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August 20, 2015

Partial indemnity costs nearing the substantial indemnity scale in Ontario (Minister of Finance, Motor Vehicle Accident Claims Fund) v Chartis Insurance Company of Canada

In a recent decision, the Ontario Superior Court awarded costs on a partial indemnity scale which constituted 75% of the costs actually incurred by the successful party. The decision demonstrates the possibility of a generous costs award on a partial indemnity scale where the issues at stake are important and complex, and both written materials and oral submissions are of high calibre.

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Chartis claimed 75% of the amount that they charged for their work and had those costs awarded on a partial indemnity costs basis.

The Ontario Fund disputed the claim on the basis that the appeal was not complex, and the percentage of the partial indemnity costs claimed was excessive. The Court disagreed.

The Court factored in considerations under Rule 57.01 of the *Rules of Civil Procedure*.

The issue at stake was important to the parties and to the motor vehicle accident insurance industry in Ontario more generally. The appeal was therefore complex, contrary to the suggestions of the Ontario Fund. The appeal was scheduled as a long motion and was argued for over ½ a day. Both counsel filed detailed factums and briefs of authorities as case law directly on point was nonexistent.

The amount suggested by Chartis was a "fair and reasonable amount" given the importance of the issue, the time allocated to

the matter by senior counsel, the high calibre of written material and oral submissions, and the complexity of the issue.