

Citation: Froc, Kerri A, “Cost Breakdown: What *Mowat* Means for Accessing Justice in Human Rights Regimes” (2014) 18:1 CLELJ 253

Abstract: The Canadian Human Rights Act authorizes the Canadian Human Rights Tribunal to compensate victims of discrimination for “any expenses incurred... as a result of the discriminatory practice.” In the *Mowat* case in 2011, the Supreme Court of Canada held that this statutory language was not clear enough to enable that Tribunal to award legal costs to a successful applicant. In his review of the Ontario human rights system in 2012, Andrew Pinto interpreted *Mowat* to mean that provincial human rights tribunals must have an explicit statutory power if they are to award legal costs, though he declined to recommend that the Ontario Human Rights Tribunal be given such a power until there was more evidence on its likely effects. The author argues that the Supreme Court in *Mowat* gave an unduly narrow interpretation to the “expenses” provision of the *Canadian Human Rights Act*, on the basis of an aversion to what the Court called a “one-sided” costs regime, which would allow the granting of costs to successful applicants but not to successful respondents. In the author’s view, however, such a regime would enhance subordinated social groups’ access to justice, by enabling them to obtain full redress against discrimination on prohibited grounds. In fact, the need for costs awards to successful applicants has increased in recent years due to the shrinking role of human rights commissions in the carriage of complaints to adjudication, and the failure of governments to ensure adequate access to publicly funded counsel for litigants who cannot afford to hire their own counsel.