

**IN THE SUPREME COURT OF NOVA SCOTIA**

Citation: Driscoll v. Crombie Developments Ltd., 2006 NSSC 262

Date: 20060911  
Docket: S.H. No. 214032  
Registry: Halifax

**Between:**

**Cecelia Driscoll**

**-and-**

**Crombie Developments Limited, a body corporate**

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Robert W. Wright

**Date of Last**

**Written Submissions:** June 12, 2006:

**Written**

**Decision:** September 11, 2006

**Subject:** Party and Party Costs - Applicable Tariff of Costs and Fees - Lump Sum Award - Expert Fees and Disbursements

**Summary:** In an occupiers' liability case, liability was apportioned 75/25% in favour of the plaintiff. The trial proceeded on the determination of liability only, the parties having agreed just prior to trial on a quantum of damages of \$22,600.

Costs were similarly apportioned 75/25% in favour of the plaintiff. Counsel were subsequently unable to agree on various costs issues.

**Issues:**

- (1) The recoverability of the professional fee and disbursements account of the defendant's expert witness, Philip Sarvinis (to the extent of 25%);
- (2) Whether the revised Tariff of Costs and Fees which came into effect on September 21, 2004 applies to this case;

- (3) The “Amount Involved” and the applicable Scale;
- (4) Whether the plaintiff ought to be awarded a lump sum in costs over and above the applicable Tariff.

**Result:**

- (1) Although the defendant’s retention of its expert witness was reasonable, the disbursement account presented for taxation was reduced in two respects:
  - (a) to disallow fees for the expert’s travel time between Toronto and Halifax for discovery and for trial which had been billed to the defendant at his full hourly rate;
  - (b) only 50% of the fees charged for the expert’s preparation and attendance time at discovery and trial were allowed to be taxed where, in the unusual circumstances of this case, the defendant’s expert was every bit as much of a fact witness as an expert opinion witness;
- (2) Where this action was commenced on January 16, 2004 the 1989 costs tariff applied. The revised costs tariff which came into effect on September 21, 2004 did not apply retrospectively;
- (3) The amount involved was the same amount as counsel had agreed on as the quantum of damages to be awarded, to which Scale 3 (basic) applied;
- (4) Having regard to the principle that party and party costs should provide a substantial but incomplete recovery, and with the plaintiff’s solicitor-client costs estimated in the range of \$15,000-\$20,000, the court ordered a lump sum costs award of \$5,000 (instead of the \$2,250 amount under the old tariff).

In the final outcome, after applying the 75/25% apportionment to be made, the plaintiff was entitled to recover from the defendant a total amount of \$6,600 in costs and disbursements. The defendant was entitled to recover from the plaintiff costs and disbursements of \$3,825 under the 75/25% apportionment to be made.

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**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.**

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