

**PROVINCE OF NOVA SCOTIA**

**COUNTY OF LUNENBURG**

**IN THE COURT OF PROBATE**

**IN THE MATTER OF the Estate of Marion Phyllis MacKay**

**-and -**

**IN THE MATTER OF a claim filed against the estate by Richard MacKay**

**Cite as: MacKay Estate (Re), 2012 NSPB 2**

**Counsel:    Franceen Romney, Solicitor representing the Estate**

**Michael Power, Solicitor for the Claimant**

### **DECISION ON COSTS**

Counsel appeared on February 2nd, 2012 with respect to the above noted claim and were advised, at that time, to submit their briefs' on costs.

Ms. Romney, on behalf of the Estate of Marion Phyllis MacKay, has the position that the estate is entitled to costs.

Mr. Power, on behalf of Richard MacKay, has the position that the estate should pay all costs on a solicitor-client basis.

Ms. Romney, suggested in her brief that pursuant to Tariff C the amount of \$5,500.00 plus HST would be the amount of costs payable. Mr. Power has not suggested a figure only that the estate should pay all costs on a solicitor-client basis.

In the decision of The Honourable Justice J. E. Scanlan re: ***The Estate of James John Roode*** he states:

*On the issue of costs this Court has made it clear for some time now that you do not automatically sue an estate and expect that the estate is going to pay the costs. In saying that I recognize the rules on costs continue to be somewhat different in relation to estates. Costs may be awarded to both successful and unsuccessful litigants where an estate is involved. I would again make the point that counsel should, before they begin an action, take into account, just as they would in any other litigation, the question of whether or not there is a reasonable chance of success in an application. Mr. Lederman points out that indeed there has been no success by the applicant in terms of its application. In normal circumstances this would be a case where costs would be awarded as against an applicant where the application has been completely dismissed as it has here.*

I have taken into consideration the remarks of Ms. Romney and Mr. Power, and also the case law provided by Mr. Power.

Under the Civil Procedure Rules, Section **77.08 - Lump sum amount instead of tariff**

*A judge may award lump sum costs instead of tariff costs.*

I have based my decision on costs under the above section of the Civil Procedure Rules and Richard MacKay should be responsible to pay a lump sum to the Estate of Marion Phyllis MacKay, the successful party, in the amount of \$3,500.00 plus HST.

Dated March 27, 2012.

Claire J. Feener

Registrar of Probate