SUPREME COURT OF NOVA SCOTIA
Citation: *Long v. Antigonish (Municipality)*, 2024 NSSC 61

Date: 20240229
Docket: 520479
Registry: Antigonish

Between:

Anne Marie Long, J. Therese Penny, Alicia Vink

Applicants

v.

Municipality of the County of Antigonish

Respondent

Judge:	The Honourable Justice Timothy Gabriel
Heard:	By written submissions
Written submissions received on:	January 24, 2024 and February 16, 2024
Written release:	February 29, 2024
Counsel:	Donald MacDonald, for the Applicants Robert Grant, K.C. and John Shanks, for the Respondent

By the Court:

[1] An application was brought by Anne-Marie Long, J. Therese Penny and Alicia Vink ("the Applicants"), to quash a resolution passed by Municipal Council of the Municipality of the County of Antigonish ("the Respondent" or "the Municipality") on October 20, 2022. The resolution authorized the Respondent to request the Provincial Government to pass special legislation consolidating the Municipality with the Town of Antigonish. In *Long et al v. Municipality of the County of Antigonish*, 2023 NSSC 394, the application was dismissed.

[2] The parties have been unable to agree on costs. This decision will resolve that issue.

The positions of the parties

[3] The Respondent Municipality argues that, as the successful party, it is entitled to an award of costs. It has requested a lump-sum cost award representing 75% of the legal fees it has incurred, plus disbursements.

[4] The Applicants, while conceding that a successful party is entitled to costs in the usual course of things, argue that there should be either no costs awarded, or that the costs award should be considerably reduced because the issue involved a matter of significant public interest.

The Law

[5] Tariffs A, B, and C are set out at the end of Civil Procedure Rule ("CPR") 77. The most relevant portions thereof are set out below:

> **TARIFFS OF COSTS AND FEES DETERMINED BY THE COSTS AND FEES COMMITTEE TO BE USED IN DETERMINING PARTY AND PARTY COSTS**
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> In these Tariffs unless otherwise prescribed, the "amount involved" shall be
>
> (a) where the main issue is a monetary claim which is allowed in whole or in part, an amount determined having regard to
>
> (i) the amount allowed,
>
> (ii) the complexity of the proceeding, and
>
> (iii) the importance of the issues;

(b) where the main issue is a monetary claim which is dismissed, an amount determined having regard to

(i) the amount of damages provisionally assessed by the court, if any,

(ii) the amount claimed, if any,

(iii) the complexity of the proceeding, and

(iv) the importance of the issues;

(c) where there is a substantial non-monetary issue involved and whether or not the proceeding is contested, an amount determined having regard to

(i) the complexity of the proceeding, and

(ii) the importance of the issues;

(d) an amount agreed upon by the parties.

TARIFF A

Tariff of Fees for Solicitor's Services Allowable to a Party Entitled to Costs on a Decision or Order in a Proceeding

In applying this Schedule, the "length of trial" is to be fixed by a Trial Judge.

The length of trial is an additional factor to be included in calculating costs under this Tariff and therefore, two thousand dollars ($2,000) shall be added to the amount calculated under this tariff for each day of trial as determined by the trial judge.

Amount Involved	***Scale 1 (-25%)***	***Scale 2 (Basic)***	***Scale 3 (+25%)***
Less than $25,000	$ 3,000	$ 4,000	$ 5,000
$25,000-$40,000	4,688	6,250	7,813
$40,001-$65,000	5,138	7,250	9,063
$65,001-$90,000	7,313	9,750	12,188
$90,001-$125,000	9,188	12,250	15,313
$125,001-$200,000	12,563	16,750	20,938
$200,001-$300,000	17,063	22,750	28,438
$300,001-$500,000	26,063	34,750	43,438
$500,001-$750,000	37,313	49,750	63,188
$750,001-$1,000,000	48,563	64,750	80,938
more than $1,000,000	The Basic Scale is derived by multiplying the amount involved by 6.5%.		

TARIFF B

Tariff of Party and Party costs allowed on an Appeal to the Nova Scotia Court of Appeal

On an appeal, the costs allowed shall be 40% of the costs awarded at trial excluding the "length of trial" component unless a different amount is set by the Nova Scotia Court of Appeal.

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.)

Length of Hearing of Application	**Range of Costs**
Less than 1 hour	$250 - $500
More than 1 hour but less than ½ day	$750 - $1,000
More than ½ day but less than 1 day	$1,000 - $2,000

1 day or more	$2,000 per full day

[6] The oft-cited decision of *Armoyan v. Armoyan*, 2013 NSCA 136 summarizes the applicable principles:

> [10] The Court's overall mandate, under Rule 77.02(1), is to "do justice between the parties".
>
> [11] Solicitor and client costs are engaged in "rare and exceptional circumstances as when misconduct has occurred in the conduct of or related to the litigation". *Williamson v. Williams*, 1998 NSCA 195, [1998] N.S.J. 498, per Freeman, J.A.. This Court rejected most of Mr. Armoyan's submissions on the merits. But there has been no litigation misconduct in the Nova Scotia proceedings that would support an award of solicitor and client costs. So these are party and party costs.
>
> [12] Rule 77.06 says that, unless ordered otherwise, party and party costs are quantified according to the Tariffs, reproduced in Rule 77. These are costs of a trial or an application in court under Tariff A, a motion or application in chambers under Tariff C (see also Rule 77.05), and an appeal under Tariff B. Tariff B prescribes appeal costs of 40% trial costs "unless a different amount is set by the Nova Scotia Court of Appeal".
>
> [13] By Rule 77.07(1), 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 or not the offer was made formally under Rule 10, and the parties' conduct that affected the speed or expense of the proceeding.
>
> [14] Rule 77.08 permits the court to award lump sum costs. The *Rule* does not specify the circumstances when the Court should depart from Tariff costs for a lump sum.

[7] The Court also went on, however, to explain that:

> [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.
>
> [Emphasis added]

[8] The Respondents have taken the position that, if the Tariffs were applied, Tariff A would be the applicable one, given that this was an Application in Court (*Respondents costs brief, January 24, 2024, para 38*). However, they go on to argue that, since no monetary amount was involved, it makes little sense to "pick a number out of the air" for the purpose of applying the Tariff scale.

[9] While this was not "an application heard in chambers", it was, as stated in the preamble to Tariff C, a "statutory appeal". The actual matter took approximately one half-day of court time. Therefore, if I were to view the matter exclusively through a "Tariff lens", I would have said that this proceeding, in pith and substance, resembled a Tariff C proceeding much more than a Tariff A type.

[10] This observation (arguably) assists with the Respondent's point. The application of the Tariffs is not suitable to all types of matters that find their way before the court. Once the application of the Tariffs in Rule 77 reaches a certain degree of artificiality, it becomes an exercise comparable to an attempt to fit the proverbial square peg into a round hole.

[11] In my view, it is to circumstances such as these that Fichaud, JA. was referring in *Armoyan*:

> ... 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 (para 18).

[12] I am prepared to accept that the amount of actual court time expended was deceptively small compared to the amount of time which would have been involved

in researching, briefing the court, and preparing to argue an issue that had relatively few comparators in Nova Scotia, or nationwide.

[13] As noted earlier, I am unconstrained by the Tariffs in any event. CPR 77.02 makes this explicit:

> (1) A presiding judge may, at any time, make any order about costs as the judge is satisfied will do justice between the parties.
>
> (2) Nothing in these Rules limits the general discretion of a judge to make any order about costs, except costs that are awarded after acceptance of a formal offer to settle under Rule 10.05, of Rule 10 – Settlement.

Public Interest?

[14] As to the Applicants' public interest argument, in *Walsh v. Atlantic Lottery Corporation Inc.*, 2014 NSSC 157, this Court had occasion to observe:

> **[7]** Courts have been willing, on occasion, to award reduced costs or no costs against an unsuccessful litigant where an action involves issues of public importance: *Okoro v. Nova Scotia (Human Rights Commission)*, 2006 NSSC 257, at para. 7; *Farrell v. Casavant*, 2010 NSSC 46, at paras. 28-32. Raising issues of public importance, however, will not automatically entitle a litigant to preferential treatment regarding costs: *Little Sisters Book & Art Emporium v. Canada*, 2007 SCC 2 at para. 35. Each case must be considered on its merits.

[15] The Applicants point out that the Respondent did not challenge their standing to initiate the proceedings, which is taken to mean that their status to bring the matter forward as public interest litigants was uncontested. It cannot be said that they have a personal claim or pecuniary interest in the matter which was bruited.

[16] In *Canada (AG) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, and *British Columbia (AG) v. Council of Canadians with Disabilities*, 2022 SCC 27, the Court seemed to focus upon three broad criteria to determine whether a party has public interest standing:

i) Did the application raise a serious justiciable issue?

ii) Did the Applicants have a genuine interest in the matter?

iii) Was the application a reasonable and effective means to bring the matter to court?

[17] I first observe that the issues being disputed involved questions of statutory interpretation, and in particular, whether the Municipality could request the Province to enact new or special legislation to effect a merger when the *Municipal Government Act* ("the MGA") (as the argument went) already provided two statutory means by which the process could be accomplished. This qualifies as “a serious justiciable issue”.

[18] Second, I accept, that the Applicants were not mere "busybodies" sticking their noses into matters that did not concern them. They are members of a group opposed to the process adopted by the Respondent and clearly had a genuine interest in the outcome.

[19] Finally, I accept the fact that the issue was divisive in the community. There were many who felt that the matter should have been put to a vote or plebiscite before the request was made by the Municipality to the Province. As the Applicants have phrased it, the only option available to them, other than to challenge what had been done by bringing the matter to court (as they did) was to lobby the provincial government.

What costs considerations apply when litigation has a public interest component?

[20] The Municipality has accepted that this proceeding had “certain elements of public interest” litigation (*Costs brief, para 61*). I am satisfied that the Applicants are public interest litigants. I also agree that a lack of success in the litigation does not necessarily preclude a favourable decision on costs. As the court pointed out in *St. James Preservation Society v. Toronto (City)*, 2006 CanLII 22806 (ONSC):

> [25] Another difficulty here is that success in the litigation cannot be a prerequisite for a finding that the litigation was in the public interest. Indeed, in the context of costs awards, it will necessarily be the case that this public interest determination must be made with respect to an unsuccessful litigant who has lost its case. One must not confuse success in the *lis* and the public interest. The public interest may be served simply by the litigation itself. This is reflected in Orkin’s discussion of the principles underlying the exercise of a court's discretion not to award
> costs:
>
> > An action or motion may be disposed of without costs when the question involved is a new one, not previously decided by the courts on the theory that there is a public benefit in having the court give a decision; or where it involves the interpretation of a new or ambiguous statute; or a new or

> uncertain or unsettled point of practice; or where there were no previous authoritative rulings by courts; or decided cases on point; or where the application concerned a matter of public interest and both parties acted in complete good faith; ... or the case involved difficult and sensitive issues of fact; ... or where the action was a test case; or where it was desirable to resolve a conflict in the case law.
>
> This is a helpful starting point as it recognizes the many ways that a particular piece of litigation might be said to benefit the public interest.

[21] I have considered some cases which have dealt with this factor insofar as it relates to the exercise of a discretion relating to costs awards in these types of litigation. For example, Murray J., in *Livingston v. Cabot links Enterprises ULC*, 2018 NSSC 256 distilled the case law thus:

> [30] Of those factors the court in *Medonte*, considered the following in relation to…[the] public interest component of the costs decision:
>
> A. Did the litigation involve an issue of importance beyond the immediate interests of the parties involved?
>
> B. Did the issue need to be litigated for a long time, and did the judicial determination end the uncertainty and resulting conflicts arising from it?
>
> C. Was there broad public support for the position advanced by the party?
>
> D. Did the public benefit from the consideration by the Court of the issue raised in the case?

[22] In *Livingston*, what was in issue was a claim that a portion of a golf course to be constructed in Inverness, Nova Scotia had been dedicated for public use as a park. The court concluded, even though there could not be said to be broad public support for the application, that a 30% reduction in costs was appropriate.

[23] In *Whalley v. Cape Breton Regional Municipality*, 2019 NSSC 410, the same judge denied a request by the (losing) plaintiff for costs mitigation, inasmuch as he was a longtime employee of the municipality arguing constructive dismissal when he was reassigned duties. His cause of action was viewed by the Court to be a personal one, rather than in the public interest.

[24] The Applicants have also referenced *R v. Fortis*, 2005 NSSC 125, which involved a challenge to a directive from the Registrar of Funeral and Cemetery Services. The directive was to the effect that no insurance products related to funerals could be offered for sale in a funeral home. The directive was upheld.

However, even though the Applicant had lost (and in circumstances where he could be said to have had a pecuniary interest) Murray, J concluded:

> [34] The issues in this Application involve interpretation of consumer protection legislation not previously considered by a Nova Scotia Court. Although the Applicant was unsuccessful, given the public interest nature of the proceeding, there will be no costs awarded.

[25] The Municipality, on the other hand, argues when in pursuit of public interest litigation, or of issues involving public importance, such will not automatically entitle a losing litigant to "preferential treatment with respect to costs, and that the standard is a high one such that only "rare and exceptional" cases will warrant such treatment." They cite *Carter v. Canada (Attorney General)*, 2015 SCC 5 for that proposition.

[26] *Carter* originated when one of the appellants (“T.”) challenged the constitutional validity of the provisions of the *Criminal Code* which prohibit assistance in dying. She was joined in her claim by others, including some who had assisted Ms. Carter's mother in dying by using the services of an assisted suicide clinic in Switzerland, by a physician who would be willing to participate in physician assisted dying if it were no longer prohibited, and also by the British Columbia Civil Liberties Association.

[27] The trial judge had declared the prohibition unconstitutional and granted a one-year suspension of invalidity and provided Appellant T. with a constitutional exemption. T. then passed away prior to the subsequent appeal. Separately, the trial judge awarded the (now) Appellants over $1 million in special costs, which were felt to be justified by the public interest in resolving the "complex and momentous" legal issues raised by the case.

[28] However, a majority of the British Columbia Court of Appeal allowed the appeal and upheld the prohibition on assisted dying. The Appellants appealed to the Supreme Court of Canada and sought an award of special costs on a full indemnity basis to cover the entire expense of bringing the case before the courts. They were successful.

[29] It is certainly true that in *Carter*, as the Respondents have referenced, the Court did say:

> [139] The Court elaborated on this test in *Little Sisters*, emphasizing that issues of public importance will not in themselves “automatically entitle a litigant

> to preferential treatment with respect to costs" (para. 35). The standard is a high one: only "rare and exceptional" cases will warrant such treatment (para. 38).

[30] But there is quite a difference between what *Carter* was dealing with, and what is involved in this case. This is captured in the very next paragraph, which the Respondents have not referenced:

> [140] In our view, with appropriate modifications, this test serves as a useful guide to the exercise of a judge's discretion on a motion for special costs in a case involving public interest litigants. First, the case must involve matters of public interest that are truly exceptional. It is not enough that the issues raised have not previously been resolved or that they transcend the individual interests of the successful litigant: they must also have a significant and widespread societal impact. Second, in addition to showing that they have no personal, proprietary or pecuniary interest in the litigation that would justify the proceedings on economic grounds, the plaintiffs must show that it would not have been possible to effectively pursue the litigation in question with private funding. In those rare cases, it will be contrary to the interests of justice to ask the individual litigants (or, more likely, pro bono counsel) to bear the majority of the financial burden associated with pursuing the claim.
>
> [141] Where these criteria are met, a court will have the discretion to depart from the usual rule on costs and award special costs.
>
> …
>
> [143] Having regard to these criteria, we are not persuaded the trial judge erred in awarding special costs to the appellants in the truly exceptional circumstances of this case. We would order the same with respect to the proceedings in this Court and in the Court of Appeal.
>
> [Emphasis added]

[31] In this case, the Applicants are not the winning party. More importantly, they are not seeking an award of costs, "special" or otherwise. They simply argue that their status as public interest litigants should obviate the need for them to pay costs to the Respondents, or at least some portion of the costs which would ordinarily be awarded against them to the winning party.

[32] I have mentioned earlier that the Applicants do not appear to have been merely "contrarian" in their opposition to the manner in which the Municipality proceeded. Although they were unsuccessful in their Application, their views were shared by a portion of the affected population, and apparently not a trivial portion, either.

What does the Respondent seek?

[33] Counsel for the Respondent say that the total amount of legal fees paid by the Municipality, exclusive of HST, was $84,671.01. They further contend that a “substantial contribution” to its costs, as defined by the case law, must amount to "... more than fifty and less than one hundred percent of a lawyer's reasonable bill for the services involved (per Freeman JA, in *Williamson v. Williams*, 1998 NSCA 195, at para 25). [Emphasis added]

[34] Included in their body of work was a motion to strike portions of the Applicants' affidavits. The Applicants made their own corresponding motion. The net result involved the removal of three sentences from one of the Respondent’s witness affidavits, whereas about 30 sentences, in some cases entire paragraphs, were struck from the Applicants' affidavits.

[35] The Respondent reminds me that, pursuant to CPR 39.04 (5), I am required to consider ordering the party who filed the offending affidavit to indemnify the other party for the expense of the motion to strike and any adjournment caused by it. The Respondent concedes that no adjournment was occasioned by virtue of that motion. I will consider CPR 39.04 (5), as is required of me.

[36] An affidavit of John T. Shanks, dated January 24, 2024, was filed in support of the Respondent's position on costs. It included the following:

> 4. Stewart McKelvey issued the following invoices for legal fees on this matter:
>
> (a) April 30, 2023 Invoice 91037463 in the amount of $31,089.46
>
> (b) July 20, 2023 Invoice 91054566 in the amount of $46,149.32; and
>
> (c) October 19, 2023 Invoice 91072421 in the amount of $23,219.42.
>
> 5. True and accurate copies of these invoices are attached hereto as Exhibit “A” to my affidavit.
>
> 6. The July 20, 2023 invoice includes time entries related to a separate matter. Those time entries have been redacted. A total of $1,872.49 was billed to the Municipality in respect of those time entries. I authored the note on page 6 of that invoice related to the redaction of those time entries and the deduction of $1,872.49 from the costs claimed by the Municipality in relation to the overall amount of fees billed in association with the defence of this Application in Court.
>
> 7. The total legal fees invoiced in defence of this Application in Court (excluding HST and disbursements and the amount removed from the costs claimed as noted in paragraph 6 above) were $84,671.01.

> 8. Disbursements of $929.51 were also billed to the Municipality in association with the defence of this Application in Court.

[37] Copies of the invoices were appended to Mr. Shanks' affidavit (Exhibit A). They certainly describe the work done by counsel on behalf of the Respondent. However, nowhere is the time that was consumed by any of these work entries identified, nor has the hourly rate, at which the work was billed, been provided. These are critical omissions, in my view. It is very difficult to assess the reasonableness of the legal cost of the work performed without this information.

[38] I have earlier commented that, in these specific circumstances, the assignment of an "amount involved" for the purposes of the application of the Tariffs would be a somewhat artificial exercise. As such, my preference would have been to proceed to determine the reasonableness of the fees cumulatively billed to the Respondent by its counsel, then deal with the issue of what a "substantial contribution" to those reasonable fees should look like, and then (finally) determine whether that amount should be reduced or eliminated altogether to account for the public interest nature of the application itself.

[39] I have just explained why that approach would not work in this case, given that I do not have counsel's total time expenditure, a breakdown of the amount of time spent on each unit of work, or the hourly rate of all counsel who worked on this matter.

[40] In the circumstances, I am unable to assess the reasonableness of the legal costs incurred by the Respondent. I must find another means by which to do "justice between the parties".

How should costs be calculated in these circumstances?

[41] The Applicants have made reference to several authorities such as *Colchester v. Colchester Containers*, 2020 NSSC 203; *Dawgfather PHD v. Halifax (Regional Municipality)*, 2016 NSSC 104; *Miner v. King's County*, 2016 NSSC 163; *Barney v. Halifax Regional Municipality*, 2023 NSSC 138, in which costs awards ranged from $1,000-2,000. In some cases, Tariffs were not applied, and in some others, costs had been agreed between the parties, rather than imposed by the Court. Moreover, these authorities mainly involved prosecutions for infractions of Municipal by-laws. I find them to be of limited assistance in these circumstances.

[42] In *Viehbeck v. Pook*, 2012 NSSC 113, which involved an award of costs following a dispute over a right of way, Wood, J concluded:

> [10] In the present case, there were no discovery examinations or production of documents. The hearing consisted of legal arguments without cross-examination on affidavits, and lasted slightly more than a half day. There was no significant dispute on the legal issues and the hearing focussed on the application of those principles to the facts set out in the affidavits. It was not a particularly complex hearing. I believe that this matter was less complex than the three proceedings noted above.
>
> [11] The issue with respect to the scope of use of the right-of-way was obviously important to the parties as they retained senior counsel and devoted considerable effort to the litigation. Despite this, I would fix the amount involved at less than $25,000.00 given the relative lack of complexity of the proceeding. Using Scale 2 of Tariff A, this would result in costs of $4,000.00. Tariff A also allows an additional amount to be added depending upon the number of days of trial. I am not prepared to add any such amount in this case as the matter was closer to an application than a trial in its nature.

[43] It is tempting to liken this proceeding, notwithstanding that it was an Application in Court (hence subject to Tariff A) to a Tariff C proceeding, given that it consumed approximately 1/2 day of court time, with oral argument but no cross-examination of any deponents. To do so (as pointed out earlier) would belie, in my view, the nature of the issue involved. I have concluded that I must award a lump sum.

[44] To do so, I begin by examining the invoices submitted by the Respondent's counsel, bereft as they are of the information referenced above. I consider that the work was done by senior, experienced counsel, who were well prepared and who (as did counsel for the Applicants) provided well-articulated arguments that were of assistance to the Court.

[45] I further consider the scope of the "work product". This consisted of the affidavits filed by the deponents, and the documents related to the motion to strike. I have also had regard the work occasioned by that motion, and CPR 39.04(5) itself. Finally, the high quality of the briefs filed (not only those of the Respondent, but those of the Applicants as well) must be noted. I consider these and all other relevant aspects of this Application.

[46] Under the circumstances, were this not a matter which also requires consideration of the public interest aspect of the application, I would have considered that an amount of $20,000, to be paid by the Applicants to the Respondent, would do justice between the parties in these circumstances, notwithstanding the relative brevity of the actual court time occasioned by the hearing. However, in recognition of the substantial public interest component of this

matter, I will reduce that costs award by 60%, leaving a net amount of costs of $8,000 be paid by the Applicants to the Respondent.

[47] As to disbursements, they mostly relate to photocopies. No information has been provided as to the amount per copy, or, alternatively, the total number of photocopies.

[48] The largest of the remaining disbursements is comprised of "data bank research" ($187.82). I disallow this figure. I have no information before me as to whether this is a one-time charge occasioned by work on this file specifically, the *pro rata* allocation of the yearly fee paid for access to the data bank on behalf of all clients, or some kind of a flat rate. I do allow disbursements for "stationary/bookbinding/seals" ($38.40) and postage ($3.19), for a total of $41.59.

Conclusion

[49] The Applicants shall pay $8,041.59 to the Respondent in total costs and disbursements.

Gabriel, J.