

Handwritten Endorsement

Re: *Rooplal v. Archer*
Court file no: 03-CV-261373

December 3, 2014

J.V. Maloney for the Defendants/moving parties

D. Zarek for the Defendant/responding party

J.V. Maloney is counsel to Economical and D. Zarek is counsel to Belair.

This case arises from a snowmobile accident on January 4, 2002. The action commenced on December 3, 2003. The moving parties seek an order to apportion the Plaintiff's costs on a fair and equitable basis as between Economical and Belair. The parties agree that the court has a broad discretion to award costs and the only test is one of "fair and equitable". The action went to mediation where it was settled on June 7, 2012 for \$1,858,000.00 exclusive of costs. Economical contributed \$1,080,000.00, and Belair contributed \$775,000.00. It was further agreed that an additional \$300,000.00 would be paid to the plaintiff for costs, allocated 70% to be paid by Economical and 30% to be paid by Belair. In my view this is not a case where one of the parties has acted in a manner which needlessly has extended the pace of the action. While there may have been steps taken that appear slow, overall, the matter proceeded properly. What I do find of assistance is the fact that the parties themselves have agreed to an apportionment of costs by 70/30. The figure was arrived at on agreement and in the midst of pressure. There is nothing before me to suggest that this would not be a fair outcome - to have regard for the agent of the parties. In

the result, the motion is dismissed and the current apportionment for costs will be maintained. Having heard the parties' submissions, costs payable to the responding party of \$7,000.00 fixed, payable forthwith.

Whitaker J.

Transcribed: December 8, 2014