

SUPREME COURT OF NOVA SCOTIA

Citation: Peach v. Nova Scotia (Transportation and Infrastructure Renewal),
2010 NSSC 207

Date: 20100602
Docket: Hfx No. 316675
Registry: Halifax

Between:

Nora T. Peach

Appellant

and

Department of Transportation and Infrastructure Renewal

Respondent

DECISION on COSTS

Judge: The Honourable Justice Gerald R. P. Moir

Written Submissions: March 29 and 30, 2010

Counsel: Brian K. Awad, for the appellant
Sheldon Choo, for the respondent

Moir, J.:

[1] Ms. Peach successfully appealed the determination of the Department of Transportation and Infrastructure Renewal to refuse disclosure under the *Freedom of Information and Protection of Privacy Act*.

[2] The department proposes that Ms. Peach have costs under Tariff C calculated at \$750. Ms. Peach argues that Tariff C does not apply, and she requests costs of \$5000.

[3] *Does Tariff C apply?* Mr. Awad argues that Tariff C does not apply to a *de novo* appeal. I think that Rule 77.06(3) requires that we apply Tariff C, whether or not an appeal is *de novo*, unless a case is made under Rule 77.08 for a departure from the Tariffs. In my opinion, these Rules, though they are new, do not change the settled principles about departure from the Tariffs.

[4] *Must the Tariff C amount be multiplied?* Mr. Choo refers to *Armour Group Ltd. v. Halifax*, [2008] N.S.J. 296 (S.C.) in which Justice Goodfellow said at para. 20 "to go beyond Tariff C in Chambers matters requires *special* circumstances". I

think, for two reasons, that that statement should be confined to interlocutory chambers hearings.

[5] Firstly, the present rules of court recognize that all judicial reviews and appeals usually involve more work than is required on an ordinary motion. For this reason, Rule 7 - Judicial Review and Appeal provides special procedures for directions and setting down of judicial review hearing or the hearing of an appeal, and they are not heard in chambers anymore.

[6] Secondly, the language of Tariff C(4) does not in any way limit the discretion to multiply the range of costs "[w]hen an order following an application...is determinative of the entire matter at issue". In my view, we should consider one of the multipliers in C(4) in every appeal that clearly involved more work than an ordinary, contested interlocutory motion.

[7] *How much should be awarded to Ms. Peach?* The Tariff C range is \$750 to \$1,000. This may be multiplied two, three, or four times depending on complexity, importance, and "the amount of effort involved in preparing for and conducting the [appeal]". In my view, only the third of these strongly indicates an increase. I fix

costs at the high end multiplied by three. I am satisfied that \$3,000 is a fair, partial indemnification.

[8] I will grant an order requiring the department to pay Ms. Peach \$3,000 plus her actual disbursements.

J.