

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Paletz v. Barrington Wealth Partners Inc.*, 2025 NSSC 276

**Date:** 20250828

**Docket:** Hfx No. 463240

**Registry:** Halifax

**Between:**

Dr. Justin L. Paletz

Plaintiff

v.

Barrington Wealth Partners Inc., BWP Advisory Services Inc., Manulife Financial,  
The Manufacturers Life Insurance company,  
Manulife Securities Investment Services Inc., Edward J. Lapointe, and Kelly  
Adams

Defendants

DECISION ON COSTS
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**Judge:** The Honourable Justice Glen G. McDougall

**Written Submissions:** Colin D. Piercey, K.C., on behalf of the Manulife Defendants  
Barry J. Mason, K.C., on behalf of the Plaintiff

**Counsel:** Barry J. Mason, K.C., for the Plaintiff  
Brian K. Awad, for the Defendant (Barrington Wealth Partners Inc.)  
James D. MacNeil, for the Defendant (Kelly Adams & BWP Advisory Services Inc.)  
Kyla S. Russell & Gregory D. Hardy, for the Defendant (Edward J. Lapointe)  
Blair Anderson, for the Defendant (The Manulife Insurance Company)  
Colin D. Piercey, K.C., for the Defendants (Manulife Financial, The Manufacturers Life Insurance company and Manulife Securities Ltd.)

**By the Court:**

**Ruling on Costs**

[1] Manulife Financial, The Manufacturers Life Insurance Company, and Manulife Securities Investments Services Inc. (Collectively the “Manulife Defendants”) brought a motion for partial summary judgment with respect to several claims brought against them by Dr. Justin L. Paletz (the “Plaintiff”).

[2] A full day was set aside for the hearing of the motion. The parties were able to agree to a settlement approximately a week before the date set for the hearing. The court received notice of the agreement which avoided the need for an appearance. Instead, a Consent Order was filed which was then forwarded to me as the General Chambers Judge. I was not the judge assigned to hear the motion should it have gone ahead.

**Terms of the Consent Order**

[3] The Consent Order did not grant all the relief sought by the Manulife Defendants, but it did achieve significant success in striking a number of the claims made by the Plaintiff while preserving, without prejudice, the Manulife

Defendant's ability to bring a further summary judgment motion either on pleadings or on evidence in relation to some of the Plaintiff's other claims.

[4] In regard to costs, the Consent Order contained the following paragraph:

8. Costs of this Motion will be by agreement of the Parties, and failing agreement the Manulife Defendants and the Plaintiff will make written submissions within 30 days of this order.

[5] Having failed to reach an agreement, counsel for the parties (directly involved in this motion) filed their written submissions outlining their respective client's position.

[6] The Court very much appreciates their efforts in this regard.

### **Position of the Manulife Defendants**

[7] Counsel for the Manulife Defendants seeks "costs of \$2,000 from the Plaintiff, in any event of the cause. [Correspondence dated August 8, 2025, from Mr. Colin D. Piercey, K.C.]. He points out that this amount is consistent with the range set out in Tariff C of Rule 77 – Costs for motions requiring more than ½ day but less than 1 day (\$1000-\$2000).

[8] Counsel further submits that the "proposed amount could also be framed as a multiplier of 2 on a baseline costs award of \$1,000, as the Consent Order was determinative of several of the Plaintiff's claims." He further points out that "the

Manulife Defendants obtained partial success on the Motion by virtue of the Consent Order, and this measure of success should be reflected in the costs award.” He then goes on to list the successes achieved by his clients which are significant while falling short of complete success. But, significant, nonetheless.

[9] Finally, counsel for the Manulife Defendants points out that “despite the Plaintiff failing to accept a formal partial offer to settle... (dated February 11, 2025, and attached for convenience), the Manulife Defendants have now obtained a similar result from the Consent Order.” He goes on to state that “The offer proposed the consent dismissal of the parties’ claims, and the claims in relation to the UL (i.e., Universal Life Insurance Policy) and the MSISI (i.e., Manulife Securities Investment Services Inc.) Mutual Fund Accounts.” He further points out that “The Consent Order has now resulted in the dismissal of the Portus claims, and a partial dismissal of the claims in relation to the UL Policy and the MSISI Mutual Fund Accounts.”

### **Position of the Plaintiff**

[10] Counsel for the Plaintiff suggests that the parties should bear their own costs given the mixed success. He points out that his client “consented to strike claims related to the Portus Investments and the claims relating to negligence, breach of

contract, and vicarious liability” while “maintaining it’s (sic) claim against the Manulife Defendants for breach of Fiduciary duty.” [Correspondence dated August 12, 2025, from Barry Mason, K.C.]

[11] Plaintiff’s counsel submits that since a hearing was not required, ...” the Tariff amounts are not applicable to a determination made through a Consent Order, and the parties should bear their own costs.” He adds that “Given the cooperation between the parties resulting in the Consent Order, the parties should bear their own costs.”

[12] Finally, in regard to the Plaintiff’s failure to accept the Manulife Defendants’ Partial Offer to Settle, counsel points out that “The Offer permitted the Plaintiff to accept the offer “anytime before trial begins” and since the trial has not yet begun then “The acceptance period was still open with respect to the Manulife Defendants’ offer when it was partially accepted by the Plaintiff.”

[13] A review of the partial Offer to Settle (a copy of which was provided by counsel for Manulife Defendants as an attachment to his correspondence of August 8, 2025) reveals the following clause under the sub-heading;

*Acceptance*

*You may accept this offer by delivering a statement of your acceptance in writing by you or your counsel to our place for delivery anytime before trial begins, unless the offer is withdrawn by us in writing.*

[My emphasis added]

### **Costs Ruling on Costs**

[14] Both counsel readily acknowledge that judges have a “general discretion to make any order about costs...” [CP Rule 77.02(2)] that “...will do justice between the parties.” [CP Rule 77.02(1)]

[15] Based on my review of the materials filed by counsel prior to the scheduled date of the hearing on July 3, 2025, a considerable amount of time and effort was expended by both sides. It also likely required considerable time and effort to achieve a settlement thus avoiding the need to appear in Court. I commend counsel along with their respective client(s) for managing to do so. It does not, however, preclude the Court from awarding costs.

[16] Generally speaking, costs are normally awarded to the successful party. In this case, the successful parties were the Manulife Defendants. They might not have gotten everything they were looking for, but they achieved considerable success. I do not accept Plaintiff counsel’s suggestion that due to mixed success no costs should be awarded. While the Plaintiff was somewhat successful in warding off the

relief sought by the Manulife Defendants, the bulk of the success was enjoyed by the latter.

[17] As for the suggestion that the Partial Offer to Settle was open for acceptance “anytime before trial begins...” I am not persuaded that this should deny the Manulife Defendants their entitlement to an award of costs. The Manulife Defendants, by filing the motion, forced the Plaintiff to come to grips with the pending situation. And, although an agreement was eventually reached it only occurred after the motion, and all supporting documents were filed. Indeed, the agreement was not reached until just a few days before the hearing was set to begin. By then, most of the expense associated with the filing and preparation for the hearing had already been incurred.

[18] In order to do justice between the parties, costs of \$1,250.00 should be awarded in favour of the Manulife Defendants against the Plaintiff in any event of the cause. In arriving at this amount, I have considered Tariff C even though an appearance in Court was not required. I believe the estimated time set down for the hearing is a factor that can be considered.

[19] I have also taken into consideration that there was cooperation amongst the parties in reaching an agreement. If not for that, I might have considered awarding

a quantum for costs closer to the amount suggested by counsel for the Manulife Defendants.

[20] I ask Mr. Piercey, K.C. to prepare a revised Order and to seek Mr. Mason, K.C.'s consent (at least to form).

[21] Allow me, once again, to commend and thank counsel for the quality of their submissions.

Glen G. McDougall, J.