SUPREME COURT OF NOVA SCOTIA
Citation: *Richards v. Richards*, 2013 NSSC 269

Date: 2013-08-28
Docket: *Hfx*, No. 390959
Registry: Halifax

Between:

Sandra Lynn Richards

Applicant

v.

ROBERT JAMES RICHARDS, JAYLYNN ENTERPRISES LIMITED, HOLM REALTY LIMITED, DUANE ROBERT RICHARDS, JAY R OBERT RICHARDS and RICHARDS FAMILY TRUST (2002)

Respondents

Judge:	The Honourable Justice Pierre L. Muise
Heard:	December 3, 4 and 5, 2012, and January 31 and February 1, 2013, in Halifax, Nova Scotia
Final Written Submissions:	July 26, 2013

Counsel:

Sandra Richards represented by Rubin Dexter,
Robert Richards represented by William Ryan, Q.C.,
Jaylynn Enterprises Limited and Holm Realty Limited represented by Joseph Burke
Duane Richards self-represented during this hearing (his Counsel, Lesley Mercer and David Byers were not in attendance)
Jay Richards represented by Colin Bryson
Richards Family Trust (2002) not represented

A. INTRODUCTION

[1] On June 10, 2013, I rendered a written decision in relation to a motion of Sandra Richards in this matter. I dismissed the portion of Ms. Richard's motion requesting an interlocutory injunction. However, I granted, in part, her motion for interim financial disclosure. That decision bears the citation ***Sandra Richards v. Robert Richards et al***, 2013 NSSC 163. This is my decision on costs in relation to that motion.

[2] The Respondents submit that the maximum costs available pursuant to Tariff C from the *Costs and Fees Act*, reproduced at the end of ***Civil Procedure Rule*** 77, are inadequate as they do not provide a substantial contribution to the reasonable legal costs incurred in relation to the Applicant's motion. They are of the view that there are special circumstances surrounding the motion which warrant the granting of lump sum costs, amounting to substantial contribution, in lieu of Tariff C costs. They further submit that the portion of the motion dealing with ongoing financial disclosure used up only a minimal portion, about one half hour, of a five-day hearing, and, as such, success on that portion of the motion ought to have little bearing on the costs award. They all seek costs which are over, but roughly, two thirds of the amount they submit as being their reasonable legal expenses, inclusive of HST. They also request that the costs be made payable forthwith.

[3] The Applicant submits that the divided success should result in no costs being awarded or, in the alternative, in costs being awarded in accordance with Tariff C, and payable "in the cause". She also submits that the costs award should reflect the fact that Robert Richards took the lead in responding to her motion, with the remaining respondents taking only a "supporting role". She noted that Duane Richards' lawyers did not even attend the hearing, nor file a pre-hearing brief, making the $25,000 in costs claimed by him excessive.

[4] She initially also submitted that a requirement to pay costs forthwith would raise real concerns regarding her ability to continue pursuing what may prove ultimately to be a "meritorious claim". She provided affidavit evidence outlining her financial situation. Robert objected to that evidence as being "inappropriate", and, represented that Sandra holds RRSP's valued in excess of $200,000, based on the evidence of the parties' RRSP holdings in the motion. She now "withdraws her submission that payment of the costs of the motion sought by the Respondents on a

'forthwith' basis would prejudice her ability to pursue her claim". Therefore, it is unnecessary to determine whether it is appropriate to consider her evidence regarding her financial situation.

B. ISSUES

1. The issue, broadly described, is what costs awards are appropriate in the case at hand.

C. LAW AND ANALYSIS

1. APPLICABLE AUTHORITIES

[5] "The provisions of Tariff C apply to a motion, unless the judge hearing the motion orders otherwise": ***Civil Procedure Rule 77.05(1)***. However, the judge may "add an amount to, or subtract an amount from" the Tariff C costs: ***Rule 77.07(1)***. Alternatively, he or she "may award lump-sum costs instead of" Tariff C costs: ***Rule 77.08***.

[6] The motions judge ought not depart from Tariff C costs unless there are special circumstances requiring a sufficient level of exceptional legal services. Examples of such special circumstances include the following: 1) complexity; 2) public interest; 3) pre-chambers process; 4) unsettled questions of law; 5) conduct or misconduct of a party and or solicitor; 6) failing to use an alternative and less costly process to determine the dispute; 7) the need for additional counsel; 8) the presence of multiple counsel, unless the additional counsel have limited participation; and, 9) the presence of expert witnesses. The "level of exceptional services required" as a result of one or more of these, or other applicable circumstances, provides the grounds for whether the motions judge should exercise his or her discretion to depart from Tariff C, and to what degree. [***Armour Group Ltd. v. Halifax (Regional Municipality)***, 2008 NSSC 123, at paragraphs 20, 21, 24 and 25.]

[7] "Lump-sum costs are typically awarded where the basic award of costs under the Tariff would be inadequate to serve the principle of a substantial but incomplete indemnity": ***Gammell v. Sobeys Group Inc.***, 2011 NSSC 190.

[8] In ***Bevis v. CTV Inc.***, 2004 NSSC 209, at paragraph 13, Justice Moir summarized his decision on lump sum costs in *Campbell v. Jones*, [2001] N.S.J. No. 373, as follows:

> "(1) Costs are normally set in accordance with the Tariff. (2) However, the Tariff system serves the principle of a substantial but incomplete indemnity. The Courts do not choose artificial means, such as selection of an artificial "amount involved", in order to make the Tariff serve the principle. Therefore, when reasonable approaches to amount involved or scale under the Tariff fail to produce a substantial but partial indemnity, the Court may resort to its discretion under rule 63.02(a) and order a lump sum. (3) To settle an appropriate lump sum the Court will have regard to the actual costs facing the successful party or the labour expended by counsel, but the Court will seek to settle the amount objectively in conformity with one of the policies of the Tariff, to provide an indemnity that has nothing to do with the particularities of counsel's retention. The Court will attempt to provide a substantial but partial indemnity against what would ordinarily be charged by any competent lawyer for like services. (4) Finally, the Courts have usually avoided percentages. Substantial but partial indemnity is a principle, not a formula."

[9] In ***Landymore v. Hardy*** (1992), 112 N.S.R.(2d) 410 (S.C., T.D.), Justice Saunders, as he then was, at paragraph 17, noted, citing the words of the Statutory Costs and Fees Committee, that costs "should represent a substantial contribution towards the parties' reasonable expenses". At paragraph 19, he referred to the information required to assess the reasonableness of legal expenses in order to determine what will constitute a substantial contribution, as follows:

> "As it is the court's responsibility to assess the fairness and reasonableness of the effort expended, the trial judge will have to be told how much it cost the successful party to present or defend its case. Counsel will be expected to outline the amount of time spent on the file and the total fees charged the client, preferably in the form of a short affidavit filed with the court. Only then will a judge be able to assess whether those expenses were "reasonable" before going on to decide whether the costs to be awarded will in fact represent a significant contribution to such expenses."

[10] Our Court of Appeal, in ***Williamson v. Williams***, [1998] N.S.J. No. 498, at paragraph 25, provided the following guidance on the meaning of "substantial contribution":

> "In my view a reasonable interpretation of this language suggests that a "substantial contribution" not amounting to a complete indemnity must initially have been intended to mean more than fifty and less than one hundred per cent of a lawyer's reasonable bill for the services involved. A range for party and party costs between two-thirds and three-quarters of solicitor and client costs, objectively determined, might have seemed

> reasonable. There has been considerable slippage since 1989 because of escalating legal fees, and costs awards representing a much lower proportion of legal fees actually paid appear to have become standard and accepted practice in cases not involving misconduct or other special circumstances."

[11] This suggests, in my view, that party and party costs awards considerably below the range of 2/3 to 3/4 of solicitor and client costs, may now satisfy the "substantial contribution" requirement. However, as noted by Justice Moir, "the Courts have usually avoided percentages", and, as noted by Justice Goodfellow, in ***Armour Group***, the "level of exceptional services required" may vary from case to case. Therefore, no fixed costs-to-expenses ratio can be used. Nevertheless, it appears that lower contribution ratios are more likely to be acceptable now, than they were in 1989.

[12] Justice Warner, in ***National Bank Financial Ltd. v. Potter***, 2008 NSSC 213, at paragraph13, made the following comments regarding the timing of payment of costs:

> "**13** While at one time it may have been usual to defer costs of interlocutory applications to the end of the case, the length and complexity of modern litigation has led to a reversal of that trend except in those circumstances where the primary issue in the interim application is the same as that intended in the ultimate hearing, or where to award costs at an interim stage may prevent the matter from being determined on its merits at a later date. Generally the parties are better able to argue and the Court is better able to make the appropriate costs determination at the time of the application. Unless the costs award may be improved with the benefit of hindsight (after trial), the award should be paid when ordered. …
>
> **14** Costs are normally awarded to the successful party. These respondents have been successful in this application and should have their costs. Subject to the disposition of the appeal on the merits decision, costs should be payable forthwith."

[13] Justice Warner, in ***National Bank v. Potter***, also addressed whether he was bound to order costs of an interlocutory application "in the cause". In doing so he referred to the decision of Justice Hood in ***Nova Scotia Real Estate Commission v. Lorway***, 2006 NSSC 256, which dealt with costs of an interlocutory injunction application. In ***Lorway***, Justice Hood concluded that costs of an interlocutory application would automatically be "in the cause" by default if the issue is not specifically addressed, and should also be in the cause where "the issue for trial is

the same as that on the application" which, in that case was the interpretation of a statutory provision.

[14] Both ***National Bank v. Potter*** and ***Lorway*** dealt with the costs provisions of the ***Civil Procedure Rules* 1972**. ***Rule 63.05(1)*** provided that: "Unless the court otherwise orders, the costs of any interlocutory application, whether ex parte or otherwise, are costs in the cause and shall be included in the general costs of the proceeding."

[15] ***Rule 77.05(1)*** now provides that: "The provisions of Tariff C apply to a motion, unless the judge hearing the motion orders otherwise."

[16] Guideline (2), in Tariff C, states: "Unless otherwise ordered, the costs assessed following an application shall be in the cause and either added to or subtracted from the costs calculated under Tariff A." The direction that the costs are to be "added to or subtracted from" Tariff A costs does not appear to be in conformity with the usual meaning of "costs in the cause". Orkin, "The Law of Costs" (Canada Law Book – Toronto), at page 1-14, defines "costs in the cause" as meaning "that the costs of the proceeding to which they refer are to abide the result of the trial and to go to the party who is there successful with respect costs". That is consistent with ***Rule 77.03(4)(a)***, which provides that, in the case of an order that costs are "in the cause", "the party who succeeds in the proceeding receives the costs of the motion at the end of the proceeding". Neither of these definitions envisions deducting any costs from Tariff A costs at the end of the trial. However, the possibility of such a deduction does the accompany an award of "costs in any event of cause". Orkin, at page 1 – 16, defines such costs as meaning "that the party named in the order is entitled to the costs in question regardless of the final result of the action as to costs". Similarly, ***Rule 77.03(4)(a)***, provides that a judge may order payment of costs "to a party in any event of the cause and to be paid immediately, or at the end of the proceeding, in which case a party receives the costs of the motion regardless of success in the proceeding and the judge directs when the costs are payable".

[17] Consequently, absent an order specifying when costs are payable, the default position appears to now be that the successful party in an interlocutory motion receives costs in any event of the cause which are "either added to or subtracted from the costs calculated under Tariff A" at the end of the trial.

[18] The case at hand involves an unsuccessful motion for an interlocutory injunction. The Court in ***Cana International Distributing Inc. v. Standard Innovation Corp.***, 2011 ONSC 752, at paragraph 7, stated:

> "In my opinion, absent extraordinary circumstances, costs on an unsuccessful interlocutory injunction should be payable forthwith. An application for an injunction is a discrete legal remedy involving substantial costs. There is no reason that costs should not follow the event where the application is unsuccessful. There is never an assurance that there will be a trial, particularly in circumstances where an injunction is not in place. I agree with the submission of the Defendant that the general approach in the recent caselaw is that when a plaintiff seeking an injunction is unsuccessful, costs should be ordered paid forthwith, in any event of the cause."

I agree with this reasoning.

2. ROBERT RICHARDS

[19] A member of the law firm who represented Robert Richards presented a table outlining the hours of work conducted by lawyers in defending the Applicant's motion. Where more than one lawyer was present at the same activity only the time of one lawyer, was included. The total is 242.4 hours. He submits that, even using what he refers to as the "modest" hourly rate of $300, would result in fees of $72,720, which should be considered reasonable legal costs for the purposes of determining what would constitute a substantial contribution to those costs. He notes that his actual legal fees totaled $74,735 (exclusive of HST), and $85,945 (inclusive of HST). He claims costs of $60,000, plus disbursements of $3,000, payable forthwith.

[20] The hearing lasted five days and was not "determinative of the entire matter at issue in the proceeding", so as to open up the possibility of multiplying the maximum amounts. Therefore, the costs that could be awarded under Tariff C is $10,000. Assuming that Robert Richards' reasonable legal costs do approach $75,000, $10,000 is clearly not a substantial contribution to those costs. On that basis, he asks for an award of a lump sum costs in an amount that will provide a substantial contribution. Therefore, I must examine whether there are special circumstances warranting a departure from Tariff C, and such an award of lump sum costs. Consideration of the factors relevant to whether such special circumstances exist, are also relevant to whether the legal costs advanced are reasonable.

[21] The special circumstances which Robert Richards submits warrant a departure from Tariff C costs, and an award of lump sum costs, include the following:

A) the complexity of the motion, including factual disputes, credibility issues and unsettled legal questions;

B) the importance of the motion to the parties;
C) the pre-chambers process required, given that there were four days of discoveries;
D) the conduct of the Applicant in coming to court seeking an equitable remedy with unclean hands;
E) the need for associate counsel; and,
F) the involvement of multiple counsel.

[22] The Applicant advanced a multitude of alleged acts of oppression and filed voluminous affidavit evidence which required voluminous affidavit evidence in response. There was conflicting authority on the issue of the standard required to establish the first branch of the RJR-Macdonald Test, which necessitated supplementary briefs. There were four days of discoveries, 3 days of motion evidence and 2 days of argument. Much of the time was occupied by the Applicants' questions and arguments. The time involved was what one would expect the final hearing of the application to involve. I am of the view that, the volume of materials and time involved, along with the unsettled legal issue, rendered the motion significantly more complex than most motions.

[23] The Applicant sought an interlocutory injunction requiring the Respondents to refrain from contravening directors' and shareholders' resolutions and a shareholder agreement, which required unanimous consent for certain decisions and actions. That would have given the Applicant veto power over those decisions and actions. The Respondents who attended the hearing of the motion feared the Applicant would use such a veto power in a way which would handcuff Jaylynn Enterprises Limited ("Jaylynn") and make it impossible for it to carry on its day-to-day operations. They wished to see Jaylynn continue to grow, so that they could continue to earn a good living from its operations. Therefore, the outcome of the motion was very important to them.

[24] The motion was made before the parties engaged in discoveries in the main Application in Court. Therefore, in order to prepare for the motion, the parties had to be discovered. However, in my view the discoveries which took place in preparation for the motion will greatly shorten the discoveries required for the main Application. The questions addressed related mainly to the alleged oppression, irreparable harm and balance of convenience between the parties. Those are areas which are also relevant to the main application. Had discoveries

been conducted in relation to the main Application, in my view, minimal to no discoveries would have been required for the motion. Consequently, in my view, the resources expended in relation to those discoveries are more properly considered in determining the costs following the hearing of the main Application.

[25] In ***Barthe v. National Bank Financial Ltd.***, 2010 NSSC 220, Justice Hood did take into consideration that two days of discovery were conducted prior to the hearing of a summary judgment motion. However, in that case, the pre-motion discovery was of a witness who was not available to testify at the hearing of the motion. The discovery was a substitute for the cross-examination of that witness on his affidavit during the chambers motion. In that type of situation, the pre-motion discovery is directly related to the costs of the motion. In that case, if it had not been for the discovery, the hearing would likely have lasted two more days. In the case at hand, the pre-motion discovery was not a replacement for cross-examination of a witness.

[26] In support of his submission that the costs of this motion should represent a substantial contribution of the pre-motion discoveries, Robert Richards quoted paragraph 38 of ***Turner-Lienaux v. Nova Scotia (Attorney General)*** (1992), 115 N.S.R.(2d) 200 (S.C., T.D.) which states:

> "It … has been established in *Landymore v. Hardy* S.H. 77533, February 6, 1992, Saunders, J. unreported, that costs should represent a substantial contribution to reasonable expenses, and should take into account not only trial but pretrial procedures."

[27] In ***Landymore v. Hardy***, which was subsequently reported, Justice Saunders considered the interlocutory applications, discoveries, duration of the trial, and pre-and post-trial applications in determining the reasonableness of the parties' legal expenses, for the purpose of setting the costs of the trial. He considered all of the interlocutory applications, even though, in at least one of them, the costs had already been fixed by the chambers judge. This indicates that it is proper for the trial judge to consider all procedures in the proceeding in determining costs. As such, it is appropriate for the judge hearing the within Application in Court to consider the discoveries preceding the Applicant's motion for an interlocutory injunction and ongoing disclosure in determining costs following the hearing of the main Application. In my view, they are more properly considered at that stage.

[28] The Applicant did bring the motion before the Court seeking an equitable injunctive remedy, even though she had converted funds from one of Holm Realty Limited's ("Holm") accounts for her personal use, and had unilaterally tried to

reduce Jaylynn's line of credit without notifying the other directors and officers, and thus, had unclean hands. However, that is conduct prior to the motion, not within the motion proceeding itself. Robert Richards did not point to conduct of the Applicant, within the motion proceeding itself, which increased the level of exceptional services required, apart from the volume of materials filed, questioning and argument by her, which have already been considered in assessing the complexity of the proceeding.

[29] However, the shareholders' agreement in question contained an arbitration clause, the contents of which indicated that the dispute ought to have been submitted to arbitration. That would have been a much less expensive dispute resolution avenue. Instead, the applicant chose to circumvent the arbitration clause and bring her complaints to this Court, supported by voluminous materials and allegations. That greatly increased the cost for all parties, when a less costly process was available and directed by the shareholder's agreement.

[30] Robert Richards had associate counsel to assist his main counsel in this motion. Given the volume of material involved, it was not unreasonable for him to do so. In outlining what he submits are his reasonable legal expenses, he only added the time of one lawyer where two were present for the same activity. In addition, associate counsel did not participate in the examination of any of the witnesses. However, the reasonable inclusion of associate counsel is some indication of the level of exceptional services required to properly respond to the motion.

[31] There were multiple respondents with differing interests in the motion. As such, they were represented by multiple counsel. Robert Richards took the lead on the most issues, with the other respondents adding points relevant to their own particular interests or positions. Although the other respondents' roles were not as extensive as that of Robert Richards, their roles were more than merely "confirmatory". The presence of these multiple respondents, with multiple counsel, contributed to the establishment of "special circumstances" requiring an increased level of legal services.

[32] Considering these factors, I am of the view that the circumstances of the case at hand were sufficiently special that they required an exceptional level of legal services, raising Robert Richards's legal costs above that for which the Tariff C costs can provide substantial contribution. However, I am of the view that the time expended in relation to pre-motion discoveries ought to be deducted from the total time calculated, and considered when determining the costs of the main Application in Court, for the reasons already noted.

[33] The time docket table indicates that: 30.4 hours were expended in discoveries; and, 85.4 hours were expended in preparing his affidavit and in preparing for the discovery of the Applicant. In my view, at least half of those 85.4 hours would have been used in preparing to discover the Applicant. Therefore, I will deduct a total of 72.4 hours of discovery-related time, leaving a balance of 170 hours. Considering the nature of the motion, I am of the view that a $300 hourly rate is within the range of what would reasonably be charged by a lawyer competent to represent a party responding to it. At $300 per hour that is a total legal expense of $51,000. With the addition of 15% HST, the total is $58,650.

[34] Considering the factors noted above as being special circumstances justifying the exceptional level of legal services dedicated to defending this motion, I am of the view that an award of costs in the amount of $35,000 would provide an appropriate level of substantial contribution towards legal expenses in the case at hand if it had only dealt with the request for an injunction.

[35] However, the Applicant also requested ongoing interim disclosure in relation to the corporate and financial affairs of Jaylynn and Holm. That portion of her motion was also important to her. I granted a large part of her request for disclosure. Robert Richards submitted that the portion of the motion dealing with disclosure occupied only about ½ hour. In my view it occupied slightly more than that. The issues of self-dealing through a separate company, and shielding banking information by setting up accounts at a different financial institution, were explored, and were relevant to the disclosure issue, in addition to the issue of alleged oppression overall. A portion of that time is attributable to the disclosure issue. However, I agree that the disclosure portion of the motion still occupied less than 1.5 hours. That is a minimal amount of time compared to the total time involved. Therefore, a minimal reduction of $1,000 to account for the Applicant's success on that issue, in my view, is appropriate.

[36] On that basis, I award costs to Robert Richards in the amount of $34,000.

[37] In the motion, I only had to determine whether there was a serious question to be tried in relation to whether Jaylynn or its affairs had been conducted in a manner oppressive or unfairly prejudicial to, or unfairly disregarding, the Applicant's interests. At the hearing of the Application, the judge will have to determine whether that has been established on a balance of probabilities. In the motion, I had to determine whether the Applicant had established irreparable harm and that the balance of convenience favored granting the injunction requested. In determining whether to grant an injunction at the hearing of the application, assuming oppression is established, the judge will need to consider the issues of

irreparable harm and balance of convenience, as being relevant. However, they will not be determinative of whether an injunction should issue. The judge will simply have to determine whether an injunction is an appropriate remedy, which will include a determination in relation to whether there is an effective alternate remedy. The primary remedy sought in the application is an order directing Robert Richards to purchase the Applicant's shares in Jaylynn and Holm at set values. The injunctive remedies are only sought in the alternative. In addition, the range of injunctive remedies sought in the application is much broader than that sought in the motion. Therefore, even though there are some common elements, the issues on the application are not the same as the issues on this motion.

[38] I am of the view that the judge hearing the Application would not be in a better position than myself to determine the costs of this motion. Even if he or she ultimately grants some of the injunctive relief I have denied it will not provide any further insight into costs of this motion because the elements and standards to be established are different.

[39] The Applicant has withdrawn her submission that ordering costs be paid forthwith "would prejudice her ability to pursue her claim". Therefore, that is not a reason to defer payment of costs.

[40] This was an unsuccessful interlocutory injunction motion and there are no circumstances making an order that costs be paid forthwith inappropriate.

[41] Therefore, I find that the costs are to be paid forthwith.

[42] Robert Richards' disbursements were listed as totaling $4621.72. He is only claiming $3,000 of those disbursements. However, I have no breakdown of what the disbursement expenses were. As such, I cannot assess their reasonableness. However, I will order the payment of disbursements, including HST on those disbursements. If the parties are unable to agree on an amount for disbursements, I will determine that question after receipt of further particulars and argument.

3. JAY RICHARDS

[43] Jay Richards' lawyer provided evidence that his legal bill exceeded $27,000, based on 91 hours of work. The total, with HST and $800 in disbursements, exceeded $32,000. He claims a lump sum award of $20,000. His

legal fees work out to approximately $297 per hour, which is in conformity with the $300 hourly fee used by Robert Richards.

[44] An amount should be deducted to account for the time spent preparing for and attending discoveries, for the same reasons as noted in relation to Robert Richards. There was no breakdown of how the 91 hours were spent. However, it is noted that only three days of discoveries were attended, instead of four. In addition, more likely than not, less preparation time would have been required on behalf of Jay Richards. Therefore, instead of deducting about 70 hours, I will deduct 40 hours.

[45] That leaves a balance of 51 hours, which, at $297 per hour, results in lawyer fees totaling $15,147. Adding 15% HST to that amount, results in a total of about $17,400.

[46] Jay Richards and his lawyer attended the entirety of the five-day hearing. The Tariff C costs for a five day hearing, which does not determine the entire matter at issue in the proceeding, are $10,000. In my view, that amount would provide the requisite substantial contribution.

[47] I will deduct $500 from that amount to account for the Applicant's success on the disclosure issue, which occupied only a minimal amount of hearing and preparation time.

[48] The motion was especially important to Jay Richards because he was of the view that its outcome could significantly affect his livelihood. It was likely more important to him than the main Application which claims, as its primary remedy, a requirement that Robert Richards purchase the Applicant's shares. Therefore, I will not deduct any amount for the fact that Jay Richards did not play the primary role in the proceeding.

[49] Based on the foregoing, I find that Jay Richards is entitled to costs from the Applicant in the amount of $9,500, payable forthwith.

[50] He indicates his disbursements totaled approximately $800 and claimed that amount as part of the lump sum requested. I have not granted that the lump sum amount. However, he is entitled to reasonable disbursements. Without a breakdown of them, I cannot determine whether or not they are reasonable. Therefore, I will simply order payment of disbursements. If the parties cannot agree on an amount, I will receive further details and submissions in writing.

4. JAYLYN AND HOLM

[51] The lawyer for Jaylynn and Holm provided evidence that a total of 85.8 hours was spent in defending the Applicant's motion, which resulted in total legal fees of $19,890 (without HST). That is an hourly rate of approximately $232 per hour, which is within the reasonable range. With HST, the total legal bill was $22,873.50. These corporate respondents claim a lump sum award costs in the amount of $15,000, plus disbursements.

[52] The time docket table provided on behalf of the corporations indicates that 25.6 hours were spent in preparation for and attendance at discoveries. That lesser time expenditure is explained by the fact that the lawyer only attended two of the four days of discoveries.

[53] Deducting that 25.6 hours from the total of 85.8 hours leaves a balance of 60.2 hours. At $230 per hour, that results in total legal fees of $13,966.40. With the addition of HST, the total is $16,061.36. In my view, $10,000 is a substantial contribution to that amount. Therefore, there is no need to depart from Tariff C.

[54] As with Jay Richards, I will deduct $500 for the Applicant's success on the disclosure issue, and will not deduct any amount for the fact that the corporations did not play the lead role because of the importance of the outcome of this motion to the corporations.

[55] Also, as with the other respondents, there has been no breakdown of the disbursements upon which I may assess the reasonableness.

[56] Therefore, Jaylynn and Holm are entitled to costs in the amount of $9500, to be paid forthwith, plus disbursements. If the parties cannot agree on an amount for disbursements , I will receive further details and submissions in writing. I will leave it to Jaylynn and Holm to determine how to divide the costs award between them.

5. DUANE RICHARDS

[57] The lawyers for Duane Richards did not attend the hearing. However, they presented evidence of having spent 80.55 hours in responding to the motion, which resulted in total lawyer fees of $30,927.90 (exclusive of HST). That amounts to approximately $384 per hour. It is noted that, with HST, the legal fees totalled $35,567.09. He claims lump sum costs of $25,000 plus disbursements of $321.82 .

[58] The time docket table provided indicates that 26.2 hours were spent on discoveries. For reasons already outlined above, those hours should be deducted from the total. There was no breakdown of the time spent preparing for discoveries. However, it is noted that 34.3 hours were spent preparing the affidavit of Duane Richards. Given the content of that affidavit, I am of the view that 34.3 hours is in excessive amount of time to have spent preparing it. It is more likely that some of that time was dedicated to preparing for discoveries. Therefore, I will deduct a further 15 hours for that reason. Since they did not attend the hearing, I will also deduct the 4.6 hours, noted as being in preparation for the hearing. In my view, it was unreasonable for them to spend time preparing for something they would not attend. There is a further 5.75 hours noted as being spent in preparing both for the hearing and settlement discussions. I will deduct 3 hours of that amount as being also in preparation for the hearing, which was not attended by those lawyers. That amounts to 48.8 hours to be deducted from the total of 80.55 hours, leaving a balance of 31.75 hours.

[59] In keeping with the hourly rate advanced by Robert Richards, and which I have found to be reasonable, I will limit the hourly rate to $300. Therefore, the total reasonable fees related to the motion are $9,525 without HST, and $10,953.75 with HST.

[60] Granting the $10,000 indicated in Tariff C for a five-day hearing would, in essence, amount to granting costs on a solicitor-client basis. That would not be a reasonable result in the case at hand. The fact that Duane Richards' lawyers were not in attendance for the hearing, and that he relied upon the submissions of Robert Richards's lawyer, warrants a significant reduction from the Tariff C amount.

[61] In addition, the motion was not as important to Duane Richards as it was to Jay Richards because Duane has his own separate company from which he earns a living. Even though that company does most of its work for Jaylynn, he is not totally dependent upon Jaylynn for his livelihood. Further, unlike Jay, he is not a shareholder.

[62] Considering these points, as well as the fact that the Applicant was successful on the disclosure issue, in my view, it is appropriate to deduct $5000 from Tariff C.

[63] Based on these points, I find that Dwayne Richards is entitled to $5000 in costs, plus disbursements, payable forthwith.

[64] As with the other respondents, the disbursements were not itemized. Therefore, I was unable to assess their reasonableness; and, if the parties cannot agree on an amount for disbursements, I will receive further details and submissions in writing.

D. CONCLUSION AND ORDER

[65] Based on the forgoing, I conclude and order that:

A) Sandra Richards shall pay costs in relation to her motion for an interlocutory injunction and interim ongoing disclosure, as follows:

1) $34,000 to Robert Richards;

2) $9,500 to Jay Richards;

3) $9,500 to Jaylynn Enterprises Limited and Holm Realty Limited, with the determination of their proportionate shares being determined between them; and,

4) $5,000 to Duane Richards.

B) All costs are to be paid forthwith.

C) In addition to the said costs, Sandra Richards shall also pay, to each of these parties, their reasonable disbursements.

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PIERRE L. MUISE, J