

**CITATION:** Navaratnarajah v. FSB Group Ltd., 2026 ONSC 4246  
**COURT FILE NO.:** CV-20-00642941-00CP  
**DATE:** 20260721

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** SURENDRARAJ NAVARATNARAJAH, Plaintiff

– and –

FSB GROUP LTD., FSB INSURANCE LTD., and FSB COMMERCIAL LTD.,  
Defendants

**BEFORE:** Justice E.M. Morgan

**COUNSEL:** *Tim Gleason and Megan Phyper*, for Monkhouse Law Professional Corporation  
(non-party)

*Richelle Pollard and Stephen Gleave*, for the Defendants

**HEARD:** Cost submissions in writing

**COSTS OF MOTION TO VARY COSTS ORDER**

[1] On June 17, 2026, I issued a judgment varying a previous costs order and making that order payable by Monkhouse Law Professional Corporation (“Monkhouse”), the lawyers for the Plaintiff in the action: *Navaratnarajah v. FSB Group Ltd.*, 2026 ONSC 3314 (the “Variance Motion”).

[2] . Given that context, the Defendants now seek costs of the Variance Motion on a substantial indemnity scale.

[3] Monkhouse had retained counsel and so did not represent itself in the Variance Motion.

[4] The focus of the Variance Motion and the varied costs order that resulted therefrom was the conduct of Monkhouse in the underlying action. But the fact that I criticized the law firm in my reasons in the Variance Motion does not mean that that motion itself was conducted in a way which attracts criticism. The counsel representing Monkhouse approached the Variance Motion in a straightforward and proper way, arguing their client’s position forcefully but professionally.

[5] The Court of Appeal has on a number of occasions noted that “solicitor-and-client costs should not be awarded unless there is some form of reprehensible conduct, either in the

circumstances giving rise to the cause of action, or in the proceedings, which makes such costs desirable as a form of chastisement”: *Davies v. Clarington (Municipality)*, 2009 ONCA 722, at para. 30, quoting *Mortimer v. Cameron* (1994), 17 OR (3d) 1, at 23 (CA). In the conduct of the Variance Motion, there was no “reprehensible, scandalous or outrageous conduct on the part of one of the parties” such as would warrant an elevated scale of costs: *Young v. Young*, [1993] 4 SCR 3, at 134.

[6] Monkhouse was admonished in the previous motion for engaging in unnecessary procedures and, in essence, “the pursuit of fruitless litigation”: *Apotex v. Egis Pharmaceuticals* (1991), 4 OR (3d) 321, at para. 8 (Gen Div). But nothing of that nature was done by counsel on its behalf in responding to the Variance Motion. “Under our system defendants are entitled to put the plaintiff to the proof”: *Foulis v. Robinson* (1978), 21 OR (2d) 769, at 776 (CA). That is what Monkhouse’s counsel did.

[7] Counsel for Monkhouse suggests a costs award in the amount of \$15,000 would be suitable for the Variance Motion. Counsel for the Defendants has presented a Costs Outline showing costs on a partial indemnity scale, together with disbursements and HST, in the total amount of \$53,901.00. The latter strikes me as a bit high for a motion with no cross-examinations or voluminous evidence, while the former seems a bit low for a motion with some complex legal and jurisdictional arguments.

[8] Costs are discretionary under section 131 of the *Courts of Justice Act*. I will exercise my discretion here to impose a costs award that is roughly at the mid-point between the two parties’ submissions.

[9] Using round numbers for convenience, Monkhouse shall pay the Defendants’ costs of the Variance Motion in the all-inclusive amount of \$30,000.

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**Morgan J.**

**Date:** July 21, 2026