

SUPREME COURT OF NOVA SCOTIA

Citation: *DLF Law Practice Incorporated v. McDonald et al.*, 2025 NSSC 113

Date: 20250328

Docket: Pic No. 525281

Registry: Pictou

Between:

DLF Law Practice Incorporated, a body corporate, and Donn Fraser

Plaintiffs

v.

Mary Jane McDonald, Eric Atkinson, SPI et Pomquet Inc., a body corporate,
Jennifer Hamilton Upham, Kate Harris, Joel Sellers, Julie MacPhee, Mary Jane
Saunders, Dennis James, Gerald Green and 3241964 Nova Scotia Limited
(previously known as CARM Legal Services Inc.), a body corporate, and the legal
partnership known as the firm Patterson Law

Defendants

and

Docket: Pic No. 521514

Registry: Pictou

Between:

Donn Fraser and DLF Law Practice Incorporated, a body corporate

Plaintiffs

v.

Julie MacPhee

Defendant

DECISION ON COSTS ON MOTION TO STRIKE PLEADINGS

Judge: The Honourable Justice Scott C. Norton

Heard: By Written Submissions

Decision: March 28, 2025

Counsel: Donn Fraser, self-represented
DLF Law Practice Incorporated, on its own behalf by its
Officer Donn Fraser
Michael Scott, representative of the Defendant Patterson Law
Dennis James, KC, on his own behalf
Mary Jane McDonald, on her own behalf
Gavin Giles, KC, for the remaining Defendants

By the Court:

Introduction

[1] By written Decision, dated February 20, 2025 (2025 NSSC 71) I ruled on the motion filed by the defendants, Atkinson, SPI et Pomquet Inc., Upham, Harris, Sellers, MacPhee, Saunders, Green, and 3241964 Nova Scotia Limited (the “Moving Defendants”) for an Order striking certain of the plaintiffs’ pleadings. The defendants, James and Patterson Law, supported the motion but did not participate in the motion. The defendant, McDonald, did not participate in the motion.

[2] The Moving Defendants and the Plaintiffs could not agree on costs. As directed by my Decision, they provided me with written submissions on March 20, 2025.

[3] Both sides claim entitlement to costs.

[4] The Moving Defendants say that they brought the motion to strike, and the Decision of the Court struck a large number of the Plaintiffs’ pleadings. They seek a costs award of \$11,500 representing fifty percent of their actual legal expense, based on 55.5 hours of docketed legal services at the “substantially discounted” rate of \$415 per hour.

[5] The Plaintiffs say that the motion was a “flop” with the Moving Defendants having been denied the vast majority of what they sought to be struck and what they did achieve could have been achieved by a demand for particulars or working consensually with the Plaintiffs. Regardless of success, the Plaintiffs say that nothing about the motion justifies a departure from the framework of the *Rules* and *Tariffs* for interlocutory motions. The Plaintiffs say that these principles lead to a costs award between \$1,000 and \$2,000.

Principles for Costs Awards

[6] The principles applicable to an award of costs on an interlocutory motion are based on the *Civil Procedure Rules* and have been canvassed by a number of decisions of this court. I refer by way of example to *Goulden v. Fownes*, 2021 NSSC 301, and *Raymond v. Halifax Regional Municipality*, 2021 NSSC 138.

[7] The Nova Scotia Court of Appeal provided directions with respect to the principles to be considered when determining costs in *Armoyan v. Armoyan*, 2013

NSCA 136. In *Grue v. McLellan*, 2018 NSSC 151, Justice Hunt provided the following useful summary of the *Armoyan* directions, at para. 6:

[6] In *Armoyan v. Armoyan*, 2013 NSCA 136, the Nova Scotia Court of Appeal provided direction with respect to the principles to be considered when determining costs. Specifically, Justice Fichaud stated:

1. The court's overall mandate is to do "justice between the parties": para. 10;
2. Unless otherwise ordered, costs are quantified according to the tariffs; however, the court has discretion to raise or lower the tariff costs applying factors such as those listed in *Rule 77.07(2)*. These factors include an unaccepted written settlement offer, whether the offer was made formally under Rule 10, and the parties' conduct that affected the speed or expense of the proceeding: paras. 12 and 13.
3. The *Rule* permits the court to award lump sum costs and depart from tariff costs in specified circumstances. Tariffs are the norm and there must be a reason to consider a lump sum: paras. 14-15
4. The basic principle is that a costs award should afford a substantial contribution to, but not amount to a complete indemnity to the party's reasonable fees and expenses: para. 16
5. The tariffs deliver the benefit of predictability by limiting the use of subjective discretion: para. 17
6. Some cases bear no resemblance to the tariffs' assumptions. For example, a proceeding begun nominally as a chambers motion, signaling Tariff C, may assume trial functions; a case may have "no amount involved" with other important issues at stake, the case may assume a complexity with a corresponding work load, that is far disproportionate to the court time by which costs are assessed under the tariffs, etc.: paras. 17 and 18; and
7. When the subjectivity of applying the tariffs exceeds a critical level, the tariffs may be more distracting than useful. In such cases, it is more realistic to circumvent the tariffs, and channel that discretion directly to the principled calculation of a lump sum which should turn on the objective criteria that are accepted by the *Rules* or case law: para. 18.

[8] In *Richards v. Richards*, 2013 NSSC 269, Justice Muise provided the following analysis of the factors to consider in any departure from the Tariffs, at para. 6:

[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.]

Analysis

[9] The Moving Defendants were successful in bringing the motion. They established that the pleadings in defamation and conspiracy lacked the required particulars. In addition, they established that other pleadings were scandalous, irrelevant, opinion and/or an abuse of process. The fact that I did not strike every pleading that they argued should be struck does not equate to the motion being unsuccessful or success being equally divided. The pleadings had substantial flaws and were rightly challenged.

[10] Accordingly, I find that the Moving Defendants are entitled to costs. As the motion canvassed two separate proceedings but was argued as one, I will award costs in the 525281 proceeding and the Moving Defendants can deal with how they are divided as among them.

[11] As to the amount of costs, I have considered that while not particularly legally complex, the motion required considerable work because of the way the pleadings were combined and inter-referenced. I have also considered that some of the issues raised may have been resolved by a demand for particulars or by response to the Plaintiffs' offer to try and work cooperatively to resolve the issues. However, I am not naïve to the history of the parties' dealings in these proceedings as previously chronicled and have no reason to believe that all the impugned pleadings that were struck would have been removed voluntarily by the Plaintiffs.

[12] In the result, I consider the sum of \$6,500 as a lump sum will do justice as between the parties, having regard to the established principles. This sum is payable to the Moving Defendants forthwith and in any event of the cause.

[13] Orders to issue accordingly.

Norton, J.

