

CITATION: United Bakery Manufacturers Inc. v. Alectra Utilities Corporation
2026 ONSC 4547

COURT FILE NO.: CV-24-00062789-0000

DATE: 2026-08-06

SUPERIOR COURT OF JUSTICE

RE: United Bakery Manufacturers Inc., Plaintiff

AND:

Alectra Utilities Corporation, Defendant

BEFORE: The Honourable Mr. Justice Robert B. Reid

COUNSEL: M. Arnold, Counsel, for the Plaintiff

A. Chughtai, Counsel, for the Defendant

HEARD: April 8, 2026

Costs submissions due June 30, 2026

DECISION ON COSTS OF MOTION

Introduction:

- [1] The defendant, Alectra Utilities Corporation (“Alectra”), brought a motion for summary judgment dated November 19, 2025, pursuant to r. 20.01(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “Rules”) requesting a dismissal of the claim by the plaintiff, United Bakery Manufacturers Inc. (“United”), based on the absence of a genuine issue requiring a trial.
- [2] United submitted that there were several genuine issues requiring a trial and sought dismissal of the motion.
- [3] For the reasons contained in the decision of May 20, 2026 (United Bakery Manufacturers Inc. v. Alectra Utilities Corporation, 2026 ONSC 2928), Alectra’s motion was dismissed.
- [4] Since the parties were unable to agree on costs, the matter was remitted to me for a decision.

Background:

- [5] Alectra is an electrical utilities company which provides electrical services to United. On August 16, 2023, those services were interrupted, allegedly because of the failure of one of

Alectra's underground supply cables. As a result, there was a stoppage for about four hours of the commercial baking operation of United.

- [6] United alleges that the service interruption was the responsibility of Alectra, and that Alectra should be found liable to United for damages claimed at about \$420,000.

Positions of the Parties on Costs:

United:

- [7] United seeks an order for substantial indemnity costs or in the alternative partial indemnity costs inclusive of disbursements and HST in the amounts of \$62,510 and \$51,662, respectively. It relies on its successful defence of the summary judgment motion, and its successful resistance to the request by Alectra that United's Reply be redacted or deleted. United's claim alleging negligence was contained in that pleading.
- [8] The amount at stake was significant, and successful resistance to the summary judgment motion was critical to United's ability to pursue its claim.
- [9] In reference to the provisions of r. 57.01(1)(f), United submits that Alectra's attempt to prevent the consideration of its Reply was a step that was improper, vexatious, or unnecessary.
- [10] According to United's bill of costs dated May 22, 2026 and Alectra's bill of costs dated March 17, 2026, the amount of time spent on the motion by counsel for United was modestly less than that spent by Alectra, which is to be expected given that Alectra was the moving party, and was therefore within the range of costs that the unsuccessful party could expect to pay, which is a proper consideration for the court under r. 57.01(1)(b).
- [11] Further, United seeks consideration of substantial indemnity costs based on Alectra's abuse of the r. 20 procedure, pursuant to r. 20.06.

Alectra:

- [12] Alectra agrees that the issues were important to the parties.
- [13] The summary judgment motion, while unsuccessful, was reasonable and justified given that the causes of action pleaded in the statement of claim were not supported by the evidence and given that the remaining potential cause of action based on negligence was pleaded for the first time, contrary to the Rules, in United's Reply.
- [14] Alectra submits that the procedural motion brought by United dated November 26, 2025, which was subsequently abandoned, required preparation of a response, and that therefore

Alectra should be entitled to \$2,000 costs inclusive of HST accordingly. It is not clear that costs incurred in relation to that motion were excluded from United's Bill of Costs.

- [15] In the circumstances, and despite United's success, Alectra seeks costs in the all-inclusive amount of \$5,000 or in the alternative no order as to costs.

Applicable law:

- [16] The court's discretion to award costs is established by s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. The non-exhaustive list of factors to be considered by the court in exercising its discretion is set out in r. 57.01 of the Rules.
- [17] In addition to the presumptive factor of success, r. 57.01 requires the court to consider the principle of indemnity, the amount of costs that an unsuccessful party could reasonably expect to pay, the complexity of the proceeding, the importance of the issues, and the conduct of any party that tended to shorten or to unnecessarily lengthen the duration of the proceeding.
- [18] In general, courts have established that the purposes behind awards of costs are to indemnify successful litigants for the cost of litigation, encourage settlement, and where necessary to discourage and sanction inappropriate behaviour by litigants.

Analysis:

Motion not heard:

- [19] As a preliminary matter, I will deal with Alectra's submission about the motion by United that did not proceed.
- [20] That notice of motion was dated November 26, 2025. It sought procedural orders including requirements for service by Alectra of its affidavit of documents and documentary production, attendance for examination for discovery, or in the alternative scheduling of the summary judgment motion by Alectra, and in the further alternative permitting United to file the trial record prior to the examination for discovery.
- [21] There was no confirmation filed by either party indicating that the November 29, 2025 motion was to be heard on April 8, 2026, when the summary judgment motion was

returnable. It was not addressed at the April 8 hearing. According to Alectra, it was abandoned by United.

- [22] In any event, it is not appropriate for the court to award costs in relation to a matter that was not before that court. On that basis, the request of Alectra for \$2,000 costs of the motion of November 26, 2026 is not granted.

Preliminary objections:

- [23] At the motion hearing, Alectra sought to exclude documents filed by United in response to the summary judgment motion because they did not comply with the timetable established by Standryk J. on December 18, 2025. Those documents included a compendium and book of authorities. A further objection was made to consideration of United's Reply, which was filed two days later than the Rules provided, and which contained a pleading of negligence that did not appear in the statement of claim. I ruled that a Notice of Motion should have been brought, at least as to the Reply issue, but that in any event, I would have permitted the documents to be referenced at the motion hearing.
- [24] The dismissal of the preliminary objections by Alectra supports the submission of United that it was successful in the matter.

Success in opposing Summary Judgment:

- [25] The result on a motion is a presumptive factor in considering responsibility for costs.
- [26] In this case, United was successful in opposing Alectra's motion.
- [27] The decision included a finding, which was conceded in submissions by United, that the pleaded causes of action alleging breach of contract or breach of warranty were unsupported on the evidence. Without more, there would have been a decision in favour of Alectra.
- [28] Alectra was unsuccessful because it failed to respond to the allegation in the admittedly irregular Reply that it was negligent. It did not "put its best foot forward" on the negligence issue. Whether United will need to attempt to amend its statement of claim to incorporate

that cause of action is a matter for its consideration, and any potential response that such a claim is statute-barred is likewise a matter for another day and another court.

Proportionality:

- [29] In exercising its discretion, the court can consider the factors in r. 57.01(1)(0.a) and (0.b). The experience, hourly rate, and hours spent by counsel can be considered, as well as the amount that the unsuccessful party could reasonably be expected to pay.
- [30] Counsel for United submits that 94.5 hours were spent in relation to the motion including preparation of the motion material, all court attendances, cross-examinations, correspondence, and document preparation.
- [31] Although United queries the discrepancy between Alectra's Bill of Costs previously filed dated March 17, 2026, which showed about 124 hours spent by counsel as compared with about 50 hours claimed in relation to the summary judgment motion, I am satisfied that the lower total relates to time incurred after September 12, 2025, which is the same timeframe used by United in its Bill of Costs. The previous 74 hours presumably relate to other aspects of the claim and are irrelevant to my consideration of costs of the motion.
- [32] The hourly rate for United's counsel on the partial indemnity scale was shown as \$450. That rate does not seem excessive. The hourly rate for Alectra's counsel on the partial indemnity scale was shown as either \$295 or \$345, depending which counsel was involved. United cannot be criticized for choosing senior counsel, and Alectra's reasonable expectation as the unsuccessful party should include that possibility.
- [33] I am troubled, however, by the unexplained fact that the number of hours incurred by United's counsel are almost double that of Alectra's counsel. This is despite the fact that the moving party usually incurs time greater than that of the responding party.

Other factors under r. 57.01:

- [34] The issues were clearly important to both parties. For United, its success permits the litigation to continue allowing for the possibility of a successful conclusion. The alleged financial loss by United was significant.
- [35] Despite the submissions of United, the issues were not complex. In fact, they were relatively straightforward involving an examination of whether the parties led sufficient evidence to satisfy the court about whether there was a genuine issue requiring a trial on the issue of negligence.
- [36] Under the circumstances noted above, although Alectra was unsuccessful on the motion, it cannot be said that it was unreasonable in bringing the motion. By no means can it be said

to have proceeded in a way that was improper, vexatious, or unnecessary sufficiently to engage the provisions of r. 57.01(1)(f)(i).

Conclusion:

- [37] United was successful in its opposition to Alectra's summary judgment motion, and in resisting Alectra's request to prevent or limit consideration of the Reply and other documents filed in support of the motion by United.
- [38] Success is a presumptive factor for the award of costs.
- [39] The abandoned motion was not before the court and is irrelevant to this decision on costs of the summary judgment motion.
- [40] The issues were important but not complex. The amount at stake was significant. Alectra cannot be criticized for bringing the motion, despite its lack of success.
- [41] In consideration of those factors, it is appropriate to award costs of the summary judgment motion to United. There are no persuasive reasons to depart from the usual partial indemnity scale, in keeping with the principle of indemnity.
- [42] The hourly rate of counsel for United, while about 40 per cent higher than the average hourly rate charged by Alectra counsel is nevertheless reasonable and should be within the expectation of Alectra.
- [43] The 95.5 hours docketed by counsel for United appear excessive in the circumstances and are unexplained in that they are almost double the hours incurred by counsel for Alectra. There is no evidence that Alectra's docketed time has been artificially minimized. It is acknowledged that counsel for United reasonably provided materials for use by the court including a compendium and a two-volume book of authorities. As a result, there will be a reduction in the hours allowed from 95.5 to 75.
- [44] Therefore, there will be an order that United receive partial indemnity costs from Alectra fixed in the amount of \$40,983.50 inclusive of HST and disbursements.

Reid J.

Date: August 6, 2026