

SUPREME COURT OF NOVA SCOTIA

Citation: *Rockville Carriers Limited v. Canada (Attorney General)*,
2023 NSSC 324

Date: 20231013
Docket: 512062
Registry: Halifax

Between:

Rockville Carriers Limited

Applicant

v.

The Attorney General of Canada

Respondent

Decision on Costs

Judge: The Honourable Justice Peter Rosinski

Heard: February 22, 2023, in Halifax, Nova Scotia

Counsel: Richard Norman and Kelcie White, for the Applicant
Jeffrey Waugh, for the Respondent

By the Court:

Introduction

[1] Rockville Carriers Limited [“Rockville”] filed civil suit against the Attorney General of Canada [“Canada”] by way of and Application in Court.

[2] Its claims included negligence, misfeasance in public office, and conversion/detinue in relation to the actions of Department of Fisheries and Oceans [“DFO”] personnel who seized lobsters from Rockville’s pound and returned them to the ocean.

[3] Rockville sought to be fully reimbursed for the loss of lobsters and crates which DFO personnel seized and disposed of.

[4] After a one-day trial, I dismissed each of those claims, including the embedded claim for aggravated and punitive damages – 2023 NSSC 146.

[5] This decision deals with the “costs” that Rockville must pay Canada.

Position of the parties

Canada

[6] It submits that: there is “a spectrum of reasonableness on which to base costs in this matter that ranges from \$19,072.79 to \$71,700. Ultimately, we propose that

a lump-sum award of costs as opposed the Tariff amount only, is more reflective of the reasonable legal costs incurred in this matter.”

[7] Firstly, it calculates \$19,072.79 under the Basic amount of Scale 2 in Tariff A (\$16,750 based on a total amount involved of \$125,001 – \$200,000 - as claimed by Rockville in its pleadings) plus \$2,000 per day of trial and \$322.79 disbursements.

[8] However, Canada argues that \$19,072.79 will not be in the nature of a “substantial contribution” toward “a lawyer’s reasonable bill for the services involved” (*Williamson v. Williams*, 1998 NSCA 195).

[9] It goes on to argue that since its total legal fees (per a “Detailed Statement of Account by File Business Unit/Client by Region”, which was merely attached as a Tab to its legal brief, as opposed to an attachment to an affidavit from a person in authority with personal knowledge of the matter) in relation to this matter reveals effectively \$95,602.38 for 472.47 hours legal work is the “lawyer’s reasonable bill for the services involved”.

[10] Per *Williamson*, a “substantial contribution” is usually between two thirds and three quarters of that amount, and Canada argues “a figure reflective of the

middle of this range... \$45,000, may be the most appropriate determination of costs taking into account the specific circumstances of this case.”

[11] Canada argues for a lump-sum award of \$45,000.

Rockville Carriers Limited

[12] Rockville argues that Tariff A is the appropriate basis to award costs.

[13] It argues that “the amount involved” (in spite of it having claimed more than \$169,500 in its pleadings) “was between \$48,400 (argued by Canada) and \$61,666 plus prejudgment interest” having been reduced upon reflection to that amount in Rockville’s July 7, 2023, Brief.

[14] Therefore, it concludes using that range of “amount involved”, using Scale 2 (\$7,250 + \$2,000 for a one-day hearing) that costs should be \$9,250.

[15] Rockville filed an affidavit through one of its legal counsel, Kelcie White, wherein she outlines the legal activity during the pleadings to trial timeline.

[16] Alternatively, Rockville argues that, if the Court is disposed to award a lump-sum, based on Canada’s claimed legal fees as a reference point, “a hearing be held to tax [Canada’s] account... [which] could be done by your Lordship or the

matter could be referred to the Small Claims Court Adjudicator. The fees incurred by [Canada] are unreasonable and out of proportion.”

What is the appropriate costs award here?

[17] Somewhat recently, in *Howe v. Rees*, 2023 NSSC 43, which involved a motion by Mr. Howe to amend his pleadings and a motion by the Defendants for summary judgment on pleadings, the first of which I denied, and the second of which I granted, I considered similar arguments that are made here in relation to Tariff C and a lump sum award.

[18] In that case, I cited from the reasons of Justice Wood (as he then was) in *Homburg v. Stichting Autoreteit Financiele Markten*, 2017 NSSC 52 (2017 NSCA 62, affirming the merits of Justice Wood’s decision - the “costs” order was not appealed).

[19] Here Rockville also relies on Justice Wood’s reasons.

[20] I conclude that Tariff A is the appropriate reference point in the case at Bar.¹

¹ I so conclude, in part, because I am not satisfied that I can confidently rely upon the simple tabulation provided by Canada in support of a “lump-sum” costs award. For example, it was not provided by way of a sworn affidavit; there is no explanation regarding what legal activity constitutes the references therein such as “communications with counsel”, “file management”, “document review”, “meetings”; and there is no reference to what are the qualifications of the persons who are named as involved in the activities listed, and are they truly within the ambit of “a lawyer’s reasonable bill for the services included”? Moreover, as this is a government entity, the “costing” of time spent by legal counsel on a matter is somewhat artificial, and without further explanation for the base hourly rates applied, the court is poorly positioned to assess the reasonableness thereof.

[21] In so far as the loss of the lobsters was concerned, the “amount involved” was approximately \$50,000, plus prejudgment interest, as I found at paragraph 52 of my Decision herein.

[22] However, recognizing that there was substantial pre-trial work involved, the lack of clarity in the relevant law, and the complexity of the issues involved, I find it appropriate to use Scale 3 given the circumstances of this case.

Conclusion

[23] I order that Rockville pay Canada \$11,385.79 in costs (\$9,063 plus \$2,000 for one day of trial, and \$322.79 in disbursements).

[24] I direct Rockville to prepare an Order (consented to as to form by Canada) regarding my merits and costs decisions.

Rosinski, J.