

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Lynn v. Nova Scotia (Lands and Forestry)*, 2021 NSSC 244

**Date:** 20210811

**Docket:** HFX499038

**Registry:** Halifax

**Between:**

Maryn Rebecca Lynn, Sandra Catherine Lynn,  
and Beth Skerrett

Applicants

v.

Nova Scotia Minister of Lands and Forestry, The Attorney General of  
Nova Scotia Representing Her Majesty the Queen in Right of the Province of  
Nova Scotia

Respondents

and

Helen Marjorie Chisholm, Stanley Wayne Chisholm,  
Jeffrey Wayne Chisholm and Janice Darlene Chisholm

Intervenors

---

**COSTS DECISION**

---

**Judge:** The Honourable Justice Ann E. Smith

**Submissions:** Respondent, June 22, 2021  
Applicants, June 21, 2021  
Intervenors, June 22, 2021

**Counsel:** James Simpson, for the Applicants  
Myles Thompson, for the Respondents  
Marc Dunning, for the Intervenors

**By the Court:**

**Introduction**

[1] In a decision reported at *Lynn v. Nova Scotia (Lands and Forestry)*, 2021 NSSC 184, this Court dismissed the Applicants’ motion for judicial review from a decision of the Minister of Lands and Forests (the “Minister”) that certain construction activities carried out by the Chisholms (the “Intervenors”) on James Beach did not constitute a violation of the *Crown Lands Act*, R.S., c. 114, s. 1 the *Endangered Species Act*, S.N.S. 1998, c. 11 or the *Beaches Act*, R.S. c. 32, s. 1. I awarded costs to the Respondents.

[2] The parties were unable to agree on costs, and this Court received written submissions on costs from each of the Applicants, the Respondents and the Intervenors.

**Position of the Parties**

[3] The successful Respondents seek costs of \$6000.00. This amount is based on the fact that the judicial review was heard over one full day and therefore would attract basic Tariff C costs in the amount of \$2000.00. However, the Respondents say that the decision was determinative of the entire matter at issue, and that a

multiplier of 2, 3 or 4 times may be applied depending on factors such as (a) the complexity of the matter, (b) the importance of the matters to the parties; and (c) the amount of effort involved in preparing for and conducting the application. The Respondents say that a multiplier of 3 should be applied.

[4] The Applicants say that the Respondents' success on the motion should result in basic Tariff C costs of \$2000.00. They also say that Intervenors are generally not awarded costs and that there are no exceptional circumstances in this case that should result in costs awarded to the Chisholms.

[5] The Intervenors say that they became Intervenors by consent, that they had a direct and important interest in the result of the judicial review motion and that they should be awarded costs of \$4000.00 based on basic Tariff C costs and a multiplier of 2.

### **Analysis**

[6] The general rule is that costs follow the event. That rule is not absolute. There are no reasons why that rule should not apply here. The real issue is the amount of those costs and whether the Intervenors should receive costs.

[7] The starting point in determining the quantum of costs is Rule 77.03 (3) which provides that “Costs of a proceeding follow the result, unless a judge orders or a Rule provides otherwise”. Basic Tariff C costs are set at \$2000.00.

[8] In *Grue v. McLellan*, 2018 151 Hunt J summarized the principles in awarding costs as described in *Armoyan v. Armoyan*, 2013 NSCA 136, at para. 6:

6. In *Armoyan v. Armoyan*, 2013 NSCA 136, the Nova Scotia Court of Appeal provided direction with respect to the principles to be considered when determining costs. Specifically, Justice Fichaud stated:

1. The court's overall mandate is to do "justice between the parties": para. 10;
2. Unless otherwise ordered, costs are quantified according to the tariffs; however, the court has discretion to raise or lower the tariff costs applying factors such as those listed in Rule 77.07(2). These factors include an unaccepted written settlement offer, whether the offer was made formally under Rule 10, and the parties' conduct that affected the speed or expense of the proceeding: paras. 12 and 13.
3. The Rule permits the court to award lump sum costs and depart from tariff costs in specified circumstances. Tariffs are the norm and there must be a reason to consider a lump sum: paras. 14-15
4. The basic principle is that a costs award should afford a substantial contribution to, but not amount to a complete indemnity to the party's reasonable fees and expenses: para. 16
5. The tariffs deliver the benefit of predictability by limiting the use of subjective discretion: para. 17
6. Some cases bear no resemblance to the tariffs' assumptions. For example, a proceeding begun nominally as a chambers motion, signaling Tariff C, may assume trial functions; a case may have "no amount involved" with other important issues at stake, the case may assume a complexity with a corresponding work load, that is far disproportionate to the court time by which costs are assessed under the tariffs, etc.: paras. 17 and 18; and
7. When the subjectivity of applying the tariffs exceeds a critical level, the tariffs may be more distracting than useful. In such cases, it is more realistic

to circumvent the tariffs, and channel that discretion directly to the principled calculation of a lump sum which should turn on the objective criteria that are accepted by the Rules or case law: para. 18.

[9] These principles provide the broad background for costs awards, generally.

[10] Applying these principles, this Court finds that the Respondents are entitled to costs, inclusive of disbursements, from the Applicants in the amount of \$5000.00. The Court has applied a multiplier of 2.5 to the basic Tariff C amount of \$2000.00. The Court takes into account that there was a significant amount of effort on the part of the Respondents' counsel in responding to the motion for judicial review. The Respondents were required to file a two-volume record consisting of over 600 pages of evidence from both the Department of Lands and Forestry and Nova Scotia Environment. The Respondents' counsel also filed a lengthy legal brief which reviewed provisions in the *Beaches Act*, *Crown Lands Act* and the *Endangered Species Act*, as well as the common law on the doctrine of accretion.

[11] The matter was clearly important to the Respondents in terms of the Minister's reliance on his staff who responded to the Applicants' complaints as well as to concerns and complaints expressed by many others. The matter had some complexity given the interplay between the various legislation and the facts before the Court.

[12] This Court finds that a costs' award in the amount of \$5000.00, payable to the Respondents, does justice between the parties. The Court notes that it previously awarded costs payable to the Applicants in the amount of \$1000.00 on the Respondents' unsuccessful preliminary motion to strike the motion for judicial review as out of time.

[13] The general rule is that intervenors are not awarded costs (See *A.B. Bragg v. Bragg Communications Inc.* (2010 NSSC 356)). That rule is not absolute. Each case turns on its own facts. A significant factor is the extent of the intervenor's interest in the proceeding. In that regard, Justice McDougall held as follows in *Lawton's Drug Stores Ltd. v. Zink*, 2009 NSSC 243:

9. Although an intervenor is generally not entitled to costs, in this particular case I feel it is appropriate to use the general discretion codified in *Civil Procedure Rule* 77.02. My reason for doing so is based on the very significant interest that the MacDonnells had in the proceeding. If the injunction had been granted, the sale of the MacDonnell Pharmacy to Zink and MacLean would have been further delayed and perhaps frustrated entirely.

[14] The Intervenor obviously had a very significant interest in the matters before the Court and the outcome of the judicial review. Their interest was not merely theoretical. The Applicants sought a remedy which would result in part of the Chisholms' private property being determined to be a public beach. Nor was the Chisholms' interest merely financial, as submitted by the Applicants. The Intervenor should be entitled to rely upon their connection to their own coastal

property on James Beach and their wish to protect its loss, just as much as the Applicants say that they had an abiding interest to protect James Beach.

[15] In addition, the Intervenors' counsel prepared written submissions to the Court on judicial review and made material oral submissions which contributed to this Court's understanding of the substantive issues. Counsel had a significant record to review and legal arguments to consider in preparation for doing so.

[16] This Court has the discretion to make any order concerning costs that I consider does justice between the parties pursuant to Rule 77.02(1). I find that the Intervenors are entitled to costs of \$2000.00.

[17] The Costs are payable by the Applicants within thirty (30) calendar days of this decision.

Smith, J