IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Darlington v. Moore, 2016 NSSC 84

Date: 20160401
Docket: SFHMCA 068167
Registry: Halifax

Between:

Michelle Darlington

Applicant

and

David Paul Moore

Respondent

and

Hfx. No. 407388

Between

David Moore and Sand, Surf & Sea Limited, a body corporate

Plaintiffs

and

Michelle Darlington

Defendant

Judge: Associate Chief Justice Lawrence I. O'Neil

Written Submissions: Written Submissions on costs were received.

Counsel: Peter D. Crowther, counsel for Ms. Darlington

David P. Moore, Self Represented

By the Court:

Introduction (Costs Decision)

[1] This is a ruling on costs after the Court's three written decisions in this matter, (reported at 2015 NSSC 124, released on April 20, 2015; 2014 NSSC 358, released on October 1, 2014; and 2013 NSSC 103, released March 15, 2013), following a hearing over three years and ten days in total duration. The application and counter application related to the division of the parties' property, child support, spousal support and the special expenses for the children. It also involved adjudication of a claim by Sand, Surf and Sea Limited against Ms. Darlington. Mr. Moore owns and controls this corporate entity.

[2] As part of the analysis, the Court was required to enter a detailed examination of the parties' history and rule on unjust enrichment claims of each party. The Court was also called upon to rule on related issues including imputation of income; a determination of income for child support purposes; to rule on claims for retroactive child and spousal support as well as claims for special expenses *inter alia*.

Position of the Parties

[3] Ms. Darlington calculates, after considering conferences and submissions, that more than twelve (12) days of Court time were consumed since the proceeding was first before me on October 2, 2012. She submits that she achieved success on most issues. She seeks costs in the range of $60,311 to $120,622 exclusive of taxes and disbursements. She identifies $74,750 as 62% of her overall legal fees and as reasonable in the circumstances, given her interpretation of the *Armoyan* decision as recommending costs in excess of 50% of the legal fees, this being a significant contribution towards fees. Ms. Darlington says her disbursements include $4,362.19, described as soft costs and an additional $7,068.91 for hard costs such as filing fees, recording fees and bailiff services.

[4] Ms. Darlington further submits that 68% of the costs and disbursements should be attributed to the issues of custody and access and consequently, subject to collection through the Maintenance Enforcement Program.

[5] Mr. Moore says no costs should be payable by him because he made a generous offer to settle, dated October 5, 2011 and identified as part of exhibit 101 and he argues he was successful in part.

[6] He values that offer of settlement at $604,357.69 reflecting the following:

- cash $200,000

- five payments of $10,000 per year for five years

- release from the line of credit, a benefit he valued as $96,676.69

- release from an obligation to pay for the Honda Civic, a benefit he values at $40,000

[7] Mr. Moore says the Court concluded the distribution of assets resulted in Ms. Darlington getting a prospective benefit valued at $489,912.91. His submission and arithmetic is as outlined below:

Current decision of April 20, 2015 (Michelle Darlington prospective)

1.	Division of House at 141 Lakeshore Estimate Appraisal Value	$570,000
	Less Legal Fees	$ 5,750
	Less Real Estate Fees	$ 39,300
	$524.920 divided by 2 =	$524,920
	Division net	($262,460.00)
2.	Line of Credit	
	$86,393.37 divided by 2 = $43,196.69	($ 43,196.69)
3.	Spousal Support	
	1700 x 60 months = $102,000	($102,000.00)

4.	Child Support	
	1831 x 60 months = $109,860	($109,860.00)
5.	RRSP	($ 58,789.60)
	Total Amount based on April 20, 2015 Decision	$489,912.91

General Principles Governing Costs

[8] The governing Civil Procedure Rule on costs is now 77. This Rule incorporates the tariffs mandated by the *Costs and Fees Act*, R.S.N.S. 1989, c.104 when applying an amount involved assessment to determine costs payable by a party. The Rule provides *inter alia*:

> **Scope of Rule 77**
>
> 77.01 (1) The court deals with each of the following kinds of costs:
>
> (a) party and party costs, by which one party compensates another party for part of the compensated party's expenses of litigation;
>
> (b) solicitor and client costs, which may be awarded in exceptional circumstances to compensate a party fully for the expenses of litigation;
>
> (c) fees and disbursements counsel charges to a client for representing the client in a proceeding.
>
> (2) Costs may be ordered, the amount of costs may be assessed, and counsel's fees and disbursements may be charged, in accordance with this Rule.
>
> **General discretion (party and party costs)**
>
> 77.02 (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.

Liability for costs

77.03 (1) A judge may order that parties bear their own costs, one party pay costs to another, two or more parties jointly pay costs, a party pay costs out of a fund or an estate, or that liability for party and party costs is fixed in any other way.

(2) A judge may order a party to pay solicitor and client costs to another party in exceptional circumstances recognized by law.

(3) Costs of a proceeding follow the result, unless a judge orders or a Rule provides otherwise.

(4) A judge who awards party and party costs of a motion that does not result in the final determination of the proceeding may order payment in any of the following ways:

(a) in the cause, in which case the party who succeeds in the proceeding receives the costs of the motion at the end of the proceeding;

(b) to a party in the cause, in which case the party receives the costs of the motion at the end of the proceeding if the party succeeds;

(c) to a party in any event of the cause and to be paid immediately or at the end of the proceeding, in which case the party receives the costs of the motion regardless of success in the proceeding and the judge directs when the costs are payable;

(d) any other way the judge sees fit.

(5) A judge may order that costs awarded to a party represented by counsel with Nova Scotia Legal Aid or Dalhousie Legal Aid be paid directly to the Nova Scotia Legal Aid Commission or Dalhousie Legal Aid Service.

. . . . .

Assessment of costs under tariff at end of proceeding

77.06 (1) Party and party costs of a proceeding must, unless a judge orders otherwise, be fixed by the judge in accordance with tariffs of costs and fees determined under the Costs and Fees Act, a copy of which is reproduced at the end of this Rule 77.

. . . . .

Increasing or decreasing tariff amount

77.07 (1) A judge who fixes costs may add an amount to, or subtract an amount from, tariff costs.

(2) The following are examples of factors that may be relevant on a request that tariff costs be increased or decreased after the trial of an action, or hearing of an application:

(a) the amount claimed in relation to the amount recovered;

(b) a written offer of settlement, whether made formally under Rule 10 - Settlement or otherwise, that is not accepted;

(c) an offer of contribution;

(d) a payment into court;

(e) conduct of a party affecting the speed or expense of the proceeding;

(f) a step in the proceeding that is taken improperly, abusively, through excessive caution, by neglect or mistake, or unnecessarily;

(g) a step in the proceeding a party was required to take because the other party unreasonably withheld consent;

(h) a failure to admit something that should have been admitted.

(3) Despite Rule 77.07(2)(b), an offer for settlement made at a conference under Rule 10 - Settlement or during mediation must not be referred to in evidence or submissions about costs.

. . . . .

Disbursements included in award

77.10 (1) An award of party and party costs includes necessary and reasonable disbursements pertaining to the subject of the award.

(2) A provision in an award for an apportionment of costs applies to disbursements, unless a judge orders otherwise.

[9] Justice B. MacDonald of this court summarized the applicable principles when assessing costs in *L. (N.D.) v. L. (M.S.)*, 2010 NSSC 159 and more recently in *Gagnon v. Gagnon*, 2012 NSSC 137. She stated the following at paragraph 3 in *L. (N.D.)*:

> 3 Several principles emerge from the Rules and the case law.
>
> 1. Costs are in the discretion of the Court.
>
> 2. A successful party is generally entitled to a cost award.
>
> 3. A decision not to award costs must be for a "very good reason" and be based on principle.
>
> 4. Deference to the best interests of a child, misconduct, oppressive and vexatious conduct, misuse of the court's time, unnecessarily increasing costs to a party, and failure to disclose information may justify a decision not to award costs to a otherwise successful party or to reduce a cost award.
>
> 5. The amount of a party and party cost award should "represent a substantial contribution towards the parties' reasonable expenses in presenting or defending the proceeding, but should not amount to a complete indemnity".
>
> 6. The ability of a party to pay a cost award is a factor that can be considered; but as noted by Judge Dyer in M.C.Q. v. P.L.T. 2005 NSFC 27: "Courts are also mindful that some litigants may consciously drag out court cases at little or no actual cost to themselves (because of public or third-party funding) but at a large expense to others who must "pay their own way". In such cases, fairness may dictate that the successful party's recovery of costs not be thwarted by later pleas of inability to pay. [See Muir v. Lipon, 2004 BCSC 65]."
>
> 7. The tariff of costs and fees is the first guide used by the Court in determining the appropriate quantum of the cost award.
>
> 8. In the first analysis the "amount involved", required for the application of the tariffs and for the general consideration of quantum, is the dollar amount awarded to the successful party at trial. If the trial did not involve a money amount other factors apply. The nature of matrimonial proceedings may complicate or preclude the determination of the "amount involved".
>
> 9. When determining the "amount involved" proves difficult or impossible the court may use a "rule of thumb" by equating each day of trial to an amount of $20,000 in order to determine the "amount involved".

> 10. If the award determined by the tariff does not represent a substantial contribution towards the parties' reasonable expenses "it is preferable not to increase artificially the "amount involved", but rather, to award a lump sum". However, departure from the tariff should be infrequent.
>
> 11. In determining what are "reasonable expenses", the fees billed to a successful party may be considered but this is only one factor among many to be reviewed.
>
> 12. When offers to settle have been exchanged, consider the provisions of the civil procedure rules in relation to offers and also examine the reasonableness of the offer compared to the parties position at trial and the ultimate decision of the court.

[10] Arriving at a costs assessment in matrimonial matters is difficult given the often mixed outcome and the need to consider the impact of an onerous costs award on the families; and the children in particular. The need for the court to exercise its discretion and to move away from a strict application of the tariffs is often present.

[11] As stated at paragraph 13 in *Grant v. Grant,* 2002 N.S.J. 14, Justice Williams observes that divorce and family law proceeding "often involve a multitude of separate and inter-related problems". The result is that a determination of success is also more complex.

[12] It should be noted that Rule 77.07 provides that tariff costs may be increased or decreased after considering enumerated factors.

[13] Rule 77.08 provides for a lump sum of costs in cases where a tariff amount is not appropriate.

[14] In *O'Neil v. O'Neil,* 2013 NSSC 64 Justice Beaton ordered the parties to bear their own costs. The parties had exchanged offers to settle that were very close to the Court's ruling on the quantum of spousal support ultimately ordered. Both parties were partially successful and no costs were ordered.

[15] In *Robar v. Arseneau,* 2010 NSSC 175, I ordered costs of $5,138 inclusive of HST and disbursements to be paid at a rate of $150 per month. In that case, the Applicant's case to set aside the parties' separation agreement was dismissed and Ms. Robar was found to have been unreasonable. She was also found to have

rejected offers to settle. The matter required court time on two days. I applied scale 1 of Tariff "A". The amount involved was within the $40,001-$65,000 range. Ms. Robar was subject to significant financial hardship at the time. This was a factor weighing against a higher costs award.

[16] The case of *Provost v. Marsden*, 2009 NSSC 365 involved an assessment of child support obligations. I applied Tariff "A", there being a decision following a half day hearing. The amount involved was in the $40,001-$65,000 range. Success on the issues was mixed but Mr. Marsden was found to have been the more successful party. This case also involved an offer to settle. Costs totalling $3,000 inclusive of HST and disbursements were ordered (2010 NSSC 423 (cost decision)).

[17] The case of *R. (A.) v. R.(G.)*, 2010 NSSC 377 resulted in a costs award of $3,000 inclusive of HST and disbursements. The hearing concerned the parenting arrangement for the parties' two children. The conduct of the Applicant was found to have been aggravating. The amount involved was $20,000, this representing the amount involved when a full day of court time is consumed (2010 NSSC 424 (cost decision)).

[18] In *Godin v. Godin*, 2014 NSSC 46, I ordered costs of more than $28,000 following a five day hearing and after having increased the scale by 50% to reflect Ms. Godin's *mal fides* in the conduct of the proceeding.

[19] In *Myer v. Lyle*, 2014 NSSC 355 I ordered costs payable by Mr. Lyle in the amount of $2,500 payable at the rate of $50 per month. At paragraph 24-26 of that decision I observed:

> [24] Each party played a significant role in forcing this matter to a hearing. Mr. Lyle communicated with Ms. Myer and her counsel in February 2014 (tab J of his costs submission) and sought agreement on the parenting issue and child support. He was agreeable to the child remaining with Ms. Myer in Nova Scotia and agreeable to paying the table amount of child support. Mr. Lyle's position was reasonable. These were major issues at trial. There was an opportunity to resolve these issues pre trial, had Ms. Myer responded to Mr. Lyle's suggestions in a meaningful way.
>
> [25] I exercise my discretion to order costs of $2,500 payable by Mr. Lyle. These shall be payable at the rate of $50 per month, commencing November 1, 2014 until paid in full.

> [26] The hearing was not complex, although it did consume a day and a half of Court time. The Court is persuaded that a cost award of a lesser amount than sought on behalf of Ms. Myer more appropriately reflects the needs of this family and the parties' conduct throughout.

[20] Justice Jollimore in *Moore v. Moore*, 2013 NSSC 281 at paragraph 14 addressed the applicability of Tariff "C" to applications in the Family Division:

> [14] Initial guidance in determining costs is the tariff of costs and fees. The proceeding before me was a variation application. Formally, Tariff C applies to applications. As I said in MacLean v. Boylan, 2011 NSSC 406 at paragraph 30, applications in the Family Division are, in practice, trials. Rule 77's Tariffs have not changed from the Tariffs of Rule 63 of the Nova Scotia Civil Procedure Rules (1972). Despite the distinction between an action and application created in our current Rules, the Tariffs have not been revised. My view has not changed since I decided MacLean v. Boylan, 2011 NSSC 406: I don't intend to give effect to the current Rules and their incorporation of the pre-existing Tariffs where this routinely results in lesser awards of costs for the majority of proceedings in the Family Division, such as corollary relief applications, variation applications and applications under the Maintenance and Custody Act or the Matrimonial Property Act. In these situations I intend to apply Tariff A as has been done by others in the Family Division: Justice Gass' decision in Hopkie, 2010 NSSC 345 and Justice MacDonald in Kozma, 2013 NSSC 20.

[21] Our Court of Appeal recently reviewed the law governing awards of costs in family proceedings in *Armoyan v. Armoyan*, 2013 NSCA 136. It is helpful to incorporate the court's discussion of the basis upon which costs are ordered and the meaning and effect of Rule 77. Fichaud, J. on behalf of the Court summarized how costs should be quantified beginning at paragraph 9:

> [9] Justice Campbell did not quantify costs for Ms. Armoyan. So there is no issue of appellate deference to the trial judge's exercise of discretion on quantification. The Court of Appeal is calculating costs at first instance for both the forum conveniens proceeding in the Family Division and the two appeals in this Court.
>
> [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 specify the circumstances when the Court should depart from tariff costs for a lump sum.

Tariff or Lump Sum?

[15] The tariffs are the norm, and there must be a reason to consider a lump sum.

[16] The basic principle is that a costs award should afford substantial contribution to the party's reasonable fees and expenses. In Williamson, while discussing the 1989 tariffs, Justice Freeman adopted Justice Saunders' statement from Landymore v. Hardy (1992), 112 N.S.R. (2d) 410:

> The underlying principle by which costs ought to be measured was expressed by the Statutory Costs and Fees Committee in these words:
>
> > "... the recovery of costs should represent a substantial contribution towards the parties' reasonable expenses in presenting or defending the proceeding, but should not amount to a complete indemnity."

Justice Freeman continued:

> In my view a reasonable interpretation of this language suggests that a "substantial contribution" not amounting to a complete indemnity must initially have been intended to mean more than fifty and less than one hundred per cent of a lawyer's reasonable bill for the services involved. A range for party and party costs between two-thirds and three-quarters of solicitor and client costs, objectively determined, might have seemed reasonable. There has been considerable slippage since 1989 because of escalating legal fees, and costs awards representing a much lower proportion of legal fees actually paid appear

to have become standard and accepted practice in cases not involving misconduct or other special circumstances.

[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]

[19] In my view, this is such a case for a lump sum award. I say this for the following reasons.

[20] Justices of the Family Division have stated that trial-like hearings in matrimonial matters are more appropriate for Tariff A than Tariff C: Hopkie v. Hopkie, 2010 NSSC 345, para 7, per Gass, J.; MacLean v. Boylan, 2011 NSSC 406, paras 29-30, per Jollimore, J.; Kozma v. Kozma, 2013 NSSC 20, para 2, per MacDonald, J.; Robinson v. Robinson, 2009 NSSC 409, para 10, per Campbell, J..

[21] The forum conveniens proceeding was brought by Ms. Armoyan's "Notice of Motion" that, as Mr. Armoyan's counsel points out, literally would engage Tariff C. But the proceeding ripened with the features of a complex trial that spanned ten days of hearing over eleven months. It was not remotely equivalent to a conventional chambers motion, and its natural home would be Tariff A.

[22] But this proceeding had no "amount involved" within Tariff A. The issue was whether the Courts of Nova Scotia or Florida would take jurisdiction. That matter involved broad consideration of comparative comity, fairness and efficiency in the administration of justice. The "amounts" are for the separate matrimonial

proceedings in Florida and this province. In Williamson Justice Freeman noted that the artificiality of a notional "amount involved" supported the use of a lump sum award:

> Any attempt to adjust the amount involved to factor in the special circumstances of the present appeal to arrive at a more just result would require the arbitrary determination of a fictitious "amount involved" bearing no real relationship to the matters in issue.

[23] Rule 77.07(2)(e) permits an adjustment based on "conduct of a party affecting the speed or expense of the proceeding". The supervening criterion is that the costs award "do justice between the parties" under Rule 77.02(1).

[22] Commenting on the impact offers to settle can have on an award, Justice Fichaud stated the following at paragraph 27:

> [27] Rule 77.07(2)(b) permits the adjustment of a costs award based on an unaccepted written settlement offer, whether made formally under Rule 10 "or otherwise". Rule 59.39(7) excludes Rules 10.05 to 10.10 (formal offers to settle in the Supreme Court - General Division) from family proceedings. But Rule 77.07(2)(b) is not excluded, and unaccepted offers of settlement may impact costs in family proceedings: e.g. Fermin v. Yang, 2009 NSSC 222, para 3, # 12, per MacDonald, J.. I agree with Justice Campbell's sentiments in Kennedy-Dowell v. Dowell (2002), 209 N.S.R. (2d) 392 (S.C.), under the former Rules:
>
> > [12] In my opinion, the reasonableness of both the trial position and the bargaining position (including the timing of concessions made) is a very important factor in deciding whether an order for costs should be made. This is especially true in family law matters because the parties are often of limited resources and can often face legal fees after a trial which make the process uneconomical and devastating to the family including children. Family law disputes are capable of out of court resolution in many cases and the policy of the court regarding costs should promote compromise and reasonableness in the negotiating process. For that reason, the court should measure each party's bargaining position against the court's adjudication to measure the reasonableness of each position. ...
>
> To similar effect - Justice Campbell's comments in Robinson, paras 13-15.

[23] Ultimately, in *Armoyan* Justice Fichaud found a lump sum award of costs as the most appropriate mechanism for determining costs. He awarded costs of $306,000 including disbursements.

Conclusion

[24] I am satisfied that Ms. Darlington was the more successful party. Spousal support was awarded to her in an amount approaching the spousal support guidelines as sought by her.

[25] Although Mr. Moore's grossed up income, after inclusion of his disability income, was used for purposes of calculating Mr. Moore's child support obligation and his contribution to the special expenses of the children, it was not considered in the same way to determine his spousal support obligation. To this extent, the court recognized some merit to his argument that disability income for spousal support purposes should be viewed differently than earned income.

[26] The Court did not impute a nurse's income to Ms. Darlington as Mr. Moore argued should be done. The Court found Ms. Darlington had made reasonable decisions to achieve economic independence. This issue was a significant one and decided in Ms. Darlington's favour.

[27] The Court ordered substantial retroactive spousal and child support as sought by Ms. Darlington. Mr. Moore's assertions that he gave many thousands of dollars of unrecognized support to the children were not accepted by me.

[28] The Court ordered that the subject RESP be directed to the children's educational needs as sought by Ms. Darlington. Mr. Moore's position was not accepted.

[29] The Court did find Mr. Moore was fully entitled to his employment pension. This was a significant conclusion in Mr. Moore's favour.

[30] The Court accepted a value approximating that suggested by Ms. Darlington when determining her liability for the parties' line of credit. The Court rejected Mr. Moore's argument that Ms. Darlington was liable to Sand, Surf and Sea Limited and/or to him for any part of the insurance proceeds following the restaurant fire.

[31] The Court did not find Ms. Darlington liable for the substantial liabilities related to Mr. Moore's business pursuits and those of Sand, Surf and Sea Limited.

[32] Ms. Darlington received a substantial part of the parties' total RRSP portfolio.

[33] This is a case when a parties' conduct emerges as a factor for the Court to consider when fixing the quantum of costs payable. In the words of Justice Fichaud in *Armoyan* (at paragraph 18), Mr. Moore's conduct in the subject litigation has been obstructionist.

[34] Mr. Moore was tardy with disclosure. He was often argumentative and insulting to counsel for the other party and to the Court. His decision to go to Florida in November 2013 as the Court was in the process of concluding dates for a continuation of the hearing was difficult to understand. It occurred after the Court was clear that an early continuation was contemplated and Mr. Moore purported to be interested in the same. He clearly was not. Mr. Moore did not inform the Court of his pending trip. The continuation of the hearing was delayed until June 10, 2014. I am satisfied Mr. Moore was not forthcoming with the Court at the time of the relevant discussion captured on the Court record.

[35] I have considered whether Mr. Moore is affected by personality and/or health issues that rendered him a particularly difficult litigant. A lay person's assessment would cause one to believe so. The Court has no medical evidence upon which to base a conclusion that this is so, certainly not to its satisfaction on a balance of probabilities.

[36] Mr. Moore's frequent verbal wanderings and grandiose descriptions of his ability and accomplishments were frequently tolerated by me, a decision that reflected my judgment that efficient management of the trial was best served by ignoring his behaviour.

[37] Whatever Mr. Moore's motivations for behaving as he did throughout, I am satisfied a costs sanction is necessary. Such a sanction is meant to address the circumstances of this hearing, but also a sign to others who contemplate using the Court room as a personal soap box, that there will be a price to pay for doing so.

[38] I wrote the parties in October, 2015 and inquired whether Mr. Moore's assertion that he made a settlement offer dated October 2011 (exhibit 101) was agreed to by Ms. Darlington. This claim is contained in Mr. Moore's submission on costs received on May 22, 2015.

[39] In his submission, Mr. Moore identifies exhibit 101 as containing two offers to settle, both pre-dating the hearing before me. In fact, they pre-dated the hearing before Justice Lynch. Although Mr. Moore refers to one as being made by 'Kim Mitchell', I believe this should be a reference to Kim Franklin, who represented him briefly in 2010 before Justice Lynch. The second 'offer to settle' he relies upon came from another lawyer, Judith Schoen, and also in 2010.

[40] On March 9, 2016 the Court heard from the parties on the form of the order and the issue of whether offers to settle were made which should impact on my ruling on costs.

[41] Counsel for Ms. Darlington confirms that he is not aware of any correspondence from Ms. Schoen and he has not had any dealing with Ms. Schoen on this file. I am satisfied this is the case.

[42] Mr. Moore did file a one page document purportedly dated October 5, 2011 and signed by him. It is entitled 'Settlement Offer'. Although Ms. Darlington's name appears at the bottom, the document is not signed by her.

[43] Mr. Moore also filed a letter dated March 23, 2011 from his counsel, Kymberly Franklin. The offer is more favourable to Ms. Darlington than my decision in a number of respects, pension division being the most significant.

[44] These 'offers' were made before another Justice concluded proceedings then before her. By decision dated June 21, 2012, a new hearing was ordered by the Court of Appeal. The parties first appeared before me on October 2, 2012.

[45] There is no evidence of additional 'offers to settle' after 2011.

[46] It is relevant to observe that the relationship between Mr. Moore and Ms. Darlington continued after 2011 to be characterized by acrimony and unpredictability. Mr. Moore blamed Ms. Darlington's counsel for misbehaviour and complained about him to the Nova Scotia Barristers' Society and involved the local police by complaining to them about counsel for Ms. Darlington.

[47] Throughout his appearances before me, Mr. Moore was obstinate, unpredictable, obstructionist and defiant in the face of direct Court orders. He openly displayed contempt for Ms. Darlington and her counsel. He unnecessarily

prolonged the hearing process and was uncooperative with the Court and with the other side.

[48] In my view, any benefit to Mr. Moore that the 'offers to settle' could have on my decision on costs lapsed and was not revived. In reality, Mr. Moore's conduct in subsequent proceedings reinforced a conclusion that he was not prepared to dialogue in an effort to settle the issues before the Court, notwithstanding any utterances by him to the contrary.

[49] In all of the circumstances, I order costs payable by Mr. Moore in the amount of $50,000 total, inclusive of disbursements and HST. Mr. Moore and Sand, Surf and Sea Limited are jointly and severally liable for $50,000. The costs are payable from the sale of the matrimonial home should those proceeds still be available.

[50] Custody and access were not live issues. However, I am satisfied 65% of Ms. Darlington's legal costs, including disbursements, are attributable to that aspect of the litigation pertaining to child and spousal support.

ACJ