

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** Vogler v. Szendroi, 2011 NSSC 13

**Date:** 20110113  
**Docket:** Hfx No. 192712  
**Registry:** Halifax

Between:

Richard Vogler

Plaintiff

and

Christopher Szendroi and Carole Sheehan

Defendants

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DECISION on COSTS

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**Judge:** The Honourable Justice Gerald R. P. Moir

**Heard:** On Written Submissions

**Last Written Submissions:** November 23, 2010

**Counsel:** Jason Gavras, for the plaintiff  
Jean McKenna, Lisa Richards, and Kyla Russell,  
for the defendants

**Moir, J.:**

[1] Mr. Vogler sued for damages resulting from serious injuries he suffered in a car crash. He was awarded \$373,825 in principal including \$46,075 for medical expenses payable to the government, the amount of which had been agreed subject to a contribution for contributory negligence.

[2] The injuries occurred in 2000 and the action was started in 2003. The Tariff that was adopted in 2004 does not apply. We are under the old Tariff.

[3] The "amount involved" for the purposes of the tariffs is \$373,825. I would not exclude the amount recovered for the government. Quantification of that amount was agreed to, but no payment was made.

[4] In my assessment, the case was of ordinary complexity and demands. I would apply the basic scale.

[5] The result, under the old Tariff, would be about \$16,500. It is patent that this would not provide a substantial contribution toward "what would generally or

ordinarily be charged to a client in like circumstances": *Campbell v. Jones*, [2001] N.S.J. 373 (S.C.) at para. 69 reversed on other grounds, but followed on costs, in [2002] N.S.J. 450 (C.A.) para. 74 and para. 419.

[6] The purpose of an award of costs is to provide the successful party with a partial but substantial indemnification. Where, as here, it is established that the applicable Tariff fails that purpose, judges often exercise their discretion to increase or decrease costs from the tariff amount. I have determined to do so.

[7] How much ought the increase to be? I can look to the new Tariff for guidance in a case, like this one, in which the old Tariff fails to meet the purpose of an award of costs. The amount would be \$34,750 under the new Tariff.

[8] Mr. Vogler made an offer to settle under Rule 10.05 that was "not withdrawn" and that was more favourable to the other parties than was the result at trial: Rule 10.09(1). That offer was made shortly before trial. The offer would likely have given rise to the exercise of the discretion to increase the tariff amount by twenty-five percent: Rule 10.09(2)(d).

[9] Taking into account the guidance provided by the new Tariff about what will usually provide a substantial but partial indemnification, my general knowledge of the cost of litigation, the likely demands of a case like this one, and the justice in increasing costs for a litigant who makes a favourable offer to settle, I will order that Mr. Vogler have judgment for costs in the amount of \$45,000 plus disbursements.

J.