

Ontario Superior Court of Justice

Mary Barbara Kates v. Sheldon L. Kates

Counsel

James Marks for Ms. Kates
Ron Shulman for Mr. Kates

Costs Endorsement of Backhouse, J. released November 24, 2014

[1] The applicant wife seeks full indemnity costs for the motions returnable May 22, 2014 and September 30, 2014 totalling \$48,002.26.


[2] Ms. Kates was successful in obtaining a \$500,000 advance on an equalization payment and temporary support of \$2500/month. Mr. Kates offered an advance of \$210,000 and spousal support of \$1350/month. Mr. Kates submitted that Ms. Kates should be entitled to her costs of the September 30, 2014 motion fixed in the amount of \$13,000 against which should be set off costs to him of the May 22, 2014 motion in the amount of \$8000. He submitted in the alternative that if substantial indemnity costs are awarded, Ms. Kates should receive \$17,000 with a set off to him of \$8000.

[3] Ms. Kates was the successful party. I found that Mr. Kates has taken an unreasonable hardline position in the litigation and that there is a "scorched earth" policy in the way he has conducted himself. Mr. Kates did not make full and frank disclosure. Had he done so and filed a proper net family property statement before Justice Paisley on December 10, 2013, these motions would not have been necessary. In hindsight, given Mr. Kates lack of full and frank disclosure, Ms. Kates cannot be faulted for failing to deliver a net family property statement before Justice Paisley or an offer to settle the motions.

[4] The issues on the motions before me were important to both parties and very complex. Had Ms. Kates not been successful on the motion for an advance on the equalization payment, she would not likely have been able to continue with the litigation. Mr. Kates has conducted himself in bad faith. There is no basis to award him costs. The time spent and hourly rates are reasonable.

[5] In all the circumstances, Ms. Kates is entitled to her costs on a substantial indemnity basis which I assess for both motions in the all inclusive amount of \$45,000.

November 24, 2014


Backhouse, J.