

SUPREME COURT OF NOVA SCOTIA

Citation: Chisholm v. Nova Scotia (Attorney General), 2009 NSSC 29

Date: 20090202

Docket: Pic No. 269506

Registry: Halifax

Between:

Agnes Lillian Chisholm

Plaintiff

and

The Attorney General for the Province of Nova Scotia,
representing Her Majesty The Queen in right of the Province of Nova Scotia,
and Harry Alexander Rudolph and Diane Lyn MacLeod

Defendants

and

M. G. Ventures Limited

Third Party

And Between:

Harry Alexander Rudolph and Diane Lyn MacLeod

Plaintiffs by Counterclaim

and

Agnes Lillian Chisholm and James Daniel Chisholm

Defendants by Counterclaim

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Judge: The Honourable Justice John D. Murphy

Heard: October 20, 21, 22, 23; 30, 2008, in Pictou, Nova Scotia

**Final Written
Submissions:** November 21, 2008

Subject: Costs

Summary: Plaintiff's action under *Quieting of Titles Act*, claiming possessory title to part of a lot for which Defendants had received warranty deed from Third Party, was dismissed after four-day trial. Defendants seek solicitor-client costs against Plaintiff, and Plaintiff and Defendants dispute liability for Third Party costs.

Issue:

1. Should Defendants recover solicitor-client or party-party costs?
2. Quantum of Costs award to Defendants.

3. Responsibility for and amount of Third Party's costs.

Result:

1. Defendants should recover party-party costs. Although Court rejected all bases on which Plaintiff advanced claim and did not accept her evidence when it was contradicted, Plaintiff's conduct was not so egregious as to warrant solicitor-client award. Pursuit of the claim may have been misguided, but Court was not convinced that it was advanced maliciously or recklessly, or that Plaintiff appreciated that it was groundless.
2. Defendants awarded party-party costs of \$16,250.00 following basic Tariff Scale #2 with amount involved set at \$30,000.00, more than market value of disputed land, to reflect complexity of issues and importance of case to the parties. Award included trial length component of five days, taking into account necessary travel and attendances by Defendants for interlocutory proceedings and oral decision, and brief on costs issue.
3. Plaintiff required to pay Third Party's costs. It was reasonable and necessary and not over-cautious for Defendants to join Third Parties. The issues among all parties involved related conveyances of the same property and arose inevitably from pursuit of the plaintiff's claim. Third Party awarded \$12,688.00 costs, based on \$30,000.00 in issue, but following Scale #1 for a four-day trial, reflecting less complex issues and reduced preparation and travel requirements compared to Defendants.

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