

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Okoro v. Nova Scotia (Human Rights Commission),
2006 NSSC 257

Date: 20060822
Docket: SH 264678
Registry: Halifax

Between:

Dr. Daniel Okoro

Applicant

v.

Nova Scotia Human Rights Commission, Cape
Breton Regional Hospital, Dr. Brian Foley and
Keith MacDonald

Respondents

DECISION ON COSTS

Judge: The Honourable Justice Walter R. E. Goodfellow

Heard: July 19, 2006, in Halifax, Nova Scotia

Final Written Representations On Costs: August 11, 2006

Counsel: Victor J. Goldberg, Esq. and Martha L. Mann, Esq., for the applicant
John G. Khattar, Esq., for the respondent, Cape Breton Regional
Hospital
Michael J. Wood, Q.C., Jennifer Ross, Esq., for the respondent Nova
Scotia Human Rights Commission

By the Court:

BACKGROUND:

[1] Dr. Daniel Okoro was a staff Psychiatrist at the Cape Breton Health Care complex from October, 2002 until he submitted his letter of resignation June 10, 2003. Subsequently, he completed an intake form and complaint against the hospital with the Nova Scotia Human Rights Commission. A review was conducted which resulted in a recommendation that the complaint not proceed. This resulted in further direction from the Board and, finally, a confirmation that the complaint of bias, racial discrimination, etc., did not warrant further consideration.

[2] Dr. Okoro applied initially for *mandamus* but limited to *certiorari* to quash the decision of the Human Rights Commission; the application was dismissed. Counsel were entitled to be heard on costs.

COSTS:

[3] The starting point with respect to costs is *Civil Procedure Rule* 63.02, which clearly indicates that costs are in the discretion of the Court. Costs must be judicially determined starting from *Civil Procedure Rule* 63.03 which directs that costs are to follow the event “unless the Court otherwise orders”.

[4] The Human Rights Commission at the outset indicated that it wished to maintain its somewhat neutral position and would not be seeking costs. The hospital seeks costs on the scale of *Tariff C* which provides for costs in Chambers applications that exceed one hour, but are less than one half day, in the range of \$750.00 - \$1,000.00. Counsel for the hospital seeks costs in the range of \$3,000.00 as being more adequate indemnification based on the seriousness of the allegations and the potential for substantial costs to the hospital if the decision of the Human Rights Commission had been quashed. Undoubtedly the hospital incurred significant expense to defend this application.

[5] The solicitor for Dr. Okoro submits that as between the Commission and the hospital, the majority of preparation including the return required by *certiorari*, etc., was generated by the Commission and that this is a matter of public interest and therefore no costs should be awarded.

[6] In summary, the hospital seeks costs in the amount of \$3,000.00 plus disbursements of \$709.00. The starting point that costs follow the event should always prevail unless there are circumstances warranting a deviation. Parties ought to know when they enter litigation that there are costs consequences and the general likelihood of the amount of costs that they are exposed to in the event of being unsuccessful. Self-represented parties often make a plea that they cannot afford to pay costs and that they ought not to pay costs because they did not have a lawyer. With respect, the *Rule* does not differentiate and even self-represented parties should have *CPR* 63.02 applied against them when unsuccessful. See **Gilfoy v. Kelloway** (2000), 184 N.S.R. (2d) 226.

[7] Counsel for Dr. Okoro is correct that the Court has, on occasion, departed from *Rule* 63.02 entirely or reduced costs when there is a matter of public interest. Public interest, however, requires that the litigation be of some public benefit. For example, when you have an ambiguous section in a Statute, an application that clarifies it for the general benefit of the public might call for a denial of costs or a reduction of costs. In the case before me, there is no discernable public benefit result.

[8] The Cape Breton Regional Hospital shall have its costs against Dr. Daniel Okoro, taxed and allowed in the amount of \$1,000.00 plus disbursements of \$709.00, a total of \$1,709.00 payable forthwith.

J.