

SUPREME COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Environment) v. Tynes*, 2020 NSSC 231

Date: 20200902

Docket: 490722

Registry: Halifax

Between:

Nova Scotia (Department of Environment)

Applicant

v.

Joshua Tynes and the Animal Cruelty Appeal Board

Respondent

DECISION

Judge: The Honourable Justice Glen G. McDougall

Heard: November 26, 2019, in Halifax, Nova Scotia

Counsel: Adam Norton and Cherise Hart, for the Applicant
Joshua Tynes, Self-Representative Respondent
Gary Richard, Observing for the Respondent, Animal Cruelty
Appeal Board

By the Court:

INTRODUCTION

[1] The Applicant – the Nova Scotia Department of Environment (“NSE”) – successfully challenged a decision of the Animal Cruelty Appeal Board (the “Board”).

[2] The Board chose not to participate in the review of its’ decision leaving it to Joshua Tynes to respond. Mr. Tynes acted for himself. He presented as a very intelligent and highly articulate young man. He impressed the court with his demeanor and the quality of his written and oral submissions.

[3] In finding the Board’s decision was unreasonable and remitting it back for redetermination, I left it to the parties to try to agree on costs. Unfortunately, this did not happen.

NSE – Position on Costs

[4] NSE asks for costs of \$2,000.00 based on Tariff C. It suggests the normal range for a matter that took more than an hour but less than a half day (\$750.00 - \$1,000.00) should be multiplied by 2 to reflect its (a) complexity; (b) importance; and (c) the amount of effort involved.

Mr. Tynes – Position on Costs

[5] Mr. Tynes asks the Court to take into consideration that he is a student and has limited financial resources. What little income he earns is from his small farming operation which he says has been significantly impacted by the seizure of some of his animals by the Department and the downturn in the economy. Although he did not provide an affidavit with his written submissions that fact that he is pursuing an education did come out in evidence during the hearing. I accept this as a fact.

[6] I also accept that the economy has suffered a downturn arising from the covid-19 pandemic.

Court's Decision

[7] Although costs are normally awarded to the successful party, the Rules allow for the use of discretion. In particular, Rule 77.02(2) states that:

77.02(2) Nothing in these Rules limits the general discretion of a judge to make any order about costs, except costs that are awarded after acceptance of a formal offer to settle under Rule 10.05, of Rule 10 - Settlement.

[8] I believe this is a situation where the parties should each bear their own costs. Any award of costs made against the Respondent would only serve to limit

his ability to provide for himself and his family and could jeopardize his efforts to further his education. It might also hinder his ability to appear before the Board at the rehearing. I, therefore, exercise my discretion to not award costs to either party.

Glen G. McDougall, J.