

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** Baird v. Barkhouse, 2012 NSSC 339

**Date:** 20120926  
**Docket:** 334436  
**Registry:** Sydney

**Between:**

Jeffrey Warren Baird

Plaintiff

v.

Brian Vincent Barkhouse

Defendant

**Judge:** The Honourable Justice Cindy A. Bourgeois

**Written Submissions:** Received from Mr. LaFosse, Q.C. on August 31, 2012  
Received from Mr. McLeod on September 5, 2012

**Written Decision:** September 26, 2012

**Counsel:** Hugh R. McLeod, for the Plaintiff  
Guy LaFosse, Q.C., for the Defendant

**By the Court:**

[1] The Applicant Jeffrey Warren Baird, by way of a Notice of Motion filed on June 5, 2012 moved for an order setting down discovery dates, an order limiting questions submitted by the Defendant in response to an expert's report, and a determination as to which party is obligated to pay the expert for answering those questions.

[2] In a decision dated July 30, 2012, (2012 NSSC 289), the motion was concluded, with the Respondent/Defendant being entirely successful.

[3] The parties have been unable to agree as to the cost consequences flowing from the motion. Written submissions have been received from both parties, outlining their respective positions on costs.

**POSITION OF THE PARTIES:**

[4] As the successful party, the Defendant seeks costs of \$2000.00 plus disbursements. In reaching this quantum, it is asserted that as there were two

separate Chambers appearances, both of which were “more than an hour but less than a half day” that the appropriate range of damages pursuant to Rule 77.18, Tariff C, is \$750 to \$1000. Because of the nature of the proceeding, it is suggested a multiplier of two would be appropriate.

[5] The Plaintiff submits that the motion addressed two interpretations of the *Civil Procedure Rules* which were entirely reasonable to have placed before the Court in light of the uncertainty contained in the *Rules*. Prior to the Court’s decision, it was unclear which party is obligated to pay for an expert to answer questions posed under Rule 55.11(2); and further there was a lack of clarity as to the nature of allowable questions contemplated by Rule 55.11(3). The Plaintiff submits that any cost award should reflect this uncertainty.

**DETERMINATION:**

[6] Costs are addressed in *Civil Procedure Rule 77*. It is well settled that costs are within the discretion of the Court (Rule 77.02). Rule 77.03 provides guidance as to the liability for costs. Several aspects of that *Rule* are applicable to the present matter, notably:

## Liability for costs

77.03 (1) A judge may order that parties bear their own costs, one party pay costs to another, two or more parties jointly pay costs, a party pay costs out of a fund or an estate, or that liability for party and party costs is fixed in any other way.

...

(3) Costs of a proceeding follow the result, unless a judge orders or a Rule provides otherwise.

(4) A judge who awards party and party costs of a motion that does not result in the final determination of the proceeding may order payment in any of the following ways:

(a) in the cause, in which case the party who succeeds in the proceeding receives the costs of the motion at the end of the proceeding;

(b) to a party in the cause, in which case the party receives the costs of the motion at the end of the proceeding if the party succeeds;

(c) to a party in any event of the cause and to be paid immediately or at the end of the proceeding, in which case the party receives the costs of the motion regardless of success in the proceeding and the judge directs when the costs are payable;

(d) any other way the judge sees fit.

[7] Rule 77.05(1) further provides that Tariff C will typically apply to the assessment of costs arising from the motion unless the judge hearing the matter determines otherwise.

[8] Tariff C also contains a number of provisions applicable to the present matter:

#### TARIFF C

Tariff of Costs payable following an Application heard in Chambers by the Supreme Court of Nova Scotia

For applications heard in Chambers the following guidelines shall apply:

- (1) Based on this Tariff C costs shall be assessed by the Judge presiding in Chambers at the time an order is made following an application heard in Chambers.
- (2) Unless otherwise ordered, the costs assessed following an application shall be in the cause and either added to or subtracted from the costs calculated under Tariff A.
- (3) In the exercise of discretion to award costs following an application, a Judge presiding in Chambers, notwithstanding this Tariff C, may award costs that are just and appropriate in the circumstances of the application.
- (4) 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.  
(such applications might include, but are not limited to, successful applications for Summary Judgment, judicial review of an inferior tribunal, statutory appeals and applications for some of the prerogative writs such as certiorari or a permanent injunction.)

[9] In considering the length of the motion I note that two separate appearances were necessary. It would appear however, that in total, the amount of time involved was still less than a half day. Accordingly, the Tariff suggests a range of costs of \$750.00 to \$1000.00.

[10] Although the Court was critical of the initial contents of the expert's report, which in turn gave rise to the need for extensive questions posed to the expert, I do not view this situation as being one where a multiplier should be added.

[11] The Plaintiff shall pay to the Defendant costs of the motion in the amount of \$1000.00 , payable at the conclusion of the proceedings, in any event of the cause.

J.