

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Nova Scotia College of Nursing v. McCannel*, 2023 NSSC 5

**Date:** 20230109

**Docket:** *Hfx*, No. 510952

**Registry:** Halifax

**Between:**

Nova Scotia College of Nursing

*Applicant*

v.

Adam Kiril McCannel

*Respondent*

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**COSTS DECISION**

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**Judge:** The Honourable Justice Gail L. Gatchalian

**Counsel:** Ryan Baxter and Raylene Langor, for the Applicant  
Adam McCannel, self-represented

**By the Court:**

[1] In a written decision dated November 2, 2022, I allowed the application filed by the Nova Scotia College of Nursing for a permanent injunction against the Respondent, Adam McCannel: 2022 NSSC 318. In that decision, I stated that if the parties could not agree on costs, I would receive written submissions from the College within two weeks of the decision, and written submissions from Mr. McCannel within one month of the decision.

[2] The College filed its written submissions on November 18, 2022. Mr. McCannel has not filed submissions. It is now well past the deadline for doing so.

[3] This is my decision on costs of the Application. My decision will include a decision on the costs of the interim injunction hearing before the Honourable Justice John A. Keith. In an Order dated December 2, 2021, Keith J. issued an interim injunction against Mr. McCannel, and provided that the costs of that motion would be “in the cause.”

**Costs Sought by the College**

[4] The College seeks \$27,000 in costs, representing a lump sum of 30% of its actual legal costs plus disbursements. The College filed an affidavit of Heather

Totton, Senior Director, Governance and General Counsel of the College, summarizing in table form the College's actual legal costs and disbursements. Total fees were \$88,902.59, total disbursements were \$1,543.27, for a total of \$90,445.86.

### **Costs Principles**

[5] In determining appropriate costs in a proceeding, the Court must “do justice between the parties”: Rule 77.02(1). Costs of a proceeding follow the result, unless a judge orders or a Rule provides otherwise: Rule 77.03(3). Unless a judge orders otherwise, party and party costs are fixed according to the tariffs: Rule 77.06.(1). The tariff amount may be increased or decreased: Rule 77.01(1). Rule 77.07(2) sets out examples of factors that may be relevant in determining whether the tariff costs should be increased or decreased. A judge may order lump sum costs instead of tariff costs: Rule 77.08. Tariffs are the norm, and there must be a reason to consider a lump sum. An award of party and party costs includes necessary and reasonable disbursements pertaining to the subject of the award: Rule 77.10(1). 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. See *Armoyan v. Armoyan*, 2013 NSCA 136 at paras.10 and 12-17.

[6] The College was the successful party in the motion heard by Keith J. and in the main application. Absent special circumstances, which do not exist in this case, the College will recover its costs from Mr. McCannel.

### **Application of Costs Principles**

#### ***The Tariff Amounts***

[7] Tariff C applies to costs in a motion: Rule 77.05(1). The hearing of the motion lasted almost five hours. Under Tariff C, the basic amount for a motion hearing that lasts more than half a day but less than one day is between \$1000 and \$2000. Given the length of the hearing of the motion, which started at 2:00 p.m. and went until approximately 6:52 p.m., I would be inclined to award the upper range of costs for the motion.

[8] Tariff A applies to costs in an Application in Court. There was no “amount involved” in this case. For an “amount involved” of less than \$25,000, the basic costs amount is \$4,000, plus \$2000 for each day of hearing. The hearing of the Application lasted approximately two and a half hours. If I applied Tariff A, costs for the hearing of this application would be \$4000 plus \$1000 for a half day of hearing, for a total of \$5,000.

#### ***Conduct Affecting the Speed or Expense of the Proceeding***

[9] Under Rule 77.07(2)(e), the court may take into account the conduct of a party affecting the speed or expense of the proceeding. The College argues that it offered Mr. McCannel several opportunities to remove or erase the confidential information that he had posted on social media, and when he did not do so, the College had to pursue this application. I agree. Mr. McCannel's conduct affected the expense of this proceeding in that, had he simply removed or erased the offending information, the motion and application could have been avoided. This would warrant an increase to the tariff amounts.

### *Lump Sum*

[10] The College states that a lump sum award is more appropriate in this case than the tariff amount in part because the motion and application concerned an important subject matter impacting the public interest. The College says that the motion and application were critical to the College's ability to uphold the integrity of its professional conduct process and there was no "amount involved." The College relies on the general statement in *Armoyan*, supra that "[s]ome cases bear no resemblance to the tariffs' assumptions," and that, for example, "a case may have 'no amount involved' with other important issues at stake." A lump sum should be awarded in this case instead of tariff costs because there was no amount involved and because there were important issues at stake.

***Encourage Settlement/Discourage Unnecessary Steps***

[11] The College states that a lump sum award is also justified in part because Mr. McCannel committed, in another proceeding involving similar issues between himself and the College of Paramedics, that if the College of Paramedics were successful in its application for a permanent injunction, he would plead “no contest” to the College of Nursing application. The College of Paramedics were successful in obtaining a permanent injunction against Mr. McCannel. Nonetheless, Mr. McCannel then fully contested the College of Nursing application. The College asserts that the College of Paramedics application was determinative of the issues in this application. I disagree. The two applications involved different pieces of legislation, different professional conduct complaints to different regulators, and different alleged breaches of the respective pieces of legislation.

***Substantial Contribution***

[12] The College asserts that the tariff amount would not afford a substantial contribution to its actual legal costs. While the College provided a summary of its actual legal costs in the form of affidavit evidence, it did not attach to that affidavit a copy of the actual legal accounts, as was done, for example, in *Pink v. Davis*,

2015 NSSC 47 (see para.3). The basic principle is that a costs award should afford substantial contribution to the party's "reasonable fees and expenses." It is impossible to assess the reasonableness of the fees and expenses in this case without the accounts, or some further affidavit evidence justifying the amounts. \$88,902.59 in fees seems high for an interim injunction motion and a half-day permanent injunction application, which involved substantially the same legal issues and evidence. It may very well be that the College's fees were higher than normal because Mr. McCannel was not represented by counsel. However, there is insufficient affidavit evidence for me to come to such a conclusion.

### **Conclusion**

[13] Taking all of the relevant factors into account, I conclude that a lump sum award of costs against Mr. McCannel in the amount of \$10,000, all inclusive, for both the interim injunction and the permanent injunction hearing, would do justice between the parties in the circumstances of this case. I so order. I ask that counsel for the College prepare the draft Order.

Gatchalian, J.