

SUPREME COURT OF NOVA SCOTIA

Citation: *Kennedy v. Crombie Developments Limited*, 2026 NSSC 192

Date: 20260611

Docket: HFX No. 501555

Registry: Halifax

Between:

Lawrence Anthony Phillip Kennedy

Plaintiff

v.

Crombie Developments Limited and Boone Food Services Limited

Defendants

COSTS DECISION

Judge:

The Honourable Justice Ann E. Smith

Written Submissions:

Defendant, February 27, 2026

Plaintiff, March 13, 2026

Counsel:

Sharon Cochrane, for the Plaintiff

Sarah Flanagan, for the Defendants

By the Court:**Background**

[1] In a decision reported at 2025 NSSC 359 (*Kennedy v. Crombie Developments Limited*) I dismissed a claim brought by Lawrence Kennedy against the Defendants.

[2] At trial, Lawrence Kennedy sought a finding of liability against Crombie Developments Limited (“Crombie”) and Boone Food Services Limited (“Boone”) as a result of damages he says he suffered in a slip and fall in the parking lot of an A & W restaurant in Lower Sackville, Nova Scotia.

[3] Crombie is the owner of the land and parking lot where the A & W is located. Boone leases the land and parking lot from Crombie, where it owns and operates the A & W restaurant. Crombie and Boone were represented by the same counsel at trial.

[4] The issue at trial was liability, with damages having been agreed to by the parties prior to the commencement of the trial.

[5] The Court’s decision provides that the Defendants are entitled to their costs.

[6] The parties have been unable to agree on the quantum of costs and disbursements.

Party and Party Costs

[7] Civil Procedure Rule 77 governs costs, fees and disbursements. Costs of a proceeding generally follow the result. The overall task of a judge who assesses costs is to do “justice between the parties” (Fichaud, J.A. in *Armoyan v. Armoyan*, 2013 NSCA 136 at para 10). Normally, costs are assessed using the tariffs in Rule 77. Costs may also be awarded as a lump sum pursuant to Rule 77.08, but there must be a reason to consider a lump sum (Fichaud, J.A. in *Armoyan*, at para 15).

[8] Rule 77.07 permits the Court to increase or decrease the amounts in the Tariffs. Rule 77.07(2) sets out a non-exhaustive list of factors that may be relevant where a party requests to increase tariff costs following the trial of an action.

[9] Rule 77.07(2)(b) provides that the Court may consider a written offer of settlement which was not accepted by the unsuccessful party. Rule 10.05 deals with the possible costs consequences of formal offers to settle which were not accepted by the losing party.

[10] This proceeding was a trial of an action which took place over approximately 2 and one-half days. Costs for a trial are usually assessed in accordance with Tariff A, with a primary consideration being the “amount involved”. The length of the trial

is also factor in assessing costs as the sum of \$2,000 per day is added to the Tariff A amount.

[11] In this case, the parties agree that the amount involved is \$70,000. That amount was agreed to by counsel as to the damage component of the action.

Submissions and Evidence

[12] The Defendants filed written costs submissions as well as the solicitor's affidavit of Sarah Flanagan and the affidavit of Michelle Barnhart, a legal assistant at Intact Insurance, the liability insurer of the Defendants.

[13] The Court also received written submissions from the Plaintiff. The Plaintiff did not submit affidavit evidence on the issue of costs.

The Positions of the Parties

The Defendants Crombie and Boone

[14] The Defendants were entirely successful trial. They seek costs in the amount of \$25,500.00.

The Plaintiff Lawrence Kennedy

[15] The Plaintiff says that a total award of costs in the range of \$4,000 is appropriate in the circumstances.

Analysis and Findings on Costs and Disbursements

Costs

[16] The parties agree that the “amount involved” is \$70,000. The Defendants say that Scale 2 (Basic) applies, which results in costs of \$9,750. The Plaintiffs say that Scale 1 applies (-25%), which results in costs of \$7,313.

[17] The Court views Scale 2 (Basic) as the starting point in applying Tariff A. There is no reason in this case to depart from that Basic scale. That means that I start with costs of \$9,750.

[18] Under Tariff A, an additional amount of \$2000 per day of trial is to be added to the table cost amount. In this case, the trial took place over approximately 2.5 days. Therefore, I add \$5,000 to \$9,750. which results in costs of \$14,750.

[19] The Defendants seek an additional amount of \$9,750 based upon a formal settlement offer they made in advance of trial. The amount sought is \$100% of the basic Tariff amount of \$9,750.

[20] I start with observing that the formal offer to settle was made on March 9, 2021. At that point, pleadings had not closed. The offer was to waive costs in exchange for a consent dismissal order (on a without costs basis). I find that it was not unreasonable for the Plaintiff not to accept this offer at the time. Discoveries had not taken place, the then third party, Green Arbour (the snow removal service Boone contracted with to remove snow at the A & W) had not filed a defence.

[21] The Defendants made an informal offer to settle the action approximately one month before the start of the trial on May 5, 2025. This offer to settle was open for seven days. It was not accepted and expired thereafter. The offer was to settle for the all-inclusive amount of \$6,300, the amount the Defendants say represented the disbursements incurred by the Plaintiff at that time.

[22] In all circumstances I am not persuaded that the Defendants are entitled to 100% increase of the Tariff A amount. The informal offer was made only a month before trial. By that time, the Plaintiff's counsel had, no doubt, expended significant time and resources to advance the Plaintiff's claim. It was not unreasonable to decide not to walk away at that point in time with less than \$7,000.00, particularly since the damage issue remained unresolved. However, the Defendants attempt to settle, and the fact that the Defendants were fully successful at trial leads me to

exercise the Court's discretion to increase Tariff costs of \$14,750 to **\$17,000.00**.

That amount does justice between the parties.

Disbursements

[23] The Defendants say that they incurred disbursements of \$4,508.56. The affidavit of Intact legal assistant Michelle Barnhart was filed in support of the amounts claimed as disbursements.

[24] I have reviewed this evidence. I disallow disbursements claimed for service of subpoenas on Charles Miles and Leah Miles, together with their mileage claims, their hotel charges and their dinner expenses. It was not necessary to subpoena these individuals. Charles Miles is the owner of the A & W and Leah Miles, an area manager of the A & W. These witnesses were controlled by defence counsel in the sense that it was not necessary, in the circumstances, that they be subpoenaed in order to secure their attendance at a trial where Boone was a Defendant.

[25] As a result, I reduce the expenses claimed for subpoena service by \$142.00 from \$342.00 to \$200.00.

[26] I do not allow the mileage claims for Charles Miles and Leah Miles for the same reason, with total mileage claimed for both amounts of \$341.60.

[27] As noted above, I do not allow the hotel expense or the dinner expense for Charles Miles (total claimed of \$226.91). I also do not allow the accommodation and dinner expense for Leah Miles. These expenses total \$541.64.

[28] Accordingly, total disbursements claimed in the amount of \$4,508.56 are reduced by \$1,025.24. I award disbursements costs to the Defendants in the total amount, inclusive of HST, of **\$3,483.32**.

Conclusions

[29] The Defendants are entitled to total costs of \$17,000.00 and total disbursements of \$3,483.32 for a total of **\$20,483.32**.

[30] At this point I note that the Court does not have evidence of Mr. Kennedy's financial position. I do note, however, that the trial evidence disclosed he does suffer from a number of medical conditions and is 75 years old.

[31] Total costs and disbursements must be paid by the Plaintiff in the amount of **\$20,483.32** by December 11, 2026.

Smith, J.