was open to the court to designate a costs Order to be enforceable as "support" in accordance with section 1(1) (g) of the *FRSAEA* in any proceeding in which child and spousal support were central issues, provided that a claim for support had been made. In *Clark*, the trial judge had ordered that costs be enforced as spousal support to prevent the costs from being "anything more than illusory." But because the costs recipient had never claimed spousal support, the Court of Appeal remedied the final Order to provide that costs were to be enforced as child support, even though it was a claim that the trial judge dismissed.
>
> [53] Does the ratio in *Clark* survive when applied to a support payor? In 2014 Justice Chappel considered whether costs payable to a support payor could be enforced as support in *Durso v. Mascherin,* 2014 ONSC 678:
>
> > Section 1(1) of the *Act* provides that a "support order" includes "interest or the payment of legal fees or other expenses arising in relation to support or maintenance…" The Respondent argues that an order for costs in favour of a support payor falls within this definition. I do not agree. In reaching this decision, I have considered the purpose of the *Act*, which is to address issues relating to the enforcement of orders for spousal and child support in favour of support recipients. The enforcement of costs orders in favour of payor spouses does not fall within the scope of this purpose. I have also considered the first part of the definition of "support order," which refers to a provision in an order "for the payment of money as support." The items listed in subparagraphs (a) to (f) of the definition of "support order" are all examples of provisions relating to support for recipients. A review of the definition in its entirety supports a conclusion that the reference to legal fees and other expenses referred to in subparagraph (g) was intended to relate to legal fees and expenses associated with obtaining an order for the payment of support.
>
> [54] In *Fielding v. Fielding* Justice Monahan came to the same conclusion. He first reviewed the purposes of the *FRSAEA* and then the interpretation of "support Order" per section 1(1) (g). At

[18] This case addressed what portion of costs for the support recipient was attributable to the support issues.

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paragraph 90 he writes: (my emphasis added)

> I am unclear as to whether it is open to me to designate a costs order in favour of Craig as spousal support for purposes of the *FRSAEA*. Only where legal fees "aris[e] in relation to support or maintenance" is it open to the court to designate such fees as support. But because there is no support order in favour of Craig, the legal fees payable by Victoria to Craig do not relate to, or flow from, any underlying order for support or maintenance**.** *Since Craig is a payor and not a recipient of support, it is difficult to see how a costs order in his favour can be characterized as relating or ancillary to support or maintenance.* This interpretation of "support order" seems consistent with the overall purpose of the *FRSAEA*, which is to provide a scheme for the enforcement of support obligations of payors, as well as the support entitlements of recipients. Designating the costs order in favour of Craig as "support" could mean that the Director of FRO would be required to reduce the child or spousal support otherwise payable to Victoria, which seems at odds with this overall statutory purpose.

[202] When this court expressed its concerns about its authority to order the Director to enforce costs payable to a support payor, the father's counsel submitted that the father is also a support recipient because child support is set off under section 9 of the guidelines due to the parties' shared parenting arrangement.[19]

[203] The court disagrees. The court order specifies the amount the father, as the support payor, must pay to the mother as the support recipient. The court conducted a support analysis under section 9 of the guidelines. It took the first step of determining the amounts set out in the applicable tables for the mother and the father. No evidence was provided regarding the second step in the analysis being the increased costs of a shared parenting arrangement. However, the court adjusted child support upwards under the third step of the section 9 analysis because the father's means, needs and other circumstances were much better than the mother's. The father was not and is not the support recipient.

[204] The court finds it has no authority to order the Director to enforce costs as support for the payor.

Part Fifteen – Costs of the costs proceeding

15.1 Introduction

[205] It is unusual for the court to address costs of costs submissions. See: *Arthur v. Arthur*, 2019 ONSC 938, where the court wrote at paragraph 41:

> A request for costs relating to the preparation and advancement of a costs argument should be made

[19] Section 9 of the guidelines reads as follows:
Shared parenting time

9. Where each parent or spouse exercises parenting time with respect to a child for not less than 40 per cent of the time over the course of a year, the amount of the order for the support of a child must be determined by taking into account,

(a) the amounts set out in the applicable tables for each of the parents or spouses;

(b) the increased costs of shared parenting time arrangements; and

(c) the condition, means, needs and other circumstances of each parent or spouse and of any child for whom support is sought.

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> as part of the general submissions respecting costs of the hearing in question, unless there are exceptional circumstances which satisfy the court that procedural and substantive justice cannot be achieved unless a separate costs hearing is held (*C. (K.D.); Johanns*; *Osmar v. Osmar*, 2000 CanLII 20380 (ON SC), [2000] O.J. No. 2504 (S.C.J.)).

[206] However, the court has the authority to entertain submissions about costs of costs submissions. See: *Berman v. Berman*, 2017 ONSC 4966.

[207] All counsel agreed that this was an exceptional case where the court should entertain submissions and determine the costs of the costs proceeding. This was because of the serious allegations about the conduct of Ms. Cash and the father – conduct that was not the subject of the trial. This evidence had to be tested for the court to make findings of fact so it could justly determine the costs of the trial stage.

[208] Counsel agreed during the case management process for the costs hearing that the court would determine the costs of the costs proceeding in the same decision as it determined the costs for the trial stage. The father, the mother and Ms. Cash made costs submissions and attached their bills of costs and offers to settle. They were sealed and the court did not look at them until it had determined the costs of the trial stage.

15.2 Positions

[209] The father asked for costs of the costs proceeding in the amount of $130,000. He claimed his full costs were over $141,000. He asked that Ms. Cash pay $104,000, and that the mother pay $26,000. It was another example of an extreme position.

[210] Ms. Cash claimed costs of the costs proceeding against the father. She provided a costs outline stating her full recovery fees and disbursements were $73,740. She submitted that her partial recovery fees and disbursements were $52,845.

[211] The mother also claimed costs of the costs proceeding of $18,918 against the father.

15.3 Did anyone make an offer to settle that attracted the costs consequences set out in subrule 24 (12)?

[212] The answer is no. Ms. Cash did not make an offer to settle. She could and should have done this. The mother offered to settle the costs issue by paying the father $7,000 for the costs of the trial stage and the costs proceeding. The father offered to settle if the mother paid him $85,000 for the costs of both the trial stage and costs proceeding. He proposed that Ms. Cash pay him $130,000 for the costs of the trial stage and the costs proceeding.

15.4 Who was successful in the costs proceeding?

[213] Ms. Cash was the successful party in the costs proceeding. The father's claim that she personally pay costs to him was dismissed. She is presumptively entitled, under subrule 24 (3), to her costs of the costs proceeding from him. That presumption was not rebutted.

15.5 Costs between the mother and the father

[214] There was divided success between the mother and the father in the costs proceeding.

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The father initially sought costs of $150,000 against the mother and Ms. Cash jointly for the trial stage. He revised that request to $75,000 against each of them prior to the costs hearing. The mother sought an order that she pay no costs for the trial stage. Total costs of $26,200 were awarded against her - $25,000 for the trial stage and $1,200 for the motion to strike the father's application. Once again, the parties took extreme positions that were not supported by the evidence or results.

[215] Based on their positions, the mother was arguably more successful than the father in the costs proceeding.

[216] The court recognizes that it was Ms. Cash who took the lead in asserting that the father should not receive costs because of his intimidating and harassing conduct. This is reflected in the mother's much lower costs claim against the father. However, the mother made a choice to support that claim and was unsuccessful. This increased the costs of the costs proceeding for the father.

[217] The court finds that no costs should be ordered between the mother and the father for the costs proceeding, with one exception. The mother brought a motion for production of 2022 police records. This was dismissed on April 4, 2025. The father made an offer to settle dated April 1, 2025 to have the motion dismissed without costs. This offer attracted the costs consequences set out in subrule 24 (12). This motion did not take much time. It was heard at the same time as the father's unopposed motion for current police records. The court will order that the mother pay the father's costs of $800 for that motion.

15.6 Analysis of costs between Ms. Cash and the father

[218] It is hard for the father to claim that Ms. Cash's costs are unreasonable when he claimed $56,000 more than Ms. Cash for the costs of the costs hearing (and $77,000 more based on her partial recovery claim).

[219] The father claimed that Ms. Cash acted in bad faith. He said she did not initially produce all her unredacted phone records for his expert. This does not come close to being bad faith as described by the case law under subrule 24 (10).[20] It was another example of an extreme assertion.

[220] This matter was important to the parties. Ms. Cash was facing huge costs and was defending her professional reputation. The father had to respond to allegations that he was harassing and intimidating the mother and Ms. Cash, while facing criminal charges for these alleged actions. The mother was also facing significant costs.

[221] There was some level of difficulty and complexity to the costs proceeding. The father incurred additional expense to obtain phone records. Those phone records were material to the

[20] Subrule 24 (10) requires a fairly high threshold of egregious behaviour, and as such a finding of bad faith is rarely made. See: *Cozzi v. Smith*, 2015 ONSC 3626; *Scipione v. Del Sordo*, 2015 CarswellOnt 14971 (Ont. SCJ). There is a difference between bad faith and unreasonable behaviour. The essence of bad faith is when a person suggests their actions are aimed for one purpose when they are aimed for another purpose. It is done knowingly and intentionally. See: *S.(C.) v. S. (M.)* (2007), 38 R.F.L. (6th) 315 (Ont. SCJ). Bad faith is not synonymous with bad judgment or negligence; rather, it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity. Bad faith involves intentional duplicity, obstruction or obfuscation. See: *Scipione, supra*.

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court concluding that Ms. Cash and the mother did not meet the onus of establishing that the father was intimidating and harassing Ms. Cash.

[222] While Ms. Cash was successful in having the costs claim against her dismissed, much of the time spent, in and out of court for the costs proceeding, was on whether the father had harassed and intimidated Ms. Cash. The father was successful on this important factual issue. This partial success significantly reduces the amount of costs that would otherwise have been payable to Ms. Cash, even though she was successful in resisting the personal costs claim.

[223] Ms. Cash also increased the costs because she did not provide a complete copy of her phone records to the father until August 2025, despite requests from him. The father deposed her expert a second day because of this.

[224] The father did not establish that Ms. Cash had him arrested at court as a tactic because she was not prepared for trial. He also did not establish that Ms. Cash altered the audiotapes she presented.

[225] Based on his own counsel's fees, the father should have reasonably expected to pay the costs that will be ordered if he was unsuccessful. The court also finds that the father can afford to pay these costs.

[226] The father's choice to claim costs personally against Ms. Cash was misguided. It was another example of the parties taking things too far in the litigation.

[227] The court finds that the amounts claimed by the father and Ms. Cash for the costs proceeding were not reasonable and proportionate. The court emphasized to the parties this was supposed to be a very focused hearing. The court allotted only one court day for it. The court will award costs that it considers reasonable and proportionate in these circumstances.

[228] The father will be required to pay Ms. Cash for her costs of the costs proceeding in the amount of $15,000, inclusive of fees, disbursements and HST.

Part Sixteen – Conclusion

[229] A final order shall go as follows:

a) The mother shall pay the father costs of $25,000 arising from the trial of the support and travel issues, inclusive of fees, disbursements and HST.

b) The mother shall pay the father costs of $1,200 arising from her motion to strike his application. This amount is inclusive of fees, disbursements and HST.

c) The father's claim for costs against Ms. Cash is dismissed.

d) The father shall pay Ms. Cash her costs of this costs proceeding fixed at $15,000, inclusive of fees, disbursements and HST. This is due and payable in 60 days.

e) The mother shall pay the father's costs of $800, inclusive of fees, disbursements and HST arising from her motion to obtain police records in the costs hearing. Otherwise,

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there shall be no order of costs between the mother and the father for the costs hearing.

f) The mother may pay the costs awarded to the father in this order, being a total of $27,000, at $500 each month, starting on August 1, 2026.

g) The father's claim to have the costs enforced by the Director as support is dismissed.

Released: July 6, 2026

Justice Stanley B. Sherr

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