

ONTARIO

SUPERIOR COURT OF JUSTICE

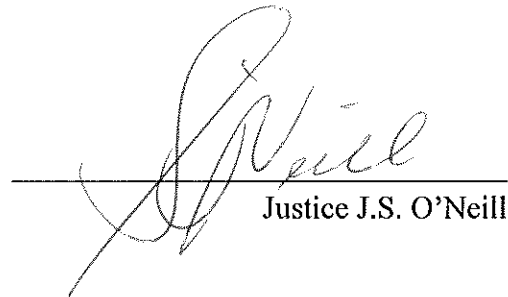
BETWEEN:)
)
Direct Energy Marketing Limited)
) Paul Le Vay and Justin Safayeni, for the
Applicant/Responding Party) Applicant/Responding Party
)
- and -)
)
National Energy Corporation) Brad Teplitsky, for the Respondent/Moving
) Party
Respondent/Moving Party)
)
)
)
)

J.S. O'NEILL

Ruling on Costs

- [1] Since releasing my order on July 17, 2012, I have since received costs submissions from the parties as follows:
- August 15, 2012 – National Energy Corporation (as to whether the determination of costs should be deferred).
 - August 20, 2012 – Direct Energy Marketing Limited (whether costs should be deferred and quantum).
 - September 4, 2012 – reply submissions by National Energy.
 - October 4, 2012 – further costs submissions by National Energy.
- [2] In the interim, on September 17, 2012, I released a costs ruling where I concluded that for the reasons given I would fix costs on the partial indemnity scale. In doing so, the Respondent was given the opportunity to file submissions re: the issue of quantum. I have now reviewed those submissions, along with the Applicant's Bill of Costs.

- [3] In its response, counsel for the Respondent raised issues of delay as factors to consider in assessing the partial indemnity bill of costs. Delay issues were also raised by the Applicant. I do not attribute in this costs ruling, such delay as to generally increase or decrease the costs award.
- [4] In my September 17, 2012 ruling, I dealt with the importance of s. 131(1) of the *Courts of Justice Act*, the factors set out in Rule 57.01(1), as well as the principle of proportionality. I also dealt with the issue of the importance of this case to both parties. I determined in my reasons of July 12, 2012, that “the Applicant has demonstrated a prima facie case of damages”.
- [5] I went on to state that “I am also satisfied that the distribution of the brochure was likely to have the effect of depreciating, to some extent, the value of the goodwill attaching to the Applicant’s trademark”.
- [6] Accordingly, in all of these circumstances, I am in a position now to fix the Applicant’s costs on the partial indemnity scale, in the exercise of my costs discretion.
- [7] The Applicant’s bill is calculated and measured essentially in hours times an hourly rate. The actual rate and the partial indemnity rate are reflected. In my view, it is appropriate to reduce somewhat the hourly calculated Bill of Costs, to a lump sum amount, that reflects, on an overall basis, the exercise of my costs discretion. My role is not to painstakingly analyze every step or hour incurred by counsel on this application. I conclude, however, that the sum of \$45,334.00 ought to be reduced somewhat, taking into account the litigation to date, my reasons of July 12, 2012, as well as the unresolved matter of damages.
- [8] Accordingly, I fix the Applicant’s costs at \$40,000.00 for fees, \$2,041.17 for disbursements and \$2,021.97 for attendance costs. To this total of \$44,063.14 I add HST, on the fees, in the amount of \$5,200.00, and where applicable, HST on the disbursement award, and on the attendance costs.
- [9] These costs as fixed by me are to be paid by the Respondent to the Applicant within the next sixty days.
- [10] Order accordingly.


Justice J.S. O'Neill

CITATION: Direct Energy Marketing Ltd v. National Energy Corp, 2013 ONSC 5856

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SUPERIOR COURT OF JUSTICE

BETWEEN:

Direct Energy Marketing Limited

Applicant/Responding Party

– and –

National Energy Corporation

Respondent/Moving Party

RULING ON COSTS

Justice J.S. O’Neill

Released: September 19, 2013