IN THE SUPREME COURT OF NOVA SCOTIA
Citation: *Coates v. Northwoodcare Incorporated*, 2005 NSSC 119

Date: 20050518
Docket: S.H. 169512
Registry: Halifax

Between:

Kimberley Coates

Plaintiff

v.

Northwoodcare Incorporated

Defendant

Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: April 26, 27, 2005, in Halifax, Nova Scotia

Counsel: June L. Rudderham
Tracey D. Kennedy for the plaintiff
Lisa M. Gallivan
Mark D. Tector for the defendant

By the Court:

BACKGROUND:

[1] Allison Kimberly Coates (Miller) born April 13, 1963, resides in Bridgewater, Nova Scotia and is presently employed with the Nova Scotia College of Registered Nurses. She holds a Bachelor of Science Degree from Indiana University which she obtained in 1985. Her present employment started with a consultation relationship sometime in 2002 and prior to that she was employed with Hillside Pines Home for Special Care in Bridgewater as administrator. This was a full-time position with a salary of $66,000 per annum. She was in that position for approximately sixteen months from December 2003 to February 2005. Prior to Hillside Pines Home for Special Care she worked at Southshore Health with Bridgewater Hospital under the Southshore District Health Authority as a resource specialist and her duties included the overall supervision of the Hospital, remote supervision of the Lunenburg Hospital, Fisherman's Memorial and the admission and discharge of patients. Initially, it was a temporary full-time position and she was in that position from July 4, 2001 until December 2001 when it became a full-time permanent position. When she became a permanent employee in this position her income was approximately $52,000 per annum and when

she left that position she left directly to Hillside Pines. Prior to working with Southshore Health she spent a few weeks as a staff nurse with Mahone Bay Nursing in a casual position earning approximately $21. per hour. This was the position she went to after her dismissal from Northwood. She also worked at Louisiana Pacific who own the hardboard products plant in East River, Nova Scotia, as safety manager for a period and prior to that employment she worked at Shannex Health Care Management as an administrator. Her employment as a staff nurse at Mahone Bay was her first return to clinical nursing since her entry into nursing in 1985 where she spent most of her time for the next dozen years or so at the Moncton Hospital in Moncton, New Brunswick. She left clinical nursing when she was hired by Loblaws Canada in the Safety Department where she remained for just under four years.

[2] In July 2002, she saw an advertisement by Northwoodcare Incorporated (Northwood) for the position of Program Manager of Nursing Services and when the advertisement was repeated she applied and this was followed by two meetings both of which were attended by Debra Harris, Director, Nursing Services for Northwood. Ms. Coates entered into the employ of Northwood after receiving a written offer of employment dated July 5, 2000,

accepted by her July 26, 2000 and employment commenced August 21, 2000.

[3] On the afternoon of November 30, 2000, Ms. Coates was called to Debra Harris' office and advised that her employment was terminated. She was then escorted by Security from the Northwood premises.

[4] Her action for wrongful dismissal and damages was issued in February 2001 and initially Northwood filed a Defence March 9, 2001, which included an allegation of dismissal for just cause. This allegation of just cause was withdrawn after notice at the opening of the trial.

ISSUES:

Issue 1: Was the Contract Between Ms. Coates and Northwood a Fixed-Term Contract?

Issue 2: Was Ms. Coates Subject To A Probationary Period?

Issue 3: If Ms. Coates' Contract Is Not A Fixed-Term Contract To What Amount of Reasonable Notice Would She Be Entitled If Successful In Her Claim For Wrongful Dismissal?

Issue 4: Is Ms. Coates Entitled To Damages For Bad Faith Conduct In The Manner Of Termination Of Her Employment?

Issue 5: Is Ms. Coates Entitled To Any Additional Compensation For Aggravated Or Punitive Damages?

CIVIL PROCEDURE RULE 18.14(1)(a)(b)(c):

[5] Use of depositions as evidence

> 18.14. (1) At a trial or upon a hearing of an application, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at an examination for discovery, or who received due notice thereof, for any of the following purposes:
> (a) to contradict or impeach the testimony of the deponent as a witness;
> (b) where the deponent was a party, or an officer, director or manager of a party that is a corporation, partnership or association, for any purpose by an adverse party;
>
> (c) where the deponent is dead, or is unable to attend or testify because of age, infirmity, sickness, or imprisonment, or is out of the jurisdiction, or his attendance cannot be secured by subpoena, or exceptional circumstances exist that make it desirable in the interest of justice to allow the deposition to be used, for any purpose by any party.

MOTION:

[6] Ms. Coates' solicitor sought to tender Discovery Evidence of Northwood's Director of Nursing, Debra Harris, taken on April 6, 2004. Ms. Harris, by the time of her discovery, had left the employ of Northwood. The Motion is based on two arguments:

1. That the Plaintiff is unable to locate Ms. Harris and;
2. Ms. Harris was, at the time of giving discovery, a manager of Northwood within the prerequisites of **Civil Procedure Rule** 18.14(1)(b).

Argument 1:

[7] In support of the first argument I have an affidavit of attempted service upon Ms. Harris and I readily conclude that the mere attempts at service and an indication that there was no luck in effecting service was far from adequate. The limited attempts at service would not even meet the much lesser threshold of requirement for substituted service as outlined in *Investors Group Trust Co. v. Ulan* (1991), 105 N.S.R. (2nd) 161. The fact that a process server attended at the believed residence of Ms. Harris on a couple of occasions is by itself totally inadequate and falls dramatically short of the requirement of establishing that, despite all reasonable efforts, the witness was out of the jurisdiction and unavailable to give evidence at trial. *Horne v. Industrial Estates Limited* (1996), 152 N.S.R. (2nd) 380.

Argument 2:

[8] With respect to the second argument it is clear that Debra Harris was a manager within **Civil Procedure Rule** 18.14(1)(b) in that she had the power to decide and did in fact make the decision by Northwood to hire Ms. Coates and the decision by Northwood to fire Ms. Coates. Northwood clothed Ms. Harris at the relevant times with the authority to deal with the hiring, employment and dismissal of Ms. Coates.

[9] The case law in Nova Scotia is very definitive with respect to the use of a manager's discovery evidence as being binding upon the corporation. Cowan, C.J.T.D. in *Clayton Developments Limited v. Nova Scotia Housing Commission et al.* (1980), 50 N.S.R. (2d) 214 concluded that, in his view, the relevant time is not the time of trial and not the time when any incident may have occurred but at the time of discovery. He expressed the view that the purpose of the Rule is that the person should be in a position to bind the

corporation and that the relevant time is at the time when the question is asked and the answer is given. The Nova Scotia Court of Appeal took essentially the same position in *M.A. Hanna Co. v. Sydney Steel Corp.* (N.S.C.A.) (1993), 126 N.S.R. (2d) 155. In that case Hanna was suing Sydney Steel. The president of Sydney Steel was examined on discovery after he had retired from Sydney Steel. The question arose as to whether or not interrogatories answered by the retired president could be tendered in evidence. Freeman, J.A. at paragraph 7 stated:

> Former officers, directors or managers of a company lack that authority; their thoughts and intentions, subjective and objective, are no longer those of an alter ego or directing mind of the company. Regardless of their relationship with the company at the time of their departure and following it, such persons are no longer accountable to the company.

[10] It is with some caution and deference that I depart from the position that there is an <u>absolute</u> prohibition on admitting evidence of a manager of a corporation who <u>clearly had authority at the relevant times when the issues were raised</u>. It seems to me that if this authority is clearly established and the Manager had the capacity to bind the corporation at the relevant times then discovery evidence limited to what actually transpired and related to the time frame the issues were raised should be admitted as relevant evidence. It should be remembered the corporation has the capacity to call evidence to contradict or explain what authority it conferred, etc.

[11] The object of our **Civil Procedure Rules** is clearly stated in **Civil Procedure Rule** 1.03:

> The object of these Rules is to secure the just, speedy and inexpensive determination of every proceeding.

As I have previously stated on a number of occasions the **Rules** are the tools of the Court for obtaining the object of the Rules and not the masters of the court.

[12] It seems to me that it would put a undue hardship and confer a benefit upon a corporation if they could authorize, as they have done here, a manager to hire, determine terms of employment, fire the employee and simply because the manager has left the corporation's employment voluntarily or otherwise, avoid the evidence of the one person whom they clothed with the authority to address what is before the court and avoid any assessment or consideration, by weight or otherwise, of that manager's evidence given on discovery post departure from the corporation. Certainly, a manager of a corporation should, in circumstances where that manager is the one who participated in the exercise of the corporation's authority to hire and fire a particular employee be called upon on discovery to give account of that authority and actions <u>at the time such authority existed</u>. The discovery admissions would be limited to the extent of the authority and any corporation has the opportunity to contradict, give evidence as to limitations and respond.

[13] I note that **Civil Procedure Rule** 18 does not make any reference as to the limitation of utilizing the evidence of a person established to be a person in authority such as a manager. There is absolutely no reference to the discovery of a person in authority such as a manager <u>not</u> being admissible due to circumstances such as being no longer in the employ of the corporation. The court should admit all relevant evidence and then it is a matter of weight. In circumstances where the person being discovered is a disgruntled former employee then that feature can be established and may in appropriate circumstances totally undermine the evidence sought to be tendered on discovery. It seems to me that a balancing act is required and that, in circumstances such as exist, here where the person clothed with authority to hire the plaintiff; to determine the terms of her employment and dismiss the plaintiff was Debra Harris who was, at all factual times, clearly authorized to act on behalf of the company should have her discovery evidence admissible.

COURT RULING:

[14] I therefore ruled that portions of the discovery of Debra Harris, former manager of Northwood, were admissible indicating very clearly that while *prima facie* relevant the court would have to determine what weight, if any, could be given to this evidence.

[15] After reviewing the evidence of Debra Harris, Director of Nursing, I conclude in any event that although admissible it is not evidence that is not before me generally through Ms. Coates' own evidence. I am able to and do make my final determination on the issues outstanding without attaching any weight to the discovery evidence of Debra Harris.

Issue 1: Was the Contract Between Ms. Coates and Northwood a Fixed-Term Contract?

[16] The letter from Ms. Harris to Ms. Coates of July 25, 2000 was as follows:

NORTHWOOD

Focusing on Services for Older Adults

July 25, 2000

Kimberley Coates
94 Tremont Street
Chester, Nova Scotia
B0J 1J0

Dear Ms. Coates:

I am pleased to offer you the position of Program Manager, Nursing Services with a start date of August 21, 2000. The position will report to myself as Director, Nursing Services.

I look forward to working with you to develop the position and nursing services in the special care areas. As indicated to you on the telephone, this position will be in place for three years after which we will mutually negotiate the direction of the manager role. The benefit package is as follows.

Your salary will be $53,633 per year. Other benefits include four weeks vacation per year, 18 sick days per annum to a maximum of 1,000 hours, pension at the approximate rate of 5% of salary matched by the corporation (you will be able to continue with your NSAHO plan), optional Blue Cross medical coverage, group life insurance equal to your annual salary with an option to purchase additional life insurance, and Long Term Disability insurance matched by the corporation. Eleven statutory holidays are recognized. There are five days per annum for family illness if required; these days are deducted from the employee's annual sick leave. Parking is available at Northwood's Bloomfield Street parking lot for $25 per month if desired. Optional benefits include opportunities for payroll deductions for RRSP contributions and Canada Savings Plan.

In keeping with Northwood's hiring practices, a health clearance is required. Sandra Cameron, Occupational Health Nurse, will be in touch with you to make the arrangements for you to meet with her for the required screening procedures. You will also be required to have a criminal records clearance.

I will meet you in the nursing department at 8:30 a.m. on the 21st of August. There is a metered parking lot across the street (Northwood Terrace) that you can utilize until we get you straightened out with the parking in our Bloomfield parking lot. You do not need to put money in the meter, just give your license plate number and make of car to the Centre Desk Receptionist who will see that you are not ticketed.

An orientation program will be prepared for you.

If you are in agreement with the terms and conditions of this letter, please sign and return one copy to myself and keep the other for your records. Welcome to Northwood and good luck in your transition to the department.

Yours truly,

Northwoodcare Incorporated
(sgd) Debra Harris
Director, Nursing Services

DH/eeh

Enclosure

(sgd) Kimberley Coates July 26, 2000

Signature Date

[17] The evidence establishes that Debra Harris was, at all relevant times, clothed with the authority to hire on behalf of Northwood. At this time Ms. Harris was the Director, Nursing Services at Northwood and authored the letter of July 25, 2000. She also interviewed Ms. Coates prior to advancing the written offer of employment. Northwood takes the position that Ms. Coates was not offered a fixed-term of employment but merely an indication the position would change at the expiration of three years and that Northwood had no intent to terminate employment at the end of the three year term. The evidence does not support Northwood's position and is unequivocally to the contrary.

[18] After her second interview, Ms. Coates received a telephone call from Debra Harris that lasted approximately forty-five minutes in which there were discussions with respect to employment and the projected future with Northwood and at no time during that telephone interview was there any suggestion the employment which was going to be offered in writing would be of an indefinite nature.

[19] The letter of employment clearly states that Ms. Coates was offered the position of Program Manager, Nursing Services. The starting date was expressly stated August 21, 2000 and it was expressly stated that this position, Program Manager, Nursing Services, would be in place for three years after which there would be mutual negotiations to determine the direction of the Manager role being offered to Ms. Coates. This was a projection of the restructuring taking place and anticipated. Very clearly the interview and the written offer of employment constitute a fixed-term contract of three years. The terms of the contract are clear and should therefore be enforced. There is no ambiguity in the term of contract of employment and had there been one it would have been interpreted in favour of Ms. Coates and against the drafter of the contract, Northwood. In this case there is a definite term contract established in the letter of July 25, 2000. Only when you have an absence of an express agreement as to the duration of an employment contract does the employment contract become one for an indefinite term and subject to termination on reasonable notice. When the employment is subject to numerous contingencies and no consensus on a term certain you have an employment contract for an indefinite term, (*Annand v. Peter M. Cox Enterprises Ltd.* (1992), 11 N.S.R. (2nd) 196).

[20] Issue 1 is answered in the affirmative. A fixed-term contract has been established.

Issue 2: Was Ms. Coates Subject To A Probationary Period?

[21] At no time in the two interviews Ms. Coates attended nor in the lengthy telephone conversation with Debra Harris that preceded the formal offer of employment in writing July 25, 2000 was there any mention of a term of employment or in any way that the employment was subject to a probationary period. The letter of employment itself does not indicate or even suggest that there was a probationary term of the contract of employment. Ms. Pullin, who was hired at the same time as Ms. Coates, gave evidence to the extent that she sort of assumed there was a probationary period and that it was an indefinite contract but very clearly she acknowledged that during the discussions leading up to her written offer of employment, identical to Ms. Coates', that she did not remember anything being said about the employment being subject to a probationary period.

[22] It is clear that the employment by Northwood of Ms. Coates was not subject to a probationary period and the issue did not even arise until some time later in October/November when consideration was being given by Ms. Coates to the terms being drafted for employment of Area Managers. This was the very first mention to Ms. Coates that there might be a probationary aspect to her employment and this was raised after she was in employment, had received pay cheques and as indicated there is a total absence of evidence to suggest let alone establish that her employment contract was subject to a probationary term.

[23] Issue 2 is answered in the negative.

Issue 3: If Ms. Coates' Contract Is Not A Fixed-Term Contract To What Amount of Reasonable Notice Would She Be Entitled If Successful In Her Claim For Wrongful Dismissal?

[24] Issue 3 is addressed by the determination of Issue 1.

Issue 4: Is Ms. Coates Entitled To Damages For Bad Faith Conduct In The Manner Of Termination Of Her Employment?

[25] Ms. Coates takes strong exception to the manner in which she was dismissed. She refers to Ms. Harris assigning her some work that morning to presumably present to Ms. Harris later in the date. She describes this as deceitful and, in fact, I would assess it as giving Ms. Coates something to possibly comment on to her fellow workers when she was answering the summons to Ms. Harris' office later that day. The fact that Ms. Coates was upset is not in itself a cause of action or establishment of a claim for damages regarding the process followed by Northwood. It was meant and to a considerable extent did avoid a public dismissal or dismissal in front of her fellow employees and to possibly avoid what might otherwise have been an emotional scene. The suggestion that Ms. Harris should have walked Ms. Coates out through the staff offices to her departure rather than utilizing a security guard would in my view more likely produce an opportunity for embarrassment and possible confrontation which Northwood was endeavouring to and managed to avoid. Northwood set the time of firing for late in the afternoon and arranged for the other employees to be let off early. The fact that three of the employees chose to wait out on the sidewalk to see what was transpiring is something beyond the control of Northwood. There is nothing sinister in the utilization of security personnel to ensure none of the employers' records, equipment, confidentially aspects were subject to any type of possible emotional misconduct. Discharging an employee is never a pleasant task and there is nothing in the manner in which Northwood exercised the discharge of Ms. Coates that gives rise to any compensable damages.

[26] Issue 4 is answered in the negative.

Issue 5: Is Ms. Coates Entitled To Any Additional Compensation For Aggravated Or Punitive Damages?

[27] Issue 5 is answered in the negative and is substantially covered in the reasons given in determining Issue 4. The fact that earlier on the day of dismissal Ms. Coates' husband attended at the Hospital and when given a tour by Ms. Coates met Ms. Harris in the canteen and Ms. Harris spoke in a complimentary manner as to the work of Ms. Coates. This may now be viewed as deceitful by Ms. Coates but, in effect, was to avoid any cause for concern, rumours, etc., that quite probably would have arisen if Ms. Harris had been somewhat unfriendly to Mr. Coates or simply announced that Ms. Coates was to report to Ms. Harris' office at 4:00 p.m.

DAMAGE CLAIMS OF MS. COATES:

[28] I had some difficulty following the mathematics in the pre-trial representations and therefore requested counsel, post the trial, to provide me with their respective calculations.

[29] Ms. Coates' claim is:

1.	Full value of three year contract (3 x $53,633.)	$160,900.00
	Less: Monies paid by Northwood to Coates	$ 18,973.00
	Total:	$141,927.00
	Less: Mitigation earnings (as per income tax returns)	$ 58,139.00
	Claim:	**$ 83,788.00**
2.	5% Pension Contribution from Northwood	$ 7,096.00
3.	Maternity Leave Top-up from Northwood	$ 11,068.00
4.	One-half Cost of Saint Mary's University Masters Program	$ 19,000.00
5.	Punitive/Aggravated Damages	$ 10,000.00
6.	Prejudgment Interest	
7.	Costs	
	Summary: The claim is therefore in the amount of **Plus** prejudgment interest and costs.	**$130,952.00**

1. Full Value of Three-Year Contract:

[30] The court determined it was a fixed-term contract so, the starting point is the total salary for the three year period less the amount already paid by

Northwood, and less the mitigation earnings bringing the amount to $83,788.

2. 5% Pension Contribution from Northwood:

[31] The issue arises with respect to a loss of pension contributions from Northwood. The contract letter of July 25, 2000 states "pension at the approximate rate of 5% of salary matched by the corporation (you will be able to continue with your NSAHO plan...".

[32] Northwood maintains the only basis upon which to calculate the 5% pension amount is based on the amount of money actually to be paid by Northwood. Northwood calculates it at 5% of $43,563 having deducted from $83,788: nine (9) months maternity leave in the amount of $40,225. Ms. Coates calculates the 5% pension contribution on the total value of the contract, less the monies paid to date, namely: 5% of $141,927. Northwood says there was no evidence provided by Ms. Coates of any pension contributions having been made at other points during employment since November 30, 2000. Ms. Coates' counsel submits that her client gave evidence that she did not receive any pension contributions from her employment during the balance of the fixed term. However, a careful review of the evidence of Ms. Coates fails to disclose that she gave any evidence on this point and in the absence of evidence, the claim must be limited to 5% of the benefit match, $2,178. This is so because the court cannot speculate as to whether or not Ms. Coates did, in fact, receive any pension benefit during the balance of her fixed term contract and, if so, whether it was greater or less than the pension benefit she contracted for in her contract of July 25, 2000. It is to be remembered that Ms. Coates' evidence was to the effect that Ms. Harris was somewhat apologetic about the pension contribution to be made by Northwood. In any event, there is no evidence to determine whether Ms. Coates did or did not receive pension benefits from alternate employment and, if so, whether it was greater than, less than or equal to that she would have received from Northwood.

3. Maternity Leave Top-Up From Northwood:

[33] Ms. Coates claims the amount of $11,068 for this item. Unfortunately, the evidence does not establish this claim. There is no reference to maternity leave or maternity leave top-up in the contract between Ms. Coates and Northwood. Ms. Coates asked the court essentially to write into her contract an entitlement that nurses had through collective bargaining. The Collective Bargaining Agreement itself did not provide for maternity leave until July, post Ms. Coates entering the employment of Northwood, and Ms. Coates was not employed in a unionized position. There is no law that indicates that in such circumstances by inference or otherwise Ms. Coates has such an entitlement and certainly I find that there are no facts that would permit the drawing of such an inference or implying such a term in the contract. Accordingly, this claim has not been established. Ms. Coates having elected to take maternity leave for which she had no recovery entitlement against Northwood results in the deduction of nine months salary $40,225.

[34] In addition to maternity leave Ms. Coates took pre-maternity sick leave. Ms. Coates' evidence is that there was a considerable difference in the physical demands of her employment where she took this leave than the physical demands on her employment with Northwood. Her employment with Northwood, in her evidence is stated to be primarily sedentary, whereas in a clinical nursing position she was doing lengthy shifts and on her feet a major portion of her employment period. It is the evidence of Ms. Coates, which I accept, that had she continued at Northwood she would not have taken pre-maternity sick leave.

4. Educational Claim - Masters Program:

[35] Ms. Coates is seeking payment of the sum of $19,000 pursuant to the contract of employment which she says provided her with a contractual entitlement to take a Masters Program and to be reimbursed for 50% of the cost of such program. I have already indicated that there is no probationary period in the contract because it was not a part of the contract. The evidence with respect to educational program is that of the telephone conference between Ms. Harris and Ms. Coates prior to the contract itself being reduced to writing dated July 25, 2000. Ms. Coates says that in that three-quarter hour telephone conference there was a discussion between her and Debra Harris during which Ms. Harris confided that she had developed a restructuring plan for later implementation and that there would be many challenges. The discussion also indicated that laptop computers would be provided, that there would be arrangements for out-of-office days, some flexibility in scheduling and that Ms. Harris also talked about education. Ms. Harris apparently outlined her own extensive education and that it was Ms. Harris' desire that all the Program Managers would need to be Masters prepared and Ms. Coates explained to her that she had an interest in that prospect. Ms. Harris indicated that Northwood would participate and the terminology used by Ms. Coates is that Ms. Harris suggested Northwood's

interest would be a 50% contribution. It is interesting and of significance that Ms. Coates, at the conclusion of her evidence relating to the telephone conference, stated, "we also talked about the start, these type of things and she said she would send me an offer letter outlining the offer that was being made to me.". In her further evidence with respect to the education aspect, discussions did indicate Ms. Coates knew Ms. Harris had only been in Northwood's employ for a relatively short period of time and that Ms. Harris had not been in this area and wasn't familiar with the details. There is absolutely no reference to a contractual term which would render Northwood liable for one-half of the Masters program selected to be done some time in the future by Ms. Coates. The discussions that took place prior to the entry and finalizing of the terms of contract cannot be elevated to a term of the contract of employment. I assess the evidence before me as in the nature of a wish list a desired possible projection but by no means undertaking a contractual liability on the part of Northwood to pay one-half of a Masters degree program.

[36] It is of interest and I accept the evidence of Ms. Westhaver with respect to the then policy existing of Northwood in relation to encouraging employees to obtain higher education, namely, that there was a policy where after application an employee might be approved for an educational allowance limited to $500 per annum with a total cap of $1,500. Quite probably, Ms. Harris was not aware as she said to Ms. Coates, of such details which, as I said, clearly indicates no such term of the contract was agreed upon or entered into in the employment contract of Ms. Coates with Northwood.

[37] In the result the claim for $19,000 has not been established.

5. Punitive/Aggravated Damages:

[38] The claim for Punitive/Aggravated Damages has already been dismissed and it follows that the monetary claim of $10,000 has not been established.

SUMMARY:.

Full value of three year contract (3 x $53,633.)	$160,900.00
Less: Monies paid by Northwood to Coates	$ 18,973.00
Total:	$141,927.00
Less: Mitigation earnings (income tax returns)	$ 58,139.00
Total:	$ 83,788.00
Less: 9 months maternity leave not provided for in employment contract	$ 40,225.00
	$ 43,563.00
Plus: 5% Pension match benefit	$ 2,178.00
Total:	**$ 45,741.00**

6 Prejudgment Interest:

[39] Prejudgment Interest shall be as agreed by counsel at the rate of 3%, and as indicated in *Swinamer v. Unitel* above, this should be from the date of wrongful dismissal.

7. Costs:

[40] If counsel are unable to agree on costs, I would ask that they provide me with their written representations as soon as possible.

J.