

SUPREME COURT OF NOVA SCOTIA

Citation: *Hart v. Allstate Insurance Company of Canada*, 2024 NSSC 112

Date: 20240416

Docket: 511493

Registry: Halifax

Between:

Shawn Hart

Plaintiff

v.

Allstate Insurance Company of Canadas, an Extra-Provincial Corporation

Defendant

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| DECISION ON COSTS |
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Judge: The Honourable Justice Ann E. Smith

Counsel: Michael Dull and Basia Sowinski-Banfield, for the Plaintiff
Michelle M. Kelly, K.C., and Meaghan Kells for the Defendant

By the Court:

Introduction

[1] On September 1, 2023 this Court granted the motion of Allstate Insurance Company of Canada (“Allstate”) for summary judgement on evidence on the basis that Mr. Hart commenced his action against Allstate too late. [See *Hart v. Allstate Insurance Company of Canada*, 2023 NSSC 273]. As a result, the Court dismissed Mr. Hart’s action against Allstate, with costs payable to Allstate.

[2] The parties have been unable to agree on costs. They each provided this Court with their written positions on costs.

[3] The parties agree that this motion for summary judgement on evidence was heard over one day and for one hour on a second day.

[4] Relying upon Tariff C, Mr. Hart submits that a cost award of \$2000 would satisfy a substantial indemnity of the reasonable costs of Allstate. Mr. Hart points out that Allstate has not provided proof of reasonable disbursements incurred on the motion, but if Allstate were to provide such proof, he accepts their addition to the cost award.

[5] Allstate seeks costs of \$7500 and disbursements in the amount of \$243.40 [filing fees of the defence, (\$99.70), Notice of Motion (\$66.00) and various courier and postage charges (\$77.70)].

[6] Allstate also seeks costs of \$4,688 in relation to the dismissal of the underlying action and disbursements of \$243.40 for “the total proceeding to date”. Accordingly, Allstate seeks total costs and disbursements in the amount of \$12,431.40.

Law and Analysis

[7] The general rule is that costs follow the event. That rule is not absolute.

[8] There are no reasons why that rule should not apply here. The real issue is the amount of those costs

[9] The starting point in determining the quantum of costs is the *Tariffs of Costs and Fees* under *Rule 77*. Costs on a motion are governed by Tariff C, unless the judge orders otherwise: *Rule 77.05(1)*.

[10] A judge has the discretion to add or subtract from the Tariff amount: *Rule 77.07*. Furthermore, a judge “may award lump sum costs instead of Tariff costs”: *Rule 77.08*.

[11] The guiding principles in awarding costs were considered by the Nova Scotia Court of Appeal in *Armoyan v. Armoyan*, 2013 NSCA 136. Hunt J. summarized the Court's comments from *Armoyan* in *Grue v McLellan*, 2018 NSSC 151:

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.

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

[13] Courts will depart from Tariff C amounts when the basic award of costs under the Tariff would not adequately serve the principle of substantial but not complete indemnity for legal fees of the successful party.

[14] The maximum Tariff C costs in this case would amount to \$2,500, for approximately one day and one hour of hearing time.

[15] Allstate has not provided this Court with a bill of costs or any other information as to its actual legal fees incurred to date in defending the action.

[16] Nevertheless, in the circumstances of this case, I believe a departure from Tariff C is warranted. The motion involved a late addition of allegations of bad faith on the part of Allstate including the submission of cases at the hearing by Plaintiff's counsel which had not been included in Mr. Hart's brief on the motion. This resulted in an adjournment and the submission of additional case law by Allstate on the issue of bad faith claims relating to insurance contracts.

[17] Allstate filed a comprehensive brief on the motion. I find that the matter was somewhat complex, involving significant effort on the part of Allstate. It put its best foot forward in seeking summary judgement and it was wholly successfully. I accept that Allstate's counsel expended significant effort in the preparation and conduct of

the matter. The summary judgement motion resulted in the full determination of the claim and the dismissal of the underlying action.

[18] The Court determines that it is appropriate in the circumstances to apply a multiplier of 3 to the basic Tariff C amount of \$2000 (one day) and one hour on the second day (\$500) which results in costs of \$7500.

[19] The outcome of the summary judgement motion meant that no trial was necessary. Allstate's counsel admits that the underlying action was in its infancy, although Affidavits Disclosing Documents had been exchanged.

[20] In all of the circumstances, and after considering all relevant factors, I find it appropriate to add \$1000 to the Tariff C amount of \$7500, resulting in total costs of \$8500. I find that that amount does justice between the parties.

[21] In terms of disbursements, I award filing fees for Allstate's defence and motion documents in the total amount of \$165.70. The Court was not provided with confirmation of any other disbursements incurred, so none are awarded.

[22] Mr. Hart shall pay total costs and disbursements to Allstate in the amount of \$8665.70 within forty-five (45) days of the date this decision is received by counsel.

Smith, J.