A GUIDE TO COSTS

for Self-Represented Litigants in Canada

The National Self-Represented Litigants Project

NSRLP

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Table of Contents

Before You Get Started

The goals of this primer are:

1. to help self-represented litigants (SRLs) understand what costs awards are;
2. to explain how to either ask for a costs award, or defend against a costs award.

We will show you how to prepare the form that you bring to court explaining the costs you are asking for, called a "bill of costs" or "costs outline." We will explain costs awards in general, but will focus specifically on costs in family and civil legal disputes in Ontario. We will also go over recent case law (for more on "case law" see our primer, "Reading and Understanding Case Reports") involving SRLs and the issue of costs, and will talk a little about the different approach to costs in family law cases. An appendix at the end of the primer highlights important things to know about costs awards in provinces other than Ontario (which is covered throughout this primer), and Quebec, where the civil rules around costs are very different.

We (the National Self-Represented Litigants Project, or NSRLP) have many other guides that can help you while representing yourself, and those can all be found here:

https://representingyourselfcanada.com/our-srl-resources/

CanLII, which publishes case reports, legislation, and case commentary from all over Canada is another excellent resource for preparing to present your own case. Using CanLll, you can research and read previous court decisions on issues similar to yours (such as costs awards), and in your jurisdiction. CanLll is free and publicly available, and can be found here. To make the best use of CanLII, check out our guides, "The CanLII Primer" (also available in French), and "Reading and Understanding Case Reports."

All the best as you navigate costs awards,

The NSRLP team

Part 1: Understanding Costs

What are costs?

Going to court can be expensive, and, depending on how long or complicated your case is, you or the other party might have large financial costs. In the legal world, "costs" has a specific meaning:

> ***"costs" refers to the lawyer fees, disbursements, taxes, and other expenses taken on by a party (you or the person on the other side of your dispute) when they are making a legal claim, or defending against a claim***.

Costs are discretionary: this means that judges and adjudicators in courts and tribunals across Canada have a lot of leeway to decide whether a party should be ordered to pay costs, and if so, how much. Costs are usually awarded to the successful party: the losing side reimburses the successful side for certain amounts of money that the successful side had to pay throughout the case. This means that the issue of costs is decided *after* the judge has ruled on which side was successful.

This is based on the idea that the court or tribunal considers which party was in the right and should therefore should be compensated for the costs they spent in trying to resolve the legal matter. The theory is that by awarding costs to the party that was successful, everyone will think twice before bringing a claim to court, or raising a defence to a claim made against them – because if they lose they may have to pay the other side money. This is meant to discourage "vexatious" or frivolous claims. The idea that a losing party may have to pay certain amounts to the winning party can also make parties think twice about refusing to accept reasonable offers to settle, encouraging parties to try to settle matters, rather than drag them out in court. (For more about settlement, see our primer, "Settlement smarts.")

Although costs are usually awarded in favour of the successful party in a legal dispute, being successful does not automatically mean that you will receive costs from the other side. Costs may still be given to the losing side in very specific examples – for example, where the successful side engages in bad or disruptive behaviour during the case.

It is important to know that costs do not always need to be decided by a judge or adjudicator at a court or tribunal. You and the other side can negotiate and agree on costs without getting a judge to make a decision about who is entitled to costs and in what amount. This may be done to simplify things, or to avoid the unpredictability of a decision by a judge.

When and where can costs be awarded?

Across Canada, costs can be awarded at trials, motions, and applications. ***The rules about costs awards at court will be set out in the relevant rules for that type of case***. For example, for a civil case in Ontario, the rule for costs is Rule 57 (Costs of Proceedings) of the *Rules of Civil Procedure*, RRO 1990, Reg 194. For a family law case in Ontario, Rules 18 (Offers to Settle) and 24 (Costs) of the *Family Law Rules*, O Reg 114/99 outline how judges will make decisions about who is entitled to costs, and for how much.

Costs might also be awarded in other proceedings, such as a hearing before a board or tribunal, but not always. The ability to ask for costs is usually more limited at a board or tribunal. For example, the Human Rights Tribunal of Ontario, under the Ontario *Human Rights Code*, RSO 1990, c H.19, cannot award costs. But the Landlord and Tenant Board (LTB) *does* allow the possibility of awarding some costs, though they are usually only awarded to cover the application fee. Additional costs may only be awarded where a party has acted unreasonably. ***As a self-represented litigant, it is important to make sure you know which rules apply to your court or tribunal and type of case***.

You should also be aware that different courts are governed by different rules of procedure depending on how much money is being claimed. For example, in Ontario, if a dispute results in a claim that is worth $35,000 or less, and the dispute is being heard in the

Ontario Small Claims Court, you should use the Ontario Small Claims Court rules: O. Reg. 258/98: Rules of the Small Claims Court.

Part 2: Costs Rules for Civil Proceedings

This guide focuses on costs awards in civil legal matters in Ontario, but we have included a chart outlining costs award rules for civil proceedings in all other provinces (except Quebec) at the end of the primer. Please be aware that in some provinces there are separate rules or guidelines for family proceedings.

General guidelines for costs in civil proceedings in Ontario

In Ontario, the judge who heard the legal case will decide whether to award costs in civil proceedings. This means that the judge can decide whether a party is entitled to be paid costs by the other party, and if so, how much. Specifically, guidelines for judges on costs can be found in Rule 57 of the Rules of Civil Procedure, and section 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, which sets out three principles:

(i) the costs of a case are at the discretion of the court;

(ii) the court may determine who should pay costs; and

(iii) the court may determine how much costs should be paid.

As we talked about in Part 1, ***costs awards were created for three important purposes:***

1) to reimburse successful litigants for the money they spent in litigation;

2) to encourage the litigants to try and settle;

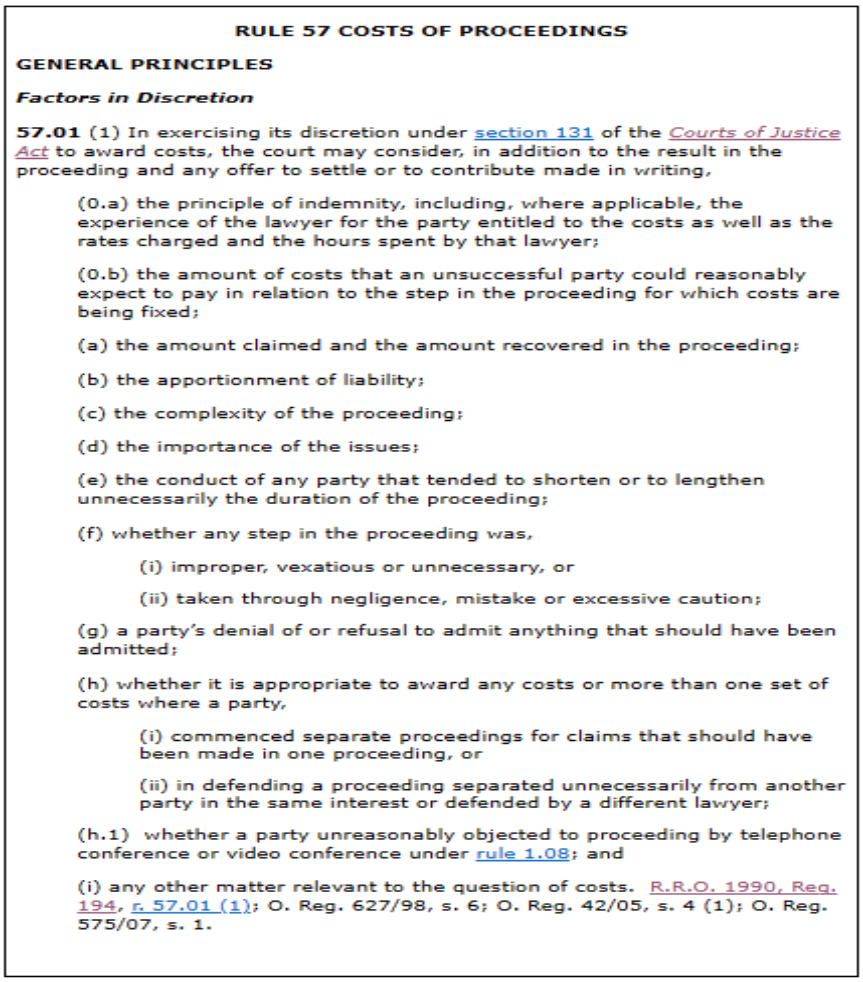
3) to discourage and punish inappropriate behaviour by litigants.[1]

[1] *Fong v. Chan*, 46 O.R. (3d) 330, 1999 CanLII 2052 at para 24.

Making “vexatious” and “frivolous” claims can be considered inappropriate behaviour, as can other behaviour that intentionally delays or complicates the process. SRLs have sometimes been unfairly accused of being vexatious, although recent case law suggests that some courts and judges have started to take a more balanced view, with the idea that they should be more careful about deciding whether to formally designate an SRL as “vexatious.” These courts and judges understand that it is very challenging to represent yourself, and that an SRL’s lack of knowledge and skill might be the reason that their behaviour in court appears to be “inappropriate.” (For more information on this topic, you can read the NSRLP’s report on SRLs and vexatiousness.) But ***as an SRL, you should think carefully about your claims before filing any legal proceedings, to try to make sure your claim would not be considered vexatious or frivolous.*** Looking up cases similar to yours on CanLII can help you here.

What will the judge consider in deciding on costs in Ontario for a civil proceeding?

The full list of factors that the judge may consider when deciding a question of costs can be found in Rule 57 of the Ontario *Rules of Civil Procedure*. These factors (see below) are considered in addition to the result of the proceeding (meaning which party was successful, and to what degree) and any offers to settle (this would only include formal offers to settle made under Rule 49 of the *Rules of Civil Procedure*).



RULE 57 COSTS OF PROCEEDINGS

GENERAL PRINCIPLES

Factors in Discretion

57.01 (1) In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

(a) the amount claimed and the amount recovered in the proceeding;

(b) the apportionment of liability;

(c) the complexity of the proceeding;

(d) the importance of the issues;

(e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;

(f) whether any step in the proceeding was,

(i) improper, vexatious or unnecessary, or

(ii) taken through negligence, mistake or excessive caution;

(g) a party's denial of or refusal to admit anything that should have been admitted;

(h) whether it is appropriate to award any costs or more than one set of costs where a party,

(i) commenced separate proceedings for claims that should have been made in one proceeding, or

(ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer;

(h.1) whether a party unreasonably objected to proceeding by telephone conference or video conference under rule 1.08; and

(i) any other matter relevant to the question of costs. R.R.O. 1990, Reg. 194, r. 57.01 (1); O. Reg. 627/98, s. 6; O. Reg. 42/05, s. 4 (1); O. Reg. 575/07, s. 1.

How are decisions about costs made in civil proceedings in Ontario?

Having costs "fixed" is the term used to describe the decision made by a judge (or master) about who is awarded costs and in what amount. They make their decision based on the factors outlined in Rule 57 (see above), after the judge has made a decision about the legal issues. *There is also a separate process called Costs Assessments*. This refers to a process in which the decision about who is entitled to costs and how much is made by an assessment officer appointed under s. 90 of the *Courts of Justice Act*, instead of a judge. These assessment officers specialize in reviewing a case and making a decision about who gets costs and in what amount. Assessment of costs is governed by Rule 58 of the *Rules of*

Civil Procedure. Decisions made by assessment officers under Rule 58 are limited to unique cases, so we will not cover them in detail in this guide.

When does a judge consider costs in a civil proceeding in Ontario?

There will usually be a decision about who is paying costs and in what amount every time a judge makes a decision in a case, including at contested motions, applications, and trials. This is because the judge is being asked to decide a legal issue that the parties cannot agree on, and there is likely to be a winner and a loser. So,there might be multiple costs decisions over the course of your legal case. However, in cases where there *may not* be a dispute between the parties about a specific issue, such as an ex-parte motion (hearings in front of a judge where only one party is present), there will probably not be a costs order. Case conferences, scheduling attendances, and pre-trial conferences also usually do not result in a costs order. But is is important to remember that the time spent by the parties involved in the case may be taken into account in the future when the judge has to make a decision on the legal issues in the case (meaning a trial). ***For steps in the litigation that are not subject to a decision in court (these often involve work by the parties outside of courtrooms), such as the preparation of court documents (pleadings), discovery of documents, and examinations for discovery, the costs related to completing these steps are usually dealt with at the conclusion of the entire proceeding.***

Arguments about costs can be dealt with either in person or in writing – the judge will tell the parties which format they should use to present their arguments. When the judge decides to deal with the issue of costs in person, this means that at the end of a motion or trial where one party has won and the other party has lost, the parties will present arguments to the judge about how they believe they deserve costs, and in what amount. The judge will listen to what each party has to say about costs and then either make their decision immediately, or say that they want time to review the arguments, and will let the

litigants know their decision about costs at a later date. If the parties discussed the issue of costs before the end of the hearing, and agreed ahead of time on whether the winner will get costs and in what amount, it is at the end of the hearing that they inform the judge of this agreement. If there is no agreement about costs, the successful party will submit a bill of costs (an itemized list of the costs that they have incurred), or costs outline. ***As an SRL, you may decide to reach out to the other party (or their lawyer, if they are represented) before the end of the hearing to try and reach an agreement on costs. Or you may consider their proposal on this if they reach out to you. You do not have to agree to a costs proposal presented to you by an opposing party or lawyer if you think it is unfair or unreasonable. If you do not reach an agreement on costs with the other party ahead of time, you should bring a bill of costs or costs outline to all court appearances where you or the opposing party is asking the judge to decide a legal issue in one person's favour or the other. Instructions on how to prepare this can be found in Part 4 of this guide.***

The judge might also ask for a party's thoughts on costs before they announce their decision on the legal issue that was being decided at the hearing. This allows the judge to include their decision on costs in their reasons for the decision on the legal issue in dispute. When this happens, the person who brought the legal issue to court (the moving party, on a motion, or the plaintiff/applicant, in a trial/application) will usually speak about costs first, explaining why the costs they are asking for are reasonable (assuming they won), or why any costs asked for by the other side are unreasonable (assuming they lost). The responding party will then do the same. Again, having the bill of costs or costs outline prepared before the hearing will help to make sure that you are ready to make these arguments whenever the judges asks for them.

Sometimes the judge can also take the decision '*under reserve*.' This means that the judge will not provide their decision on the legal issues while in the courtroom, but will instead release their decision at a later date. When this happens, arguments about who is entitled to costs, and how much, may not happen on the day of the hearing. The judge might ask

the parties to speak about costs after the decision is released. The judge might set a timeline for each party to provide the bill of costs or costs outline, and the arguments they are making about costs. If this happens, the end of the court's written decision about the legal issue (the reasons written by the judge to explain their decision) usually provides further details on how arguments on costs should be made. For example, whether a bill of costs or costs outline should be submitted in writing, or if the parties will need to re-attend in front of the judge and make arguments in person. If this happens in your case, read the instructions the judge gives you carefully, and make sure you follow all the deadlines. The judge will then make a decision about who is entitled to costs and how much, or they might send them for assessment (this ususually only happens in unusual cases).

Ontario – Tariff of costs, and partial versus substantial indemnity costs

A tariff is a way of calculating different aspects of litigation – for example, a tariff for drafting an affidavit, or a tariff for appearing in court.

Tariff A of the *Rules of Civil Procedure* sets out allowable lawyers' fees and disbursements under the costs rules. Courts today don't really use Tarriff A anymore, so you usually don't need to refer to it. But it is helpful to know that Tariff A has been used in the past, in case the opposing lawyer refers to it. Tariff B, relating to paralegal fees, is no longer used.[2]

The standard now is to award costs on a 'partial indemnity' basis. This usually means that parties ask for costs at a rate of 40 to 60 percent of their total legal expenses (lawyer's fees and disbursements). For example, if a litigant's legal bill from their lawyer was $50,000, a partial indemnity cost award might range from $20,000 to $30,000 (40-60% of 50,000).

In certain situations, a party may ask for a higher percentage of their costs. This could happen **when a party makes allegations or engages in conduct that is, "reprehensible,**

[2] Robert J Drake and Robert D Malen, Rules of Civil Procedure Chapters, Costs, Rule 57 - Costs of Proceedings in *Civil Procedure and Practice in Ontario*, Noel Semple (ed.), Canadian Legal Information Institute, 2nd ed, 2022 CanLIIDocs 1045.

scandalous, or outrageous,"[3] or when cost consequences of an offer to settle apply (see Rule 49). So if a winning party gets a better result after a hearing than what they asked for or offered in a settlement offer before trial, a party might ask for costs on a 'substantial indemnity' basis. This means that a litigant is awarded between 60 and 90 percent of their legal bill – for a $50,000 legal bill, that would be $30,000 to $45,000 (60-90% of $50,000).

'Full indemnity' costs are the highest level of costs that could be awarded to a successful party. Full indemnity costs means a party gets 100 percent of their legal fees and disbursements. **Full indemnity costs are very unusual. Only in extremely rare circumstances should a litigant ask for full indemnity costs.** Partial indemnity is the standard, and substantial indemnity costs can be asked for where a party has engaged in inappropriate behaviour that does not rise to an extreme or outrageous level. Make sure you consider very carefully before asking for substantial indemnity costs, and even more carefully about full indemnity costs. Be very prepared to explain why you are asking for higher costs.

Ontario – Proportionality of costs in civil proceedings

Ontario also has specific rules about the 'proportionality' of the amount of costs relating to the amount of money in dispute. This means that the costs awarded to a party should be proportional to how complicated the case is, and the amount of money involved in the legal dispute. Rule 1.04(1.1) of the *Rules of Civil Procedure* explains this principle of proportionality: the parties must take steps to make sure that the costs of the proceeding are proportionate to the importance and complexity of the issues in dispute. **If you are asking for your costs to be paid, or responding to a party that is asking for their costs to be paid, it is important to consider the principle of proportionality. A simple way to think about proportionality is to compare the value of the costs to the total value of the claim – are the costs being asked for close to or more than the value of the entire**

[3] *1238915 Ontario Limited v Nothdurft*, 2022 ONSC 5250, at para 9.

legal claim? Judges may be concerned about awarding costs that are disproportionately high when compared to the value of the entire legal dispute.

Costs in family proceedings

Although this guide does not go into the specific details of costs awards in family proceedings, it is important for SRLs in family law matters to be aware of costs. If you are representing yourself in a family proceeding and wondering how costs will be handled, this guide provides general principles only. You should consult the specific family law rules for your jurisdiction (province or territory). Ontario has the *Family Law Rules* separate from the *Rules of Civil Procedure*, and most provinces and territories have some form of family law rules.

Like the rules for civil cases, it is important to know that family law rules often have similar cost consequences for failure to accept reasonable offers to settle. But there is not always a clear 'winner' or 'loser' in family law proceedings, so judges may also consider factors which are not usually considered in a civil case. In the next section, we will go over key considerations for costs in family proceedings in Ontario, Alberta, and British Columbia.

Ontario – Family law cases and costs

In Ontario, there is a unique set of *Family Law Rules* that cover family law cases in the province. The key rule to consider is **Rule 24**. It says that while there is a presumption that the successful party is entitled to costs, this will not always be the case. In deciding whether costs will be awarded, the judge may consider whether either party acted in bad faith, was absent or unprepared, or behaved unreasonably. Any costs awarded have to be supported by documents provided to the judge, although 'documents' can refer to a wide range of things, such as receipts, a time sheet showing how much time was spent working on the case (we will talk about this later in greater detail), or a bill statement from a lawyer's office. If, while preparing your case, you needed to pay for things like court fees or mailing documents, and you are hoping to get reimbursed for those costs, you should save

the receipts or any proof of payment for these expenses. However, the Family Law Rules do not give specific instructions for tracking the amount of time that you spent working on your case.

Along with case law you may research (perhaps using CanLII), the judge might consider other factors, such as a party's ability to pay, and how this impacts the best interests of any children. If you are representing yourself in a family proceeding, you might want to prepare arguments about these specific issues – be prepared to support your arguments with any documents that help you prove your point. For example, if you are unable to pay a costs award because of your parenting obligations and expenses, to prove this point, you could submit documents that show your current financial situation. These might be bank statements, proof of support and other expenses you pay, and income statements or pay stubs.

Alberta – Family law cases and costs

While Ontario has specific rules about costs in family law matters, Alberta does not. But it is worth noting that there are examples of how judges make decisions about costs in family law cases in Alberta case law. If you are an SRL in Alberta, there are three important things to think about when dealing with costs in family law matters:

1. Alberta considers costs in family matters to be no different than costs in any other civil matter. However, judges do have a lot of leeway when asked by a party to make a costs award. When deciding about costs, the judge may consider the best interests of the child, the need to discourage bad behaviour, or a party's financial ability to pay a costs award.
2. Unlike Ontario where costs are decided when a decision is reached at *each stage* of a case, Alberta judges decide costs orders at the *end* of the case, as stated in Rule 10.30(1). There is an exception for custody, access, and child support cases, where the Alberta *Family Law Act* (section 93) allows a judge to make an order for costs at

any point in the proceeding (this means a costs decision *could* be made before a final decision in the case).

3. Alberta has separate procedural rules for its provincial and superior courts, with the *Alberta Provincial Court Procedures (Family Law) Regulation* applying to the provincial court (Alberta Court of Justice) and the Alberta Rules of Court applying to Superior Court (Alberta Court of King's Bench). The Alberta *Family Law Act* also gives some guidance about costs in family matters.

British Columbia – Family law cases and costs

In British Columbia, Rule 16-1(7) of the *Supreme Court Family Rules*, B.C. Reg. 169/2009 follows the general principle that costs are awarded to the successful party: *"subject to subrule (9), costs of a family law case must be awarded to the successful party unless the court otherwise orders."*

Subrule 9 of the *Supreme Court Family Rules* gives specific rules when a litigant starts an application (this is different than a hearing, trial, etc. – for more guidance on filing a family law application in British Columbia, visit this webpage). Subrule (9) of Rule 16-1 gives specific rules about when costs of an application may be awarded, regardless of what happens in the trial or hearing of the petition. You should be aware that there are different consequences depending on who wins and who loses at trial: the applicant (the party who brought the application) or the respondent (the party who was responding to the claims in the application). These rules also set out specific considerations relating to the costs that can be awarded for bringing an application. But the general rule in British Columbia is to award costs to the successful party.

The decision of *Fotheringham v. Fotheringham*, 2001 BCSC 1321 from the BC Supreme Court can help you understand the issue of whether or not costs may be awarded based on

who was successful in a family law case in British Columbia.[4] This case outlines a four-step approach to deciding who the successful party in the proceeding is:

1. Focus on the "matters in dispute" at the trial. These may or may not include "issues" mentioned in the written pleadings prepared before trial.
2. Assess the weight or importance of those "matters" to the parties.
3. Consider all of the matters in dispute and determine which party "substantially succeeded" overall, and therefore won the trial.
4. If one party "substantially succeeded," consider whether there are reasons to "otherwise order" that the winning party should not get costs, and instead each side should cover their own costs.

This case concluded that, as a rule of thumb, substantial success happens when a party succeeds on 75% of the matters in dispute (at paragraph 60). When this happens, that party can be considered the successful party, entitled to costs – unless there are other factors that would justify costs being decided differently. For example, if one party has a lot more money or income than the other party.

Part 3: Costs Awards For and Against Self-Represented Litigants

What has happened in Canadian case law

In April 2018, we published a research paper called "Costs Awards for Self-Represented Litigants."[5] This report looked at how courts have determined costs awards for successful SRLs in Canada. We found that judicial decisions across the country have started to increase the ability of SRLs to get costs when they are successful in their legal cases, even

[4] *L.C. v Y.S*, 2023 BCSC 422 at para 315 [*the most recent case to cite Justice Bouck for the standard of "substantial success"*].
[5] Imbrogno, Lidia and Macfarlane, Julie. "Costs Awards for Self Represented Litigants." National Self Represented Litigants Project, Research Paper, April 2018.

though a lack of guidance to judges on this means that costs awards for SRLs have been inconsistent.

Later that year, we published another research paper, "Substantial & Punitive Costs Awards Against Self-Represented Litigants."[6] This report looked at the possible outcomes for Canadian SRLs when they were unsuccessful, and how judges sometimes award very large costs awards *against* SRLs in order punish them. In our report, we came to 4 conclusions:

1. There is not very much consistency in the application of substantial or punitive (often very large) costs awards against SRLs.
2. Substantial or punitive costs awards against SRLs are often linked to discussions of vexatious behaviour. This raises concerns about consistency and fairness.
3. Increased awards of costs against SRLs are often linked to the judge raising questions about fairness for the other party. Some judges view delays caused by an SRL as a simple lack of understanding, while other judges respond more harshly, suggesting that an SRL's failure to follow procedures is intentional.
4. Substantial or punitive costs may be used to encourage SRLs to stop pursuing legal action, which may not be fair or effective in reducing the number of SRLs in court.

New Ontario case law

While all SRLs are entitled to ask for costs to cover expenses (such as court fees and filing fees), past cases have been inconsistent when it comes to awarding "counsel fee" costs to SRLs. A counsel fee is the portion of the costs award that compensates an SRL for doing the work to prepare their case that would have been done by a lawyer, if they had one. If a lawyer were handling a case, their counsel fee would be the hours they spent on the case, multiplied by their hourly rate – what they would charge a client for their services.

[6] Haines, Ashley and Macfarlane, Julie. "Substantial & Punitive Costs Awards Against Self-Represented Litigants." National Self Represented Litigants Project, Research Paper, July 2018.

There are three challenges when trying to calculate the counsel fee that an SRL might claim for the work they did on their case:

1. **Deciding whether compensation is appropriate at all in the form of a "counsel fee."**
2. **Calculating the number of hours to be compensated.**
3. **Deciding the appropriate hourly rate.**

As an SRL, if you are asking for counsel fee costs from an opposing party, you should be prepared to make arguments about these points to the judge. Citing the cases outlined below may be helpful, depending on your circumstances.

1. **Determining Where Counsel Fees are Appropriate**

In the recent case of *Cuthbert v. Nolis,* 2022 ONSC 3002 ("*Cuthbert*"), the judge provided a summary of their approach to costs for SRLs, and clarified and outlined how counsel fees should be handled. According to this case:

a) SRLS may be given counsel fees.[7] However, SRLs – whether they have any legal training or not – are not entitled to costs calculated on the same basis as a litigant with a lawyer.[8]
b) Counsel fees have been awarded to SRLs in the amount of anywhere between $20-$200 an hour, depending on the SRLs' skill level. (In *Cuthbert* the appropriate amount was decided to be $86 per hour.)
c) SRLs may be given costs for disbursements (expenses), as well as the economic loss (the reasonable cost of the SRL's time and any lost wages) caused by having to prepare their case and appear to argue the case in court.[9] But the SRL must show that they devoted time and effort to do the work that would have been done by a lawyer if they had one, and as a result, they suffered an economic loss by having to

[7] *Jordan v Stewart,* 2013 ONSC 5037 at para 74.
[8] *Pirani v Esmail*, 2014 ONCA 279 at para 6, citing *Fong v Chan* (1999), 1999 CanLII 2052 (ON CA).
[9] *Fong v Chan, supra*.

give up other activities (such as their job) that they would normally be paid for.[10] Plus, losses have to be moderate and reasonable.

2. Calculating the Number of Hours to Compensate an SRL

To figure out the number of hours that an SRL should be compensated for, the judge said in *Cuthbert* that this calculation should not include the time and effort that any litigant (with legal representation) would have needed to devote to the case.[11]

3. Determining the Hourly Rate for Compensation

If an SRL has lost wages as a result of missing work in order to prepare for their case, this can be factored into a costs award. But lost wages from when the SRL would have been in attendance at a hearing or other step in the case whether they were represented or not can't be included.[12]

Part 4: How to Prepare Costs Submissions as a Self-Represented Litigant in Ontario

Please note that the following guide is based on the requirements of Form 57A (Bill of Costs) or Form 57B (Costs Outline) in ***Ontario for civil proceedings****. For Ontario family proceedings, any claim for costs must be supported by documentation that the judge accepts, so you may still use the principles and guidance set out below to organize and prepare documentation for Ontario family proceedings, but know that additional arguments or documents may be required, as explained above (this includes factors such as the party's ability to pay, and the best interests of the children). For other provinces, similar forms may exist, but have slightly different requirements. Consult the Appendix to this guide for helpful resources and guidance on costs in other provinces, with the exception of Quebec.*

[10] *Ibid.*
[11] In *Cuthbert*, the Court cited a previous case for this principle*, M.A.L. v. R.H.M.,* 2018 ONSC 2542, at para 11.
[12] *Fong v Chan, supra*.

Step 1: Document everything, including your time and all expenses

A key step of seeking costs as an SRL is to provide evidence of the time that you put into preparing for your case (just like a lawyer would have to do). You should keep careful records and time logs of all the hours you spent working on your case – but make sure that you only track the time you spend working on things that a lawyer would have done for you, if you had one. Time you would have spent preparing anyway, if you had a lawyer, does not count (for example, the time you spend attending court, or a settlement conference). Keep track of: the hours you spent, the dates you did this work, and a brief description of what you were working on.

For example, if you spend time preparing motion materials, reading materials prepared by the other party, or researching cases that you plan to use in court, record the number of hours you spent on preparation or review or research, and include a brief description of your activity that day. If you have phone calls or email exchanges with the other party (or their lawyer), keep a record of who you were speaking with, why, and the time you spent on these conversations.

A spreadsheet may be an easy way to keep track of your time, or you can keep a journal. When you go to prepare your arguments on costs, you can shorten the amount of detail to just include what the court will require: the date, the number of hours spent on the task, and a very brief description of the task (for example, 'preparing for a motion'). But keep your full records handy, because having these details ready will ensure you can respond to any questions.

You must also track all disbursements (expenses) – this includes court filing fees, hiring parties to serve documents, fees to send registered mail, etc.

Sample Time Tracking Chart

Activity	**Time Spent**	**Date**	**Additional Notes** [*Include details on the activity, such as if it was difficult for a particular reason*]
Reviewing motion materials received by other party's counsel	8 hours	2024-04-11	Motion materials were lengthy and included a 10 page factum; had to do additional research into the case law cited in the motion
Preparing responding motion materials and factum	6 hours	2024-04-11	Besides drafting materials, had to spend time on legal research on CanLII.org on the issue of custody [for example]
Contacting process server to serve materials [or time spent personally serving]	30 minutes	2024-05-06	
Call with opposing party's counsel on the issue of custody [for example]	12 minutes	2024-05-09	

Sample Disbursement (Expenses) Tracking Chart

**Make sure you save all invoices and receipts!*

Disbursement type	**Reason**	**Cost**
Process server	Required to serve Statement of Claim as an originating proceeding	$90.00 + tax
Court filing fees	Filing fee at Court _____ [make sure to include the specific name and location of the court]	$110.00
Business registration search	Determining legal name to list on the Statement of Claim	$25.00 + tax

Step 2: Consider settlement discussions on costs with the other party

You can always try to settle on costs ahead of time with the other party. Attempting to reach an agreement about costs (instead of leaving it to the judge to decide) will mean reaching out to the other party (either the person themselves if they are also self-represented, or their lawyer if they have one), and presenting options. For example, you can propose that each party agree to pay their own costs. Keep in mind that costs can be disputed, and an agreement may not always be possible. Remember that at the end of a hearing, the judge may ask whether the parties have resolved any costs issues, or whether the successful party wishes to ask for costs from the unsuccessful party.

Step 3: Determine whether you need a bill of costs or a costs outline (applicable for Ontario civil proceedings only)

Once you get to the stage of determining costs at court, you will need to know whether you need a bill of costs, or a costs outline, if you are in an Ontario civil proceeding. A **costs outline** and a **bill of costs** are both used as documentation for a request for costs, but they have different uses. A costs outline (Form 57B), is used for **interlocutory motions**. (An interlocutory motion is a temporary decision on an issue that comes up between the start of a legal case and its end – for example, a judge may make an interlocutory order about child support until a trial has decided the issue, or a judge may hear an interlocutory motion for additional discovery, or exchange of documents by the parties. The decision made by the judge in an interlocutory hearing does not end the litigation.) A **bill of costs** (Form 57A) is used for proceedings that result in an end to the litigation, such as granting a motion to dismiss, a motion for summary judgment, or the end of a trial. The main difference between an interlocutory hearing and final hearing is whether the judge's decision will mean the end of the legal matter. If the legal matter is not resolved at the end of the court appearance that day (and there are still steps to take), you will generally only need a **costs outline**. But if the legal matter is resolved by that appearance, you will need a

bill of costs. The formats are very similar, and if you are not sure which one to use, a court clerk may be able to help you, if you contact your courthouse.

See Appendix 2 for a sample Costs Outline, and Appendix 3 for a sample Bill of Costs.

Step 4: Determine your hourly rate

As we have explained previously, the case law has often cited $60 an hour as a reasonable amount for compensation of SRLs as a counsel fee. This may be what you want to ask for in your case. However, in the end, the hourly rate will be determined by a number of factors, including the level of skill with which you prepare your materials. (Remember: senior lawyers charge more than junior lawyers because they are assumed to be more skilled). You can also explain why you believe you should receive more than $60 an hour. For example, if your job pays you at a rate of $75 an hour, this would be evidence for you to argue that this rate is a more fair assessment of the value of your time.

Step 5: Determine if you are seeking partial or substantial indemnity costs

As we have explained above, the standard in Ontario civil proceedings is for the successful party to ask for *partial* indemnity costs (40-60% of the total amount), if there has been no unreasonable behaviour by the other party. This is usually the rule in Ontario family law proceedings as well. If you are asking for *substantial* indemnity costs (60-90%) because of unreasonable behaviour by the opposing party, be prepared to clearly explain why this behaviour was unacceptable. Examples could include poorly prepared materials, or delays in the proceedings because of their behaviour (for example, they didn't get back to you, or only did so after long periods of time). Remember that *full* indemnity costs (100%) are very rarely awarded.

Step 6: Determine the total amount you are asking for

To calculate the total amount you are asking for in a costs award, start by figuring out the total number of hours you should be compensated for (hours doing work on your case that a lawyer would have done, had you had one), and then multiply your total number of hours

by the hourly rate you are asking for. For example, this could be 200 hours, multiplied by the commonly accepted rate for SRLs in the case law, which is $60 an hour. Then, if you are asking for partial indemnity costs, you could propose reimbursement of a maximum of 60% of this total, in addition to reimbursement of the money you paid to have materials served, or filed at the court. Remember that the judge has discretion in awarding costs, so they may not accept your calculation, and instead award a different or lesser amount. But you should still calculate your true costs.

In our example:

200 hours worked, multiplied by $60, equals $12,000. 60% of $12,000 is $7,200. If you spent $500 in server fees and court fees, the total amount you would ask for as a costs award would be $7,700.

Step 7: Object to costs, if necesssary

The other party may seek a costs award against you that you do not agree with. In the end, your conduct during the proceedings may determine whether they ask that you pay a portion of their costs. But you will have a chance to tell the judge why you believe the opposing party is not entitled to the costs amounts that they have asked for. Consider the amount of time they spent on the case, the hourly rates, any behaviour from them that might suggest that they are not entitled to costs, as well as any positive action by you to attempt to resolve the case in a fair and time-efficient way.

Conclusion

We hope that this guide will be a resource for SRLs to consult when considering submissions on costs awards in Canada. We have focused on Ontario because of time and length constraints, so if your case is in another province we encourage you to take a look below at Appendix 1, which gives a summary of information on costs in other provinces.

For more resources on representing yourself in Canada, visit the NSRLP SRL Resources page, which can be found here.

Appendix 1

Costs in Civil Proceedings in Other Provinces

Note: this guide is for proceedings governed by the legislation listed. Courthouse-specific guidance may also be available, such as practice notes or requirements for specific court locations.

Province	Legislation	Rules & Factors Considered	Forms Required & Other Notes
Alberta	*Alberta Rules of Court*, Alta Reg 124/2010. Guildelines about costs are covered throughout the Rules, especially in Division 2 - Recoverable Costs of Litigation.	In making a costs award, the judge will consider: 1. The result of the matter and the degree of success of each party. 2. The amount claimed and the amount recovered. 3. The importance of the issues. 4. The complexity of the matter. 5. To what degree each party is liable. 6. Any party's conduct that shortened the matter. 7. Any other issue that the judge thinks is related to the question of reasonable and proper costs. Note: there are cost consequences to not accepting a formal offer to settle. See rule 4.29(1). The plaintiff may be entitled to double the costs they usually would if their offer to settle was not accepted, and the final judgment is as favourable, or more favourable, than their earlier offer.	See: Civil Forms (albertacourts.ca) Depending on the circumstances, a Bill of Costs (Form 44) and Appointment for Assessment of Costs (Form 45) may be needed. If you disagree with the assessment of the costs made by an Assessment Officer, you can apply for a Notice of Appeal of Assessment Officer's Decision (Form 46).
British Columbia	*Court Rules Act*, Supreme Court Civil Rules, B.C. Reg. 168/2009, Rule 14-1 — Costs	If costs are payable to a party under the Rules or by order from a judge, those costs must be assessed as "party and party" (another term for "partial indemnity") costs in accordance with Appendix B, unless any of	Supreme Court Civil Rules forms - Province of British Columbia (gov.bc.ca)

		the circumstances in 14-1 (1) apply. These circumstances are fully explained within the Rules, but may include the parties making a different agreement, fast-tracked litigation, the judge determining other fixed costs, etc. The costs consequences for not accepting a formal offer to settle are described in Rule 9-1(5) and (6), and may apply if the judge's decision is as or more favourable to the winning side than the offer.	Note: Appendix B of the rules will fix the costs from Scale A to Scale C. Scale A is for matters of little or less than ordinary difficulty; Scale B is for matters of ordinary difficulty; Scale C is for matters of more than ordinary difficulty. Appendix B sets out the costs scales, but special costs may also be awarded. For more information on representing yourself and resolving a case before going to trial in BC, see the Supreme Court of BC's guide.
Saskatchewan	*King's Bench Rules*, Part 11.	Part 11 of the Rules provides for two different approaches to costs: Under Division 1 of Part 11, Rule 11-1 says costs can be fixed or awarded by the judge at their discretion. When the Court fixes costs, it can do so with or without reference to the Tariff (a tariff is a way of calculating different aspects of litigation – i.e. a tariff for drafting an affidavit, or a tariff for appearing in court). Under Division 2 of Part 11, Rule 11-11 says that where the costs have not been fixed by the Tariff, they must be assessed in accordance with the Rules in Division 2 and any direction given by the judge. Rule 11-18 says that the assessment officer will allow and assess fees in accordance with the appropriate column of the applicable table in Schedule I "B" of the Tariff.	Publications Centre (saskatchewan.ca) See the Saskatchewan Access to Legal Information Project's guide to representing yourself in Saskatchewan.

Manitoba	*Court of King's Bench Rules,* Manitoba Regulation 553/88	Rule 57.01(1) of the Court of King's Bench rules outlines the following factors that the court may consider when awarding costs: (a) the amount claimed and the amount recovered in the proceeding; (b) the complexity of the proceeding; (c) the importance of the issues; (d) the conduct of any party which tended to shorten or lengthen unnecessarily the duration of the proceeding; (d.1) the conduct of any party which unnecessarily complicated the proceeding; (d.2) the failure of a party to meet a filing deadline; (e) whether any step in the proceeding was improper, vexatious or unnecessary; (f) a party's denial or refusal to admit anything which should have been admitted; (f.1) the relative success of a party on one or more issues in a proceeding in relation to all matters put in issue by that party; (g) whether it is appropriate to award any costs or more than one set of costs where there are several parties with identical interests who are unnecessarily represented by more than one counsel; and (h) any other matter relevant to the question of costs. Note: cost consequences can double from the date forward from an offer to settle that meets the criteria of rule 49.10(1), if the court's decision is as or more favourable than the offer.	Forms 58A, 58B, and 58C may be relevant depending on the circumstances of your case. Court of King's Bench Forms (gov.mb.ca) You can also consult Manitoba's webpage with information for SRLs. Note: There is a Tariff A to the Rules that defines recoverable costs and a Tariff B that establishes recoverable disbursements, though the court has discretion to depart from these. (A tariff is a way of calculating different aspects of litigation – i.e. a tariff for drafting an affidavit, or a tariff for appearing in court.)
Newfoundland & Labrador	*Rules of the Supreme Court, 1986,* SNL1986 c42 Schedule D	Under Rule 55.04(4), the Court in awarding party and party (another term for partial	Civil Rules, Practice Notes and Forms – General – Supreme Court

	under the *Judicature Act*, RSNL 1990, Chapter J-4. See Rule 55.	indemnity) costs may consider the following factors: (a) the amounts claimed and the amounts recovered; (b) the importance of the issues; (c) the complexity, difficulty or novelty of the issues; (d) the manner in which the proceeding was conducted, including any conduct that tended to shorten or unnecessarily lengthen the duration of the proceeding; (e) the failure by a party to admit anything that should have been admitted; (f) the proposion of the services rendered prior to the amendment to this paragraph introducing a Scale of Costs where costs are taxed accoding to a column or combination of columns came into force; (g) seniority at the bar of counsel; and (h) any other relevant matter. There are cost consequences of failing to accept offer to settle if the court's decision is as or more favourable than the offer, as per rule 20A.08.	of Newfoundland and Labrador See the Newfoundland and Labrador webpage on representing yourself. Rule 55 has an Appendix with the Scale of Costs and Columns referenced in the rules. The Appendix states that a party seeking an assessment of costs must prepare a bill of costs, indicating the type of legal service, the column and the number of units, and, where the service is based on days or half days, shall indicate the number of days or half days. A bill of costs may include a list of disbursements, supported by invoice or by affidavit. Under rule 7.20(1) you can apply to the judge, with notice to all other parties, for an order that *you pay no costs in the proceeding*. This requires Form 7.20A, as well as supporting affidavits/documentation if requested, and it must be filed no later than 30 days following the close of pleadings. The judge may grant this if you can prove you can't afford to pay costs, and that would prevent you from advancing a non-frivolous and non-vexatious claim or defense, and the Court is satisfied that the order would be in the best interests of justice (not

			applicable to proceedings initiated pursuant to rule 53 – contempt orders).
Prince Edward Island	Note: Since the Supreme Court of PEI adopted the *Ontario Rules of Civil Procedure* in 1990, a substantial number of written decisions have been given by the Court addressing issues of interpretation and application of the Rules. Rule 57.	Under Rule 57, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing: (0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer; (0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed; (a) the amount claimed and the amount recovered in the proceeding; (b) the apportionment of liability; (c) the complexity of the proceeding; (d) the importance of the issues; (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding; (f) whether any step in the proceeding was, (i) improper, vexatious or unnecessary, or (ii) taken through negligence, mistake or excessive caution; (g) a party's denial of or refusal to admit anything that should have been admitted; (h) whether it is appropriate to award any costs or more than one set of costs where a party, (i) commenced separate proceedings for claims that should have been made in one proceeding, or	Forms 57A (Bill of Costs) and 57B (Costs Outline) are important. A Bill of Costs (57A) should not be longer than 3 pages. Forms | Courts of PEI. PEI also has Practice Note 21, which has a costs guide setting out principles and established rates to be paid *for legal counsel*. SRLs should *only* consult Practice Note 21 if they're disputing an award against them, but shouldn't use it to figure out what costs they would ask the other side to pay.

		(ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer; and (iii) any other matter relevant to the question of costs. There are cost consequences to formal offers to settle if the court's decision is as or more favourable than the offer (the same as Ontario) – rule 49.10.	
New Brunswick	New Brunswick *Rules of Court*, Rule 59.	Rule 59.01(1) says that the costs of a proceeding are awarded at the discretion of the judge. Usually, costs are awarded to the successful party. There is a Tariff A-D that may be applied in various circumstances. (A tariff is a way of calculating different aspects of litigation – i.e. a tariff for drafting an affidavit, or a tariff for appearing in court.) For example, while Tariff A usually applies, Tariff B is for when a default judgement was entered, and Tariff D sets out amounts for disbursements.	See the PDF of Rule 59 and the Tariffs for more information. The approach in New Brunswick is similar to the approach taken in Nova Scotia, though the tariffs differ somewhat.
Nova Scotia	*Nova Scotia Civil Procedure Rules*, Royal Gaz Nov 19, 2008, Rule 77.	The Tariff (A, B, C, D, E, or F) that applies depends on the nature of the proceeding. (A tariff is a way of calculating different aspects of litigation – i.e. a tariff for drafting an affidavit, or a tariff for appearing in court.) In some cases, the amount is a set percentage based on the amount involved (for a decision or order in a proceeding – Tariff A), where in other cases, such as a discontinuance or settlement, there are maximum amounts set out in Tariff F. Despite the Tariff guidelines, Rule 77.07 says that a judge who fixes costs may add an amount to, or subtract an amount from,	The Courts of Nova Scotia - Supreme Court - Forms See the Nova Scotia Supreme Court's webpage on representing yourself in Nova Scotia. A judge may also award a lump sum instead of tariff costs (see rule 77.08). Rule 77.04 says that a party who cannot afford to pay costs and for whom the risk of an award of costs is a serious impediment to making, defending, or

		tariff costs based on the following list of relevant factors: (a) the amount claimed in relation to the amount recovered; (b) a written offer of settlement that is not accepted; (c) an offer of contribution; (d) a payment into court; (e) conduct of a party affecting the speed or expense of the proceeding; (f) a step in the proceeding that is taken improperly, abusively, through excessive caution, by neglect or mistake, or unnecessarily; (g) a step in the proceeding a party was required to take because the other party unreasonably withheld consent; (h) a failure to admit something that should have been admitted.	contesting a claim may make a motion for an order that the party is to *pay no costs* in the proceeding (this is not applicable for civil appeals, contempt, or an abuse of process order).

Appendix 2

Sample Costs Outline

**Note: Although this sample outline is specific to Ontario, the rules across provinces are often similar, so it can also be used as a general guide for provinces other than Ontario. Just be aware that the format or required inclusions might be slightly different. See Appendix 1 for an overview of the applicable rules in your province.*

COSTS OUTLINE OF THE MOVING PARTY

Partial Indemnity Totals:

Estimated counsel fees (self represented litigant):	$720.00
Disbursements (as detailed in the attached Appendix A)	$800.00
H.S.T. [13% in Ontario]	$197.60
Total	**$1717.60**

The following points are made in support of the costs sought:

- the amount claimed and the amount recovered in the proceeding

The claims in this proceeding are substantial and the costs incurred on this motion are proportionate to the claims. *[If the amounts claimed are below $35,000 you should be proceeding at Small Claims Court in Ontario, in which case Form 57B does not apply. You should also proceed via the Simplified Procedure set out in Rule 76 of the Rules of Civil Procedure if your claim is valued under $200,000. If you don't do this, you may be charged higher costs. Though Form 57B is still applicable for Simplified Procedure matters, costs are capped at $50,000, and disbursements are capped at $25,000, exclusive of HST. Make sure to confirm the rules in your province if you are outside of Ontario.]*

- the complexity of the proceeding

This motion was factually but not legally complex. [*Many cases will not be "legally" complex where the law in a particular area has been established. This means that the law that governs a particular issue or dispute is not completely complicated – there is a straightforward legal answer to the question, or the case law is generally clear about how this situation is to be interpreted.*]

- the importance of the issues

The issues in this motion are important because without the relief granted [additional production of documents] I would not have the required information to proceed with the litigation. [*Tailor this to your case and why the motion was important.]*

- the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding

The responding party would not concede certain facts that would have streamlined the conduct of the motion, and asked for a number of adjournments which delayed the proceedings. *[Tailor this to the circumstances of your case]*.

- whether any step in the proceeding was improper, vexatious or unnecessary or taken through negligence, mistake, or excessive caution

[You can leave this blank if it is not relevant – make sure you are not making any unsupported claims if you do fill this section in.]

- a party's denial or refusal to admit anything that should have been admitted

The responding party disputed the legitimate findings of the report. *[Tailor this information to the details of your case]*.

- the experience of the party's lawyer

[*Your name*] is a self-represented litigant seeking counsel fees. The appropriate rate of compensation is $60.00 per hour as established within the case law. [*OR you should briefly explain here why you are asking for a higher rate – for example, because of how much you make per hour at work*.]

- the hours spent, the rates sought for costs and the rate actually charged by the party's lawyer

Note: plaintiff is self-represented, all fee items and tasks were completed by the moving party. *[If you did have a lawyer's help on a limited, unbundled, or fixed fee basis, you can include that here as well.]*

FEE ITEMS	HOURS	PARTIAL INDEMNITY RATE TOTAL (60%)	ACTUAL RATE TOTAL (100%)
Telephone calls, emails, voicemails and/or other correspondence with opposing counsel	2	*[Enter 60% of the dollar amounts]*	*[Enter 100% of the dollar amount (dollar amount is the hourly rate you set for yourself as an SRL multiplied by the number of hours spent on the task)]*

		$72.00	$120.00
Preparation of notice of motion and supporting affidavits	5	$180.00	$300.00
Review of responding motion record and responding affidavits	3	$108.00	$180.00
Preparation of factum	10	$360.00	$600.00

- any other matter relevant to the question of costs

[You can add anything else here that is a unique aspect of your legal dispute that might impact the judge's decision.]

[Form 57B also includes a section titled "Lawyer's Certificate" – you can fill this in but modify it to just include the certification as shown below.]

I CERTIFY that the hours claimed have been spent, that the rates shown are correct and that each disbursement has been incurred as claimed.

_____

SRL [Sign your name here]

APPENDIX A

Disbursements

Paid to Minister of Finance	$200.00
Paid to Process Server Fees	$100.00
Court Reporters	$500.00
TOTAL DISBURSEMENTS:	$800.00

Appendix 3

Sample Bill of Costs

[As we explained above, the rules across other provinces are often similar, so this sample Bill of Costs can be used as a template outside Ontario. However, there may be different formating or additional information required in other provinces. Consult Appendix 1 for an overview of the rules in your province.]

BILL OF COSTS OF THE PLAINTIFF (OR RESPONDENT)

Note: Plaintiff is self-represented.

TASK	HOURS	PARTIAL INDEMNITY RATE TOTAL (60%)	ACTUAL RATE TOTAL (100%)

[Like the Costs Outline example in Appendix 2, you calculate the actual rate of 100% as your hours spent on the task multiplied by your hourly rate. The 60% rate is 60% of that 100% total. Make sure your hourly rate sought is reasonable, based on what we've explained in this guide. (Usually, 20-60$ an hour is considered a reasonable range). Write out the tasks you completed, like in the Costs Outline in Appendix 2.]