

Condo Unit Owner Appeals \$20,000 Costs Award

In a [prior blog post](#), we reported about a case (Wexler v. Carleton Condominium Corp. No. 28) where a unit owner who had unsuccessfully sued the condominium corporation for harassment was ordered to pay costs to the condominium corporation in the amount of \$20,000. This seems disproportionately high in view of the fact that the unit owner's failed claim in the Small Claims Court action was only for \$2,525. However, the trial spanned over three days and the corporation had incurred costs in excess of \$35,000.

As noted in our earlier blog post, section 29 of the Courts of Justice Act provides that in Small Claims Court an award of costs will not ordinarily exceed 15% of the amount claimed unless the Court makes a higher award to penalize a party for unreasonable behaviour in the legal proceedings.

In making the costs award, the Small Claims Court Deputy Judge relied on the indemnity provisions set out in the corporation's declaration and concluded that in view of this provision, it would be unfair for all of the other unit owners to have to bear the costs of the lawsuit.

The unit owner brought a [motion to obtain leave to appeal](#) the costs decision to the Divisional Court and the motion was granted.

The Judge hearing the motion stated that there is "good reason to doubt the correctness of the Deputy Judge's decision" and that the decision was open to "serious debate." The indemnity provisions in the declaration only related to loss, cost, damages or injury to or with respect to the common elements and/or all the other units and made no mention of legal costs. For this reason, the Judge hearing the motion stated that the Small Claims Court Deputy Judge "seems to have placed significant emphasis on irrelevant considerations". The Deputy Judge's decision also conflicted with the decision in a prior case that dealt with a similarly-worded indemnity provision.

Since many condominium disputes are heard in Small Claims Court, the Judge hearing the motion also noted that the proper interpretation of the indemnity provisions in the declaration and their impact on costs awards was an important matter and for that reason also, leave to appeal should be granted.

We await the appeal decision of the Divisional Court. Not only will it be revisiting the original costs award, but it will also be dealing with the costs relating to the motion to obtain leave to appeal and the appeal itself. With each court hearing the legal costs incurred by the condominium corporation will increase. So far, the unit owner has been self-represented.