CITATION: Sweda Farms Ltd. v. Egg Farmers of Ontario, 2026 ONSC6256
COURT FILE NO.: CV-08-357570
DATE: November 5, 2026

2026 ONSC 6256 (CanLII)

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Sweda Farms Ltd., Best Choice Eggs Ltd and Tilia Transport Inc. v. Egg Farmers of Ontario, Harry Pelissero, Burnbrae Farms Limited, Burnbrae Holdings Inc., Maple Lynn Foods Limited, L.H. Gray & Son Limited, William Harding Gray, John Klei and The Estate of Johannes Klei;

BEFORE: ASSOCIATE JUSTICE C. WIEBE

COUNSEL: David B. Williams and Allison Webster for L.H. Gray & Son Limited and William Harding Gray (the "Gray Defendants");
Geoffrey P. Spurr for Egg Farmers of Ontario and Harry Pelissero (the EFO Defendants");
Laurie L. Aitchison for John Klei and The Estate of Johannes Klei (the "Klei Defendants");
Peter Neufeld Sweda Farms Ltd., Best Choice Eggs Ltd. and Tilia Transport Inc.;

DECISION: September 21, 2026.

COSTS DECISION

[1] On September 21, 2026 I rendered my Reasons for Decision on the motion by the defendants for an order requiring the plaintiffs to post security for the defendants' trial related costs. I ordered that the plaintiffs post $950,000 in security for these costs in ninety days. I also ordered that the parties attempt to resolve the issue of the costs of this motion and that, should they fail to do so, make written submissions on costs. They failed to resolve the issue of costs and have made these written submissions.

[2] At the time of the argument, on my direction, the parties filed costs outlines. The Gray defendants' costs outline showed $41,932.93 in partial indemnity costs and $55,056.30 in substantial indemnity costs; the EFO defendants' costs outline showed $22,895.43 in partial indemnity costs and $29,370.33 in actual costs; and the Klei defendants bill of costs showed $3,737.48 in partial indemnity costs and $4,983.30 in substantial indemnity costs. The plaintiffs' costs outlines showed $24,819.55 in partial indemnity costs, $36,409.11 in substantial indemnity costs and $40,272.30 in full indemnity costs.

[3] In their written costs submissions, the defendants seek their substantial indemnity costs claims adjusted to account for the costs of the written submissions. The Gray Defendants seek substantial indemnity costs of $56,028.10; the EFO Defendants seek substantial indemnity costs of

$31,531.46; the Klei Defendants seek substantial indemnity costs of $4,983.30. The total is $92,542.86. The plaintiffs submit that the award should be no more than $25,000.

Result

[4] The defendants were clearly the successful parties in this motion and are entitled to costs. They succeeded in obtaining a substantial security for costs order. The fact that what was ordered as security, $950,000, was 76% of what was originally claimed should only be considered for the purpose of potentially reducing the final award of costs in favour of the defendants commensurately, not disentitling them to costs at all.

Offers to settle

[5] The written submissions make no reference to settlement discussions concerning this motion. That frankly shocked me, given the fact that the original motion for security for costs was resolved on consent. It appears from the materials that the plaintiffs made no effort this time to resolve the issue of the security for the trial costs of the defendants, despite the evidence showing that the plaintiffs' wherewithal to pay costs had worsened since 2017.

[6] Instead, the plaintiff chose to fight this motion primarily on the rather farfetched arguments that the motion was a tactical move by the Gray Defendants to thwart this action and the alleged potential double recovery for the EFO Defendants. The late attempt to serve and file supplementary materials concerning the corporate dealings of LH Gray was a part of this effort. This, in my view, was unreasonable behavior that unnecessarily lengthened this action.

Scale of costs

[7] Substantial indemnity costs are to be awarded for reprehensible, scandalous and outrageous conduct, not hard-fought litigation; see *Davies v. Clarington (Municipality) et al.*, 2009 ONCA 722 (CanLII) at paras. 28 – 31. Nevertheless, I seriously considered the defendants' submission to award them substantial indemnity costs due to the plaintiffs' conduct as described above.

[8] However, I decided in the end that the plaintiffs' conduct does not rise to the level of misconduct meriting an award of substantial indemnity costs. The primary reason is the defendants' delay in bringing this motion, a delay that I found to be only marginally passable. This delay of almost three years alone formed a reasonable basis for the plaintiffs' decision to resist this motion.

[9] I will, therefore, award the usual partial indemnity costs. The adjusted partial indemnity costs claimed by the Gray Defendants is $42,667.43; the adjusted partial indemnity costs claimed by the EFO Defendants is $27,245.93; and the partial indemnity costs claimed by the Klei Defendants is $3,737.48. The total is $73,650.84.

[10] Because this decision on the scale of costs turned on the issue of the motion delay, I will not reduce the award further due to the above noted decreased result. That decrease in result was due to the same motion delay.

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[11] Mr. Neufeld made one further good point. The partial indemnity costs claimed by the EFO Defendants, $27,245.93, is greater than the required 60% of their adjusted actual costs as shown in their costs submissions, namely $34,963.83. 60% of those actual costs is $20,978.29. I will use that figure in a benchmark in my costs award concerning the EFO Defendants.

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Conduct and proportionality

[12] Mr. Neufeld argued that the defendants' costs claims are excessive and disproportionate. He argued that the defendants' use of separate counsel to advance what he called substantially identical positions using common evidence amounted to unnecessary duplication of effort and conduct that unnecessarily lengthened the motion. He argued that this is unreasonable cost inflation that the plaintiffs could not reasonably expect to pay in the event of a loss. He argued that a proper and proportionate award would mirror the plaintiffs' partial indemnity claim in its costs outline of $24,819.55. He relied on the decision in *Guergis v. Novak et al*, 2013 ONSC 1130 (CanLII) at para. 11.

[13] I do not accept this argument for the following reasons:

- First, the defendants' upfront positions on this motion were not identical. This was a motion for security for the defendants' trial costs, not, as in *Guergis*, a pleadings motion where the defendants undertook a common attack on the sufficiency of the statement of claim. In the motion for security for costs that is before me, each defendant's trial costs are different depending on the claims against each, the defences each raise, the witnesses each will call and the documents each will rely upon. Each defendant had to justify their portion of the claimed security.

- Second, the defendants here in fact made a serious effort to coordinate their efforts and streamline the costs. They served one motion record and one factum. The defendants' counsel divided the closing argument properly between them with Mr. William discussing the history of this action, Mr. Spurr the issues his clients have unique evidence of such as the Sweda sale of its quota, and Ms. Webster the legal test, the relevant evidence and the bill of costs.

- Third, the plaintiffs' defence to this motion differentiated significantly between the defendants, thereby differentiating further the positions of the defendants. The plaintiffs argued that the corporate dealings of LH Gray, on the one hand, and the alleged potential double recovery of the EFO Defendants, on the other, justified denying or reducing the claimed security for costs. These two groups of defendants, therefore, had to respond to these allegations.

[14] I also do not accept the argument that the plaintiffs' partial indemnity costs as shown on its costs outline, $24,819.55, reflect what the plaintiffs should reasonably expect to pay all three sets of defendants in the event of a loss. The lawyers for the Gray Defendants point out rightfully that the plaintiffs' costs outline does not include the communications between counsel regarding the scheduling of the motion and the motion itself. Furthermore, the lawyers for the Gray Defendants spent much more time on this motion than did the lawyers for the plaintiffs because these

defendants are the prime target of the action and have the higher onus of proof on this motion. It does not surprise me, for instance, that the Gray Defendants spent almost twice as much time on the defendants factum as the plaintiffs spent on theirs. Finally, I note that the lawyers for the plaintiffs are significantly lesser in years of experience and lower in charged hourly rates than are the defendants' lawyers. As I stated in my Reasons, I am not prepared to penalize the defendants for using expensive and experienced lawyers, given the gravity of the allegations made against them.

[15] I also do not accept the argument that the Klei Defendants should be denied costs due to their minimal visibility in the motion. These defendants had their own costs to secure and were entitled to be present at the motion as a result. They succeeded along with the other defendants. They deserve costs as a result.

Complexity, importance and quantum

[16] As I stated in my Reasons, I accept that this case has complexity, particularly since the egg supply management system will have to be explained and explored in some detail. I also accept that this case is important to all the defendants given the allegations of quasi-criminal conduct against them. I note that this is particularly the case with the EFO Defendants who are public officials. Finally, I note that there were no other challenges to the quantum of the claims made by the defendants.

Conclusion

[17] Considering all of these factors, and following the guidance of the Court of Appeal in *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (ONCA) at para. 24, I have to decided to award the defendants the following partial indemnity costs of this motion, which I find to be reasonable and fair in the circumstances of this motion and this action:

- the Gray Defendants must be paid **$42,000**;
- the EFO Defendants must be paid **$21,000**; and
- the Klei Defendants must be paid **$3,000**.

This is a total of **$66,000** in partial indemnity costs. These costs must be paid by the plaintiffs to the defendants on or before thirty (30) days from today.

DATE: November 5, 2026

ASSOCIATE JUSTICE C. WIEBE

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