

SUPREME COURT OF NOVA SCOTIA

Citation: *Islam v. Dalhousie Univeristy*, 2015 NSSC 342

Date: 20151127

Docket: *Hfx*, No. 436585

Registry: Halifax

Between:

Dr. Rafiq Islam

Applicant

v.

Dalhousie University

Respondent

DECISION ON COSTS

Judge: The Honourable Justice Michael J. Wood

**Final Written
Submissions:** November 24, 2015

Counsel: Yavar Hameed, for the Applicant
Rebecca Saturley, for the Respondent

By the Court:

[1] In a decision issued on October 7, 2015 (2015 NSSC 285) I allowed Dr. Islam's application for judicial review and set aside an arbitrator's decision dismissing his grievances against Dalhousie University. The parties have been unable to reach an agreement on the quantum of costs to be awarded to Dr. Islam.

[2] The parties agree that Tariff C of *Civil Procedure Rule 77* is applicable. This sets out the costs for applications in Chambers and interlocutory motions. The hearing of this review lasted more than a half day and therefore the range of costs is \$1,000.00 to \$2,000.00. Paragraph 4 of Tariff C permits this base account to be multiplied by factors of two, three or four if the outcome is determinative of the matter at issue in the proceeding. Whether to apply the multiplier is discretionary based upon the complexity of the matter, the importance to the parties and the amount of effort involved.

[3] As I said in *Brennan v. Nova Scotia (Minister of Agriculture)* 2015 NSSC 237, at paragraph 10, judicial review is, by its nature, more complex than many other Chambers applications. As a result I would expect that in most cases a multiplier should be applied.

[4] Dr. Islam submits that a multiplier of four should be used taking into account the factors in paragraph 4 of Tariff C and his actual legal account of \$11,755.00 plus HST and disbursements. Counsel for Dr. Islam argues that an award of \$8,000.00 would meet the principle of substantial indemnity which has been recognized in our court's approach to assessment of costs.

[5] Dalhousie University disagrees that any multiplier is needed and suggests costs of \$1,500.00 relying on awards of that amount in other judicial review cases.

[6] None of the cases referred to by Dalhousie include any real analysis of the importance of the issues, the length of the hearing or the complexity of the matter. In two of them the parties had agreed on the quantum of costs in advance.

[7] Previous cost decisions can be useful to outline general principles but the actual amount awarded has little precedential value. Of necessity, the assessment of costs in a given case is an individual exercise based upon the factors set out in Tariff C.

[8] In this case the grievance of Dr. Islam, which was dismissed by the Arbitrator, raised issues of significant importance to the parties. Fundamentally the question was whether a professor of long standing who was placed on involuntary medical leave could have his contract of employment terminated because of frustration. Aside from the obvious impact on Dr. Islam the outcome of that question would dictate how Dalhousie must deal with many of its other employees.

[9] As I believe is apparent from my decision, the legal issues raised on the judicial review were complex. They included questions of *res judicata* and *issue estoppel* in the application of a previous arbitrator's award. It was necessary to determine the standard of review, which is not the case in every judicial review. The grievance itself raised questions of discrimination, disguised discipline and academic freedom which had to be interpreted in the context of the language of the collective bargaining agreement.

[10] Taking into account these factors as well as the principle of providing a substantial but partial indemnity I believe a base amount of \$2,000.00 with a multiplier of three would be appropriate.

[11] With respect to disbursements, Dr. Islam claims \$857.01 for the costs of counsel travelling from Ontario to Nova Scotia for the hearing, as well as photocopy expenses of \$115.20 and courier of \$137.20.

[12] I believe that costs for travel of counsel are reasonable in the circumstances. Mr. Hameed was counsel at the arbitration hearing and has represented Dr. Islam in various matters arising out of his dispute with Dalhousie. His background brings a considerable efficiency to the matter. This is illustrated by the fact that his total time spent on the judicial review, including preparing documents, research and attending the hearing was less than 50 hours. Dr. Islam's decision to have Mr. Hameed represent him in this matter was reasonable and the modest travel expenses are recoverable as disbursements.

[13] I do not have details with respect to the calculation of the photocopying and courier expenses. The recoverable portion will only be expenses related to materials being filed with the court or delivered to other counsel. In addition the rate for photocopies should not include significant profit; 10¢ per page is usually considered reasonable. Without the additional details I will award a lump sum of \$100.00 for photocopying and courier expenses.

[14] In conclusion, I will award Dr. Islam costs of \$6,000.00 plus disbursements of \$957.01. HST will be added to both of these amounts.

Wood, J.