

SUPREME COURT OF NOVA SCOTIA

Citation: *Genidi v. North 45 Orchards Limited*, 2026 NSSC 242

Date: 2026-07-17

Docket: Hfx No. 514569

Registry: Halifax

Between:

Younis Ashraf Genidi

Plaintiff

v.

North 45 Orchards Limited and Hossam Elokda

Defendants

DECISION on COSTS

Judge:	The Honourable Associate Chief Justice Darlene A. Jamieson
Summary Judgment Motion Heard:	November 27, 2025, in Halifax, Nova Scotia
Final Submission on Costs:	May 25, 2026
Counsel:	Mr. David Hutt and Mr. Thomas Morehouse for the Plaintiff Mr. John Dicks, self representing as Vice President of the Defendant, North 45 Orchards Limited Dr. Hossam Elokda, self represented Defendant

By the Court:**Background**

[1] This is my costs decision arising from the Plaintiff's successful Motion for partial summary judgment heard on November 27, 2025. My written decision on the merits is found at *Genidi v. North 45 Orchards Limited*, 2026 NSSC 116.

[2] The Plaintiff says a cost award in the usual range under Tariff C would not achieve justice in this matter. He submits that this court ought to make a lump sum costs award of \$20,000. The Plaintiff argues that there is good reason for the court to depart from the Tariffs and award a lump sum. In particular, he says there has been litigation misconduct including "engaging a strategy of delay, ignoring court orders, submitting irrelevant affidavit evidence needing to be struck, and holding fast to a hopeless defence." As a result the Plaintiff says that 66% of his legal fees and disbursements, being \$20,000, is the appropriate lump sum. The solicitor's affidavit indicates that legal fees for the summary judgment motion were \$26,636.50 (exclusive of applicable taxes) plus \$342.80 in disbursements (exclusive of applicable taxes) or a total of \$31,016.30. (The addition in Mr. Morehouse's affidavit is incorrect as the total of the above two amounts is \$26,979.30.)

[3] The Defendants say an award of costs of \$20,000 is excessive, punitive and entirely inconsistent with the ordinary application of Tariff C. They say there has been no finding of litigation misconduct and none is warranted. They also say that the costs award of \$500 at the hearing due to the late filed affidavits has addressed delay. The Defendants argue that this is not a rare or exceptional circumstance justifying a departure from the court's presumptive Tariff framework.

[4] The self-represented Defendants also appear to be seeking, in the last paragraph of their costs submission, a stay of any resulting order pending appeal. Any such request must be brought before the court by way of a proper motion on notice to the Plaintiff.

[5] The general rule is that costs follow the event. The starting point is Tariff C whereby the range of costs awarded for a hearing lasting more than one half day but less than one full day is between \$1,000 and \$2,000. The successful motion for partial summary judgment was not determinative of the entire matter at issue between the parties. Claims against North 45 Orchards Limited and also against Dr. Hossam Elokda personally, remain to be determined.

[6] Costs are in the discretion of the court and the court may order lump sum costs instead of Tariff costs under Rule 77.08. The Civil Procedure Rules do not provide guidance on when a court should use its discretion under Rule 77.08 to depart from the Tariff in favour of a lump sum award of costs. The Nova Scotia Court of Appeal in *Armoyan v. Armoyan*, 2013 NSCA 136 said that awarding costs pursuant to the Tariff is the norm, and there must be a reason to consider a lump sum.

[7] In the recent Court of Appeal decision *Arbuckle v. Tanner*, 2025 NSCA 54 the Court summarized the approach when determining whether lump sum costs are appropriate:

[66] In *Armoyan v. Armoyan* 2013 NSCA 136, paras. 15-30, this Court approved the following approach to whether lump sum costs are appropriate:

- Tariffs are the norm, meaning there must be a reason to consider a lump sum. The tariffs deliver the benefit of predictability by limiting subjective discretion.
- However, tariffs are based on assumptions of normalcy. A case that bears no resemblance to those assumptions may inject the heavy dose of subjectivity that the tariffs aim to avoid. In such a case, it is better to skip the tariff and channel the discretion directly to the principled calculation of a lump sum.

[67] Here, an award based on the tariff clearly is unsatisfactory. The Family Division did not award costs, meaning there is no basis for the tariff's guideline of 40% for appeal costs. Case management directions normally are standard fare. The tariffs contemplate neither complex litigation arising at a case management conference nor a fully throttled appeal from a case managing judge's direction. An award of lump sum costs for this appeal is appropriate.

[68] *Armoyan*, paras. 10-16, 31-38 offers guidance on the calculation of lump sum costs. The approach derives from principles approved by Justice Freeman in *Williamson v. Williams* 1998 NSCA 195, [1998] N.S.J. 498 and Justice Saunders in *Landymore v. Hardy* 1992 NSSC 70, 112 N.S.R. (2d) 410. The approach has been applied by authorities since *Armoyan*, including recently in *Fraser v. MacIntosh* 2024 NSCA 85, paras. 22-24, per Beaton J.A. for the Court.

[69] To summarize from these authorities:

- Solicitor and client costs are based on "rare and exceptional circumstances as when misconduct has occurred in the conduct of or related to the litigation" (*Armoyan*, para. 11). Lump sum awards are party and party costs, not solicitor and client. Here, we are dealing with lump sum party and party costs.
- The basic principle of party and party costs is to award a "substantial contribution" toward the party's reasonable fees and expenses. For a lump

sum award, this involves two factors: what amount is a "reasonable" starting point and what percentage of that amount is a "substantial contribution" in the circumstances. (*Armoyan*, paras. 16, 37)

- Determining a "reasonable" amount of fees and expenses, as a factor for lump sum party and party costs, involves a different calculus than assessing solicitor and client costs. For a party and party lump sum, "reasonableness" depends largely on the reliability of the information provided to the Court. Simply handing to the Court a lawyer's invoice that has vaguely described items, rote nomenclature, little useful explanation as to what is covered, and no supporting affidavit, *i.e.* no opportunity for the other party to test or cross-examine, will lower the amount the court considers to be "reasonable". (*Armoyan*, para. 16)
- "Substantial contribution" for a lump sum award means more than 50% but under 100% of the reasonable fees and expenses. Unless there is reason to do otherwise, the Court may default at 66%. Reasons to vary that percentage derive from the Court's overall mandate to "do justice between the parties" and the criteria cited in *Civil Procedure Rule 77* on costs. Such reasons may include the conduct of either party that affected the speed, effort or expense of the proceeding and the content of unaccepted but reasonable settlement offers. (*Armoyan*, paras. 16, 37)

[8] Utilizing the Tariffs is preferable when awarding costs, as they provide the parties with predictability. However, I am of the view that in the current circumstances an award based on Tariff C of between \$1,000 and \$2,000 is clearly unsatisfactory. As the Court of Appeal has said, the Tariffs are based on assumptions of normalcy.

[9] This matter did not proceed in the normal way. This motion was filed in December of 2024 and there have been a number of delays attributed to the Defendants as set out in my summary judgment decision at paragraphs 4 and 5, including an adjournment I granted in November of 2025 to allow further time for the Defendants to marshal their evidence. Further, the Defendants disregarded various court directives concerning filing timelines. I recognize that not all of the delays can be solely attributed to the Defendants; for example, one adjournment occurred in May of 2025 due to a court scheduling conflict, although the Defendants themselves had sought an adjournment by correspondence of May 15 and 16, 2025. Ultimately the court adjourned the motion scheduled for May 21, 2025 without deciding the Defendants' adjournment request.

[10] While the Defendants are correct that I did order costs of \$500 at the hearing, those costs related to two late filed affidavits and not to the prior delays in getting

the summary judgment motion to hearing, nor to the failure to follow various prior court directives. Civil Procedure Rule 23.12(3) provides that “a judge who allows a late affidavit may order the party filing the affidavit to indemnify any other party for expenses resulting from the filing, including expenses resulting from any adjournment.” This is a discretionary provision and at the hearing, I ordered \$500 in costs with respect to the late filed affidavits.

[11] I am satisfied that the appropriate amount of lump sum costs of this motion, which took the better part of a full day, is \$15,000. Considering all of the circumstances, a costs award of \$15,000 will do justice between the parties.

[12] In conclusion, total costs in the amount of \$15,000 are awarded to the Plaintiff, Mr. Younis, against the Defendant, North 45 Orchards Limited, only. I would ask that counsel for the Plaintiff prepare the appropriate order.

Jamieson, ACJ