

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Bank of Montreal v. Scotia Capital Inc., 2002 NSSC 274

Date: 20021219

Docket: SH 171558

Registry: Halifax

Between:

Bank of Montreal

Plaintiff

v.

Scotia Capital Inc./Scotia Capitaux Inc.

Defendant

Third Party Plaintiff

Third Party Counterclaim Defendant

v.

Cathy Lewis

Third Party Defendant

Third Party Counterclaim Plaintiff

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Judge: The Honourable Justice Walter R. E. Goodfellow

Heard: October 28, 2002 in (Chambers), Halifax, Nova Scotia (Supplementary decision on costs)

Subject: COSTS - SUMMARY JUDGMENT

Summary: Bank of Montreal entitled to summary judgment against Scotia and Scotia entitled to summary judgment against Lewis. Bank of Montreal and Scotia sought costs on Tariff "A" or alternatively, no less than Tariff "C", which is the Tariff in the event of discontinuance. Court commented on Tariff "A" not being appropriate and that Tariff "C" covered a very wide spectrum of possible circumstances and provides a maximum "up to, but not exceeding, ...". Court determined that basic approach was to deal with costs on a heavy one day Chambers application plus taking into account pleadings and all disbursements of the action. It was noted that there had not been any discoveries or other interlocutory proceedings. With respect to disbursements, substantial reduction in disbursements for photocopying, a printer expense which was not explained, no allowance for electronic research disbursement. Full allowance for all filing fees and substantial

service fees incurred throughout period Ms. Lewis was self-represented. Ms. Lewis' limited financial position no basis for special treatment of costs. *Gilfoy et al v. Kelloway et al* (2000), 184 N.S.R. (2d) 226 and *Edward Phillips v. Robert A. Jeffries et al*, 2002 NSSC 114.

On reduction of disbursements, see *Balders Estate v. Nova Scotia* (2000), 181 N.S.R. (2d) 201; *Knox v. Inter-provincial Engineering Ltd. et al* (1993), 120 N.S.R. (2d) 288; and *Hudgins v. Danka Business Systems Ltd.*, [1998] N.S.J. No. 293. On disallowing research fee, followed *Elliott v. Nicholson* (1999), 179 N.S.R. (2d) 264 noting that prior to electronic searching, incurring of research or librarian's fees for research were not allowed as party and party disbursement. The fact that they are now done electronically does not change character of disbursement.

Issue: Costs on summary judgment

Result: Bank of Montreal entitled to party and party costs taxed at \$1,150.00 plus disbursements of \$380.34 against Scotia. Scotia entitled to party and party costs taxed at \$1,350.00 plus disbursements of \$1,243.61 against Lewis. Scotia, on payment of costs to Bank of Montreal, entitled to recover such costs against Lewis.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***