SUPREME COURT OF NOVA SCOTIA
Citation: Peterson v. Kentville (Town), 2009 NSSC 234

Date: 20090805
Docket: Hfx 290467
Registry: Halifax

Between:

Floyd H. Peterson

Plaintiff

and

Town of Kentville

Defendant

DECISION ON COSTS

Judge:	The Honourable Justice Gerald R. P. Moir
Heard:	March 10 & 11 and June 10, 11 & 12, 2008, in Kentville, Nova Scotia
Last Submissions:	March 5, 2009
Counsel:	Peter Rogers, Q.C., for the plaintiff Thomas MacEwan, for the defendant

By the Court:

[1] Mr. Peterson applied by Originating Notice (Application Inter Parties) for judicial review of decisions made by the Town of Kentville about the development of a park owned by the town. Mr. Peterson was unsuccessful. the parties could not agree on costs, and they made written submissions to me.

[2] Although it was not clear from the notice, Mr. Peterson sought a finding that public hearings conducted by the municipality were a sham. He claimed the Town of Kentville had made its decisions before Mr. Peterson and the members of his group of park abutters were given an opportunity to be heard. The municipality moved to convert the application into an action.

[3] A quicker determination than would be available through an action was very much in the interests of Mr. Peterson and the other abutters. So, I refused to convert the proceedings but I gave directions for quick disclosure and for the presentation of evidence on procedural fairness.

[4] Two days set aside for the hearing in March of 2008 were used for disclosure and for argument on subjects not requiring further evidence. We found

three more days in June when the parties could, after compressed disclosure, present evidence and begin the further arguments. Those had to be followed by written submissions, the last of which were provided in July of 2008. A decision was released later in the summer.

[5] I agree with the statement in Mr. MacEwan's brief on costs that "the Town was required to respond to a host of claims on the issues of fairness, natural justice and bias". As Mr. MacEwan points out, "actions of the Town commencing in 1987 ... and continuing into 2007" were under review.

[6] Mr. Rodger's submission on costs invites me to assess the municipality's behavior, both its behavior leading up to the review and its conduct in response to the proceeding.

[7] Mr. Rogers summarizes his main point as follows, and he discusses these and other points in detail:

- the Town aggressively proceeding with a controversial development in contravention to its own By-laws even when the illegality had been repeatedly brought to its attention;

- the town being eager to proceed with development right away, in the face of attempts to have the matter put before the Court;

- the Town not honouring stated timetables for consideration of the alternative parkland/recreation uses of the LIQ;

- the Town Council using its power over funding to deprive the residents (lawfully, but nevertheless harshly) of fencing around the LIQ (this being the one mitigating feature of the development which seemingly had been obtained from PARAC);

- the Town being unable or unwilling to satisfactorily answer basic and reasonable questions.

These and other points are said to explain Mr. Peterson's "profound sense ... of being treated unjustly and even meanly".

[8] While I respect Mr. Peterson's reasoning and conclusion, I do not share either. In my assessment, he was not treated unjustly by the Town of Kentville. I am of the view that the municipality should not be deprived of costs.

[9] Mr. MacEwan refers to Tariff C of the Tariffs of Costs and Fees. It applies to "an Application heard in Chambers", and specifically includes "judicial review". (Under the present rules of court a judicial review hearing is conducted in court

rather than chambers). Mr. MacEwan points out that the tariff would indemnify a party for $10,000 of counsel's fees on a five day hearing.

[10] Mr. Rogers points out that one of the five days was used for disclosure. Thus, the tariff would suggest an indemnity of $8,000, but Mr. Peterson's position is that the municipality should be deprived of costs.

[11] Mr. MacEwan says that this is a case in which the judge should "multiply the maximum amounts in the range of costs in this Tariff by 2, 3, or 4 times" as provided in s. (4) of Tariff C. That section provides these factors:

> (a) the complexity of the matter,
>
> (b) the importance of the matter to the parties;
>
> (c) the amount of effort involved in preparing for and conducting the application.

[12] The many issues raised by the application and the broad borders of factual relevance made this proceeding somewhat complex, for preparation as well as presentation. The allegations of official misconduct made the proceeding

important for the Town of Kentville. Counsels' efforts included working under a greater degree of judicial management than usual, working in a much compressed period, and covering broad territory.

[13] Mr. MacEwan's firm charged the municipality nearly $62,000 for fees. Mr. Rogers contests both the relevancy of this and the establishment of it. Our court frequently considers actual expenses when lump sum costs are requested. The information is of relevance, but limited relevance: *Hardman Group, Ltd.* v. *Alexander*, [2003] N.S.J. 267 (Hood, J.) at para. 142. As for establishment, I would not require a greater intrusion into privilege because the relevance of the information is so limited.

[14] Knowing what I do of the preparations and presentation, I would expect any client to have to pay any experienced counsel over $50,000 for work of this kind, unless counsel worked at a discount, as sometimes is done.

[15] In my assessment the factors of complexity, importance, and effort justify a threefold multiplication. I will allow costs of $24,000 plus $2,048.93 for disbursements.

[16] Mr. Rogers requests that we include in the final order a declaration that the Town of Kentville was obligated to obtain, as it did very late in the day, a development permit. Because it would not declare any right, I am not prepared to require such a provision.

[17] I thank both counsel for their submissions and for their excellent assistance throughout.

J.