

SUPREME COURT OF NOVA SCOTIA

Citation: Nichol v. Royal Canadian Legion, Branch 138 Ashby, 2011 NSSC 210

Date: 20110601

Docket: Syd. No. 284735

Registry: Sydney

Between:

Henry Nichol

Plaintiff

v.

Royal Canadian Legion, Branch 138 Ashby

Defendant

**DECISION ON COSTS, DISBURSEMENTS AND
PRE-JUDGMENT INTEREST**

Judge: The Honourable Justice Cindy A. Bourgeois

Heard: February 8, 9, 10, April 8, 2011, in Sydney, Nova Scotia

Written Decision: June 1, 2011

Counsel: Alan Stanwick, for the plaintiff
Christopher Conohan, for the defendant

By the Court:

[1] In a decision released April 12, 2011 (reported 2011 NSSC 144), the claim advanced by the Plaintiff alleging defamation was allowed. General damages of \$45,000.00 were awarded to the Plaintiff. At the conclusion of the decision, the Court requested written submissions from Counsel in relation to costs to be awarded. Both parties have made their respective positions known to the Court.

Pre-judgment Interest:

[2] The Plaintiff is seeking pre-judgment interest on the general damages awarded from the date of the cause of action to the date of the Court's decision. It is further submitted that based upon the principles enunciated in *Bush v. Air Canada* (1992), 109 N.S.R. (2d) 91 (A.D.), that the Court should apply interest at the rate of 2.5%, or alternately 3%, if inflation was not considered in quantifying the general damages.

[3] The Court is mindful of the provisions of the **Judicature Act**, R.S.N.S. 1989, c. 240 which mandates an award of pre-judgment interest as follows:

41. In every proceeding commenced in the Court, law and equity shall be administered therein according to the following provisions:

(i) in any proceeding for the recovery of any debt or damages, the Court shall include in the sum for which judgment is to be given interest thereon at such rate as it thinks fit for the period between the date when the cause of action arose and the date of judgment after trial or after any subsequent appeal;

[4] However, the above provision should also be read in conjunction with Section 41(k), which provides:

(k) the Court in its discretion may decline to award interest under clause (i) or may reduce the rate of interest or the period for which it is awarded if

(i) interest is payable as of right by virtue of an agreement or otherwise by law,

(ii) the claimant has not during the whole of the pre-judgment period been deprived of the use of money now being awarded, or

(iii) the claimant has been responsible for undue delay in the litigation.

[5] In the present instance, the acts for which the Plaintiff was able to successfully establish defamation occurred in September of 2003. The Originating Notice and Statement of Claim was filed on August 23, 2007 and subsequently amended on February 7, 2008. A Request for Date Assignment Conference was

filed by the Plaintiff on June 19, 2009. By virtue of the resulting Conference, trial dates were set for September 28, 29, 30, and October 1, 2010.

[6] Given the Plaintiff was seriously ill the week of the scheduled trial, the matter was adjourned and re-scheduled. It was ultimately heard over three days, February 8, 9, and 10, 2011, with brief oral submissions being heard on April 8, 2011.

[7] Other than the adjournment of the original trial dates due to the Plaintiff being ill, there was nothing before the Court, either in terms of the Court file or the nature of the evidence called at trial, which would account for this matter taking in excess of 7 years to advance to trial. The cause of action crystallized in September of 2003. There would be little time required to appropriately appreciate the nature of the Plaintiff's damages. The factual circumstances giving rise to the action were not complex, nor difficult for the parties to ascertain in a relatively speedy fashion. The Court is aware from the evidence, that the Plaintiff was in 2006 until mid-2007, involved along with the Defendant, in a dispute before the Labour Standards Tribunal, however, this should not have accounted for, given the nature of this case, the extent of the delay.

[8] There is ample case authority to permit the Court to limit the amount of time for which pre-judgment interest may be awarded (*Thomas-Canning v. Juteau* (1993), 122 N.S.R. (2d) (S.C.); *Terry v. Lombardo* (1998), 167 N.S.R. (2d) 365 (S.C.)). I believe that in the circumstances of this case, it is appropriate to exercise my discretion to limit the award of pre-judgment interest to 4 years. As inflation was not a factor considered in reaching the general damages awarded, an appropriate rate of interest is 3%.

[9] Based on the above, the Plaintiff is entitled to pre-judgment interest in the amount of \$5400.00.

Costs:

[10] Costs to be awarded in this matter are governed in my view by Rule 77.06(1) of the Nova Scotia Civil Procedure Rules (2009), which reads:

77.06(1) Party and party costs of a proceeding must, unless a judge orders otherwise, be fixed by the judge in accordance with tariffs of costs and fees determined under the Costs and Fees Act, a copy of which is reproduced at the end of this Rule 77.

[11] The Court sees no reason to vary from Tariff A, which both parties appear to agree is applicable. The appropriate "amount involved" is \$45,000.00, and based on the nature of the proceeding, Scale 2 should apply. Accordingly, "base" costs of \$7250.00 result, with an additional \$6000.00 being added, reflective of three days of trial time.

[12] The Plaintiff is entitled to costs of \$13, 250.00.

Disbursements:

[13] In his written submissions, Counsel for the Plaintiff has claimed Court filing fees, photocopying expenses and fax charges. The Court has been provided receipts for the filing fees, as well as two receipts from a commercial copying provider, which include not only the cost of photocopies, but appears to also include charges for tabs and binding services.

[14] Although modest, there is little explanation as to the necessity of the photocopying. There is no explanation as to the necessity of the faxing charges, nor supporting documentation. The Court is satisfied that it is appropriate that

some amount be awarded for photocopy expenses, but "actual cost" is rarely found to be appropriate (*Purdy v. Morash*, 2010 NSSC 362).

[15] The Plaintiff shall be entitled to disbursements in the amount of \$250.65 comprised as follows:

Filing fees	\$186.90
Law stamp	\$ 28.75
Photocopies	\$ 35.00

Conclusion:

[16] The Plaintiff is entitled, as against the Defendant, costs of \$13,250.00, prejudgment interest of \$5400.00, and allowable disbursements of \$250.65.

J.