

SUPREME COURT OF NOVA SCOTIA

Citation: *Carvery v. Halifax (City)*, 2019 NSSC 253

Date: 20190819

Docket: HFX126561

Registry: Halifax

Between:

Nelson Carvery

Plaintiff

v.

City of Halifax

Defendant

Costs on Motion to Certify Proceeding

Judge: The Honourable Justice Patrick J. Duncan

Heard: By Correspondence

**Final Written
Submissions:** June 6, 2019

Counsel: Robert Pineo, for the Plaintiff

Karen MacDonald, for the Defendant

[1] Nelson Carvery brought a motion to certify the within Action as a Class Proceeding pursuant to Sections 4(3) and 7 of the **Class Proceedings Act**, SNS 2007, c. 28. The motion was dismissed. *see, Carvery v City of Halifax*, 2018 NSSC 204.

[2] The parties were unable to agree on the disposition as to costs and argued the issue by correspondence.

[3] The defendant municipality submits that as the successful party, it is entitled to its costs. It seeks an award of \$750, payable forthwith, and relies upon **Civil Procedure Rule 77** and **Tariff C** of the Costs and Fees Tariffs.

[4] The plaintiff submits that the defendant is not entitled to costs. Counsel argues that the pleaded cause of action is a claim for compensation under the law of expropriation. He says that because it is an expropriation matter the defendant's right to claim costs is governed by Section 414 of the **Halifax City Charter**. He submits that costs can only be awarded against the landowner in the event that the landowner challenges a statutory offer of compensation made by the City and then fails to achieve an award greater than that offer. The argument is that since the defendant has not made a statutory offer to the plaintiff it cannot seek costs.

[5] I disagree with the plaintiff's interpretation of the section. The failed motion to certify was brought under the **Class Proceedings Act**, which is a procedural statute. The motion did not engage any of the issues which could lead to the determination of the substantive claim in expropriation.

[6] Section 414 of the **City Charter** speaks only to the issue of costs where an offer has been made. I do not accept that it can be read to inferentially limit the availability of costs in proceedings not captured by the specific conditions it describes. Section 414 does not address the circumstances of the motion to certify and it does not provide a basis upon which to deny the defendant costs that it is otherwise entitled to.

[7] Having found that there is no reason to disentitle the successful party on this motion to its costs, I conclude that the plaintiff will pay to the defendant costs of \$750, in accordance with **Tariff C**. The claimed amount is very reasonable, having regard to the complexity and importance of the issues raised by the motion, as well as the effort expended to respond to the motion.

[8] The costs are payable forthwith.



Duncan J.