

SUPREME COURT OF NOVA SCOTIA

Citation: *Brennan v. Nova Scotia (Agriculture)*, 2015 NSSC 237

Date: 20150812

Docket: *Hfx*, No. 437570

Registry: Halifax

Between:

Annette Brennan

Applicant

v.

Nova Scotia (Minister of Agriculture)

Respondent

DECISION ON COSTS

Judge: The Honourable Justice Michael J. Wood

**Final Written
Submissions:** July 17, 2015

Counsel: Christopher I. Robinson, for the Applicant
Sean Foreman, for the Respondent

By the Court:

[1] On June 10, 2015 I issued a decision in this matter allowing the Applicant's judicial review of a decision of the Deputy Minister of Agriculture under the *Animal Protection Act; Brennan v. Nova Scotia (Minister of Agriculture)* 2015 NSSC 171.

[2] The parties agree that the Applicant is entitled to costs because she was successful, however they cannot agree on an appropriate quantum. This is my decision on that issue.

[3] The Applicant says that a strict application of the tariff will not do justice between the parties because it will not provide a substantial contribution toward her actual legal expenses which she says total approximately \$29,000.00 including fees, disbursements and HST. She requests a lump sum of \$22,000.00.

[4] The Respondent argues that the tariff should be applied. In light of the length of the hearing the maximum base amount under Tariff C would be \$1,000.00 which could attract a multiplier of two, three or four times, depending upon the factors in paragraph (4) of Tariff C. The Respondent suggests that a reasonable assessment of costs would be \$1,000.00 to \$2,000.00.

[5] The starting presumption for an application in Chambers (which would include this judicial review) is that Tariff C should be applied unless the Court is satisfied that it would not result in a "substantial indemnity". (See *Tessier v. Nova Scotia (Human Rights Commission)* 2014 NSSC 189.

[6] The Applicant filed an affidavit of her counsel to establish her actual legal expenses. There is no detailed description of the work performed or the time spent on any particular task. The affidavit indicates total legal fees of \$24,803.00 and an hourly rate of \$250.00 for counsel. From this, one can assume that approximately 100 hours of counsel's time was invoiced to the Applicant.

[7] In order to determine whether the tariff calculation does not represent a substantial contribution it is not enough to simply compare the party's actual legal costs. The court must use a filter of reasonableness in order to determine an estimate for the actual work necessary for the particular proceeding. In this case the Applicant retained counsel immediately upon the seizure of her animals by the

government inspector. Counsel made detailed written submissions as part of the process leading to the final decision which was the subject of the review. This included filing affidavit evidence and written briefs. The submissions and arguments presented by the Applicant on the judicial review repeated many of the points raised in the submissions to the Minister of Agriculture.

[8] In my view it is only the legal expenses incurred in the actual judicial review proceeding that can be considered in determining whether the tariff represents a substantial contribution to the party's expenses. Without a detailed breakdown of counsel's activities it is difficult to be precise in determining how much time was spent on the review and how much in dealing with the administrative process. I am satisfied that it would be substantially less than the 100 hours which counsel spent in total.

[9] The hearing of the review took approximately two hours and therefore the highest amount which could be awarded under Tariff C is \$4,000.00, if the maximum multiplier of four is used. I am satisfied that in the circumstances of this case a cost award in that amount would not do justice between the parties.

[10] Judicial review is, by its nature, more complex than many other chambers applications. In this case the parties were required to address the standard of review, statutory interpretation, as well as an analysis of the inspector's initial decision to seize the horses, the separate decision not to return them and the Deputy Minister's review of the inspector's actions. Although the hearing was only two hours long that was due, in part, to counsel preparing comprehensive briefs and the Court imposing strict limits on the length of argument to accommodate the Court's available time slot. In order to achieve such efficiencies counsel would frequently have to spend more, and not less, time in preparation.

[11] In this matter Ms. Brennan also began preparations for an application to stay the Minister's decision pending judicial review. Ultimately this was not necessary as counsel for the Minister agreed that the animals would be retained until the matter was concluded.

[12] For a proceeding of this nature and complexity I believe that a lump sum award of \$8,000.00 including disbursements represents an appropriate contribution to the Plaintiff's expenses.

Wood, J