
When is a settlement offer a ‘nominal’ offer?

Reported Case:	<i>Sobeys Land Holdings Limited v. Harvey & Company Limited</i>
Citation:	2009 NLTD 105
At Issue:	Whether the defendant is entitled to greater than party and party costs because the plaintiff refused to accept a settlement offer that, although a sizable offer, was far lower than the damages being claimed by the plaintiff.
The Court:	Supreme Court of Newfoundland and Labrador
Judgment Rendered:	July 7, 2009
Factual Summary:	The plaintiff sued the defendant for approximately \$17 million in damages arising from the loss of a warehouse by fire, alleging that the fire had started in one of the defendant’s trailers due to defective lighting circuitry. Prior to trial, the defendant made an offer to the plaintiff to settle for \$250,000 plus the costs of second defendant who did not join in the offer to settle. The offer was made prior to discovery or expert reports being produced, and at that time the opinion of firefighters and police was that the fire had started in the trailer; later, when expert evidence was produced, there was considerable evidence to contradict that theory. At trial, the plaintiff was unable to prove that the defendant had been negligent or that the trailer had been the cause of the fire. The defendant then asserted that because the plaintiff had not accepted the settlement offer, it was entitled to be awarded greater than normal costs.
Disposition:	The application was dismissed. Although \$250,000 was objectively a considerable amount of money to offer, when assessed against the plaintiff’s claim, it could not be considered a serious offer and would not lead to meaningful pre-trial negotiations. There was no suggestion in this case that the amount of damages claimed by the plaintiff was an exaggeration of its losses. Although expert evidence was produced subsequent to the offer that cast doubt on the plaintiff’s claim as against the defendant, at the time the offer was made the cause of the fire was still under investigation by both parties, and the plaintiff’s claim could not at that stage have been considered devoid of merit.

See: <http://www.canlii.org/en/nl/nlsctd/doc/2009/2009nlttd105/2009nlttd105.html>