

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** Vaughn v. Hayden, 2009 NSSC 236

**Date:** 20090717  
**Docket:** Bwt No. 212166  
**Registry:** Bridgewater

**Between:**

Donald Max Vaughn

Plaintiff

v.

Dr. David S. Hayden and Dr. David S. Hayden Inc., a body corporate, incorporated  
under the laws of the Province of Nova Scotia

Defendants

**Judge:** The Honourable Justice Glen G. McDougall

**Heard:** June 11, 2009, in Bridgewater, Nova Scotia

**Written Decision:** August 6, 2009

**Counsel:** Colin J. Clarke, L.L.B., on behalf of the movers/defendants  
J.C. Reddy, L.L.B., on behalf the respondent/plaintiff

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**DECISION ON COSTS**

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**By the Court:**

[1] This is a motion for summary judgment brought by the Defendants under **Civil Procedure Rule 13**.

**DECISION ON COSTS:**

[2] Based on my notes, the hearing of the motion commenced at 1:30 p.m. The last time entry I have is when Mr. Clarke began his reply at 3:52 p.m. There was a brief break just before that. I cannot recall just how long it lasted, but based on my recollection it was not a very long break. I did not make a time entry as to when the matter ended but, again, my recollection is that it went beyond 4:00 p.m. A normal half day would be 2.5 hours and this certainly exceeded 2.5 hours. However, I am going to treat it as if it is an application that consisted of more than one hour, but less than one half day.

[3] The range for costs based on Tariff 'C' for a Chambers motion would be \$750 - \$1,000. I am going to use \$1,000 as the proper amount for the hearing itself. I think it is clear that I have a discretion as all judges do when awarding costs. That discretion has to be exercised judicially. Tariff 'C' of **Rule 77.18** provides some guidance. In particular, **Rule 77.18(4)** specifically applies:

(4) When an order following an application in Chambers is determinative of the entire matter at issue in the proceeding, the Judge presiding in Chambers may multiply the maximum amounts in the range of costs set out in this Tariff C by 2, 3 or 4 times, depending on the following 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.

(such applications might include, but are not limited to, successful applications for Summary Judgment, judicial review of an inferior tribunal, statutory appeals and applications for some of the prerogative writs such as certiorari or a permanent injunction.)

[4] I have already indicated that the higher limit of costs for this category of motion is appropriate. There was also a certain degree of complexity involved.

[5] I have no doubt that a great deal of effort has been expended, not only in preparing and presenting the motion itself but in the lead-up to the launch of that motion. There was a great deal of effort on both sides but I have to look at it from the

point of view of the successful party, the defendants. The motion for summary judgment has, for all intents and purposes, ended the matter.

[6] I am prepared to apply a factor of two to the higher end of the range – \$1,000. I am going to award costs of \$2,000 payable by the plaintiff to the defendants along with disbursements. I will require a list of the defendants' disbursements so they can be taxed. I would ask Mr. Clarke to present a bill of costs showing the disbursements incurred which I anticipate will be in the range of \$3,900.

[7] In terms of paying that amount of money, Mr. Clarke had suggested that payment be made within 30 days. Mr. Reddy, I would want to hear from you after you have had a chance to speak to your client about how much time he might need in order to pay costs.

[8] [After hearing from Mr. Reddy.] Upon receiving Mr. Clarke's list of disbursements Mr. Reddy will have ten days to review and make written submissions to the Court, if he challenges any of the listed disbursements. When the Court makes its final decision on costs, the plaintiff will have 30 days from that date to make payment in full to the defendants.

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Justice Glen G. McDougall