CITATION: Direct Management Services Inc. v. Kenora Municipal Non-Profit Housing Corporation et al, 2026 ONSC 6026
COURT FILE NO.: CV-21-0096-000
DATE: 2026-10-23

2026 ONSC 6026 (CanLII)

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:	
Direct Management Services Inc. Plaintiff	A. Wray & J. Echavarria for the Plaintiff
- and -	
Kenora Municipal Non-Profit Housing Corporation, Kenora District Services Board and City of Kenora Defendant	S. W. Morris, for the Defendant
	HEARD: in writing

Mr. Justice S.J. Wojciechowski

Decision on Costs

[1] Following my trial decision, I directed the parties to make written submissions with respect to any costs either party would be seeking.

[2] Both parties provided written submissions, and upon reviewing the positions of the parties and the supporting documents filed with their submissions, this is my decision on costs.

[3] The trial in this matter proceeded via Zoom over the course of 5 days in June 2026. My decision was dated September 4, 2026 ("Trial Decision"), and found in favour of the plaintiff, awarding damages of $610,192.00, plus PJI which has been calculated by the plaintiff to amount to $16,876.41.

[4] The total award to the plaintiff was therefore $627,068.41.

[5] The plaintiff submits that a Rule 49 offer to settle dated May 21, 2026 in the amount of $700,000 beat the Trial Decision award when HST is factored into the equation. While the Trial Decision determined that HST was not payable on the damages' award, had it been payable, then the award would have exceeded the $700,000 which was offered. Alternatively, if HST is deducted from the $700,000 offer to settle, then the resulting amount would be less than the amount awarded by the Trial Decision.

[6] As such, on the basis of this approach to the numbers, the plaintiff submits that its Rule 49 offer to settle is such that substantial indemnity costs are payable commencing May 21, 2026, with the plaintiff's legal costs to the date of the offer being payable on a partial indemnity basis.

[7] The Rule 49 offer dated May 21, 2026 provides that the defendant will pay the plaintiff "a lump sum payment of $700,000 as damages", plus partial indemnity costs in an amount to be agreed upon or assessed. This Rule 49 offer does not allocate the $700,000 to any amounts other than damages, i.e., not HST nor interest, and as such comparing apples to apples, this offer does not beat the award of damages determined by the Trial Decision.

2026 ONSC 6026 (CanLII)

[8] In terms of any Rule 49 offers made by the defendant, the trial offer to settle dated March 9, 2026 put $125,000 on the table, plus PJI and partial indemnity costs, to resolve the matter. Clearly this proposal of the defendant was not better than what was awarded in damages by the Trial Decision.

[9] Accordingly, the plaintiff's costs shall be assessed throughout on a partial indemnity basis.

[10] In terms of the costs of this action, both parties submitted a Bill of Costs for the Court's consideration.

[11] The plaintiff's partial indemnity costs, inclusive of HST and disbursements, total $202,276.11, which reflects upon a full indemnity amount of $334,549.85.

[12] The defendant's bill of costs asserts it incurred partial indemnity costs, inclusive of HST and disbursements, in an amount of $132,586.44. This is based upon a full indemnity figure of $219,811.02.

[13] Costs awards are entirely within the discretion of the judge hearing the matter: s. 131 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. In addition to the result in the proceeding and any offers to settle which were exchanged, r. 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, sets out guidelines for the court to consider when exercising its discretion.

[14] Costs' awards address several important principles. They partially indemnify successful litigants for the costs of litigation, they encourage settlement, and they discourage and sanction inappropriate behaviour. An award of costs should reflect a fair and reasonable amount, as determined by the judge hearing the matter, which an unsuccessful party should pay. It is not meant

2026 ONSC 6026 (CanLII)

to be an exact measure of the actual costs of the successful party. In considering what a fair and reasonable amount should be, a court should consider what the unsuccessful party should expect to pay in the circumstances: see *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at para. 26.

[15] The Court in *Wright v. Wal-Mart*, 2010 ONSC 2936 (CanLII), at para. 156, expressed a similar approach to the assessment of costs:

> Several principles should guide a trial judge in an assessment of costs. First, in exercising his discretion under section 131(1) of the *Courts of Justice Act* and Rule 57.01 of the *Rules of Civil Procedure*, he must arrive at a costs award that is a fair and reasonable amount to be paid by an unsuccessful party and take into account the expectations of the parties concerning the quantum of a costs award . . . . Second, in reviewing a claim for costs, a trial judge need not undertake a line by line analysis of the hours claimed, nor should he second guess the amount claimed unless it is clearly excessive or overreaching. A trial judge must consider what is reasonable in the circumstances and, after taking into account all of the relevant factors, should award costs in a global fashion . . . . [citations omitted]

[16] In considering the plaintiff's claim for costs, my first observation is that the amount claimed is based upon full indemnity costs being incurred in the amount of approximately $335,000 in order to obtain a judgment of approximately $627,000. For obvious reasons, devoting resources of $335,000 seeking $627,000 is not proportional. While the plaintiff is not seeking $335,000, the reasonableness of the figure of $202,276 is premised on disproportional efforts being expended.

[17] I accept, in part, the defendant's submissions regarding the claim of the plaintiff for damages representing project management fees which could not be obtained without the defendant embarking on a project. While the plaintiff asserts it did not know whether a project would be

2026 ONSC 6026 (CanLII)

secured within the remaining months of its contract with the defendant, after pleadings were exchanged and discoveries were undertaken, the fact that this claim was not abandoned until the eve of trial meant that some oxygen was wasted on this issue. Having said that, I did not get the sense that this was a burning issue throughout the litigation which continued until a week before trial, and as such there were not a significant amount of fees and expenses incurred by the plaintiff on this issue which are now being sought.

[18] One argument of the defendant which does have some traction is the fact that two counsel were assigned to stick handle the litigation on behalf of the plaintiff. Senior counsel has 24 years under his belt, and the junior counsel was called to the bar 8 years ago. It was clear during the trial of this matter that all of the submissions and evidence were introduced by Mr. Wray, with Mr. Echavarria no doubt supporting the litigation effort, but not playing a central role in advancing the claims of the plaintiff. This is not to suggest that Mr. Echavarria did nothing, and it is likely that he assisted Mr. Wray in the background, but this being a straightforward contract interpretation case, which was presented through Zoom relying on agreed upon facts and documents which simplified the exercise of tendering evidence through chief and cross exams of the four witnesses who testified, the need for a second lawyer at the counsel table is not immediately apparent to me.

[19] Again, this is no criticism of the plaintiff's decision to have two lawyers preparing and advancing its case. However, doing so does not mean it is reasonable to expect the defendant to pay costs based on that decision.

[20] After considering the various factors set out in Rule 57.01 of the *Rules of Civil Procedure*, including:

2026 ONSC 6026 (CanLII)

- the seniority and experience of Mr. Wray,
- the amount the defendant could reasonably expect to pay as evidenced by its bill of costs,
- the amount claimed and recovered, which did not include the interest sought by the plaintiff, and
- the complexity, or lack thereof, of the proceeding,

it is my decision that the plaintiff shall be awarded the fair and reasonable amount of partial indemnity costs in all the circumstances of this matter to be in the amount of $145,000 in fees, plus HST, and disbursements in the HST-inclusive amount of $3,865.52.

The Hon. Mr. Justice S.J. Wojciechowski

Released: October 23, 2026

2026 ONSC 6026 (CanLII)

CITATION: Direct Management Services Inc. v. Kenora Municipal Non-Profit Housing Corporation et al, 2026 ONSC 6026
COURT FILE NO.: CV-21-0096-000
DATE: 2026-10-23

2026 ONSC 6026 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Direct Management Services Inc.

Plaintiff

- and -

Kenora Municipal Non-Profit Housing Corporation, Kenora District Services Board and City of Kenora

Defendant

DECISION ON COSTS

Wojciechowski J.

Released: October 23, 2026