

SUPREME COURT OF NOVA SCOTIA

Citation: Braithwaite v. Bacich, 2011 NSSC 213

Date: 20110602

Docket: Syd. No. 24155 (109562)

Registry: Sydney

Between:

David Braithwaite

Plaintiff

v.

Jim C. Bacich, Greg A. Blanchard, Reinhold M. Endres, Q.C., George L. Fox,
Grant Vaughan, Bill McKee, Kevin McNamara and Lisa Morris, all Trustees of the
Nova Scotia Public Service Long Term Disability Plan Trust Fund

Defendants

DECISION ON COSTS

Judge: The Honourable Justice Cindy A. Bourgeois

Heard: April 12, 2011, in Sydney, Nova Scotia

**Final Written
Submissions:** May 26, 2011

Written Decision: June 2, 2011

Counsel: David Braithwaite, in person
Colin D. Bryson, Q.C., for the Defendant

By the Court:

[1] In a decision released May 4, 2011 (reported 2011 NSSC 176), a Motion brought by the Defendants pursuant to Civil Procedure Rule 82.18 seeking dismissal of the Plaintiff's claim for want of prosecution, was allowed. The Court has now been asked to make a determination respecting costs. Written submissions have been received from both parties.

[2] The background and history of the claim before the Court was outlined in some detail in the above noted written decision. Although mindful of same in rendering this decision, that history will not be repeated.

[3] The Defendants, as successful party on the motion, are seeking their costs. As the motion served to bring the entire action to an end, Counsel submits that "Tariff F" of the current tariff should be applied by the Court. It is further asserted that the "amount involved" should be considered as being \$220,000.00, the approximate value of the Long Term Disability benefits which the Plaintiff asserted he was owed.

[4] In his written submissions, the Plaintiff submits that he should not be ordered to pay costs and asks for the return of the sum of \$3000.00 plus accrued interest, currently being held as security for costs by the Court as a result of an Order of Justice S. J. MacDonald.

[5] This claim was commenced by way of Originating Notice and Statement of Claim filed July 24, 1998. As such, the 1989 Tariff would apply (see **Bevis v. CTV Inc.** 2004 NSSC 209). However, there is ample authority for the Court to deviate, in its discretion, from the applicable tariff, should it be viewed as appropriate in the circumstances. It is not at all uncommon for the court to consider the current Tariff in such instances (see **Vogler v. Szendroi** 2011 NSSC 13).

[6] In the present circumstances, I view it as entirely appropriate to reference the current Tariff in reaching a determination regarding costs. However, I cannot agree with the Defendants that Tariff F best "fits" the circumstances before me. Rather, Tariff C, and in particular provision (4) thereof, seems to best address the nature of the matter before the Court. It reads:

(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 the 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 *certiori* or a permanent injunction.)

[7] I am satisfied that Tariff C provides appropriate guidance to the Court in the present instance. In terms of the "Length of Hearing of Application", this matter was before the Court on two separate occasions, albeit for relatively short periods on both occasions. I am satisfied that the appropriate time range to apply is "more than 1 hour but less than half a day", thus creating a range of costs of \$750 to \$1000. As noted above, the Court has the discretion to multiply the amount determined within that range by 2, 3, or 4 times.

[8] I have considered the complexity of the matter, the importance of the matter to the parties, and the preparation required for the motion and conclude that it would be appropriate to determine a base amount of \$1000, to be multiplied by 3.

[9] As such, the Defendants shall be entitled to costs of \$3000.00 which I direct be paid from the funds currently being held as security. Any interest accrued on these funds are to be returned to the Plaintiff.

[10] As for disbursements, the Defendants assert that "a ball park amount" of \$500.00 has been incurred for filing fees and photocopying. No supporting documentation has been filed in support. In the circumstances, in addition to the costs awarded herein, the Defendants shall be further entitled to disbursements, to be taxed.

J.