CITATION: Atkinsréalis Construction (Pacific) Inc. v. GIP Construction Ontario East Ltd., 2026 ONSC 5995
COURT FILE NO.: CL-26-00000307-0000
DATE: 20261022

2026 ONSC 5995 (CanLII)

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN:	
ATKINSRÉALIS CONSTRUCTION (PACIFIC) INC.	
Applicant	John Adair, David Ionos, and Rachel Allen, for the Applicant
– and –	
GIP CONSTRUCTION ONTARIO EAST LTD.	
Respondent	John Margie, Leah Mangano, and Sophia Montoni for the Respondent
	READ: October 22, 2026

FL MYERS J

REASONS FOR DECISION

This Application

[1] The Applicant seeks its costs of its successful application to remove an arbitrator under ss. 13 (6) and 15 of the *Arbitration Act, 1991*, SO 1991, c 17. The Applicant also asks for the reversal of the costs award made by the Arbitrator after his determination of the Applicant's motion asking the Arbitrator to recuse himself under s. 13 (5) of the statute.

[2] The Applicant's Notice of Application in this court does not seek any relief related to the costs of the motion before the Arbitrator. It lists no grounds on which that issue is properly brought before the court.

[3] The Respondent rightly notes that in my decision removing the Arbitrator, I said that the hearing before me was *de novo* rather than being an appeal from the Arbitrator's decision. I did not address the question of whether the statute provided for an "appeal *de novo"* in the circumstances despite the fact that it does not use the word "appeal." I certainly have disagreed with the outcome and the reasoning of the Arbitrator in his decision. But as I said in my decision, I did not apply any standard of review. I just used elements of his decision to explain my decision.

[4] There are issues that could have been argued. Subsection 15 (3) of the statute allows the court to make directions about the conduct of the arbitration going forward. Perhaps repayment or even reversal of the costs award made by the Arbitrator could be a direction made to allow the arbitration to continue on a fair footing.

[5] There could also be an argument that the Arbitrator was without jurisdiction to make his costs order. The case law cited in my decision makes clear that an arbitrator loses jurisdiction when a reasonable apprehension of bias arises. Then s. 13 (5) provides an express grant of jurisdiction for an arbitrator to decide the issue of bias raised by a party. Perhaps he or she has no further jurisdiction to award costs of that decision if it turns out that a court finds that, contrary to the arbitrator's view, there was a basis to remove the arbitrator. That would require an analysis of the nature of an arbitrator's jurisdiction to deal with costs under s. 54 of the statute when his jurisdiction is lost but continued for a hearing under s. 13 (5).

[6] The Respondent submits that the only way the Applicant could have brought the issue to the court was by applying under s. 46 of the statute. Subsection 46 (1)8 of the statute allows a party to move to set aside an arbitral award on the basis that there is a reasonable apprehension of bias.

[7] Section 47 of the statute requires an application under s. 46 to be commenced within 30 days of the release of the challenged decision. This application was brought within 30 days of the release of the Arbitrator's

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decision. In fact, it was brought within ten days of the decision to meet the tighter time limit in s. 13 (6) of the Act. But, as noted above, the application brought contains nary a word about the costs of the hearing before the Arbitrator under s. 13 (5) of the statute.

[8] In calling for costs submissions in my decision, I signalled a concern about whether the issue of costs of the motion before the Arbitrator was properly before me. At para. 117, I wrote:

> If the parties cannot agree on costs of the motion before the Arbitrator under s. 13 (5) of the statute (if properly before me) and the costs of this application, ATRL may make costs submissions in writing to be delivered on or before October 14, 2026.

[9] The Applicant did not take up the cudgel. It argued simply that the Arbitrator lost jurisdiction when he created circumstances that raised a reasonable apprehension fo bias. But, as discussed above, s. 13 (5) of the statute expressly provided him with jurisdiction to decide the issue of whether he should recuse himself. The Applicant did not make any submissions as to how the question of costs of the motion before the Arbitrator was open for consideration in this application. It did not bring an application to set aside the costs award under s. 46 (1)8 of the statute. It did not raise the issue of the costs of the s. 13 (5) hearing in its Notice of Application at all.

[10] In my view, the question of whether the Arbitrator's costs award ought to be reversed is not before me for decision at this time. Accordingly, I make no findings on the propriety or status of that decision.

[11] As to the costs of this proceeding, I accept that the Respondent committed no wrongdoing that led to the outcome of this proceeding. The issue involved solely the conduct of the Arbitrator. But the costs of a proceeding do not generally turn on an express finding of wrongdoing by a responding party. Rather, costs follow the event presumptively. The presumption is designed partly to keep the successful party whole as it has done no wrong either. Costs are also designed to provide settlement incentive to a defendant who might wish to settle despite believing that he, she, or it did no wrong.

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[12] It is quite common for parties to have differing interpretations of events or of contractual terms. Decisions are frequently made without any finding of wrongdoing - simply on whose interpretation of the outcome of the application of the law to the facts is correct. Costs follow the event because one person was found to be correct without any necessary finding of wrongdoing being made against the other.

[13] Costs awards are a piece of the cost benefit analysis that goes into the question of when to sue and when to settle. The risk of being found to have committed wrongdoing is but one piece of that analysis.

[14] The Respondent exercised its undoubted right to give full-throated support to the position of the Arbitrator in defence of this application. Had the Respondent consented to the removal of the Arbitrator, none of the costs of this proceeding would have been necessary.

[15] In my view, having failed on the merits, it is fair and reasonable for the Respondent to be responsible for a portion of the Applicant’s costs.

[16] The Respondent makes no submissions concerning the quantum of costs sought by the Applicant. In fact, the costs sought by the Respondent in its Bill of Costs delivered before the hearing of the application are about 20% higher than the costs sought by the Applicant.

[17] The costs put forward by both parties are fair and reasonable. The rates are within market. The hours claimed are quite reasonable for a hearing of the complexity and import of this application.

[18] I suspect that the costs of both sides were lessened by the fact that they had each made fundamentally the same arguments before the Arbitrator under s. 13 (5) of the statute. In light of the costs incurred by the Respondent and the very reasonable level of costs of this proceeding in any event, there is no issue of proportionality nor any basis to fear that the Respondent might be surprised by the quantum of costs sought by the Applicant.

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[19] I find that it is fair and reasonable to order the Respondent to pay the costs of this application to the Applicant on a partial indemnity basis fixed in the amount of $42,500 all-inclusive. Order to go accordingly.

FL Myers J

Released: October 22, 2026

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