

**CITATION:** *Ottawa-Carleton Standard Condominium Corporation No. 671 v. Friend*, 2020  
 ONSC 6208  
**COURT FILE NO.:** CV-20-83673  
**DATE:** 2020/11/19

**ONTARIO  
 SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
Ottawa-Carleton Standard Condominium Corporation No. 671	)	C. Wood, for the Applicant
	)	
Applicant	)	
	)	
<b>– and –</b>	)	
	)	
Anthony Marcus Friend	)	
	)	
Respondent	)	Self-represented
	)	
	)	
	)	
	)	
	)	
	)	<b>HEARD:</b> April 27, 2020, with subsequent written submissions regarding costs

**SUPPLEMENTARY REASONS FOR JUDGMENT AS TO COSTS**

**KANE J.**

**Applicant’s Request for Cost**

[1] The Ottawa-Carleton Standard Condominium Corporation No. 671 (the “Condominium”) as part of the relief it requested in the application sought:

- a. costs of this application against Mr. Friend on a scale of full indemnity in the amount of \$12,270; and
- b. an order that such cost award be added to the common element expenses of Mr. Friend’s units in the Condominium and be recoverable as such against his units, including by way of a Condominium Lien against Mr. Friend’s condominium units.

- [2] The Condominium seeks costs on a full indemnity scale for the following reasons:
- a. Mr. Friend was aware of his obligations and duties under the Condominium Act, 1998 (the “Act”), the Condominium’s governing documents (referred to individually as the “Declaration”, the By-Laws” and the “Rules”) and previous Court orders;
  - b. S. 134(5) of the Act confirms that a condominium is entitled to all reasonable legal costs incurred in seeking compliance;
  - c. All steps taken by the Condominium that were required to seek compliance by Mr. Friend with his obligations and other innocent owners should not be put to such expense, as stated in Carleton Condominium No. 36 v. Burdet, 2015 ONSC 1361, para 44;
  - d. Article 8.01 of the Condominium’s Declaration confirms that the respondent is contractually bound to fully indemnify the Condominium for costs incurred due to his breaches of the Condominium’s governing documents; and
  - e. The Respondent’s conduct unnecessarily complicated and prolonged this matter, which is a relevant consideration in addition to its entitlement to all reasonable costs under s. 134 (5) of the Act.

**Mr. Friend’s Position Regarding Costs**

[3] Mr. Friend opposes an award of costs on this application to the Condominium. He does not seek costs against the Condominium.

**Relief Sought and Granted on the Application**

- [4] The Condominium in its April 2020 application sought:
- a. An order that Mr. Friend cease and desist conduct:
    - i. which contravenes the Act, the Condominium’s Declaration, By-laws, Rules;
    - ii. which violates previous Court orders against him regarding the Condominium;
    - iii. which risks the health and safety of other residents of the Condominium;
  - b. A permanent injunction against Mr. Friend containing the terms of the June 28, 2019, interlocutory injunction against him in Court File No. 18-78035;
  - c. An order granting leave to the Condominium to submit an affidavit to the court seeking the forced sale of Mr. Friend’s Condominium units should he fail in the future to comply with the above orders; and

- d. Costs of the application on a full indemnity scale to be payable by Mr. Friend and that such costs be added to and recoverable as common element expenses payable on his units and by way of a lien of such units in the amount of such cost award.

[5] The court in its June 4, 2020 decision (the “Decision”):

- a. ordered Mr. Friend to cease and desist conduct which contravenes the Act and/or the Condominium’s Declaration, By-laws and Rules, including:
  - i. conduct which risked the health and safety of other residents; and
  - ii. conduct which violated prior court orders;
- b. granted a permanent injunction against Mr. Friend preventing him from communicating with Condominium employees, contractors, service providers and members of its Board of Directors and Officers or family members of such individuals, subject to specific, limited and stated exceptions;
- c. indicated that costs normally would be awarded to the Condominium given its level of success on the application but adjourned that issue in order that Mr. Friend would have the opportunity to reply to the Condominium’s draft Bill of Costs and docket entries presented during argument. The court accordingly directed the Condominium to provide supplementary written submissions by June 14, 2020 as to:
  - i. the appropriate level of costs to be awarded;
  - ii. whether any cost award against Mr. Friend should be added to the common element expenses of his Condominium units;
  - iii. and ordered that Mr. Friend was entitled to deliver written cost submissions, not exceeding four pages in length, by June 30, 2020.

[6] Mr. Friend sought and received an extension beyond June 30, 2020 to file his cost submissions and waiver of the four-page limit of his submissions.

[7] Mr. Friend filed some 120 pages of written submissions, dated June 29, July 3, 18, 19 and 27, 2020, which the court has reviewed.

### Analysis

[8] In his submissions, Mr. Friend does not address:

- a. the cost entitlement provisions in the Act and the Condominium’s Declaration in this case;
- b. the legal issues as to costs on this application, such as the appropriate scale of costs, the importance of the issues, the hourly rates charged by counsel, the disbursements charged,

the level of success, and whether either party unnecessarily lengthened the proceeding or proportionality.

[9] Mr. Friend's cost submissions instead cite a host of matters which do not relate to the cost issues, such as:

- a. events concerning his unsuccessful attempts to be elected a Director of the Condominium in 2008, 2009 and 2012;
- b. his dispute as to who chaired the Condominium's 2011 annual general meeting;
- c. his challenge as to the minutes of the Condominium's 2010 to 2012 annual general meetings;
- d. his reasons for requesting a special meeting of condominium owners in June 2012;
- e. his dispute of liability to the Condominium for some \$3,000 in 2012 for the installation costs of an energy meter and subsequent energy costs billed for his units, notwithstanding that such issues were determined against him by court order dated October 9, 2013;
- f. his reasons for disputing a \$487 invoice in February 2014 from the Condominium;
- g. events in the Condominium building in July 2020, subsequent to the April 27, 2020 argument of and the June 4, 2020 decision of this application;
- h. his arguments as to the errors in and the invalidity of the June 28, 2019 Interlocutory Injunction against him; and
- i. his arguments as to the errors in the June 4, 2020 Decision.

[10] Mr. Friend's above submissions are not relevant to the cost issues of this application.

**Nature of This Cost Determination**

[11] Section 134 of the Act relied upon by the Condominium, contains the following relevant provisions:

*Compliance order*

**134** (1) Subject to subsection (2), an owner, an occupier of a proposed unit, a corporation, a declarant, a lessor of a leasehold condominium corporation or a mortgagee of a unit may make an application to the Superior Court of Justice for an order enforcing compliance with any provision of this Act, the declaration, the by-laws, the rules or an agreement between two or more corporations for the mutual use, provision or maintenance or the cost-sharing of facilities or services of any of the parties to the agreement.

*Content of Order*

- (3) On an application, the court may, subject to subsection (4),
- (a) grant the order applied for;
  - (b) require the persons named in the order to pay,
    - (i) the damages incurred by the applicant as a result of the acts of non-compliance, and
    - (ii) the costs incurred by the applicant in obtaining the order; or
  - (c) grant such other relief as is fair and equitable in the circumstances.

*Addition to common expenses*

(5) If a corporation obtains an award of damages or costs in an order made against an owner or occupier of a unit, the damages or costs, together with any additional actual costs to the corporation in obtaining the order, shall be added to the common expenses for the unit and the corporation may specify a time for payment by the owner of the unit.

[12] The Condominium's application in this case was brought under S. 134(1).

[13] The June 4, 2020 Decision was made pursuant to sub-sections 134(3)(a) and (c).

[14] The Condominium's application request for an order pursuant to S. 134 (3)(b)(ii), fixing or directing Mr. Friend to pay the costs incurred by the Condominium in obtaining the orders granted, was as stated, adjourned to permit supplementary written submissions by the Condominium and written submissions by Mr. Friend regarding the issues as to the costs.

[15] The Condominium further relies upon Article 8.01 of the Declaration which states:

Each owner shall indemnify and save harmless the Corporation from and against any ... costs ..... whatsoever which the Corporation may ... incur resulting from or caused by an act or omission of such owner ..... (including .... any costs incurred by the Corporation in preparation for or pursuance of Court proceedings relating to any such act or omission) ... .

[16] The Court in *Metropolitan Toronto Condominium Corp. No. 1385 v. Skyline Executive Properties Inc.*, 2005 CarswellOnt 1576 (Ont. C.A.):

- a. indicates the basis upon which costs should be determined;
- b. distinguishes between such an award of costs and any additional actual costs incurred and owed by the Condominium to its legal counsel beyond the costs awarded which may also be added to the common expenses of an owner's units pursuant to S. 134(5); and

c. address the recovery of costs by way of a lien against the respondent's units.

[17] The Court in *Metropolitan Toronto Condominium Corp. No. 1385* stated:

**8** I would allow the appeal. My interpretation of s. 134(5) differs from that of the motion judge in two respects. First, I think s. 134(5) speaks separately to "an award of costs" on the one hand, and "additional actual costs" on the other hand. "An award of costs" refers to the costs that the court orders one litigant to pay to another litigant. "Additional actual costs" can encompass those legal costs owing as between the client and its own lawyer beyond the costs that the court had ordered paid by an opposing party. To the extent that the legal bills owed by MTCC to its own lawyers exceeded the costs awarded against Skyline, MTCC could properly add those amounts to the common expenses of the Skyline units as long as MTCC could demonstrate that those additional legal costs were incurred in obtaining the compliance order.

**38** Section 134(5) went some way towards addressing the concerns expressed in these submissions. The section declares that the corporation may recover both "an award of costs" and "any additional actual costs". Clearly, the language of s. 134(5) contemplates recovery by the condominium corporation of costs beyond those that are addressed in a court order so long as those costs were actually incurred by the condominium corporation and were incurred in obtaining the compliance order.

**39** Not only does s. 134(5) give a condominium corporation a broad right of recovery for costs incurred in obtaining compliance orders, it also provides an effective enforcement mechanism for the collection of those costs. The section declares that the "award of costs" and the "additional actual costs" may both be added to the common expenses for the unit. If the amounts are not paid, the condominium corporation may register a lien against the unit. The lien is enforceable in the same way as a mortgage (s. 85(2), s. 86(6)). Section 86 of the Act gives a s. 85(1) lien priority over almost all other encumbrances including mortgages. Consequently, if the costs described in s. 134(5) are not paid, the condominium corporation can recover that amount through the sale of the unit.

**42** Section 134(5) distinguishes between "an award of costs" and "additional actual costs". The latter is to be added to the former to arrive at the total amount that shall be added to the common expenses owed by the offending unit owner. There is no difficulty with the ordinary meaning of "an award of costs". The phrase refers to costs orders made by a court or made after a court ordered assessment. ....

**46** A reading of s. 134(5) that allows MTCC to claim its actual legal costs in obtaining the compliance order as part of the common expenses of the Skyline units is consistent with the remedial purpose of s. 134(5). That reading effectively shifts the financial burden associated with obtaining a compliance order from the

"innocent" condominium corporation and unit owners to the "guilty" unit owner who necessitated the obtaining of the compliance order.

49 With respect, this analysis misses the distinction made in *Boucher*, supra, between costs as fixed or assessed between parties to litigation and a litigant's actual legal costs. In assessing MTCC's costs of the application or fixing its costs of the appeal, the court looked to what was fair and reasonable as between the parties and not to the legal costs actually incurred by MTCC. In determining what amounts MTCC could add to the common expenses of the Skyline units, the Legislature recognized the difference between the two measures of costs described in *Boucher*, supra. The Legislature declared that both assessed costs and actual costs could be added to the common expenses. By providing that costs beyond assessed costs could be added to common expenses, the Legislature did not interfere with the court's jurisdiction to assess costs as between the litigants.

50 It is true that by virtue of s. 134(5), MTCC could resort to the s. 85 lien enforcement mechanism to collect both the costs awarded and its additional actual legal costs. I do not accept however, that the availability of this enforcement mechanism in any way derogates from the court's jurisdiction to determine the appropriate award of costs as between the parties. The costs awarded to MTCC are what costs are in any case, the measure of the costs properly payable by one litigant to the other, and are enforceable by MTCC against Skyline in the same manner as any other money judgment. (emphasis added)

[18] The Condominium's submission that S. 134(5) entitles it to an award of costs on a scale of full indemnity is incorrect, pursuant to the wording of that sub-section and *Metropolitan Toronto Condominium Corp. No. 1385*, paras 49 and 50.

[19] The court, while taking into consideration the relevant provisions of the Act, the Declaration and the Rules, will accordingly determine the issues as to costs pursuant to S. 131 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43 and Rule 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

### **Outcome and Level of Success**

[20] The Condominium was successful on this application in obtaining the relief it requested other than its request for leave to file an affidavit seeking the forced sale of the of Mr. Friend's units in the event of future breaches by him.

[21] The request for leave to file an affidavit seeking the forced sale of Mr. Friend's units in the event of any future breaches by him was one of several heads of relief claimed but did not extend the materials or argument of this application.

**What Costs Claimed Relate To**

[22] The costs claimed by the Condominium were incurred in obtaining the June 4, 2020 Decision which ordered Mr. Friend to cease specified conduct and granted the permanent injunction. The costs requested do not include costs for prior or subsequent legal services, such as the legal costs as to enforcement of the remedies granted as in *Metropolitan Toronto Condominium Corp. No. 1385*.

**Fair and Reasonable Test**

[23] The broad discretion in S. 131(1) does not detract from the requirement that the determination of costs must be made on a principled basis which requires due consideration of the factors set out in R. 57.01(1) in order to achieve a just and reasonable determination: *Geographic Resources Integrated Data Solution Ltd. v. Peterson*, 2013 ONSC 1041 (Div. Ct.), at para. 15.

[24] The responsibility of the court, generally, is to fix an amount of costs that is fair and reasonable for the unsuccessful party to pay, which is not simply a calculation of the hours times the rates expended by the successful litigant as that amount may not be considered justified: *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at paras. 26 and 29.

[25] The Court, in determining the issue of costs, must consider and refer to the overriding principle of reasonableness. Failure to do so can produce a result contrary to the fundamental principles of justice. There are obviously cases where the prospect of an award of costs against the losing party will operate as a reality check for the litigant and assist in discouraging frivolous or unnecessary litigation: *Boucher*, at para. 37.

**Time Expended and Hourly Rates**

[26] It was appropriate for the Condominium to bring this application for permanent protection against Mr. Friend's attempts to impose his will on the Condominium which is governed by the Act, its own governing documents and a duly elected Board of Directors; namely in order to protect the proper administration of the Condominium and to protect other Condominium unit owners from his outbursts of anger, threats and use of physical force.

[27] The time as docketed by counsel for the Condominium in bringing and arguing this application is reasonable given the lengthy and relevant history of Mr. Friend's conduct in issue which included his disregard of and arguments attacking the validity of prior court decisions and cost awards against him.

[28] The hourly rates charged to the Condominium are appropriate given legal counsels' years of call.

**Complexity Including Extent of Conduct Relied Upon**

[29] The extent of conduct relied upon by each party was lengthy as indicated.



[30] Whether or not the conduct in issue was material to the relief requested, required consideration of the Act, the Condominium's governing documents and prior court orders.

[31] The following responsibilities, authority and obligations in the Act, including those of the Condominium, its Directors and the unit owners, are relevant considerations in the determination of costs, namely:

- a. the objects of the condominium are to manage the property and the assets of the corporation on behalf of the owners: ss. 17(1);
- b. the condominium has a duty to control, manage and administer the common elements and the assets of the corporation: ss. 17(2);
- c. the Condominium has a duty to take all reasonable steps to ensure that the unit owners comply with the Act, the declaration, the by-laws and the rules: ss. 17(3); and
- d. that no one shall permit a condition to exist or carry on an activity in a unit or in the common elements which is likely to damage property or cause injury to an individual: S. 117.

[32] The phrase "injury to an individual" in S. 117 includes psychological harm as well as verbal and written forms of abuse: *York Condominium Corp. No. 163 v. Robinson*, 2017 ONSC 2419, para. 10, *Metropolitan Toronto Corporation No. 747 v. Korolekh*, 2010 ONSC 4448, para. 71, *Carleton Condominium Corp. No. 291 v. Weeks*, 2003 CarswellOnt 1013, paras. 25-34 and *Toronto Standard Condominium Corporation No. 2395 v. Wong*, 2016 ONSC 800, para 40.

[33] Aggressive, threatening and demeaning language also constitute a breach of S. 117: *Carleton Condominium Corp. 291 v. Weeks*, para. 32-34.

[34] Unit owners such as Mr. Friend are obliged to comply with the Act, the Declaration, the By-laws and the Rules of the Condominium: S. 119(1) of the Act and Article 3.01 of the Declaration.

[35] Mr. Friend on several occasions breached his obligation pursuant to Article 3.01 of the Declaration to provide access to his units to authorized representatives of the Condominium.

[36] Mr. Friend's comments on April 3, 2020 to a Director of the Condominium while temporarily blocking the movement of that Director, breached the June 28, 2019 interlocutory injunction, but did not thereby breach the Act, the Declaration, the By-laws or the Rules of the Condominium as referred to in ss. 134(1).

[37] The relief granted in the June 4, 2020 Decision however was neither sought nor granted solely based on Mr. Friend's April 3, 2020 actions towards a Condominium Director. The grounds for seeking and granting the relief in the Decision included events before and after April 3, 2020, such as:

- a. conduct by Mr. Friend which interfered with and thereby breached the rights and obligation of the Condominium and its Directors to manage the affairs and assets of the Condominium pursuant to sections 17 (1), (2) and (3);
- b. several breaches by Mr. Friend of his s. 117 obligation to take no action which risked injury to others; and
- c. his breach of Condominium Rules which prohibited him from accessing the roof of the Condominium; and
- d. his numerous breaches of the Condominium Rules which prohibited him from leaving his foot ware in the hallways of that building.

[38] Those breaches of the Act and the Rules of the Condominium included Mr. Friend's:

- a. attempt on April 15, 2014 to engage or direct the services of the Condominium's auditor, thereby attempting to interfere with and exercise the role of management of the Condominium;
- b. aggressive conduct on January 21, 2016, towards the Chairperson during a Condominium meeting;
- c. actions to prevent performance of an inspection by a Fire Inspector in February, 2016;
- d. attempts in August 2016 to prevent replacement of a smoke detector in his unit pursuant to a decision by the Directors;
- e. October 20, 2016 act of physically pulling a Director into his unit;
- f. denial of entry to a roofing contractor engaged by the Condominium on April 5, 2017;
- g. attendance on the Condominium roof on April 5, 2017, contrary to the Rules of the Condominium;
- h. attempt on June 19, 2017, to direct and engage the services of the Condominium's auditor;
- i. February 22, 2018 use of force in order gain access to and his attendance on the roof of the Condominium;
- j. May 27, 2018 attempt to engage the services of the Condominium's auditor;
- k. repeated breaches during the winter of 2018/2019 of the Condominium Rules which prohibited him leaving foot ware in the common corridors;
- l. March 22, 2019 attendance on the roof of the Condominium;
- m. yelling at and use of force towards a Condominium Director on June 26, 2019;

- n. speaking to and preventing a caulking contractor to carry out work directed by the Condominium on September 27 and October 8, 2019, which also breached the Interlocutory Injunction; and
- o. frequent rejection of authority of the Condominium's Board of Directors: Interlocutory Injunction Decision, paras 36, 40, 42, 47, 49, 52, 55, 56, 59, 64, 66, 75, 81-83, 91, 94, 95 and 102, and the Decision, paras 25, 32 and 37.

[39] Grounds for granting the June 4, 2020 permanent injunction, in addition to the April 3, 2020 events and unrelated to breaches of the Act or Condominium rules, included breaches of the June 28, 2019 interlocutory injunction by Mr. Friend, which included:

- a. him frequently speaking to Condominium Directors between August 20 and December 19, 2019 and on April 3, 2020;
- b. his frequent emails, or copies thereof, to Directors between July 10, 2019 and April 6, 2020; and
- c. him frequently speaking to Condominium contractors between August 20 and December 19, 2019: Decision, para 40.

[40] The above conduct by Mr. Friend relied upon by the Condominium was extensive and included its prior affidavits filed in obtaining the interlocutory injunction.

[41] Mr. Friend relied upon considerable written documents which he referenced during argument of this application. A considerable portion of his materials and arguments were not relevant to the issues on the application. The Condominium in argument was required during argument to demonstrate the inappropriateness of Mr. Friend's materials and submissions.

[42] Those same numerous events and issues presented by both parties, combined with the accompanying quantity of the written record, increased the required preparation time, extended the length of argument and thereby increased the Condominium's legal costs now claimed.

[43] The number of issues involved and argued combined with the quantity of material filed by each party constituted a form of complexity.

### **Importance of Issues**

[44] The issues on this application were important to each party.

[45] Mr. Friend's frequent unwillingness to accept the authority of and decisions by the Board of Directors, his frequent breach of Rules of the Condominium, his use of anger and physical force against those authorized to act in matters as to the Condominium and his breaches of the Act, are important issues which negatively impacted the Condominium and the financial interests of other unit owners, including Mrs. Friend's ownership interest in her units.

[46] Non-compliance to court orders is important.

[47] Mr. Friend's belief that successive slates of Directors of the Condominium have acted with prejudice in conducting an unfair campaign against him during the last ten years, was important to him.

[48] The frequency of prior litigation between these parties and the repetitive nature of orders granted against Mr. Friend was important.

### **Proportionality**

[49] The amount of legal costs incurred by the Condominium on this application are proportional to the number of issues argued, the above importance thereof and the nature of the relief granted in the Permanent Injunction decision.

### **Conduct Unnecessarily Lengthening Proceeding**

[50] Mr. Friend's arguments on this application as to:

- a. numerous historical events in the Condominium over the last eight to twelve years; and
- b. the errors he believes the courts made in decisions in 2013 and 2019;

were mistaken, not relevant and unnecessarily enlarged the length and cost of this proceeding.

### **Scale of Costs**

[51] The normal scale of costs to be awarded is partial indemnity. An award of costs on a higher scale is appropriate where the conduct of the losing party either before or during the litigation warrants sanction: *Davies v. Clarington (Municipality)*, 2009 ONCA 722, 100 O.R. (3d) 66, paras. 28 and 40; *Brown v. Canada (Attorney General)*, 2015 ONSC 717, 2015 CarswellOnt 1288 (Ont. Div. Ct.) and *Oz Optics Ltd v. Timbercon Inc.*, 2012 ONCA 735, para. 16.

[52] Unproven allegations of fraud, bad faith, misconduct against another party, wanton, scandalous and vicious charges or improper conduct during the litigation have been considered sufficient reason to award costs on a scale of substantial indemnity: *McBride Metal Fabricating Corp. v. H & W Sales Co.* (2002), 59 O.R. (3d) 97, para. 38 (C.A.); *Murano v. Bank of Montreal* (1998), 41 O.R. (3d) 222, para. 82 (C.A.) and *Foulis v. Robinson* (1978), 21 O.R. (2d) 769 at p. 776 (C.A.).

[53] Mr. Friend's repetitive historical and ongoing misconduct contrary to the Act, the Declaration, the Rules and prior court orders warrants a cost award on a scale of at least substantial indemnity.

[54] A cost award on a scale of full indemnity is exceptional, but is justified where a party has unsuccessfully alleged dishonesty, illegality, and conspiracy or where the allegations or conduct

by a party are "reprehensible, scandalous, or outrageous": *1483677 Ontario Ltd v. Crain*, 2010 ONSC 1353, para. 19 and *Envoy Relocation Services Inc. v. Canada (Attorney General)*, 2013 CarswellOnt 5389, para. 114 (OSC).

[55] Mr. Friend's false allegations that this application was merely the latest prejudicial campaign by the Condominium's Directors and the property managers against him, denies reality, is reprehensible and warrants an award of costs on a scale of full indemnity pursuant to the decisions in *1483677* and *Envoy*.

[56] A condominium corporation has a duty and is required under the Act to take all reasonable steps to ensure compliance by unit owners with the Act, the Declaration, the Bylaws and the Rules and should therefore be fully indemnified: s. 17(3) of *the Act and Metropolitan Toronto Condominium Corporation No. 985 v. Vanduzer*, [2010] O.J. No. 571, paras. 27 and 28.

[57] Owners ordered to comply with their obligations under the Act, the Declaration, Bylaws and Rules of the corporation should pay all costs of the condominium as unrecovered which expenses would otherwise be borne by innocent unit owners through their common expenses or levies: *York Region Standard Condominium Corporation No. 1076 v. Anjali Holdings Limited*, 2010 ONSC 822, paras. 1 and 2.

#### **Indemnification**

[58] R. 57.01 states that a court in exercising its discretion under s. 131 of the *Courts of Justice Act* to award costs, may consider the factors listed therein, which includes:

(i) any other matter relevant to the question of costs.

[59] Article 8.01 of the Condominium's Declaration as to indemnification:

a. is a relevant matter pursuant to R. 51.07 (i); and

b. reinforces the appropriateness of a cost award on a scale of full indemnity.

[60] Courts have upheld contractual obligations in a condominium's governing documents as in this case which provide for indemnification of all costs resulting from a unit owner's breach of the governing documents: *Metropolitan Toronto Condominium Corporation No.1067 v. 1388020 Ontario Corp.*, 2017 ONSC 4793, para. 16.

[61] Costs awarded against Mr. Friend on this application for the above reasons should be on a scale of full indemnity.

#### **Offers**

[62] No offers are relied upon.

**Reasonable Expectation of Loosing Party**

[63] Given:

- a. the number of issues argued;
- b. the importance of such issues to the orderly, non-confrontational management of condominium affairs; and
- c. the number of similar cost awards made against Mr. Friend in prior proceedings with the Condominium;

the amount of costs now claimed should not have exceeded Mr. Friend's expectation if he was unsuccessful on this application.

**Conclusion**

[64] Costs of this application are awarded to the Condominium against Mr. Friend on a scale of full indemnity in the amount of \$12,270, inclusive of disbursements and HST.

[65] Such cost award of \$12,270:

- a. is to be added, pursuant to s. 134(5), to the common expenses of Mr. Friend's Condominium units; and
- b. is recoverable as common expenses of such units by way of a lien: *Metropolitan Toronto Condominium Corp. No. 1385*, para 39.

  
Justice Kane

**Released:** November 19, 2020

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**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

Ottawa-Carleton Standard Condominium Corporation  
No. 671

Applicant

**- and -**

Anthony Marcus Friend

Respondent

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**SUPPLEMENTARY REASONS FOR  
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Justice Kane

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