

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Van Delft v. The Dominion of Canada General Insurance Company*,  
2020 NSSC 8

**Date:** 20200109

**Docket:** HFX476343

**Registry:** Halifax

**Between:**

Dilly van Delft

Plaintiff

v.

The Dominion of Canada General Insurance Company,  
St. Paul Fire and Marine Insurance Company (Canada Branch),  
Travelers Insurance Company of Canada, known as Travelers Canada,  
WCL Bault (1975) Limited

Defendants

---

**DECISION ON COSTS**

---

**Judge:** The Honourable Justice Glen G. McDougall

**Heard:** February 26, 2019, and July 8, 2019, in Halifax, Nova Scotia

**Final Written Submissions:** December 2, 2019

**Counsel:** David G. Coles QC, for the Plaintiff

Shelley A. Wood, for the Defendants  
(The Dominion of Canada General Insurance Company, St. Paul Fire and Marine Insurance Company (Canada Branch), Travelers Insurance Company of Canada, known as Travelers Canada)

Joseph F. Burke, for the Defendant  
(WCL Bault (1975) Limited)

**By the Court:**

[1] The Plaintiff brought a dual motion seeking:

- (i) A determination of a question of law pursuant to *Civil Procedure Rule 12*; and
- (ii) Summary Judgement (on evidence) against the Dominion of Canada General Insurance Company, St. Paul Five and Marine Insurance Company (Canada Branch) and Travelers Insurance Company of Canada (collectively “Travelers”) pursuant to *Civil Procedure Rule 13*.

[2] In a decision released on October 15, 2019, both motions were denied. The parties were encouraged to try to reach an agreement on costs, failing which, they were invited to file written submissions to assist the Court in making the determination. I thank Counsel for their attempt to agree and the written submissions that followed.

**Plaintiff’s Position**

[3] Counsel for the Plaintiff – Miss van Delft – suggests that costs of the Motions be left to be determined by the presiding judge at trial. Alternatively, if costs are to be quantified now, then it should be based on the Tariff C rate of \$3,000 (i.e., \$2,000 per day X 1½ days).

[4] He also asks that should the Court decide to use a multiplier, that it be limited to two times the normal Tariff C amount for a hearing that took 1½ days to complete.

### **Defendant's Position**

[5] Counsel for the defendants participating in the Motions, argue that their clients are entitled to a partial but substantial indemnity for the reasonable and necessary costs they incurred in successfully opposing the two Motions brought on behalf of the Plaintiff.

[6] Affidavit evidence provided by one of the defendant's counsel indicates that a total of \$62,192.77 (not including the time expended on submissions related to costs) has been billed to their clients for this purpose. In order to provide a substantial indemnity to the defendants, counsel suggests a lump sum of \$15,548.19 (representing 25% of the total amount billed), to be awarded and made payable forthwith.

### **Court's Ruling**

[7] The decision to award costs is largely left to the discretion of the judge who hears and decides the matter. *Civil Procedure Rule 77.02(1)* states:

A presiding judge may, at any time, make any order about costs as the judge is satisfied will do justice between the parties.

[8] Counsel for both sides have done a commendable job in briefing me on the topic. I thank them for their efforts in this regard.

[9] The two motions, if successful, would have resulted in a final determination of the matters set out in the Plaintiff's Notice of Action/Statement of Claim filed on May 11, 2018 (amended on June 27, 2018). Significant time and effort went into advancing and arguing the merits of these two motions. The same can be said of the efforts expended by counsel on behalf of the opposing parties.

[10] In order to do justice between the parties, I do not think it would be fair to simply accede to the suggestion from Plaintiff's counsel to leave it to the judge at trial to decide. *Rule 77.03(3)* states that "[c]osts of a proceeding follow the result, unless a judge orders or a *Rule* provides otherwise". Subsection (4) of this *Rule* provides different ways for the payment of costs for motions that do not result in the final determination of the proceeding.

[11] Paragraph (c) of Rule 77.03(4) contemplates for payment:

77.03(4)(c) to a party in any event of the cause and to be paid immediately or at the end of the proceeding, in which case the party receives the costs of the motion regardless of success in the proceeding and the judge directs when the costs are payable;

[12] I am of the view that the appropriate amount of costs payable by the Plaintiff to the defendants involved in these Motions should be set at \$7,500, in any event of the cause, payable at the conclusion of the proceeding. I believe this provides a substantial indemnity to the defendants without unduly fettering the Plaintiff's ability to proceed with her claim.

Glen G. McDougall, J.