SUPREME COURT OF NOVA SCOTIA
Citation: *Iosipescu v. Kindred Living Inc.,* 2025 NSSC 293

Date: 20250910
Docket: Hfx No. 534181
Hfx No. 534182
Hfx No. 534183
Registry: Halifax

Between:

Michael J. Iosipescu

Plaintiff

v.

Kindred Living Inc., a body corporate

Defendant

Decision on Costs

Judge: The Honourable Justice Peter P. Rosinski

Heard: June 12, 2025, in Halifax, Nova Scotia

Counsel: Michael Blades, for the Plaintiff
Richard Norman and Hannah Helm, for Marc Gill and Nick Gill
Heather Wyse and Daisy Fitzgerald, for Julie Chamagne

By the Court:

Introduction

[1] This "costs" decision ensues from my earlier decision, 2025 NSSC 200, in which I concluded that the motion characterized as an "emergency" pursuant to *Civil Procedure Rule* ("CPR") 28 was not shown to be an "emergency".

[2] Therein I stated:

> [10] For this reason, Julie has made a Motion on an "emergency" basis per *Civil Procedure Rule* ("CPR") 28, requesting the Court to permit her alone to act in the best interests of the corporation pursuant to section 4 of the *Third Schedule of the Companies Act*, RSNS 1989 c. 81.

[3] She sought the following relief, which was opposed by Mr. Iosipescu as a person suing Kindred who had obtained three Default Judgments against Kindred and his two sons, Nick and Marc, who each were Directors, Officers and Shareholders of Kindred:

> [41] Julie's Amended Notice of Emergency Motion requests:
>
> 1. Granting Julie leave to defend Halifax numbers 534181, 534182, and 534183 on behalf of Kindred;
> 2. Vacating the Default Order for Judgement granted by the Deputy Prothonotary in favour of Michael on December 19, 2024 (regarding each of the separate Actions based on three separate Promissory Notes);
> 3. Granting Julie permission to file a Defence in each of the Actions 534181, 534182, 534183 on behalf of Kindred by June 30, 2025; and
> 4. Ordering the removal of the *lis pendens* recorded against Kindred's property on June 24, 2024.

The Positions of the Parties

Julie

[4] Julie argues that Tariff C in our civil procedure rules (CPR No. 77) should be applied.

[5] She relies on the language of CPR 77.02 General discretion (party and party costs), CPR 77.03(4), 77.05(1) and 77.06(3) rather than CPR 77.08 (lump sum amount instead of Tariff) and CPR 77.09(2), to argue that the maximum amount of $1,000 for a one-half day hearing should be awarded to Mr. Iosipescu; and $1,000 should also be awarded to Marc and Nick collectively, who were represented by the same counsel.

[6] As Ms. Wyse for Julie, put it, the court dealt with "three identical emergency motions filed and heard simultaneously" within ½ day hearing, and that the court did not have to go on to address the substance/merits of her motion.

[7] She argues that Tariff C is the norm and there is no reason to depart from it.

[8] She cited Justice Wood (as he then was) in *Homburg et al. v. Stichting Autoriteit Financiele Markten*, 2017 NSSC 52 wherein he stated:

> [4] Costs are dealt with under *Civil Procedure Rule 77*, which makes it clear *that costs of a motion must be addressed under Tariff C unless a judge otherwise orders* (*Rule 77.05* and *77.06(3)*). The court may make any order with respect to costs that would "do justice between the parties" (*Rule 77.02(1)*). *In applying the tariff, the court is given discretion to add an amount to or subtract an amount from tariff costs* (*Rule 77.07(1)*). *Rule 77.07(2)* gives examples of some of the factors which may be relevant in assessing whether to do so. It provides:
>
> > 77.07 (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.
>
> [5] *Rule 77.08* permits the court to depart from the tariff calculation and award a lump sum. On its face the rule does not provide any guidance as to when this

would be appropriate, however the jurisprudence does. The Nova Scotia Court of Appeal in **Armoyan v. Armoyan**, 2013 NSCA 136, considered the circumstances when a lump sum cost award might be considered. The recommended approach is found in the following passage from the decision:

> 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.
>
> 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.

[6] The court concluded that the circumstances of that case justified awarding a lump sum rather than tariff costs. The court's rationale for reaching this conclusion included the following:

1. The proceeding was brought as a motion which would engage Tariff C but ripened into features of a complex trial involving ten days of hearings over eleven months.
2. The matter involved an issue of jurisdiction between the courts of Nova Scotia and Florida and triggered broad consideration of comity, fairness, and efficiency in the administration of justice. It would be artificial to determine a notional "amount involved" for purposes of Tariff A (the trial tariff) if that were applicable.
3. The respondents had disobeyed court orders with respect to costs and engaged in litigation strategy which resulted in staggering legal accounts for the applicant. In order to do justice between the parties the "mercenary use of costs attrition" warranted a cost consequence.
4. The applicant made an informal settlement offer on terms which were more advantageous to the respondent than the court decision. Had it been accepted the applicant would have saved over $350,000 in legal fees.
5. The tariff calculation represented only 27% of the applicant's legal fees and disbursements and did not approach a "substantial contribution".

[7] In **Andrews v. Keybase Financial Group Inc.**, 2014 NSSC 287, the court considered an award of costs where the plaintiffs had been successful in a claim for financial losses caused by the fraud of a former financial advisor employed by the defendants. The court relied on **Armoyan v. Armoyan** and exercised its discretion to make a lump sum cost order that would do justice between the parties. It decided it was appropriate for the following reasons:

1. The length and complexity of the case.

2. The claim arose from a deliberate breach of fiduciary duty, such that the appropriate remedy should reflect the principle of restitution.

3. There was a public interest in protecting investor confidence in financial institutions.

[8] In these circumstances the court said a lump sum award of costs should be made to give the plaintiffs a substantial contribution to their reasonable legal expenses. The amount awarded represented 66% of the solicitor client account.

[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*.

[12] The fact that consideration of legal fees incurred comes at the end of the analysis, and after a decision to award lump sum costs is made, is reflected in the following comments from the **Armoyan** decision:

> [29] *The propriety of a lump sum award may be tested by comparing the proposed tariff award to the actual legal fees and expenses*. Mr. Armoyan's calculation under the tariffs is $117,714.64. Even after the adjustments that I will discuss later, Ms. Armoyan's legal fees and disbursements exceed $450,000 for the Nova Scotia *forum conveniens* proceeding and both appeals. A recovery of about 27% does not approach the "substantial contribution" that Justice Freeman contemplated in **Williamson**.

[My italicization added throughout to Justice Wood's decision]

[9] Based on *Homburg*, Julie argues the fact that litigants have substantial legal fees does not necessarily make Tariff C inapplicable, in part because courts should seek to do justice as between the parties in the particular circumstances, and Tariff C can be adjusted to increase the total amount as contemplated in section 4 thereof:

> When an order following an application in Chambers is determinative of the entire matter at issue in the proceeding, the Judge presiding in Chambers may multiply the maximum amounts in the range of costs set out in this Tariff C by 2, 3 or 4 times, depending on the following factors:
>
> (a) the complexity of the matter,
>
> (b) the importance of the matter to the parties,
>
> (c) the amount of effort involved in preparing for and conducting the application.

[10] The increase of Tariff C amounts by multipliers is strictly speaking limited to outcomes that are "determinative of the entire matter at issue in the proceeding" which is not the case here – see e.g. *Link v. Link*, 2021 NSSC 6 (and *Link v. Link*, 2022 NSCA 14) which dealt with a situation comparable to what result might have come from a consideration of the merits of Julie's motion. However, CPR 77.07(1) allows "A judge who fixes costs may add an amount to, or subtract an amount from, tariff costs".

Mr. Iosipescu's Position

[11] I am satisfied that his actual reasonable legal fees are approximately $24,894.75 plus $831.50 disbursements. Julie did not dispute that his fees could reasonably have been such.

[12] He notes that the Default Judgments he obtained against Kindred stem directly from Julie's inaction bringing them to the attention of Kindred in in a timely manner (and they should be paid forthwith – same is conceded by Julie); and in any event to the cause, per Justice Norton's reasons in *Halifax County Condominium Corporation No. 38 et al. v. Meshal*, 2023 NSSC 318 at paras. 2 –3 and 9.

[13] He pointed out that, in any event, Julie and Kindred do not deny that some amount of money is owing to him as claimed in the Notices of Action underlying the three Default Judgments; and that although the merits of the substantive motions

were not directly addressed, the Defendants had to be prepared to address all of them, to some extent, before the commencement of the hearing on June 12, 2025.

[14] Consequently, he says, although the motion duration was no more than one half day in court, the embedded substance thereof made it more complex as he had to prepare to address the general context surrounding Julie's substantive motions.

[15] He also relies on the court's finding that Julie's evidence was found wanting credibility in some respects, and that without his counsel's preparation and cross-examination of her the court would not have been in a position to make such a finding.

[16] Lastly, he also points out that the court exceptionally permitted Julie to file further reply submissions, to which he had replied on August 27, 2025. This caused further legal expenses to him.

[17] He noted that the maximum Tariff C amount per day, $2,000, multiplied by the maximum multiplier, 4 times, would only provide $8,000 reimbursement towards his at least $25,000 reasonable legal fees.

[18] He claims a 72% lump sum award in the amount of $18,000 + $831.50 disbursements.

The Position of Marc and Nick Gill

[19] The brothers were represented by one counsel which was a reasonable basis upon which they could collectively answer the motions made by Julie. I am satisfied that their actual reasonable legal fees were $14,934 plus HST and disbursements.

[20] They are seeking a 60% lump sum reimbursement or $8,960.40 plus $1,254.46 HST.

Why I conclude that Tariff C costs are appropriate

[21] Julie does not deny that Mr. Iosipescu is owed some monies in relation to each of the three Promissory Notes which were given by Kindred in his favour; however, her testimony suggested that the amounts are not as great as he claims, and that the amounts truly owing have not been definitively ascertained.

[22] In such circumstances it is not surprising that Mr. Iosipescu filed three separate Notices of Action, and pursued Default Judgments on each, when no Defence was filed by Kindred Living Inc.

[23] Kindred has not paid any monies to Mr. Iosipescu in relation to those three Promissory Notes, which by their nature are for fixed amounts, although Mr. Iosipescu himself agreed that there were some related credits that should accrue to Kindred.

[24] Julie considered the Default Judgments to be serious impediments to the upcoming renewal of the mortgage of Kindred's properties in July 2025.

[25] When Kindred's officers and directors were split regarding how to proceed with the renewal of the mortgage, Julie made an "emergency" motion seeking 4 forms of relief:

1. leave to defend Kindred as against the three promissory note actions;
2. vacating the three Default Orders for Judgment;
3. granting her permission to file a Defence in each of the three actions on behalf of Kindred; and
4. ordering the removal of the *lis pendens* recorded against Kindred's property on June 24, 2024.

[26] I concluded the circumstances as I found them were not of a true "emergency".

[27] The question of what are appropriate costs should be resolved upon core principles that courts have relied upon in the past.

[28] Ultimately, the court should attempt to "do justice between the parties" in the context of the specific litigation.

[29] Generally speaking, costs should afford a substantial contribution towards the party's reasonable expenses but should not amount to a complete indemnity.

[30] Here the main action is between Mr. Iosipescu as Plaintiff and Kindred as Defendant.

[31] I am satisfied that standard Tariff C costs are sufficient and appropriate to properly compensate the winning parties here.

[32] Mr. Iosipescu did the lion's share of the work on behalf of the Defendants, but Nick and Marc were also entitled to respond.

[33] Marc and Nick appear to have had legitimate reasons for taking a position against Julie being given the sole right to speak for Kindred in relation to the ongoing financial disagreements between Kindred and Mr. Iosipescu, and the upcoming mortgage renewal.

[34] While the hearing lasted only one half day and was focused on the question of whether an "emergency" existed, some, but not all, of the expenses incurred by the winning parties in preparing for the potentiality of a hearing on the merits, should be included in the costs awards in favour of the Defendants because the preliminary decision concluding there was no "emergency" forestalled this Court from having to decide the merits.

[35] The Defendants had to muster significant legal resources to refute the motion made by Julie based on the legal positions she put forward.

[36] However, the Court ruled only on the "emergency" issue.

[37] Therefore, my decision did not necessarily preclude the substance of the motion from proceeding and, depending on that outcome, ultimately, costs being potentially awarded in relation to the "merits" thereof.

[38] Bearing in mind all of the circumstances and the applicable legal principles, I conclude doing justice between the parties in relation to the "emergency" nature of the motion can be achieved by the following costs awards:

1. In favour of Marc and Gill: $3,000 all inclusive, payable forthwith by Julie and in any event of the cause;
2. In favour of Mr. Iosipescu: $7,000 all inclusive, payable forthwith by Julie and in any event of the cause.

Rosinski, J.