SUPREME COURT OF NOVA SCOTIA
Citation: *Strug v. I.M.P. Group Limited*, 2025 NSSC 241

Date:20250714
Docket: HFX No. 510077
Registry: Halifax

Between:

Stanley Strug and Cynthia Joyce Robertson

Plaintiffs

v.

I.M.P. Group Limited

Defendant

Costs Decision

Judge:	The Honourable Justice D. Timothy Gabriel
Heard:	By written submissions
Final Written Submissions:	June 17, 2025
Counsel:	Dennis James, K.C., for the Plaintiffs Erin McSorley and James Pinchak, for the Defendant

By the Court:

A. Background

[1] The trial of this matter took place on February 3-5, 2025, and the decision was reserved. A written decision was rendered on April 29, 2025, reported as *Strug v. I.M.P. Group Limited*, 2025 NSSC 149. The Court dismissed the Plaintiffs' claim for damages. The parties were invited to make submissions on costs if they were unable to agree. They have been unable to do so. Consequently, these reasons will determine what the costs award will be.

[2] The Defendant, I.M.P. Group Limited ("IMP"), says that it has incurred legal fees in the total amount of $133,472.45, inclusive of HST. They argue that the nature of the claims advanced by the Plaintiffs, and the Court's ultimate disposition of those claims, should be considered in tandem with the (three times repeated) settlement offer that was made. They argue that this offer was more favourable to the Plaintiffs than was this Court's disposition of their claim, and that all of this warrants a lump-sum, rather than a tariff based approach to their costs award.

[3] The Defendant argues that a lump-sum award is necessary in order to do justice between the parties and provide a substantial contribution to what defending this claim has cost them (*Defendant Costs Brief*, para. 3). IMP seeks a costs award of $88,000 (or 66% of its legal costs incurred), as well as disbursements in the amount of $2,002.24 (*Brief*, para. 59).

[4] The Plaintiffs, although acknowledging that the Defendant was the successful party and is entitled to its costs, argue that the cost award should be primarily tariff based, reminding the Court that the proceeding was under the auspices of *Civil Procedure Rule* ("CPR") 57, was heard over three days, and that there were no extraordinary procedural or evidentiary matters involved.

[5] Further, the argument continues, since the amount claimed by the Plaintiffs was the purported cost of the cleanup in the aftermath of the sewer backup, replacement of the pump, together with damages in a range of $50,000 - $75,000 (the argument continues), the appropriate "amount involved" for the purpose of the application of Tariff A is $85,000, which would yield, under scale two, a cost award of $9,750, plus a per diem of $2,000 for the three days of the hearing, for a total of $15,750 (*Plaintiffs Costs Brief*, p. 2).

[6] These costs were incurred within the context of the Plaintiffs' claim which involved allegations of negligent and fraudulent misrepresentation against IMP. As indicated, special damages to cover the cost incurred in cleaning up from a sewer backup and special damages for replacement costs for the grinder pump were sought. But special damages for increased electricity cost, special damages for the anticipated cost of replacing the grinder pump on a five-year cycle, and general damages for the impact on the market value of their property associated with its being serviced by a grinder pump, were also referenced.

B. Applicable Law

[7] CPR 77, including the tariffs set out therein, deals with the quantification of cost awards. In a nutshell, the Court's discretion with respect to an award of costs is unfettered. CPR 77 and the tariffs do, however, provide guidance to the Court as to how that discretion should be exercised in various circumstances. As has been stated by this Court on many occasions, it is appropriate that these guiding principles be applied by the Court in assessing costs, so as to provide some indication to the parties, beforehand, as to their exposure. As a consequence, the onus lies with the party advocating a departure from these principles to show that such is necessary in order to achieve a just result in the circumstances of the particular case.

[8] The foundational principle is that, generally speaking, the successful party should receive substantial, but incomplete, indemnity with respect to the legal expense incurred in the proceeding. The tariffs are presumed to accomplish that.

[9] As Justice Wood (now CJ NS) observed in *Homburg v. Stichting Autoriteit Financiele Markten*, 2017 NSSC 52:

> [9] It is important to recognize that the substantial contribution principle underlies the tariffs but does not supersede them. Most cost matters should be disposed of based upon an application of the tariffs with the built in discretion to adjust amounts for the factors identified in *Rule 77*. The mere fact that the party's actual legal account is significantly more than the tariff does not automatically justify a departure. To suggest otherwise would turn the court into a taxing master whose function is to first assess the reasonable solicitor client account and then apply some percentage recovery between 50% and 100%.
>
> [10] The cost analysis should not start with an examination of the reasonableness of a party's account. The court is not equipped on a cost motion to inquire into all of the reasons why the account was rendered in a particular amount. That will depend upon the terms of the fee agreement between solicitor and client, client

> instructions, efficiency of counsel, etc. By application of the tariff similar hearings will result in costs being awarded in roughly equivalent amounts and the predictability of such a result is desirable. If the focus is on calculating a substantial contribution to actual legal expenses, the result will be different in every case. The variation in counsel fees could be dramatic, even though the actual hearings are comparable in terms of duration and complexity.
>
> [11] In my view the proper approach is to start with the presumption that the tariffs should be applied. If the party who wishes to depart from those rules can establish circumstances which show a lump sum is appropriate in order to do justice between the parties, then the court should engage in a principled analysis to determine the amount. This would lead to an assessment of the party's reasonable expenses and identification of an amount that represents a substantial contribution to them.

[10] CPR 77 confirms many other things. For example, 77.02(1) sets out the goal which the Court strives to attain by the way of an award of costs. That goal is "to do justice between the parties".

[11] Since this matter proceeded to trial, the most relevant place to begin, when CPR 77 is considered, is Tariff A, which reads:

TARIFF A

Tariff of Fees for Solicitor's Services Allowable to a Party Entitled to Costs on a Decision or Order in a Proceeding

In applying this Schedule the "length of trial" is to be fixed by a Trial Judge.

The length of trial is an additional factor to be included in calculating costs under this Tariff and therefore two thousand dollars ($2,000) shall be added to the amount calculated under this tariff for each day of trial as determined by the trial judge

Amount Involved	**Scale 1 (-25%)**	**Scale 2 (Basic)**	**Scale 3 (+25%)**
Less than $25,000	$ 3,000	$ 4,000	$ 5,000
$25,000-$40,000	4,688	6,250	7,813
$40,001-$65,000	5,138	7,250	9,063
$65,001-$90,000	7,313	9,750	12,188
$90,001-$125,000	9,188	12,250	15,313
$125,001-$200,000	12,563	16,750	20,938
$200,001-$300,000	17,063	22,750	28,438
$300,001-$500,000	26,063	34,750	43,438
$500,001-$750,000	37,313	49,750	63,188
$750,001-$1,000,000	48,563	64,750	80,938

more than $1,000,000	The Basic Scale is derived by multiplying the "amount involved by 6.5%.

[12] In *Armoyan v. Armoyan*, 2013 NSCA 136, our Court of Appeal observed:

> [15] The tariffs are the norm, and there must be a reason to consider a lump sum.
>
> [16] The basic principle is that a costs award should afford substantial contribution to the party's reasonable fees and expenses. In *Williamson*, while discussing the 1989 tariffs, Justice Freeman adopted Justice Saunders' statement from *Landymore v. Hardy* (1992), 112 N.S.R. (2d) 410:
>
> > The underlying principle by which costs ought to be measured was expressed by the Statutory Costs and Fees Committee in these words:
> >
> > > "… the recovery of costs should represent a substantial contribution towards the parties' reasonable expenses in presenting or defending the proceeding, but should not amount to a complete indemnity."
>
> Justice Freeman continued:
>
> > 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.
>
> [17] The tariffs deliver the benefit of predictability by limiting the use of subjective discretion. This works well in a conventional case whose circumstances conform generally to the parameters assumed by the tariffs. The remaining discretion is a mechanism for constructive adjustment that tailors the tariffs' model to the features of the case.

[13] Fichaud, J.A. then continued:

> [18] But some cases bear no resemblance to the tariffs' assumptions. A proceeding begun nominally as a chambers motion, signalling Tariff C, may assume trial functions, contemplated by Tariff A. A Tariff A case may have no "amount involved", other important issues being at stake. Sometimes the effort is substantially lessened by the efficiencies of capable counsel, or handicapped by obstructionism. The amount claimed may vary widely from the amount awarded.

> The case may assume a complexity, with a corresponding workload, that is far disproportionate to the court time, by which costs are assessed under provisions of the Tariffs. Conversely, a substantial sum may turn on a concisely presented issue. There may be a rejected settlement offer, formal or informal, that would have saved everyone significant expense. These are just examples. Some cases may combine several such factors to the degree that the reflexive use of the tariffs may inject a heavy dose of the very subjectivity – *e.g.* to define an artificial "amount involved" as Justice Freeman noted in *Williamson* – that the tariffs aim to avoid. When this subjectivity exceeds a critical level, the tariff may be more distracting than useful. Then it is more realistic to circumvent the tariffs, and channel that discretion directly to the principled calculation of a lump sum. A principled calculation should turn on the objective criteria that are accepted by the *Rules* or case law.
>
> [emphasis added]

[14] As to the effect of an offer to settle, this is governed by CPR 10, the relevant portions of which are set forth below:

> **Rule 10 – Settlement**
>
> **10.01 Scope of Rule 10**
>
> (1) This Rule applies to a settlement of a proceeding or of a claim in a proceeding, and includes both of the following:
>
> (a) a formal way to make an offer that may affect how costs are awarded;
>
> (b) judge-assisted alternative dispute resolution that is voluntary and flexible.
>
> (2) This Rule does not cover approval of a settlement by a judge, such as that provided for in Rule 36 - Representative Party.
>
> (3) Nothing in this Rule makes a judge a compellable witness, or diminishes judicial immunity from civil claims.
>
> …
>
> **10.03 Settlement offers and costs**
>
> A judge who determines costs may take into consideration a written offer of settlement made formally under this Rule or otherwise, unless the offer was made at a settlement conference or under an agreement that the offer would not be admissible in relation to costs.
>
> …
>
> **10.05 Formal offer to settle an action**

(1) A party who makes a formal offer to settle under this Rule 10.05 may take advantage of the applicable provisions for costs in Rules 10.08 and 10.09.

(2) A party may make a formal offer to settle an action, or a counterclaim, crossclaim or third party claim in an action, by delivering an offer to settle.

(3) A formal offer to settle must contain the standard heading of the action, be entitled in one of the following ways, and be dated and signed:

(a) "Offer to Settle by Claimant (Monetary)", if it offers to settle entirely on the basis that money is paid to the party who makes the offer;

(b) "Offer to Settle by Claimant (Non-monetary)", if it offers to settle on terms that include a requirement the other party do, or refrain from doing, something in satisfaction of a non-monetary claim;

(c) "Offer to Settle by Person Claimed Against (Monetary)", if it offers to settle entirely on the basis that money is paid to the other party by the party who makes the offer;

(d) "Offer to Settle by Person Claimed Against (Non-monetary)", if it offers to settle on terms that require the party making the offer to do, or refrain from doing, something in satisfaction of a non-monetary claim made by the other party.

(4) 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.

(5) The offer must also contain both of the following terms:

(a) it is open for acceptance until it is withdrawn or the trial begins;

(b) it may be accepted only by delivery of a written acceptance to the party making the offer.

10.06 Withdrawal or expiry of formal offer to settle

(1) A party who makes a formal offer to settle may withdraw the offer at any time by delivering to the other party a written withdrawal.

(2) A formal offer to settle remains open for acceptance although the other party makes an offer to settle on other terms.

…

10.09 Determining costs if formal offer not accepted

(1) A party obtains a "favourable judgment" when each of the following have occurred:

(a) the party delivers a formal offer to settle an action, or a counterclaim, crossclaim, or third party claim, at least one week before a trial;

(b) the offer is not withdrawn or accepted;

(c) a judgment is given providing the other party with a result no better than that party would have received by accepting the offer.

(2) A judge may award costs to a party who starts or who successfully defends a proceeding and obtains a favourable judgment, in an amount based on the tariffs increased by one of the following percentages:

(a) one hundred percent, if the offer is made less than twenty-five days after pleadings close;

(b) seventy-five percent, if the offer is made more than twenty-five days after pleadings close and before setting down;

(c) fifty percent, if the offer is made after setting down and before the finish date;

(d) twenty-five percent, if the offer is made after the finish date.

(3) A judge may award costs in one of the following amounts to a party who defends a proceeding, does not fully succeed, and obtains a favourable judgment:

(a) the amount that the tariffs would provide had the party been successful, if the offer is made less than twenty-five days after pleadings close;

(b) seventy-five percent of that amount, if the offer is made more than twentyfive days after pleadings close and before setting down;

(c) sixty percent of that amount, if the offer is made after setting down and before the finish date;

(d) nothing, if the offer is made after the finish date.

…

[15] As Hunt, J. observed in *Hankey v. Hughes*, 2022 NSSC 293:

[5] The costs regime has an important role to play in encouraging settlements, deterring unmeritorious litigation, and facilitating access to justice.

[6] Sympathy for an unsuccessful litigant's challenging circumstances must be balanced against the many objectives of the cost's regime.

[16] In *Hankey*, only a one day hearing was involved because the parties had agreed to bifurcate the issues of liability and damages. The amount of $23,000 in costs was awarded in circumstances which showed that the unsuccessful plaintiff was in dire financial circumstances, including challenges imposed by the need to care for her chronically ill child.

[17] The Defendant points to the absence of such mitigating factors in this case as compared to *Hankey*.

[18] The Defendant has filed the Affidavit of James Pinchak dated June 11, 2025 ("Pinchak Affidavit") in support of the legal costs incurred by IMP throughout the course of this matter. This is accompanied by information with respect to the work done by each of the lawyers involved in the case, an incremental breakdown of the time incurred in performing each unit of work, and the hourly rate of the various lawyers involved.

C. Analysis

(i) Plaintiffs' position throughout proceedings and effect of offer to settle

[19] In many respects, the Plaintiffs' position throughout the trial was puzzling. Some of this was referenced by the Defendant as such:

> 46. Despite a demonstrably and ultimately successful defence on liability, IMP put forward a generous settlement offer, first in the form of the First Settlement Offer in July 2024 after the Plaintiffs failed to file expert evidence, and subsequently formalized before the Finish Date in the form of the Formal Offer. IMP did so in an attempt to avoid the significant costs of trial. Despite having failed to file expert evidence necessary to support their claim (and certainly the majority of their claimed damages), the Plaintiffs never responded to any of IMP's attempts at settlement. IMP attempted to initiate settlement discussions again in the days leading up to trial in one last attempt to avoid the cost of trial and save valuable court time, but once again IMP was met with silence from the Plaintiffs.
>
> 47. It is significant that the Plaintiffs never quantified their claim or put forward a settlement demand. The Plaintiffs clearly did not want a settlement; they wanted a trial, and they wanted a trial in the Supreme Court of Nova Scotia rather than the Small Claims Court (which arguably was the proper venue for their claim). It was the Plaintiffs' right to choose to proceed to trial in the Supreme Court, but they bear the cost consequences associated with that choice.

(*Defendant Costs Brief*)

[20] The Plaintiff had earlier filed their request for a Date Assignment Conference on October 5, 2023. Therein, they stated their intention to file two expert reports, one from an expert on grinder pumps, including lifecycle costs, and another in the form of an appraisal. They filed neither. The deadline for filing such reports passed on April 30, 2024. No Rule 55 reports were filed. These would have provided an integral and essential component of their damages claim had the Plaintiffs been able to establish liability on the part of IMP.

[21] Nevertheless, the Defendant made a settlement offer of $9,500, in an effort to avoid the cost of trial, on July 10, 2024. This ended up being in excess of the Court's provisional assessment of the Plaintiffs' damages following trial. The Defendant made this a "Formal Offer" (within the meaning of CPR 10) on October 30, 2024. The Defendant pointed out that they never received either a response or even an acknowledgement with respect to either iteration of the offer (*Defendant Costs Brief*, paras. 12 & 14).

[22] The offer was reiterated by the Defendant on January 31, 2025, and correspondence was sent seeking to set up without prejudice discussions for the purpose of attempting to resolve the matter and save legal cost. Once again, they received no response from the Plaintiffs (*Pinchak Affidavit*, Ex. C, para. 6).

[23] I have concluded that the offer to settle made on July 10, 2024 and "formalized" on October 30, 2024, was easily more favourable to the Plaintiffs than the Court's decision. IMP, as a consequence, has obtained a "favourable judgment" in the sense envisioned by CPR 10.09(2).

(ii) What would Tariff A yield?

[24] The Defendant concedes that "Tariff A costs are the default starting point when assessing the costs payable to IMP" (*Defendant Costs Brief*, para. 24).

[25] To calculate a "tariff based" award, then, one begins with a calculation of the "amount involved". There are several potential ways to go about this, despite the fact that it appears the Plaintiffs never fully quantified their claim. For example, their pretrial brief claimed general damages between $50,000 and $75,000, and also a number of special damages awards. However, the fact remains that this matter was brought under Rule 57, which acknowledges that it is an action for damages of less than $150,000.

[26] I next observe that the damages actually assessed (provisionally) in the decision rendered (post trial) were $5,330.44. If I were to use this figure as the "amount involved" for a Tariff A costs calculation, I would be, in essence, punishing the Defendant for its success.

[27] It makes more sense, in the circumstances, to consider an "amount involved" of $100,000, which accords, generally, with the special and general damages claims which the Plaintiffs had advanced, and the fact that the Action was brought under the auspices of CPR 57.

[28] This consideration would yield three possible figures: Scale 1, $9,188; Scale 2 (basic), $12,500; and Scale 3, $15,313. This was not a situation in which it would be appropriate to use Scale 3. Cases in which Scale 3 is used usually bear the hallmarks of complexity, or some other unusual distinguishing features (see, for example, *Martell-Norman v. Brown*, 2022 NSSC 186). This case did not.

[29] Scale 2 is the ordinary, or default, starting point. This would yield (at first instance) an award of costs of $12,500, plus a $2,000 per diem, which results in an award of $18,500.

[30] Next, as has been earlier noted, the offer to settle itself can be factored into a costs award through the interaction of CPR 10 and 77. Recall that CPR 10.03 says:

> A judge who determines costs may take into consideration a written offer of settlement made formally under this Rule or otherwise, unless the offer was made at a settlement conference or under an agreement that the offer would not be admissible in relation to costs.

[31] Recall further that CPR 10.09(2)(c) provides:

> (2) A judge may award costs to a party who starts or who successfully defends a proceeding and obtains a favourable judgment, in an amount based on the tariffs increased by one of the following percentages:
>
> …
>
> (c) fifty percent, if the offer is made after setting down and before the finish date;
>
> …

[32] I observe that the initial offer was made on July 10, 2024 and formalized on October 30, 2024. The matter was "set down" on January 12, 2024. The Finish Date was October 31, 2024. The application of CPR 10.09(2)(c) would, therefore,

result in a 50% increase to the Tariff A costs, in the amount of $9,250, which would raise the award to $27,750.

[33] I also recognize that I have discretion under CPR 77 to augment what would otherwise have been the Tariff A award calculated ($27,750) above.

[34] This is because CPR 77.07 states:

> 77.07 Increasing or decreasing tariff amount
>
> (1) A judge who fixes costs may add an amount to, or subtract an amount from, tariff costs.
>
> (2) The following are examples of factors that may be relevant on a request that tariff costs be increased or decreased after the trial of an action, or hearing of an application:
>
> (a) the amount claimed in relation to the amount recovered;
>
> (b) a written offer of settlement, whether made formally under Rule 10 - Settlement or otherwise, that is not accepted;
>
> (c) an offer of contribution;
>
> (d) a payment into court;
>
> (e) conduct of a party affecting the speed or expense of the proceeding;
>
> (f) a step in the proceeding that is taken improperly, abusively, through excessive caution, by neglect or mistake, or unnecessarily;
>
> (g) a step in the proceeding a party was required to take because the other party unreasonably withheld consent;
>
> (h) a failure to admit something that should have been admitted.
>
> (3) Despite Rule 77.07(2)(b), an offer for settlement made at a conference under Rule 10 - Settlement or during mediation must not be referred to in evidence or submissions about costs.

[35] However, I have already considered 77.07(2)(b) in the calculation of the $27,750 figure. Although (arguably), ss. (e) and (f) could be involved as well, the real crux of the matter is that the settlement offer was not accepted. Were I to award additional costs pursuant to (e) and (f) in the circumstances of this case, on the basis that the failure to accept the offer affected the overall expense of the proceeding, or that the steps in the proceeding taken after the offer were unnecessary, I would be, in effect, punishing the Plaintiffs twice for having failed to accept the offer.

[36] Having said that, however, I must return to the fact that the allegations levelled against the Defendant by the Plaintiffs included "intentional misrepresentation" (*Statement of Claim*, para. 24) which, considered in conjunction with all of the evidence led in relation to this case, is virtually indistinguishable from "fraud".

[37] These were allegations which the Defendant was required to vigorously defend no matter the amount involved. I find that an award of costs premised upon Tariff A, would be inadequate to do justice between the parties, even after applying the provisions of CPR 10.

(iii) What is an appropriate lump sum?

[38] The Plaintiffs have argued that:

> The Defendants say that in the circumstances of this case the award under the Tariff of $23,265 is a reasonable contribution to reasonable costs incurred and takes into account the impact of the Formal Offer. This is not a situation where one can say that the award under the Tariff is woefully inadequate.

[39] The Plaintiffs also advert to the fact that the $133,472.45 in total legal expenses put forward by the Defendant includes HST, and point to the decision of Jamieson, J. in *Freeman v. Ponhook Lodge*, 2024 NSSC 1, where she states:

> [43] In *R. (G.B.) v. Hollett,* 1996 CanLII 5288 (NS CA), 1996 NSCA 121, the Nova Scotia Court of Appeal clearly stated that tax is not payable on an award of costs:
>
> 198 I agree with the comments of Goodfellow J. in *Day v. Day* (1994), 1994 CanLII 4501 (NS SC), 129 N.S.R. (2d) 186 at p. 193:
>
> > While the theory of costs is that it is a partial reimbursement by way of indemnification to the successful party, costs are the property of the party, and no GST is incurred or is payable on an award of costs. Costs do not represent goods and services, and being owned by the party should not be related to a client's liability for whatever GST is required by law on a solicitor/client bill for legal fees.
>
> [44] I note that the Court of Appeal has affirmed cost awards inclusive of HST without specific comment on the HST issue (*Laamanen*, *supra* and *L.K.S. v. D.M.C.T.*, 2008 NSCA 61). In addition, the Court of Appeal added HST to an award of costs in relation to proceedings in the court below, but did not explicitly address the issue *(Moore v. Darlington*, 2012 NSCA 68, at para. 64). After review of these cases, I am of the view that the Court of Appeal has not revisited and

explicitly overturned its earlier decision in *R.(G.B.), supra*. It remains the law in Nova Scotia and I decline to add HST to the costs award.

[45] Therefore, the costs award will not include HST. However, the Court of Appeal in *R. (G.B.), supra* stated that reimbursement for disbursements does include the HST paid. In this regard, I refer also to the decision of *Mader v. Lahey and Mailman* (1997), 1997 CanLII 26091 (NS SC), 176 N.S.R. (2d) 143, 538 A.P.R. 143 (S.C.), where Justice Edwards reviewed the law and stated:

> [43] HST is not to be calculated on an award of costs other than in respect of disbursements to the extent the disbursements have been allowed and HST actually has been paid.
>
> [44] Reference is made to the Court of Appeal decision in *Roose v. Hollett et al* (1996), 1996 CanLII 5288 (NS CA), 154 N.S.R. (2d) 161, 452 A.P.R. 161 (C.A.). In that case the Court stated clearly, following a number of decisions by Goodfellow, J. that GST was not to be added to taxable party and party solicitor's costs. That reasoning was followed and applied by Saunders, J. in two cases in which he held that HST was not claimable other than HST paid on disbursements — *MacDonell v. M & M Developments Ltd. et al*., [1977] N.S.J. No. 342; 1997 CanLII 2345 (NS SC), 164 N.S.R. (2d) 81; 491 A.P.R. 81 (S.C.) and *Campbell v. Lienaux et al*., [1977] N.S.J. No. 343; 1997 CanLII 4434 (NS SC), 165 N.S.R. (2d) 356; 495 A.P.R. 56 (S.C.)
>
> [45] As such, no award for HST on costs can be made other than as noted in respect of disbursements.

(*Plaintiffs Costs Brief*, p. 5)

[40] The Plaintiffs also stress that their own legal fees were less than one-half of those incurred by the Defendant and argue that although "a comparison between the accounts offered by the parties does not lead one to the conclusion that one account is unreasonable", the Court should at least consider it as one of the factors to determine whether the Defendant accounts are reasonable (*Plaintiffs Costs Brief*, p. 5).

[41] Obviously, a "reasonability" analysis must be conducted with respect to the Defendant's legal fees because of my determination that the application of the tariffs yielded a figure that would not do justice between the parties in the circumstances of this case (*Homburg*, paras. 9-11). It is part of the calculation of what an appropriate lump sum award of costs should be. In the course of that exercise, reference to other lump sum costs decisions, even though some of them were rendered within the context of what would otherwise have been Tariff C awards, is helpful.

[42] For example, in *Link v. Link*, 2021 NSSC 114 (aff'd 2022 NSCA 14), Rosinski, J. was dealing with an assessment of costs in the aftermath of a failed attempt by the Applicant to bring a derivative action on behalf of "Link Canada" in Nova Scotia against the Respondents.

[43] The Applicant argued that there had been no exceptional circumstances warranting a departure from CPR 77 Tariff C scale costs. The Court (in *Link*) disagreed and concluded that it had been appropriate for the Respondent to take the time to provide a substantial background to the corporate structure involving the group of companies which would be implicated by the order sought, and the associated litigation already underway in the United States (at the time). As was noted:

> [13] The Respondents' position implicates the interests of various corporations, but significantly also three individuals – each of whom likely have distinct legal needs and perspectives in relation to Jay's allegations against them. Had they each had separate counsel their combined costs to defend against this proposed derivative action could well have been even greater. They were each entitled to take Jay's claims of up to $60-$80 million US liability seriously and have their counsels counter with their own positions.
>
> [14] Notably, both sides considered the matter sufficiently serious to each have two senior counsel in court to argue the matter.
>
> [15] Assessing the factors relevant to whether leave should be granted was made more challenging than usual for the court, as a result of, *inter alia*: the lengthy history between the Link corporations and individuals involved; the multi-jurisdictional and integrated nature of the closely-held corporations; the intersection of an argued limitation period – including when/how the court should treat that issue in this context, and the anticipated effects on the potential main proceeding of which jurisdiction's limitation period would likely be applicable.
>
> [16] This proceeding was consequently extraordinary, *inter alia*, insofar as it placed especial corollary demands on counsel for the Respondents in particular. While heard in one day, the preparation and arguments far exceeded the norm.
>
> [17] Bearing in mind the relevant Rules and the jurisprudence, including those argued by the parties for their respective positions, I find that the application of tariff "C" would not do justice between the parties.

[44] In *Medjuck v. Medjuck*, 2023 NSSC 345, which involved a two-day hearing, Chipman, J. had occasion to refer to the *Link* decision, and also went on to award lump sum costs in that factual milieu:

[21] I find the above-quoted comments to be of guidance as I consider appropriate costs to award. In exercising my discretion I have bourne in mind the substance of the motions, which had they been successful, would have meant for potential exposure in the neighbourhood of three times the original pleaded $7 Million. In assessing reasonable costs I also must consider Rule 77 and whether the Tariff C starting point should be set aside in favour of an award that more closely reflects the legal spend to deal with the motions. At the same time I have to bear in mind that these motions did not bring this litigation to an end, coming as they did prior to the close of pleadings and before any discoveries.

[22] Having regard to my Motion Decision, I am cognizant of the fact that the motions were unfounded, put forward by in many instances, deceptive evidence exposed through Mr. Giles, K.C.'s cross-examination of Harold. The stakes were high insomuch as success for Harold would have meant for a claim within the realm of $20 Million. I am also cognizant of the uncontradicted evidence of Mr. Giles, K.C. on this costs hearing and recognize that the Medjuck Defendants made a significant legal spend in their resistance to the motions. Harold's conduct and his failure to achieve almost all of what he sought on the motions causes me to readily conclude that this is a case where I am prepared to exercise my discretion and award more than bare Tariff C costs to the Medjuck Defendants.

…

[24] In all of the circumstances and to do justice between the parties, I hereby award $4,000.00 to Medjuck and Medjuck and an identical sum to be split ($2,000.00 each) between 51/56 and Universal. This figure is representative of the two days in Court on these motions (Tariff C - $2,000.00 per day times two) with the multiplier considerations (owing to Harold's actions as described in the Motion Decision along with the complexity and voluminous overall documentary burden) offset by the "labouring oar" exercised by counsel for the Medjuck Defendants. In making these costs awards I am alive to the fact that Mr. McEwan represented both 51/56 and Universal.

[25] With respect to appropriate costs for the Medjuck Defendants I return to my above comments and the above excerpts from the motion costs decisions of Justice Rosinski. I am of the view that the constellation of factors here make it one of those rare motions where the Court must depart from Tariff C to effect a fair and appropriate costs disposition. The matter was sufficiently legally and factually complex and undoubtedly required significant pre-motions preparation by counsel for the Medjuck Defendants.

[26] In *Link* Justice Rosinski noted that what he had dealt with was "not an ordinary Application in Chambers". I say the same of the motions which occupied the Court's time here. In the end Justice Rosinski exercised his discretion and awarded the successful party 23.5 percent of their claimed reasonable costs.

[27] There are distinguishing features between *Link* and this case such that I am not prepared to award a percentage approaching nearly a quarter of what was

> characterized as "reasonable" costs in *Link*. There was considerably more money at stake in *Link* and that decision resulted in a final disposition.
>
> [28] Mr. Giles, K.C. was at one time – as he deposes to in his affidavit – a "taxing officer". He must understand that such a role is not normally the job of the Court on a motion. Indeed, Mr. Giles acknowledged this fact during his remarks today. In any case, when I consider the relevant caselaw and all of the circumstances of this situation, I have exercised my discretion in order to do justice between the parties on costs (and disbursements) such that Harold shall pay the Medjuck Defendants the lump sum of $20,000.00.

[45] In *Tri-Mac Holdings Inc. v.* Ostrom, 2019 NSSC 44, the Court was tasked with fashioning an appropriate award of costs in the aftermath of a six-day hearing. The following context was provided by Justice Ann Smith:

> [7] The hearing in this matter extended over months and took about six days to complete. The date that was originally set was December 12, 2017. The day before the hearing Mr. Ostrom filed another motion seeking to strike portions of the affidavit of Dale Ostrom. That affidavit had been filed a month before. Dale Ostrom responded to that motion and it was withdrawn in court, on December 12, 2017. The matter was then adjourned to January 16-18, 2018. The argument took place over three full days. Even that was not enough. Bradley Ostrom was given the opportunity to file post-hearing submissions, which involved further costs to Dale Ostrom. I released my decision on the matter, on July 20, 2018. Bradley Ostrom made an attempt then to reopen the matter to have me essentially reconsider the decision that I had made. That resulted in further filing of materials that added to the costs. The materials that were filed were voluminous and complex and the arguments based upon those materials were without merit. The request to have the matter reopened failed but more importantly, it should never have been made. A party may waste his or her own money on unnecessary motions and meritless arguments, but they should not be allowed to drag someone else with them. The manner in which this matter was pursued was wasteful and that willingness to expend money in that way should not be forced upon the opposing party.
>
> [8] This is a case in which a lump sum costs award is required to provide a level of indemnity for the successful party that approaches substantial. The legal fees charged to the defendants amounted to about $75,000. The amount they seek in costs is $25,000 with $6,076.77 in disbursements. That is one-third recovery. The claim is entirely reasonable. Lump sum costs of $25,000 and disbursements in the amount of $6,076.77 are awarded.

[46] In *Homburg*, an award of $40,000 in costs was made after a 2 ½-day motion which dealt with complicating factors such as jurisdiction and state immunity. This

amount was arrived at by applying the maximum tariff amount with a multiplier of four and increasing it by a factor of two-thirds.

[47] The Defendant has referenced *Urquhart v. MacIsaac*, 2018 NSSC 36. That case involved an "amount involved" of $80,000. Chipman, J. concluded that application of the tariffs to that amount resulted in a "woefully inadequate" award of costs after a six-day hearing. He awarded a lump sum of $60,000 instead.

[48] *Irving Shipbuilding Inc. v. Beazley Syndicates AFB 2623*, 2025 NSSC 169 took place within the context of a one-day motion for discovery of documents in relation to which the Plaintiff had claimed were privileged. The motion was not dispositive of the litigation (which included damages sought in excess of $200 million) and in relation to which matters impacting upon national security were said to be involved. I assessed the reasonable legal expense of Irving Shipbuilding Inc. (the successful party) at $55,000 and awarded $30,250, or 55% thereof, plus disbursements.

[49] This was a three-day trial. Having considered all of the above, including the Defendant's invoices for legal work, the file documents and work product itself, together with the removal of the HST from the total legal expense incurred by the Defendant, I conclude that the Defendant's reasonable legal fees incurred in relation to this matter were $78,500 inclusive of disbursements. I award the Defendant 66% of this figure, or $51,810 payable forthwith. I consider that this would represent a substantial contribution to the Defendant's legal costs incurred in this proceeding.

Gabriel, J.