

SUPREME COURT OF NOVA SCOTIA

Citation: *Martell-Norman v Brown*, 2022 NSSC 186

Date: 20220627

Docket: ANN, No. 449419

Registry: Annapolis

Between:

Timothy Martell-Norman and Cheryl Norman-Martell

Plaintiffs

v.

Ronald Elwin Brown

Defendant

Judge:

The Honourable Justice Gregory M. Warner

**Final Written
Submissions:**

June 13 & June 22, 2022

Counsel:

Jonathan G. Cuming , for the Plaintiffs
W. Bruce Gillis, QC for the Defendant

By the Court:

[1] By written decision dated May 17, 2022 (2022 NSSC 137) this Court found the defendant liable and assessed damages in favour of the Plaintiffs in the amount of \$63000 and prejudgment interest totalling \$5300.12. The parties are unable to agree on costs.

[2] The Plaintiffs seek costs on Scale 3 of Tariff A for a damage award between \$40001 and \$65000 of \$9063. They note that, per Civil Procedure Rule 77.07 tariff costs may be increased based on factors relevant to this case. The plaintiffs offered to settle by letter dated March 9, 2016 for \$65000. The offer was rejected and the plaintiffs claimed they incurred substantial legal costs in the ensuing six years, totalling \$21529 plus HST. They claim the Tariff A scale of \$2000 per day of trial, based on one full day plus two partial days adds an additional \$4000.

[3] The Defendant submits that the appropriate scale is the Basic Scale (Scale 2) in the amount of \$7250. There was nothing unusual about the conduct of this trial. With respect to the \$2000 per day of trial claim, he claims that two of the three days did not exceed one half day, for which the tariff is \$750 to \$1000 each.

ANALYSIS

[4] As I have written in several costs decisions, CPR 77 applies. Costs decisions are in the general discretion of the court and for the purpose of doing justice between the parties. The starting point is Tariff A Scale 2. Scale 1 is for simple trials and Scale 3 for unusually complex trials. There was nothing unusual about this trial. Scale 2, called the Basic Scale, is the appropriate scale for this proceeding.

[5] With respect to the provision of an additional \$2000 for each day of trial, \$4000 is the appropriate amount. The trial consumed one full and two half days.

[6] I infer that the defendant refers to Tariff C – which applies to Applications in Chambers of between one hour and a half day when he refers to the suggested range of \$750 to \$1000. Effectively the parties were in trial for the equivalent of two full days.

SUMMARY

[7] The plaintiffs are awarded costs in accordance with Tariff A based on the scale of \$7250, plus \$4000, or \$11250, payable within 30 days.

Gregory M. Warner, J.