SUPREME COURT OF NOVA SCOTIA

Citation: *Crowell v. RBC Life Insurance Company*, 2022 NSSC 314

Date: 20221018
Docket: *Hfx*, No. 467749
Registry: Halifax

Between:

Karen Crowell

Plaintiff

v.

RBC Life Insurance Company

Defendant

Judge:	The Honourable Justice Diane Rowe
Oral Decision:	September 29, 2022, in Halifax, Nova Scotia
Final Written Submissions:	March 25, 2022
Counsel:	Barry Mason, KC, for the Plaintiff Michelle Awad, KC, for the Defendant

By the Court – Orally:

Motion for Summary Judgement

[1] This is a motion for Summary Judgement on the evidence, pursuant to *Civil Procedure Rule* 13.04.

[2] The Defendant, RBC Life Insurance Company ("RBC Life"), seeks the dismissal of the Plaintiff, Ms. Karen Crowell's claim, with costs.

[3] The basis for RBC Life's motion is that (1) the Plaintiff's allegations of wrongdoing by RBC Life are based on the wrongful denial of the Plaintiff's claim for the benefits under a disability policy, however, no such claim was made by Ms. Crowell to RBC Life; (2) the Plaintiff cannot now make a claim for benefits under the terms of the Policy as the Policy was cancelled; and (3) that if there is a basis for the Plaintiff's claims as pleaded, then those claims were made after the expiry of the limitation period.

[4] Ms. Crowell's response is that the Defendant had not met the requisite legal test for dismissal of the action against RBC Life, and that there are genuine issues of material fact or fact and law, and genuine issues of law for determination mixed with fact, present in the claim that require determination by the Court.

The Plaintiff submits that her claim as against RBC Life is in regard to representations made by its agent, the Royal Bank of Canada ("RBC"), to her concerning the policy; that there is no limitations issue as the discoverability rule would apply and she had just realized the legal identity of the insurer in April 2016; and that there is a genuine issue to be determined concerning a claim for relief from forfeiture.

Issue

[5] Has RBC Life established that summary judgement, on the evidence, should be granted with the Plaintiff's claim dismissed?

The Action and Defence

[6] Ms. Crowell's Statement of Claim states that while she was an employee of RBC, she entered into a policy of insurance with the Defendant, RBC Life Insurance.

[7] The parties both agree that Ms. Crowell entered into a policy of individual insurance with RBC Life Insurance Company. This policy was issued on July 1, 2012.

[8] Ms. Crowell's Statement of Claim states at paragraph 4 that she "…requested payment under the Policy for Individual Disability Insurance" benefits from RBC Life Insurance. Then, per paragraph 5, that as RBC Life Insurance has not paid the Plaintiff her benefits, it is in breach of the contract.

[9] There are no particulars set out regarding the date or manner concerning Ms. Crowell's claim for benefits from the Defendant, or the response of the Defendant to the claim, within the Statement of Claim. There is a plea for damages, under various headings, directly after paragraphs 4 and 5.

[10] RBC Life's defence is that the Policy sets out the requirement for making a claim, in accordance with Part 11, and particularly sections 11.1.1, 11.1.2, and section 11.8. Section 11.1.1 essentially provides that the insured gives written notice of claim to the insurer not later than 30 days after a claim arises, and is then to provide proof of the claim within 90 days of the claim.

[11] Section 11.1.2 provides that: "Failure to give notice of claim or furnish proof of claim does not invalidate the claim if the notice or proof is given or furnished as soon as reasonably possible, and in no event later than one year from the date of the accident or the date a claim arises under the contract on account of

sickness or disability if it is shown that it was not reasonably possible to give notice or furnish proof within the time so prescribed."

[12] Section 11.8, headed "Limitation of Actions" provides that an action against the insurer for the recovery of a claim shall not be commenced more than one year after the date insurance money was or could have been payable if there had been a valid claim.

[13] RBC Life pleads that Ms. Crowell has not made a claim for benefits at any time, therefore, the claims put forward are without foundation. Further, RBC Life pleads that Ms. Crowell cancelled the policy in late November at her request, with the cancellation effective November 28, 2016, resulting in Ms. Crowell being unable to claim under the policy afterward.

[14] The Defence states that this action, as filed August 31, 2017, is not a claim under or a reinstatement of the policy.

[15] The Defence further states that as of August 31, 2017, when the action was filed, all of Ms. Crowell's claims are barred pursuant to the Limitation of Actions clause in the policy, and statutory limitations in accordance with s. 23(1) *Limitation of Actions Act*, S.N.S. 2014, c. 35 and the *Insurance Act*, R.S.N.S. 1989, c. 231.

[16] Further, the Defence pleads that Ms. Crowell has not demonstrated it was not reasonably possible for her to give notice or furnish proof of her claim in the time prescribed in the policy or statute.

[17] RBC submits that, as there is an absence of claim and expiry of limitation periods, it is not possible for the Plaintiff to claim a loss within the terms of the policy.

[18] In support of the motion, RBC Life provided the Affidavit of Mr. John Biondic, a Senior Consultant with RBC Life Insurance, dated March 14, 2022 ("Biondic Affidavit").

[19] In response, the Plaintiff provided the Affidavit of Ms. Karen Crowell, sworn April 4, 2022 ("Crowell Affidavit").

Test

[20] The test a Court must apply in an application on Summary Judgement on the evidence, pursuant to Rule 13.04, is set out in *Shannex Inc. v. Dora Construction Ltd*., 2016 NSCA 89, in which Justice Fichaud wrote:

> [30] Shannex moved for summary judgement in the evidence under Rule 13.04. Rule 13. 04 was amended on February 26, 2016. Before Justice Rosinski, the parties agreed that the amended Rule governed the motion. I will apply the amended Rule.

[31] The amended Rule says:

Summary judgement on evidence in an action

13.04 (1) A judge who is satisfied on both of the following must grant summary judgment on a claim or a defence in an action:

(a) there is no genuine issue of material fact, whether on its own or mixed with a question of law, for trial of the claim or defence;

(b) the claim or defence does not require determination of a question of law, whether on its own or mixed with a question of fact, or the claim or defence requires determination only of a question of law and the judge exercises the discretion provided in this Rule 13.04 to determine the question.

(2) When the absence of a genuine issue of material fact for trial and the absence of a question of law requiring determination are established, summary judgment must be granted without distinction between a claim and a defence and without further inquiry into chances of success.

(3) The judge may grant judgment, dismiss the proceeding, allow a claim, dismiss a claim, or dismiss a defence.

(4) On a motion for summary judgment on evidence, the pleadings serve only to indicate the issues, and the subjects of a genuine issue of material fact and a question of law depend on the evidence presented.

(5) A party who wishes to contest the motion must provide evidence in favour of the party's claim or defence by affidavit filed by the contesting party, affidavit filed by another party, cross-examination, or other means permitted by a judge.

(6) A judge who hears a motion for summary judgment on evidence has discretion to do either of the following:

(a) determine the question of law, if there is no genuine issue of material fact for trial;

(b) adjourn the hearing of the motion for any just purpose including to permit necessary disclosure, production, discovery, presentation of expert evidence, or collection of other evidence.

See also the expanded summary of the principles in *Burton*, para. 87.

[33] The amended Rule 13.04 frames, but does not materially change *Burton*'s tests. On the first test, instead of the former Rule's "genuine issue for trial", the new Rule 13.04(1) speaks of a "genuine issue of material fact, whether on its own or mixed with a question of law". On the second, the amended Rule 13.04(3) repeats the former Rule 13.04(2), that the judge may grant judgment, dismiss a proceeding, and allow or

dismiss a claim or defence. These provisions remain consistent with Justice Saunders' formulation in *Burton*.

[34] I interpret the amended Rule 13.04 to pose five sequential questions:

- **First Question: Does the challenged pleading disclose a "genuine issue of material fact", either pure or mixed with a question of law?** [Rules 13.04(1), (2) and (4)]

If Yes, it should not be determined by summary judgment. It should either be considered for conversion to an application under Rules 13.08(1)(b) and 6 as discussed below [paras. 37-42], or go to trial.

The analysis of this question follows *Burton*'s first step.

A "material fact" is one that would affect the result. A dispute about an incidental fact - *i.e.* one that would not affect the outcome - will not derail a summary judgment motion: *2420188 Nova Scotia Ltd. v. Hiltz*, 2011 NSCA 74, para. 27, adopted by *Burton*, para. 41, and see also para. 87 (#8).

The moving party has the onus to show by evidence there is no genuine issue of material fact. But the judge's assessment is based on all the evidence from any source. If the pleadings dispute the material facts, and the evidence on the motion fails to negate the existence of a genuine issue of material fact, then the onus bites and the judge answers the first question Yes. [Rules 13.04(4) and (5)]

Burton, paras. 85-86, said that, if the responding party reasonably requires time to marshal his evidence, the judge should adjourn the motion for summary judgment. Summary judgment isn't an ambush. Neither is the adjournment permission to procrastinate. The amended Rule 13.04(6)(b) allows the judge to balance these factors.

- **Second Question:** If the answer to #1 is No, then: **Does the challenged pleading require the determination of a question of law, either pure, or mixed with a question of fact?**

If the answers to #1 and #2 are both No, summary judgment "must" issue: Rules 13.04(1) and (2). This would be a nuisance claim with no genuine issue of any kind – whether material fact, law, or mixed fact and law.

• **Third Question:** If the answers to #1 and #2 are No and Yes respectively, leaving only an issue of law, then the judge "may" grant or deny summary judgment: Rule 13.04(3). Governing that discretion is the principle in *Burton*'s second test: **"Does the challenged pleading have a real chance of success?"**

Nothing in the amended Rule 13.04 changes *Burton*'s test. It is difficult to envisage any other principled standard for a summary judgment. To dismiss summarily, without a full merits analysis, a claim or defence that has a real chance of success at a later trial or application hearing, would be a patently unjust exercise of discretion.

It is for the responding party to show a real chance of success. If the answer is No, then summary judgment issues to dismiss the ill-fated pleading.

• **Fourth Question:** If the answer to #3 is Yes, leaving only an issue of law with a real chance of success, then, under Rule 13.04(6)(a): **Should the judge exercise the "discretion" to finally determine the issue of law?**

If the judge does not exercise this discretion, then: (1) the judge dismisses the motion for summary judgment, and (2) the matter with a "real chance of success" goes onward either to a converted application under Rules 13.08(1)(b) and 6, as discussed below [paras. 37-42], or to trial. If the judge exercises the discretion, he or she determines the full merits of the legal issue once and for all. Then the judge's conclusion generates issue estoppel, subject to any appeal.

This is not the case to catalogue the principles that will govern the judge's discretion under Rule 13.04(6)(a). Those principles will develop over time. Proportionality criteria, such as those discussed in *Hryniak v. Mauldin*, [2014] 1 S.C.R. 87, will play a role.

A party who wishes the judge to exercise discretion under Rule 13.04(6)(a) should state that request, with notice to the other party. The judge who, on his or her own motion, intends to exercise the discretion under Rule 13.04(6)(a) should notify the parties that the point is under consideration. Then, after the hearing, the judge's decision should state whether and why the discretion was exercised. The reasons for this process are obvious: (1) fairness requires that both parties know the ground rules and whether the ruling will generate issue estoppel; (2) the judge's standard differs between summary mode ("real chance of success") and full-merits mode; (3) the judge's choice may affect the standard of review on appeal.

> [35] **"Discretion":** The judge's "discretion" under the amended Rule 13.04(6)(a) governs the option *whether or not to determine the full merits – i.e.* the Fourth Question. I disagree with Mr. Upham's factum that Rule 13.04(6)(a) gives the judge "unfettered" discretion to just dismiss Shannex's summary judgment motion. The Civil Procedure Rules do not authorize judges to allow or dismiss summary judgment motions on an unprincipled or arbitrary basis.
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> [36] **"Best foot forward":** Under the amended Rule, as with the former Rule, the judge's assessment of issues of fact or mixed fact and law depends on evidence, not just pleaded allegations or speculation from the counsel table. Each party is expected to "put his best foot forward" with evidence and legal submissions on all these questions, including the "genuine issue of material fact", issue of law, and "real chance of success": Rules 13.04(4) and (5); *Burton*, para. 87.

[21] A "material fact" is one that is essential to the claim or defence (*2420188 Nova Scotia Ltd. v. Hiltz*, 2011 NSCA 74 at paragraph 27). Material facts are "important factual matters that anchor the cause of action or defence" (*Coady v. Burton Canada Co*, 2013 NSCA 95 at paragraph 95).

[22] Justice Farrar in *Hatch Limited v. Atlantic Sub-Sea Construction and Consulting Inc.* 2017 NSCA 61 at paragraphs 23 to 26 wrote that:

> [23] The role of the motions judge on a summary judgment motion is to determine whether the challenged claim discloses a genuine issue of material fact (either pure or mixed with a question of law). The onus is on the moving party to show there is no genuine issue of material fact. If it fails to do so the motion is dismissed. A material fact being one that would affect the result.
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> [24] The motions judge must determine whether the evidence is sufficient to support the pleading, but he/she cannot draw inferences from the available evidence to resolve disputed facts.
>
> [25] This prohibition on weighing evidence was addressed by Saunders, J.A. in *Coady*. After discussing the law of summary judgment in Nova Scotia, he provides a list of principles, including:
>
> [87] …

> 10. Summary judgment applications are not the appropriate forum to resolve disputed questions of fact, or mixed law and fact, **or the appropriate inferences to be drawn from disputed facts**.
>
> 11. **Neither is a summary judgment application the appropriate forum to weigh the evidence or evaluate credibility**.
>
> [Emphasis added]
>
> [26] The law is clear that judges on summary judgment motions under Rule 13.04 are not permitted to weigh evidence;…

[23] The case authorities on the Rule in Nova Scotia repeatedly emphasize that the motion is to be based on the evidence before the Court, and framed by the pleadings.

[24] As was established by the Court of Appeal in *Shannex*, *supra*, a judge's assessment of issues of fact or mixed fact and law depends on the evidence, not on the pleaded allegations or speculation from the counsel table (*Shannex, supra,* at para 36).

[25] RBC Life submits that the test on a summary judgement motion is modified to a degree when a defendant's motion to dismiss is based on an expired limitation period. I am mindful of the test as set out in *Nova Scotia Home for Coloured Children v. Milbury* 2007 NSCA 52 at paragraph 20 and 23, in which it was written:

> Did the defendants establish that there are no genuine issues of fact on the question of whether the plaintiff's action is statute barred because the limitation expired?

> …
>
> When the defendant pleads a limitation period and proves the facts supporting the expiry of the time period, the plaintiff has the burden of proving that the time has not expired as a result, for example, of the discoverability rule.

Analysis

[26] The Court accepts the affidavit evidence for the purposes of Motion and will canvass the primary elements. It is not my role to evaluate the merits of either parties' position, but to determine whether there is a genuine issue of material fact, or mixed fact and law, for trial of the claim or defence.

[27] In considering the first question in *Shannex*, *supra*, as noted previously, the parties are in agreement on the policy issuance and its contents, as well as its termination.

[28] The Biondic Affidavit filed by RBC Life establishes that:

- on August 14, 2013, Ms. Crowell called RBC Life to request a copy of the policy;
- on September 12, 2013, the policy was emailed to Ms. Crowell by RBC Life;

- on November 24, 2016, Ms. Crowell emailed her Cancellation Request form to RBC Life; and

- on November 28, 2016, a letter was sent to Ms. Crowell by RBC Life confirming the cancellation of the Policy as she requested.

[29] The Crowell Affidavit indicates Ms. Crowell retained counsel in or about September 2013 to represent her in regard to a separate action against Manulife Insurance Company and RBC. There was a mediation held in regard to this action on April 5, 2016, with Ms. Crowell asserting it was at this point she learned that the Policy was issued by RBC Life.

[30] Ms. Crowell's affidavit evidence, however, is silent in regard to making any claim against the Policy to RBC Life. She does refer to a conversation with her manager concerning what she refers to as the "Top Up" policy. There is no reference to RBC acting as the agent to the Defendant in the Pleadings filed.

[31] In regard to the first of Justice Fichaud's questions, in *Shannex*, *supra,* the Court has reviewed and considered the pleadings and argument filed by Ms. Crowell and RBC Life. Ms. Crowell claims disability on or about April 29, 2013. RBC Life did not oppose this date for the purposes of the motion. Ms. Crowell did not make a claim for benefits. I accept that the necessary elements

of material fact in an action on an insurance policy are that there is coverage under a policy of insurance (which is admitted), a date of disability, and a claim for benefits. In this case, there is a lack of claim on the policy prior to its cancellation, which is a material fact that is not in issue between the parties.

[32] Ms. Crowell submits that there is a genuine issue of material fact raised in her pleadings, though, as she submits that the representation to her by the RBC employee to her stopped her from making a claim before April 2016. She submits that, but for that person's representations, she would have made a claim in a timely fashion against the Policy. However, there is an inescapable gap in logic that occurs in considering this submission, as she did not make any claim to RBC Life from the time she received a copy of the insurance policy via email in September, 2013, (at a minimum) and then even while covered by the Policy into 2016. Instead, she cancelled the policy, nine months after the date Ms. Crowell claims she acquired knowledge of the identity of the policy issuer, thereby terminating her own ability to make a claim, and many months in advance of starting this action.

[33] Three items were submitted by Ms. Crowell for the Court to consider in relation to both the first and second questions set out in *Shannex supra*, as times that offered **either** a potential genuine issue of material fact or mixed law and

fact on the motion, **or** as one requiring a determination of law, purely, or of law mixed with fact.

[34] In regard to the first question, Ms. Crowell also submitted that there is a genuine issue of material fact concerning when Ms. Crowell discovered the identity of the Defendant to the action and her reasonable diligence in making the discovery. I do not see how this issue anchors the cause of action as material fact, as Ms. Crowell submits in her own pleading that she discovered this in April of 2016, yet still acted to cancel the policy subsequently.

[35] In regard to Ms. Crowell's submission concerning whether RBC was or was not an agent of RBC Life, the affidavit evidence does not support this as a genuine issue of material fact. As per *Hatch, supra*, the "motions judge must determine whether the evidence is sufficient to support the pleadings, but cannot draw inferences from the available evidence to resolve disputed facts." There is no pleading of agency within the claim. Further, as per *Shannex, supra*, "the judge's assessment of issues of fact or mixed fact and law depends on evidence, not just pleaded allegations or speculation from the counsel table."

[36] Ms. Crowell submits that the other genuine issues of material fact for the Court to consider in regard to the first question, is whether RBC Bank, as the

agent for RBC Life, denied benefits to Ms. Crowell. This is inextricably linked to the prior issue identified by the Plaintiff, put forward in reliance on the submissions of counsel.

[37] Ms. Crowell submits that there is an issue in regard to a claim for relief from forfeiture as a genuine issue of material fact, but this is not a claim within the pleadings filed in the Statement of Claim, but is raised in submission by counsel on the Motion. The Court finds that it is speculative.

[38] In answer to the first question, and upon consideration of the evidence and pleadings before me, there are no genuine issues of material fact between the parties, in regard to the Policy.

[39] In considering the second question set out in *Shannex*, which is whether there is a determination required by the Court of a question of law, either pure or mixed with a question of fact, Ms. Crowell's submission reiterated the three elements canvassed in the first question in the alternative, and added the issue of whether the Court is required to determine whether Ms. Crowell's action is barred by the *Limitation of Actions Act*.

[40] RBC submits that there is no element of Ms. Crowell's pleading which requires a determination of a question of law, or of law mixed with a question of fact.

[41] Concerning the issue of limitation provisions, RBC Life directs the Court to consider that the limitation provisions in the policy are identical to those in the *Limitations of Actions Act* and do not require interpretation. It is further submitted that, in applying the limitation periods contained in the policy, the *Insurance Act*, and the *Limitations of Actions Act(s),* all have passed in relation to claims against RBC Life in connection with the date of April 29, 2013 for disability. Ms. Crowell did concede at the outset of the hearing that there was a one year limitation in effect for the policy.

[42] In regard to the issue of agency, in subsequent reply submissions, RBC Life notes that agency is not an issue in the pleadings filed.

[43] I have previously determined that the pleadings do not establish there is a genuine issue of material fact concerning the agency of RBC to RBC Life Insurance, and it appears to the Court that this would be necessary to underpin a determination of law regarding agency for this particular issue.

[44] The issue raised regarding an “agency” claim is implicit in the affidavit of Ms. Crowell only. The Court though, must determine on the pleadings and evidence before it on the motion, whether they disclosed this as an issue of mixed fact and law (“Branch 2”) with reasonable a chance of success.

[45] The Court does not seek proof on a civil liability basis for determining a “reasonable chance of success”, as that is properly for the trial judge, but presuming that the facts as alleged are proven then the Court must consider whether this issue gives rise to an issue of mixed fact and law with a reasonable chance of success for the Claim.

[46] RBC Life did provide, in the Biondic Affidavit, a copy of the Amended Statement of Claim in the separate action between the Plaintiff and RBC Bank, as amended by an Order of Justice Richard Coughlan. I will note that this pleading, in the separate action, includes a plea for relief as against RBC Bank for breach of contract related to alleged misrepresentations of an employee concerning Ms. Crowell’s access to the Top Up benefit claimed.

[47] The affidavit evidence of Ms. Crowell states she asked a question to her manager and received his statement on how he thought the claim process would work. The statement does not speak to counsel’s written submission that there

was likely an agency relationship between RBC and RBC Life that is a genuine issue of material fact.

[48] While Ms. Crowell has included in her affidavit a pamphlet setting out the coverage she could acquire as an RBC employee, she did not indicate when or how she acquired this. Without weighing the evidence, reviewing this item indicates there is no issue of law or of mixed fact and law in regard to this element, as the parties both rely on the same evidence of an individual policy issued by RBC Life that was subject to a separate claims process.

[49] Ms. Crowell argues it is for RBC Life to negate the issues of the agency and there is nothing in the pleadings or evidence to suggest that no agency exists. This would require the Defendant to prove the negative, when the burden is on the Plaintiff to frame the pleadings and present evidence of a fact in issue.

[50] Further, the Plaintiff submitted several cases concerning claims against employers group policies in support of the submission that there is a question of law or of law and mixed fact requiring the Court to determine whether Ms. Crowell could claim relief from forfeiture to address both the limitations issue and the claims issue, however, this is not supported in the pleadings and evidence before the Court in this motion. The Policy of insurance is individual

to Ms. Crowell, with the corporate identity within the Policy stated as RBC Life Insurance Company, which is the legal identity of the insurer, as issued July 1, 2012.

[51] It is not an issue that the Policy was cancelled by the insured as provided within the Policy at section 11.3.

[52] The Court takes note of the phrasing in this section 11.3: **"…and in no event later than one year from the date of the accident or the date a claim arises under the contract on account of sickness or disability if it was shown it was reasonably possible to give notice to furnish proof within the time so prescribed."**

[53] Counsel did begin the hearing by noting there was an agreement in regard to the applicability of a one year limitation in regard to the claim. Ms. Crowell's pleadings and evidence are silent in support of a submission showing it was not reasonably possible for her to give notice or furnish proof of claim within the time.

[54] Ms. Crowell submitted that the issue of limitations concerning discoverability is implicit in her affidavit submission, but the onus is on the Plaintiff **of proving that the time has not expired as a result, for example, of**

the discoverability rule, as stated in *Milbury, supra***.** Ms. Crowell submits that the one year period is operative, but relies on cases, including *Andreychuck v. RBC Life Insurance Co.* 2008 BCSC 286, at paragraph 10, for support that there is a question of law for the Court to determine on whether this is a "rolling" period.

[55] However, the identity of the insurer is on the face of the policy. I do not find that there is a reasonable chance of success of the claim on a determination of this possible issue of law concerning limitations raised by the Plaintiff upon reviewing the materials placed before the Court on this motion.

[56] The Plaintiff submits that the action as filed in 2017 was within the required limitation of actions period as the discoverability rule would operate to preserve it, as the identity of the insurer was "revealed" in April 2016.

[57] It is not disputed there was no corresponding claim made pursuant to the policy thereafter, and not disputed that Ms. Crowell then cancelled the individual policy of insurance in November 2016, nine months afterward. It would seem that the facts mixed with a question of law on this point do not appear to offer a "reasonable chance of success" of the claim.

[58] In regard to the second question, I do not find that the pleadings and evidence by Ms. Crowell require the determination of a question of law, either pure, or mixed with a question of fact. As the answers to both question one and two are “no”, there must be a finding for summary judgement by this Court.

Conclusion

[59] The Motion for Summary Judgement is granted to the Defendant, RBC Life Insurance, for the reasons set out, and this action is dismissed.

[60] RBC Life submitted in writing that it is seeking costs in accordance with Tariff C with a multiplier of three, for a claim of costs and disbursements in the amount of $4500.00, payable to the Defendant. There was no concurring submission on this by the Plaintiff’s counsel, as she requested an opportunity to make a submission regarding costs upon the decision being made.

[61] Costs are awarded to RBC Life, in keeping with Tariff C, for a half day hearing. If the parties are unable to agree on costs, I will receive written submissions within 30 days of this decision outlining the respective parties’ position on the amount.

Diane Rowe, J.