

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: 2748204 Ontario Inc. o/a Flex Home Loans, Michael Yosher, Shalby Investments Inc., Albert Kshoznicer, and Barbara Kshoznicer, Moving Parties

AND:

Joan Syphus, Clemisford Syphus, Ian Bickerton, by his Litigation Guardian, David Bickerton, and John Doe #1-500, Responding Parties

BEFORE: Matheson, Koehnen and Schreck JJ.

COUNSEL: *Michael Gayed*, Counsel for the Moving Parties

David Sterns and Ida Morra-Caruso, Counsel for the Responding Parties

HEARD: In-writing

ENDORSEMENT

- [1] The motion for leave to appeal the Order of Schabas J. dated February 18, 2026, is dismissed.
- [2] With respect to costs, we note that since a rule change in 2017, the Divisional Court, like the Court of Appeal and the Supreme Court of Canada, does not normally provide reasons for its decision on a motion for leave to appeal. However, in this instance, we are providing some reasons to address the issue of costs.
- [3] In 2017, this court gave general guidance about costs on motions for leave to appeal in 2265535 *Ontario Inc. v. Vijayant Sood*, 2017 ONSC 4738 (Div. Ct.). The court observed that the normal expectation for costs of a leave motion is partial indemnity costs in the range of \$5,000, although the court may nonetheless order more or less in its discretion.
- [4] Due to the passage of time, something in the range of \$7,000 continues to reflect the narrow, well-established nature of the leave test and the streamlined leave motion process. Often (as is the case here) a leave motion challenges a decision where the parties have already fully briefed the merits with motion materials for the hearing that gave rise to the decision at issue. The pre-existing motion materials ought to be of assistance in preparing the leave materials. Ordinarily, the costs of the leave motion should be modest.

- [5] In this case, the moving parties have submitted a costs outline for partial indemnity costs of \$6,734.57. However, the respondents seek substantial indemnity costs of \$53,176.52. The respondents' costs outline also sets their partial indemnity costs as \$32,157.39. We have considered the reasons put forward by the respondents, including the submissions about the merits of the motion (or lack thereof), the numerous issues raised on the motion and their delegation of a significant amount of the work to a student who apparently did over 80 hours of work (in addition to the about 40 hours spent by lawyers).
- [6] Considering all the relevant factors in the exercise of our discretion, we find that this costs claim is grossly disproportionate, even if costs were awarded on a substantial indemnity basis, and we are not persuaded to use that increased basis here. Although the motion was unsuccessful, there is no doubt that the decision from which leave was sought has serious consequences for the moving parties.
- [7] We therefore take this opportunity to emphasize that ordinarily the costs of a leave motion should be modest, in the range discussed above. We award costs to the respondents in the total amount of \$7,000, all inclusive.

Matheson J.

Koehnen J.

Schreck J.

Released: August 14, 2026