

SUPREME COURT OF NOVA SCOTIA
Citation: Langille v. Bernier, 2011 NSSC 179

Date: 20110601
Docket: Hfx No. 191895
Registry: Halifax

Between:

John Herbert Langille

Plaintiff

v.

John F. Bernier, David Chisholm, Mary and Peter Giles,
Kim and Mark Cameron, Tracey Muller, Lance Mitchell,
Susan and Vince Fitzpatrick

Defendants

DECISION ON COSTS

Judge: The Honourable Justice Cindy A. Bourgeois

Heard: May 3 - 13, 2010, in Halifax, Nova Scotia

**Final Written
Submissions:** April 27, 2011

Written Decision: June 1, 2011

Counsel: Micheal Dull, for the Plaintiff
Kevin Burke, for the Defendants Giles
Denisse Mack, for the Defendants Muller, Mitchell and
Fitzpatrick
Jean McKenna, for the Defendant Bernier
Alex Keaveny, for the Defendants Cameron

By the Court:

[1] In a decision released November 3, 2010 (reported 2010 NSSC 402), the claim for personal injuries advanced by the Plaintiff John Langille was dismissed due to the Plaintiff's inability to establish liability against any of the Defendants. Damages were provisionally assessed at \$18,000.00. The parties have been unable to agree with respect to costs. Written submissions have been received from all parties.

[2] The Plaintiff asserts that given the accident which gave rise to the claim occurred January 9, 2001, and the claim was filed January 3, 2003 against the Defendant Bernier (with the other Defendants being added on January 5, 2007) that costs should be determined pursuant to the 1989 Tariff. It is further asserted that the provisional damage award of \$18,000.00 should be considered the "amount involved" for the purpose of applying the tariff.

[3] All of the Defendants assert that the current Tariff should apply and that the "amount involved" should be \$115,000.00, the amount claimed by the Plaintiff at trial. It should be further noted that Offers to Settle were made by the Defendants Giles on September 4, 2008, offering to settle the action against them by way of a

without costs dismissal. The Defendants Fitzpatrick made a similar offer on June 4, 2008.

[4] There is ample authority for the Court to readily conclude that given the timing of the filing of the claim, the 1989 Tariff applies (*Bevis v. CTV Inc.* 2004 NSSC 209; *Vogler v. Szendroi* 2011 NSSC 13). However, there is also ample authority for the Court to deviate, in its discretion, from the applicable tariff, where to apply same would not provide an adequate assessment of costs. It is not at all uncommon in such situations, that the current Tariff be referenced, in order for the Court to determine a more appropriate award (*Vogler, supra*).

[5] In this instance, application of the 1989 Tariff would, in my view, be inappropriate to reach an assessment of costs reflective of the current costs of litigation.

[6] The Court has considered the current Tariff, including an "amount involved" of \$18,000.00, the length of trial, and the existence of two settlement offers. It has also been noted that none of the Defendants have provided the Court with an indication of the actual costs incurred, thus making it difficult to ascertain whether

any contemplated lump sum award would constitute a "substantial contribution" to their costs. Further, none of the Defendants have filed adequate supporting information regarding the disbursements claimed.

[7] Based on the above, costs in this matter are determined as follows:

a) The Defendant Bernier shall be entitled to costs of \$16,000.00 less \$700.00 in relation to costs awarded in a pre-trial chambers motion, for a total of \$15,300.00 plus disbursements to be taxed;

b) The Defendants Kim and Mark Cameron shall be entitled to costs of \$16,000.00 plus disbursements to be taxed;

c) The Defendants Mary and Peter Giles, considering the Offer to Settle made, shall be entitled to costs of \$20,000.00 plus disbursements to be taxed; and

d) The Defendants Tracey Muller, Lance Mitchell, Susan and Vince Fitzpatrick were all represented by the same Counsel. As such, they

have acknowledged that one award of costs would be appropriate.

Considering the Offer to Settle made by the Defendants Fitzpatrick, costs of \$20,000.00 plus disbursements to be taxed are appropriate.

J.