

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Grabher v Nova Scotia (Registrar of Motor Vehicles)*, 2018 NSSC  
126

**Date:** 2018-06-12

**Docket:** *Halifax*, No. SH# 463399

**Registry:** Halifax

**Between:**

Lorne Wayne Grabher

*Applicant*

v.

Her Majesty the Queen in Right of the Province of Nova Scotia as represented by  
the Registrar of Motor Vehicles

*Respondent*

**Judge:** The Honourable Justice Pierre L. Muise

**Heard:** By correspondence dated May 4 and 8, 2018

**Counsel:** Jay Cameron, for the Applicant  
Alison Campbell, for the Respondent

[1] Mr. Grabher commenced an application in court challenging the constitutionality of the revocation of his personalized licence plate. The Registrar submitted an expert report from Dr. Carrie Rentschler. Mr. Grabher brought a motion to exclude that expert evidence (the "Rentschler Motion"). In *Grabher v. Nova Scotia (Registrar of Motor Vehicles)*, 2018 NSSC 87, I granted his motion in part, to the extent that her report must be revised to be admissible. The parties have been unable to agree on the issue of costs. This is my decision on that issue.

[2] Mr. Grabher requests costs in the amount of Seven Hundred and

Fifty Dollars (\$750) in any event of the cause. That submission is based on: the application of Tariff C; the Motion having taken about 1/2 day; and, he having been partially successful on the Motion.

[3] The Registrar submits that the parties should bear their own costs because: success was mixed; and, only a "small reorganization" of Dr. Rentschler's expert evidence is required to make it admissible.

[4] **Civil Procedure Rule 77.05(1)** states that: "The provisions of Tariff C apply to a motion, unless a judge hearing the motion orders otherwise." **Civil Procedure Rule 77.06(3)** states that: "Party and party costs of a motion ... must, unless the presiding judge orders otherwise, be assessed in accordance with Tariff C." Therefore, I must first assess whether applying Tariff C will result in an appropriate costs award.

[5] An appropriate award of costs is one that "the judge is satisfied will do justice between the parties": **CPR 77.02(1)**. If Tariff C does not produce a just result, I may stray from it, including by adding an amount to, or subtracting an amount from, the range of costs specified: **CPR 77.07(1)**.

[6] I respectfully disagree with the Registrar's characterization of the revisions required to render Dr. Rentschler's expert evidence admissible as being a "small reorganization". Although the ultimate opinions expressed in Dr. Rentschler's report, upon which the Registrar seeks to rely, need not change, substantial revisions to the structure of the opinion are required. That was made necessary by the questions the Registrar put to its expert.

[7] Proper questions to elicit an opinion which is admissible for the purposes proffered by the Registrar are outlined at paragraph 146 of my decision. They are completely different from those put to Dr. Rentschler by the Registrar.

[8] The manner in which the Registrar elicited the expert opinion made Mr. Grabher's motion necessary. Had the Registrar tailored its questions to the purposes for which the opinion was advanced, the Motion would not have been required. Similarly, had the Registrar, following Mr. Grabher's objections, sought a revised opinion by submitting more appropriate questions, the Motion would not have been required.

[9] Instead, the Registrar continued to maintain that the opinion was admissible even though it argued that it was not advanced to provide an opinion on the very questions that were put to Dr. Rentschler, i.e. those related to whether or not the expression on the licence plate is offensive.

[10] It would be unfair to Mr. Grabher to deny him costs of a motion that was made necessary by the actions of the Registrar.

[11] On the other hand, as agreed to by both parties, success was divided. As a result, the amount of costs should be less than if he had been fully successful.

[12] The hearing of the Rentschler Motion lasted approximately 2.5 hours. I agree with Mr. Grabher's submission that the length of the hearing puts it in the category of "more than 1 hour but less than 1/2 day". The range of costs in

Tariff C for that length of proceeding is Seven Hundred and Fifty Dollars (\$750) to One Thousand Dollars (\$1,000).

[13] There was some level of complexity, necessitating substantial submissions. However, the applicable legal principles were not in dispute.

[14] The Registrar's motion to strike portions of the affidavit of Mr. Grabher's affidavit sworn November 1, 2017 was heard the same day as the Rentschler Motion . The hearing of that motion also took approximately 2.5 hours. That motion was made necessary by comments included in Mr. Grabher's affidavit. Although he conceded that certain portions ought to be removed, additional portions were also struck. However, not all portions requested by the Registrar were struck. Consequently, success was divided. In that motion, I concluded that the costs award that would best do justice between the parties was one of Seven Hundred and Fifty Dollars (\$750), i.e. the low end of the range, payable to the Registrar in any event of the cause.

[15] The same factors obtain in relation to the Rentschler Motion; and, the time and effort involved are approximately the same.

[16] Therefore, I am satisfied that the same costs award “will do justice between the parties”; and, there is no need to stray from Tariff C to determine an appropriate quantum of costs.

[17] Consequently, the Registrar shall pay Mr. Grabher Seven Hundred and Fifty Dollars (\$750) in costs of the Rentschler Motion, “in any event of the cause and to be paid . . . at the end of the proceeding”, as provided for in **Civil**

**Procedure Rule 77.03(4)(c).** As such, Mr. Grabher will be entitled to those costs “regardless of success” in his application in court.

[18] The practical result will be that the costs of the Rentschler Motion will completely offset the costs of the Registrar's Motion to Strike the Affidavit of Mr. Grabher.

[19] I ask counsel for Mr. Grabher to prepare the Order.

**MUISE, J.**