SUPREME COURT OF NOVA SCOTIA

Citation: *Buxton v. Nova Scotia (Attorney General)*, 2025 NSSC 306

Date: 20251001
Docket: *Ann* No. 510267
Registry: Annapolis Royal

Between:

Paul Gerard Buxton

Plaintiff

v.

The Attorney General of Nova Scotia, representing Her Majesty the Queen in Right of the Province of Nova Scotia; the Minister of Health and Wellness; the Department of Health and Wellness; and the MSI Medical Consultant, Valerie Ross

Defendants

Costs Decision Following Trial

Judge:	The Honourable Justice Pierre Muise
Final Written Submissions:	May 1, 2025
Counsel:	Paul Gerard Buxton, Self Represented Jeremy Smith, for the Defendants

By the Court:

BACKGROUND

[1] In *Buxton v. Nova Scotia (Attorney General)*, 2025 NSSC 85, I dismissed, in its entirety, Paul Buxton's action alleging misfeasance in public office, breach of trust and negligence by the Minister, the Department and Dr. Valerie Ross, in connection with the denial of his claim for reimbursement of expenses he incurred for surgical services in a private hospital in Ontario.

[2] The parties were unable to agree on costs and made written submissions on the issue.

[3] The Defendants submit that I should order costs, payable to them, totaling $14,719, inclusive of disbursements, based on Scale 3 in Tariff A, using the $25,000-$40,000 amount involved range, plus $2000 for the one day of trial, increased by 50% to account for refusal to accept, or even acknowledge, a formal offer to settle which resulted in them obtaining a favourable judgment.

[4] They initially calculated the amount involved as being the $31,000 in special damages claimed by Mr. Buxton, plus prejudgment interest at 5% per annum over the 52.5 months between his surgery and the Court's decision, resulting in an additional $6,781, for a total of $37,781. Mr. Buxton correctly pointed out that his cause of action only arose when his request for reimbursement was denied, such that prejudgment interest, even if included in the calculation of the amount involved, should only start on December 14, 2020. Following receipt of Mr. Buxton's submissions, the Defendants agreed and adjusted the proposed amount involved by deducting $387.25, leaving $37,393.

[5] I agree with the Defendants that this slight difference in the amount involved is irrelevant to the assessment of costs, and that, contrary to Mr. Buxton's assertions, the erroneous inclusion of that additional amount does not constitute an intentional attempt to deceive by counsel for the Defendants.

[6] I further agree that, even if prejudgment interest is excluded in its entirety, the amount involved clearly still falls within the same range and does not change the amount of costs that is appropriate in the case at hand.

[7] The Defendants take the position that it is appropriate to utilize Scale 3 for reasons which include the following:

- Mr. Buxton caused the Defendants to engage in supplementary unnecessary work from the outset by providing multiple defective notices of intended action, which they had to keep reviewing and then pointing out essential portions that were missing.
- Mr. Buxton amended his statement of claim after they had filed their defence, resulting in additional work for them.
- Mr. Buxton filed a corrected notice of action which they had to move to strike, and which was ultimately struck by Justice Bodurtha.
- They had to deal with the following from Mr. Buxton: a demand for particulars; interrogatories even following discoveries; a request for admissions; and a demand for production.
- Mr. Buxton also brought four abuse of process motions that were all dismissed.
- Mr. Buxton made serious unfounded and meritless allegations of unconscionability, disrespect for the law, conduct bordering on fraud, multiple unlawful acts, lying, and acting unlawfully or without lawful authority.
- Though the trial only took one day, it was a somewhat complex matter as the Defendants essentially had to argue a judicial review of the province's interpretation of the interplay between provisions in various statutes and regulations.

[8] Mr. Buxton, in his submissions, attempts to re-argue multiple points that were already rejected in his abuse of process motions and in the trial. I will not readdress those in this decision on costs.

[9] He submits he was partially successful because I accepted that the question of his entitlement to reimbursement was governed by Section 7 of the *Hospital Insurance Regulations*. That point was not in dispute. The Defendants themselves argued its applicability and Mr. Buxton unsuccessfully asked that they be estopped or barred from relying on it. Mr. Buxton was clearly and entirely unsuccessful in

establishing any claim in his action. Therefore, contrary to his submissions, he would not be entitled to partial costs on that basis.

[10] Mr. Buxton points out that, as a self represented litigant, with no legal training, he should not be penalized with increased costs for requiring multiple attempts before formulating an acceptable notice of intended action. I agree that the fact that he is self represented does warrant granting him some leeway on that point. In addition, the exchanges required before arriving at a proper notice of intended action would not have added significantly to the work required to be performed on behalf of the Defendants.

[11] Similarly, Mr. Buxton's demand for particulars, interrogatories, requests for admissions and demand for production are normal aspects of litigation which have little impact on the scale to be selected in the circumstances of the case at hand. I also note that some of these requests by Mr. Buxton were at least partly due to the defendants having believed that they had disclosed what had been requested or that it was subject to privilege but having later discovered that there were additional materials to be disclosed or that the information in question was not privileged.

[12] For example, they had provided a copy of the summary of the Out of Province Travel and Accommodation Assistance Policy from the Department of Health and Wellness Website, rather than the original Policy. Dr. Ross' explanation for that was that it is the website version that she had been operating from, so she thought that constituted compliance with Mr. Buxton's request. So, it was reasonable for Mr. Buxton to assert he had not received what he requested.

[13] Another example is, as highlighted by Mr. Buxton, the initial refusal by Dr. Ross to provide the name of a person she communicated with on grounds of privilege. That caused Mr. Buxton to have to file documentation showing the privilege did not exist. The name was then disclosed, obviating the need for a motion to be heard, but only after Mr. Buxton had engaged in that process. That is a factor which militates in favour of a lower scale.

[14] Mr. Buxton's multiple requests for documentary proof that Harold McCarthy was authorized to act as a personal representative for the Department was unnecessary and wasted resources because, as I indicated during the proceeding, he was clearly the most appropriate person to act as the Department's representative and the Department agreed to be bound by his representations. That militates in favour of using the higher scale. Contrary to Mr. Buxton's assertion, the refusal to provide such non-existent documentary proof is not a factor which

unnecessarily caused him work. As such, it ought not militate in favour of using a lower scale. Rather, by pushing the issue, he caused unnecessary work for the Defendants.

[15] The fact that he has been self represented does not excuse his general approach to the litigation, which was marred by spurious allegations of nefarious intent and action, by the Defendants and their lawyer, including allegations of deceit, fraud and forgery, and even threats of criminal prosecution. This approach led to unsubstantiated abuse of process motions and serious unsubstantiated allegations of deliberate misconduct by the Defendants giving rise to his action. I note collaterally that, sadly, the same approach continues to surface repeatedly in his submissions on costs.

[16] As the Court in *Wambolt v. Armstrong*, 2013 NSSC 81, noted, such unsubstantiated allegations can justify imposition of solicitor and client costs amounting to full indemnity, though, in the circumstances of that case, the court, at paragraph 10, concluded that they were "better handled by increasing party and party costs". Therefore, Mr. Buxton's serious and unsubstantiated allegations of nefarious intent and actions at trial are an important factor supporting use of the Scale 3 rather than the basic scale. Those same unsubstantiated allegations also support otherwise increasing Tariff costs.

[17] Nevertheless, costs of $900 have already been ordered in relation to the failed abuse of process motions. Therefore, the unsubstantiated allegations in those motions relating to steps taken or refused during the proceedings ought not factor into increasing party and party costs of the action as a whole.

[18] The fact that Mr. Buxton amended his statement of claim as of right has little or no impact on the scale level to be chosen. However, when Justice Bodurtha granted the Defendants' motion to strike his corrected notice of action purporting to add the former Minister, Zach Churchill, as a defendant, which notice was filed without permission of the Court, he left the issue of costs to be determined at a later date. Therefore, Mr. Buxton having created the need to bring that motion is a relevant factor which militates in favour of selecting the higher scale.

[19] I also note that Mr. Buxton had brought a motion for an order compelling Zach Churchill, former Minister of Health and Wellness, to submit to discovery while he was still a Member of the Legislative Assembly, which was in session. It was only after the Defendants submitted materials, including a comprehensive brief, in response to that motion that he discontinued it. By then, the Defendants

had already unnecessarily expended legal resources on the issue. That is a factor which militates in favour of a higher tariff scale or of otherwise increasing the tariff amount pursuant to Civil Procedure Rule 77.07(2)(f).

[20] I also agree with the Defendants that, despite the action centering mostly on statutory interpretation, it was of some complexity, which militates in favour of using the higher scale.

[21] In *Rockville Carriers Limited v. Canada (Attorney General)*, 2023 NSSC 324, where misfeasance in public office was also claimed, the court used Scale 3 because of "the substantial pretrial work involved, the lack of clarity in the relevant law, and the complexity of the issues involved".

[22] The case at hand also involved: substantial pretrial work; interpretation based on the interplay between multiple pieces of legislation, combined with evidence of the nature of the facility in which Mr. Buxton obtained his surgery; some level of complexity because of that; and multiple unsubstantiated allegations of very serious wrongful conduct. For the reasons outlined, I also find that Scale 3 is the appropriate scale to use in the circumstances of the case at hand.

[23] I disagree with Mr. Buxton's argument that he should be awarded costs as an unsuccessful party. The jurisprudence he advances in support of his argument indicates that costs can be awarded to an unsuccessful party where they were denied discretionary relief or where the successful party's conduct provoked the litigation.

[24] The relief Mr. Buxton was seeking in his action was not discretionary relief. He was seeking a direction that he was entitled to reimbursement and that reimbursement be paid, along with punitive or exemplary damages.

[25] He submits that he had no choice but to commence and pursue his action because his request for reimbursement was denied and the Minister, being the highest authority at the Department, had not advised him of further steps to take to obtain answers to his questions or to dispute the decision.

[26] I concluded that the decision to refuse his request for reimbursement was correct. Therefore, it would be irrational and encourage meritless litigation to award him costs simply because he was rightfully denied reimbursement to which he was not entitled.

[27] The Minister had no obligation to inform him of further steps that he might be able to take, such as a judicial review. Mr. Buxton pursued the litigation because of his conviction that his interpretation of the relevant legislation was correct and that he was entitled to reimbursement. It was up to him, as a potential litigant, to look into his chances of success. In the circumstances of the case at hand that could include exploring all relevant and applicable legislation, rather than focusing primarily on section 7 of the *Regulations*, and, if necessary, obtaining legal advice.

[28] On its face it ought to have appeared unreasonable to him to expect reimbursement when he had decided to pay a private hospital to obtain expedited surgery, without having previously inquired into whether it would be reimbursed, while other members of the public waited their turn and endured through the Covid-related delays. That increased the onus on Mr. Buxton to ensure there was some substance to his claims before pursuing them.

[29] In these circumstances, it would be unreasonable and would encourage meritless litigation to order costs payable to Mr. Buxton simply because the Minister did not point to alternate sources of information or alternate recourses.

[30] It was Mr. Buxton himself who chose to bring and pursue his action, which was dismissed in its entirety.

[31] Therefore, the Defendants, as the successful party, are entitled to costs.

[32] The Tariff A, Scale 3 costs for an amount involved of $25,000-$40,000, are $7,813. The trial took one day. Therefore $2,000 is to be added to that amount producing a base amount of tariff costs totaling $9,813.

[33] The question which remains is whether that amount should be increased by 50%, or some other amount, because Mr. Buxton did not accept the Defendants' all-inclusive offer to settle for $900, making it such that the Defendants obtained a "favourable judgment" within the meaning outlined in Rule 10.09, or for some other reason or a combination of reasons.

[34] I disagree with Mr. Buxton's argument that the Defendants' written offer to settle does not meet the requirements set out in Rule 10.05(4) because it does not state a "term that would settle costs".

[35] Rule 10.05 (4) states:

> The offer must include terms that would settle all claims in the proceeding between the party making the offer and the party to whom it is made, and the term that would settle costs must provide for one of the following:
>
> (a) payment on acceptance of an amount stated in the offer;
>
> (b) payment of an amount for costs to be determined by a judge;
>
> (c) an option for the other party to choose between a stated amount for costs or determination by a judge.

[36] Form 10.06C states:

> **Terms for settlement**
>
> We, [name] , offer to pay the sum of $ to settle all your claims against us, except costs.
>
> To settle costs, we will pay [the sum of $. / an amount to be determined by a judge./the sum of $ or an amount to be determined by a judge, at your option upon acceptance.]
>
> [If offering prejudgment interest after date of offer, specify a rate and calculation to the date of payment]

[37] The offer to settle the Defendants presented to Mr. Buxton states: "We, the Defendants, offer to pay the sum of $900 all-inclusive to settle all your claims against us in exchange for a release and a consent dismissal order."

[38] It does not make any exception for costs. Therefore, the all-inclusive settlement offer included costs and there was no need to add a further term that would settle costs.

[39] In the event I am wrong in this conclusion, I agree with the Defendants that Mr. Buxton's failure to accept the settlement offer is still a factor that is relevant to their request that tariff costs be increased, pursuant to Rule 77.07(2)(b).

[40] The settlement offer is dated July 24, 2024. The affidavit of Terry Kelly confirms that it was emailed to Mr. Buxton that same day and that it was also enclosed in a letter to him.

[41] That was after the matter was set down for trial and prior to the finish date of August 13, 2024. Therefore, pursuant to Rule 10.09(2), I may increase the base tariff amount by 50%.

[42] Other factors listed in Rule 77.07(2), in addition to the failure to accept the written settlement offer, which militate in favour of increasing tariff costs, and which obtain in the case at hand, include those which follow:

- Mr. Buxton claimed $31,000 plus punitive or exemplary damages and recovered nothing.

- He was primarily responsible for the multiple pretrial motions, most of those brought by him being unnecessary or clearly unsubstantiated, thus increasing the expense of the proceeding unnecessarily.

- He even made a motion for a date assignment conference when the Defendants made it clear to him that it was unnecessary and that they were content with proceeding to one. That added to the unnecessary steps in the proceeding.

[43] A relevant factor, not listed in Rule 77.07(2), but which militates strongly in favour of increasing Tariff costs, is the multitude of unsubstantiated allegations of serious wrongdoing advanced by Mr. Buxton.

[44] I disagree with Mr. Buxton's suggestion that the Defendants declining to agree to a settlement conference mitigates the impact of his failure to accept their settlement offer. Given the claims Mr. Buxton was advancing, his repeated and steadfast assertion that his interpretation of s. 7 of the *Regulations* was the only reasonable interpretation, and his repeated serious allegations of deceptive, fraudulent or otherwise improper conduct on the part of the Defendants or their lawyer, as well as the ultimate outcome, which would have been clear to them, it is understandable why they would not want to participate in a settlement conference. Given Mr. Buxton's attitude and approach throughout the proceedings, it, more likely than not, would have been futile to have a settlement conference.

[45] Considering these points, whether pursuant to Rule 10.09(2) or Rule 77.07(2), I find that it is appropriate, and will do justice between the parties, to increase the base tariff about by 50%.

[46] For the foregoing reasons, I order Mr. Buxton to pay, to the Defendants, $14,719, in costs, inclusive of disbursements and HST, on or before December 5, 2025.

Muise, J.