

HALLETT, J.A.:

The issue of costs was reserved following the rendering of a decision on this appeal. Having considered counsels' written submissions, and the offers to settle made by the respective parties prior to trial, and the offer to settle made by HealthVision subsequent to the jury verdict which offer was open for acceptance until HealthVision ordered a transcript for the purpose of the appeal we have concluded that the amount involved for the purpose of calculating a cost award was \$40,000.

Had the jury been properly instructed, an award in the range of \$25,000 to \$50,000 would have been within reasonable bounds for a jury award.

Considering that HealthVision's pre-trial offer to settle for \$40,000 inclusive of pre-judgment interest and costs was substantially greater than the amount that this Court ordered, although substantially less than the jury award at trial, we are of the opinion that Ms. Killorn ought to have her party and party costs plus disbursements only up to the date of the HealthVision offer and that HealthVision have its party and party costs plus disbursements to be taxed from that date to the finalization of the Order following trial. In short we have applied the provisions of **Civil Procedure Rule 41A.09(2)**. We would note that Ms. Killorn had made an offer prior to trial for \$65,000 and although the jury award was greater than this we are satisfied that had the jury been properly instructed the award would have been substantially less than this sum.

We have concluded that the party and party costs should be calculated on the basis of 50% of the legal work done on Ms. Killorn's behalf was done prior to the receipt of the pre-trial offer to settle from HealthVision and that 50% of the trial legal work done on behalf of HealthVision was done after the offer to settle was filed.

We are of the opinion that the mid Scale of the Tariff should be applied. This was a fairly straightforward wrongful dismissal case; it was only complex

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