NOVA SCOTIA COURT OF APPEAL

Citation: *Davis v. Harrison*, 2023 NSCA 74

Date: 20231030
Docket: CA 518784
Registry: Halifax

Between:

Donald Davis

Appellant

v.

Joanne Harrison

Respondent

Judge: The Honourable Justice Anne S. Derrick

Appeal Heard: October 4, 2023, in Halifax, Nova Scotia

Subject: **Matrimonial property. Pension division. s. 13, *Matrimonial Property Act*, R.S.N.S. 1989, c. 275 (*MPA*). Costs.**

Summary: The contested matrimonial division issues between the parties at divorce included the appellant's Canadian Armed Forces pension. The appellant has sought to retain his pension by way of an application for unequal division pursuant to s. 13 of the *MPA*. He was unsuccessful at trial. The trial judge dismissed his s. 13 application and ordered that the respondent receive fifty percent of the entire pension to be divided in accordance with the *Pension Benefits Division Act*, SC 1992, c.46, Sch II (*PBDA*). He also ordered costs payable to the respondent in a lump sum amount of $36,000. The appellant appealed against these determinations. He sought to introduce fresh evidence in support of his argument that the *PBDA* prohibited division of his CAF pension on divorce on the basis it had previously been divided when he separated from a common-law partner in 2000.

Issues:

(1) Should the fresh evidence be admitted?
(2) Did the trial judge err in his division of the appellant's CAF pension?
(3) Should leave to appeal be granted for the appellant to appeal the costs award, and if so, is there a basis for this Court to interfere with the award?

Result:

The fresh evidence was not admissible. It did not satisfy the requirements established by *Palmer v. The Queen*, [1980] 1 S.C.R. 759 of due diligence and credibility. Nor would it have affected the trial judge's decision on the pension division, as required by *Palmer*. In dismissing the appellant's s. 13 application the trial judge took into account the division of assets between the appellant and his common-law partner in 2000. There was nothing before the trial judge to indicate any division of the appellant's CAF pension in 2000. The trial judge made no error in his determination that the respondent should receive an equal share of the pension. The appellant had not raised ss. 8 and 9 of the *PBDA* at trial. They could not be raised for the first time on appeal. The trial judge committed no error in failing to consider an argument that was not made before him. Leave to appeal costs was granted and the appeal from costs dismissed. The trial judge's decision was entitled to significant deference on appeal. The costs award was reasonable and fair.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 55 paragraphs

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Respondent

Judges:	Wood, C.J.N.S.; Fichaud and Derrick, JJ.A.
Appeal Heard:	October 4, 2023, in Halifax, Nova Scotia
Held:	Appeals dismissed with costs, per reasons for judgment of Derrick, J.A.; Wood, C.J.N.S. and Fichaud, J.A. concurring
Counsel:	Donald Davis, appellant in person Kay L. Rhodenizer, for the respondent

Reasons for judgment:

Introduction

[1] After twenty years of marriage, Mr. Davis and Ms. Harrison were divorced by a Divorce Order dated September 8, 2022. A trial before Justice Lloyd Berliner of the Nova Scotia Supreme Court, Family Division resulted in a Corollary Relief Order (CRO) of the same date. It dealt with parenting issues, division of matrimonial property, including Mr. Davis' Canadian Armed Forces (CAF) pension, spousal and child support, and medical, dental and life insurance.

[2] The CRO provided that Ms. Harrison was entitled to half of Mr. Davis' entire CAF pension.

[3] The trial judge subsequently received written submissions on the issue of costs. He awarded costs payable by Mr. Davis in the amount of $36,000.

[4] It is these two results that Mr. Davis is appealing. In support of his appeals he has filed a motion asking this Court to admit fresh evidence.

[5] Appealing a costs award requires leave of the Court. I would grant Mr. Davis leave to appeal costs.

[6] As these reasons explain, I have concluded the fresh evidence motion should be dismissed. I would dismiss the pension and costs appeals with costs.

The Pension and Costs Orders

[7] The trial judge's Pension Order directed the following:

> The pension administrator of the Respondent's Canadian Armed Forces Pension (hereafter "the pension administrator") shall forthwith equally divide between the Petitioner and the Respondent all pension benefit credits, including but not limiting the generality of the foregoing, all pension benefit credits earned through employee and employer contributions, indexing, life expectancy and interest from the Respondent's commencement of service date on September 25, 1989 until the date of separation on May 28, 2020.

[8] The Costs Order awarded Ms. Harrison costs of $36,000 payable by Mr. Davis as follows: $6,000 to be paid immediately with the balance of $30,000 payable in $1,000 installments over thirty months beginning on January 1, 2023.

No interest was payable on the installment payments. The trial judge ordered that fifty percent of the outstanding balance ($15,000) related to the issues of child and/or spousal support.

Mr. Davis' Grounds of Appeal

[9] Mr. Davis says the trial judge was wrong to have found that Ms. Harrison was entitled to fifty percent of his entire pension. He makes two arguments in support of his claim of error, that: (1) at most, the maximum transferrable amount would be fifty percent of the pension accrued during the parties' cohabitation; and (2) in any event, s. 9 of the *Pension Benefits Division Act*, SC 1992, c. 46, Sch II (*PBDA*), precludes a further division of his pension. Mr. Davis filed fresh evidence intended to support his claim that his pension had been divided in 2000 with his common law partner, Wendy Lamirande.

[10] As for costs, Mr. Davis says the award in favour of Ms. Harrison was unfair. He says he made several offers to settle the outstanding issues that were rejected. He filed letters containing his offers as fresh evidence. He wants this Court to set aside the costs order entirely in favour of each party bearing their own costs.

The Fresh Evidence

[11] Mr. Davis' fresh evidence motion is supported by two affidavits with attached documents. Exhibited to his affidavit sworn on April 11, 2023 is an undated statement he says was signed by his former common law partner, Wendy Lamirande. Mr. Davis says the statement supports his appeal against the trial judge's division of his CAF pension.

[12] The statement from Wendy Lamirande says:

> I Wendy Lamirande am providing information of the matter that took place on 2 May 2000 separation agreement between Donald Davis and myself. I Wendy Lamirande am informing you that in the separation agreement on paragraph (11) states that I received $28,000 in the form of RRSP's these assets were an exchange allowing Donald Davis' military pension to be left intact which it states in paragraph (15) I waive my right.

[13] Mr. Davis' affidavit of April 19, 2023 was filed in support of his appeal against the costs order. It attaches two letters, dated April 13, 2021 and December 8, 2021, containing settlement proposals from his then lawyer to Ms. Rhodenizer representing Ms. Harrison.

[14] I will address why I would not admit the fresh evidence when I deal with the merits of Mr. Davis' appeals.

The Trial Judge's Decision on the Pension Division

[15] The parties' trial was heard over three days in December 2021. Final oral submissions were made on February 24, 2022. Justice Berliner released a lengthy decision on July 26, 2022 (*Davis v. Davis*, 2022 NSSC 212). He made a number of factual findings relevant to his decision on the pension issue:

- The parties were married on May 19, 2001.
- They separated on May 28, 2020.
- Mr. Davis was in the Canadian Armed Forces from September 25, 1989 to August 14, 2011 (a total of 263 months).
- On his retirement, Mr. Davis became a non-commissioned member of the Canadian Armed Forces. He receives a gross annual pension of $23,416.20.
- Mr. Davis' common-law relationship of nine years with Wendy Lamirande ended in 2000.
- The separation agreement between Mr. Davis and Ms. Lamirande was produced at trial and entered as an exhibit.
- In the separation agreement Mr. Davis waived any claim to the RRSPs in Ms. Lamirande's name.
- Paragraph 11 of the separation agreement indicates that Mr. Davis and Ms. Lamirande agreed the $28,000 in RRSPs in Ms. Lamirande's name became her sole property.
- Para. 15 of the separation agreement indicates that Mr. Davis had accumulated pension credits through his DND employment for the period of the common-law relationship and that Ms. Lamirande waived all rights to those credits.

[16] The trial judge noted that Ms. Harrison's claims in the divorce proceedings included a division of Mr. Davis' entire pension earned before and during the marriage. Ms. Harrison relied on *S.S. v. D.S.*, 2013 NSSC 384 to assert the pension was subject to a presumptive equal division. She invoked *Verdun v. Dorrance*, 2006 NSSC 305 and *Pilotte v. Pilotte*, 2013 NSSC 24 in support of including pre-marriage contributions in the division.

[17] Mr. Davis had advanced an application pursuant to s. 13 of the *Matriomonial Property Act*, R.S.N.S. 1989, c. 275 (*MPA*) for an unequal division of the CAF pension in his favour, contending it would be inherently unfair to divide his pre-marriage pension contributions with Ms. Harrison. The trial judge conducted a thorough review of the legal principles relevant to Mr. Davis' s. 13 application. Stating that he had "considered the evidence, submissions of counsel, statutory regime and case authorities", he cited six reasons why an equal division of Mr. Davis' pension was neither unfair nor unconscionable:

- *S.S. v. D.S.*, 2013 NSSC 384, at para. 112 established that pension entitlements earned before and during marriage are presumptively divisible.

- The marriage to Ms. Harrison was not of short duration as Mr. Davis maintained. The parties were married for 20 years, during which time their children were born.

- On separation, Mr. Davis and Ms. Harrison were 49 and 54 respectively. Mr. Davis was already in receipt of his pension.

- Although there was an apparent waiver by Mr. Davis of a claim to Ms. Lamirande's RRSPs in exchange for retaining his pension, there "is no evidence to determine the value of the remaining assets".[1]

- *MacLean v. Cox*, 2017 NSSC 309 relied on by Mr. Davis was distinguishable on its facts. Unlike Ms. MacLean's situation of pension contributions for 17 years before beginning to cohabit with Mr. Cox, Mr. Davis and Ms. Harrison were together for just under 47 percent of Mr. Davis' active service.

[1] The separation agreement indicated that in addition to her RRSPs, Ms. Lamirande would retain a 1996 Plymouth van (and the debt owing on it of $10,500) and all furniture, furnishings and appliances in her possession. Mr. Davis would retain a 1991 Honda Prelude, a cell phone and various debts.

- *Bishop v. Bishop*, 2005 NSSC 220 relied on by Mr. Davis was distinguishable on its facts. Mr. Davis did not transfer funds to Ms. Lamirande, he waived a claim to her RRSPs. Justice Berliner was not satisfied the waiver "was of significant contribution in the settlement as there are too many unknowns including the value of the other assets and debts". (para. 45)

[18] The trial judge ordered that Ms. Harrison receive fifty percent of Mr. Davis' entire CAF pension to be divided in accordance with the provisions of the *PBDA*. He summarized his rejection of Mr. Davis' s. 13 application and the applicable sections of the *PBDA* to effect the equal division:

> [46] Mr. Davis bears the burden of proof to establish that an equal division would be unfair or unconscionable. Mr. Davis has not met that burden. Simply looking at the value and the number of years contributed to his pension while the parties were together, does not meet that stringent test. I order that Mr. Davis' entire Canadian Armed Forces pension be divided in accordance with the *Pension Benefits Division Act*, S.C. 1992, c. 46, Sch. II, which in part states as follows:
>
> > 8 (1) A division of pension benefits shall be effected by
> >
> > (a) subject to subsection (4), transferring an amount representing fifty per cent of the value of the pension benefits that have accrued to the member of the pension plan during the period subject to division, as determined in accordance with the regulations, to the spouse, former spouse or former common-law partner, if that pension plan is a retirement compensation arrangement, or, in any other case, to
> >
> > > (i) a pension plan selected by the spouse, former spouse or former common-law partner that is registered under the *Income Tax Act*, if that pension plan so permits,
> > >
> > > (ii) a retirement savings plan or fund for the spouse, former spouse or former common-law partner that is of the prescribed kind, or
> > >
> > > (iii) a financial institution authorized to sell immediate or deferred life annuities of the prescribed kind, for the purchase from that financial institution of such an annuity for the spouse, former spouse or former common-law partner; and
> >
> > (b) adjusting, in accordance with the regulations, the pension benefits that have accrued to the member of the pension plan under that pension plan, notwithstanding the provisions of that pension plan or the Act under which it is established or by which it is provided.

> **Determination of period subject to division**
>
> (2) For the purposes of subsection (1) but subject to subsection (3), the period subject to division is
>
> > (a) the period specified by the court order or agreement as the period during which the member of the pension plan and the spouse, former spouse or former common-law partner cohabited; or
> >
> > (b) where the court order or agreement does not specify a period as described in paragraph (a), such period as may be determined by the Minister, on the basis of evidence submitted by either of the interested parties or by both, as being the period during which the member of the pension plan and the spouse, former spouse or former common-law partner cohabited.
>
> **Idem**
>
> (3) For the purposes of subsection (1), where the application is based on a court order and the order provides that pension benefits that have accrued to the member of the pension plan during a period specified in the order are to be divided, the period specified in the order is the period subject to division.
>
> ...
>
> **Further Divisions Precluded**
>
> 9 Where a division of pension benefits that have accrued to a member of a pension plan during any period is effected under section 8, no further divisions may be made under that section in respect of that period.

[19] The trial judge indicated he was retaining jurisdiction to assist the parties in the event any issues arose in relation to the pension administrator's compliance with the division order.

The Trial Judge's Decision on Costs (*Davis v. Davis*, 2022 NSSC 334)

[20] Ms. Harrison had sought costs in the amount of $88,325 on the basis she was the more successful party at trial. She asked for a lump sum award. Mr. Davis argued there had been mixed success between the parties such that each party should bear their own costs.

[21] Mr. Davis' alterative position was that any costs award in favour of Ms. Harrison should not be greater than the tariff amount.

[22] The trial judge awarded costs to Ms. Harrison as a lump sum in the amount of $36,000. He found:

- Ms. Harrison was "clearly the more successful party" and summarized in detail the examples of her greater success.

- The determination of the amount involved, a calculation required by the tariff, was not capable of quantification. He concluded it was not appropriate to "artificially determine" the amount involved, "nor is it likely to achieve a just result" (para. 22).

[23] In exercising his discretion to order a lump sum amount the trial judge focused on what he concluded was a reasonable base amount for Ms. Davis' legal fees and other factors he identified as relevant. Those factors included Mr. Davis' offers to settle. The trial judge summarized them in his Costs decision:

> [38] Mr. Davis' position is that he attempted to settle the matter by providing various settlement proposals and attempted to settle some of the issues prior to Trial. He provided the court with a copy of those proposals. Furthermore, Mr. Davis acknowledges that not everything he proposed was ordered in the Decision. He says he did make efforts to settle and was prepared to participate in a Settlement Conference while Ms. Davis was not and instead, she wanted to proceed directly to a hearing.

[24] The trial judge indicated he had "considered the various exchanges of offers in relation to the results in the Decision" (para. 39).

[25] Ultimately, the trial judge was not persuaded the costs sought by Ms. Harrison were reasonable in the circumstances. He awarded Ms. Harrison sixty percent of what he concluded was the reasonable base amount of $60,000, inclusive of disbursements. He held the total of $36,000, "…provides Ms. Davis with a substantial contribution exceeding 50% of the appropriate base sum and an amount I believe does justice between the parties" (para. 47).

[26] Mr. Davis has not appealed the trial judge's structuring of payment of the costs award.

The Positions of the Parties on Appeal

[27] Mr. Davis says the trial judge erred in ordering that his pension be equally divided with Ms. Harrison. He relies on Ms. Lamirande's statement to argue that

his pre-marriage pension credits were divided "appropriately from 1989 to 2000 by way of a transfer of $28,000 in the form of RRSPs". He says the trial judge "failed to recognize that this lump sum of monies was clearly a form of payout in the form of a transfer allowing my Canadian Armed forces Pension to remain intact". He says s. 9 of the *PBDA* prohibits a further division.

[28] Mr. Davis also once again relies on *Bishop v. Bishop*, 2005 NSSC 220 and *MacLean v. Cox*, 2017 NSSC 309, both of which were expressly distinguished by the trial judge.

[29] On the issue of costs, Mr. Davis points to the settlement offers contained in the April 13, 2021 and December 8, 2021 letters which he says indicate he wanted to avoid a trial.

[30] Ms. Harrison says Mr. Davis' appeal against the division of his pension should be dismissed. She says the trial judge made no error in rejecting Mr. Davis s. 13 application and equally dividing the pension, including the pre-marriage portion.

[31] Ms. Harrison raises two principal objections to Mr. Davis' appeal of the pension division. She says:

- Mr. Davis relied on s. 13 of the *MPA* to argue that the division of his CAF pension would be unfair or unconscionable. He made no mention of s. 9 of the *PBDA*. The trial judge dismissed Mr. Davis' s. 13 application.

- Furthermore, there was no prior division under the *PBDA* of any part of the pension acquired by Mr. Davis before his marriage to Ms. Harrison.

[32] In Ms. Harrison's submission, Mr. Davis' motion to introduce the Wendy Lamirande statement as fresh evidence should be denied as it fails three of the four *Palmer*[2] criteria – the requirements for due diligence, credibility and that it would have affected the trial judge's decision on the pension division issue. The trial judge's order for the pension to be divided equally with Ms. Harrison was based on his dismissal of Mr. Davis' s. 13 *MPA* application.

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[2] *Palmer v. The Queen*, [1980] 1 S.C.R. 759.

[33] As for Mr. Davis' appeal against the costs award, Ms. Harrison says this Court should not interfere with the trial judge's discretionary decision and should deny leave to appeal.

Standard of Review

[34] The standard of review on an appeal from a division of assets, such as a pension, is well established. As stated in this Court's recent decision of *Wolfson v. Wolfson* (2023 NSCA 57):

> [39] A judge's exercise of discretion in the classification and division of property will not be interfered with by this Court unless the judge has erred at law, applied incorrect principles, made a palpable and overriding error of fact or the result is so clearly wrong as to amount to an injustice. (See *Saunders v. Saunders*, 2011 NSCA 81 at para.18, *Cunningham v. Cunningham*, 2018 NSCA 63 at para. 15 and *Moore v. Darlington*, 2017 NSCA 67 at para 40.)
>
> [40] Issues of fact, including inferences, and issues of mixed fact and law from which no error of law is extractable, are reviewed for palpable and overriding error. Issues of law, including points of law which are extractable from mixed questions of fact and law, are reviewed for correctness. (See *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 8 and 27).

[35] The standard of review to be applied in an appeal from an award of costs is also settled law. As stated in *Wolfson*:

> [41] Costs awards are within a judge's discretion. This Court defers to that discretion, absent an error in law or where the award results in an injustice. (See *Ward v. Murphy*, 2022 NSCA 20 at para. 28 and *Donner v. Donner*, 2021 NSCA 30 at para. 60.)

[36] The decision in *Wolfson* also conveniently addresses how a motion for the admission of fresh evidence on appeal is to be assessed:

> [128] Civil Procedure Rule 90.47(1) permits this Court to admit fresh evidence where there are "special grounds". As explained in *Armoyan v. Armoyan*, 2013 NSCA 99, leave to appeal to the S.C.C. denied, 35611 (6 February 2014):
>
>> [131] Rule 90.47(1) permits the Court of Appeal to admit fresh evidence on "special grounds". The test for "special grounds" stems from *Palmer v. The Queen*, [1980] 1 S.C.R. 759, at p. 775. Under *Palmer*, the admission is governed by: (1) whether there was due diligence in the effort to adduce the evidence at trial, (2) relevance of the fresh evidence, (3) credibility of the fresh evidence, and (4) whether the fresh evidence could reasonably

> have affected the result. Further, the fresh evidence must be in admissible form. *Nova Scotia (Community Services) v. T.G.* 2012 NSCA 43, paras 77-79, leave to appeal denied [2012] S.C.C.A. 237, and authorities there cited *McIntyre v. Nova Scotia (Community Services)*, 2012 NSCA 106, para 30.

> [129] In *Barendregt v. Grebliunas*, 2022 SCC 22 the Supreme Court of Canada re-affirmed the application of the *Palmer* test in the family law context.

Analysis

[37] I will now deal with the three issues in this appeal:

1) Should the fresh evidence be admitted?

2) Did the trial judge err in his division of Mr. Davis' CAF pension?

3) Should leave to appeal be granted for Mr. Davis to appeal the costs award, and if so, is there a basis for this Court to interfere with the award?

The Fresh Evidence

[38] I find the statement from Wendy Lamirande that Mr. Davis is asking us to consider does not satisfy the *Palmer* criteria for the admission of fresh evidence on appeal. It fails the due diligence requirement. Mr. Davis could have secured a virtual appearance by Ms. Lamirande to testify at the trial. As Ms. Harrison notes, other witnesses testified virtually at the trial. A virtual appearance by Ms. Lamirande would have also addressed the requirement that fresh evidence be credible. She would have testified under oath or affirmation about how she and Mr. Davis divided their assets when their relationship ended in 2000.

[39] Most significantly however, the statement of evidence from Ms. Lamirande would not have affected the trial judge's decision on the pension division.

[40] In dismissing Mr. Davis' application, the trial judge took into account the division of assets between Mr. Davis and Ms. Lamirande in 2000. He noted the separation agreement showed "that Mr. Davis did not transfer RRSPs to his former partner. Instead he waived any claim to RRSPs that were in her name". He recited paragraphs 11 and 15 of the agreement:

> The parties agree that upon the signing of this Agreement, the 1996 Plymouth Van, all RRSPs in Wendy's name which are in client #3853967 with the Toronto Dominion Asset Management Inc. in the approximate amount of $28,000.00 and

> all furniture, furnishing and appliances in her possession, shall become her sole and exclusive property, and Don waives all claims he has thereto. In addition, immediately upon the signing of this Agreement, Don shall pay Wendy the sum of $500.00, being one-half of the present day value of his bond (acquired by payroll deduction) that will mature at the end of October, 2000.
>
> …
>
> The parties acknowledge that Don has accumulated pension credits through his employment with the Department of National Defence for the period of the common law relationship of the parties hereto. The parties agree that Wendy hereby waives all rights she has to the division of those pension credits and will sign all documents necessary for that purpose.

(paras. 30 and 31)

[41] There was nothing before the trial judge to indicate Mr. Davis' CAF pension had been divided with Ms. Lamirande.

[42] Furthermore, the trial judge had not been asked by Mr. Davis to consider the issue of a prior previous division. Mr. Davis sought to avoid the division of his pension by way of s. 13 of the *MPA*. As I have noted, that application failed.

[43] Ms. Lamirande's unsworn statement if produced at trial would have had no impact on the trial judge's pension division decision.

[44] The settlement letters of April 13 and December 8, 2021 were also before the trial judge. At the appeal hearing, Mr. Davis agreed they are found in the record from the trial which is before this Court. They do not constitute fresh evidence.

[45] As I noted above, the trial judge indicated in his Costs decision that he had taken the exchange of settlement proposals into account.

[46] The motion to admit fresh evidence is dismissed.

<u>The Pension Division Issue</u>

[47] Mr. Davis has not established any error by the trial judge in his decision on the division of the CAF pension. Mr. Davis relied on s. 13 of the *MPA* seeking to shield his pension from division. He was unsuccessful for the reasons I set out earlier.

[48] Mr. Davis now says the trial judge should not have divided the pension as it had already been the subject of a division with Ms. Lamirande. He cites ss. 8 and 9 of the *PBDA*. A division of pension benefits can be obtained under section 8, which the trial judge reproduced in his pension division decision.

[49] Where there has been a s. 8 division, section 9 of the *PBDA* prohibits further division:

> 9 Where a division of pension benefits that have accrued to a member of a pension plan during any period is effected under section 8, no further divisions may be made under that section in respect of that period.

[50] The record confirms Mr. Davis did not raise ss. 8 and 9 of the *PBDA* at trial. He cannot do so now for the first time on appeal. The trial judge cannot be found to have erred in failing to consider an argument which was not made before him (*Doncaster v. Field*, 2016 NSCA 25, at para. 49).

[51] I am satisfied the trial judge made no error in his reasoning on the pension division issue. There is no basis for us to disturb his decision.

<u>The Costs Issue</u>

[52] The trial judge's decision on costs is to be accorded significant deference on appeal. It was a carefully considered and reasonable resolution of the issue. There was no unfairness to Mr. Davis. There is no basis for interfering with it.

Conclusion

[53] Mr. Davis has established no basis for this Court to intervene on the pension division or costs decisions of the trial judge.

Disposition

[54] The motion for fresh evidence is dismissed. The appeal against the division of Mr. Davis' pension is dismissed. Leave to appeal the costs award is granted and the appeal is dismissed.

[55] Mr. Davis shall pay costs to Ms. Harrison as follows:

(1) The $500.00 in costs, inclusive of disbursements, ordered by this Court to be paid to Ms. Harrison by Order issued on December 2, 2022.

(2) For these appeals in the amount of $4000, inclusive of disbursements.

Derrick, J.A.

Concurred in:

Wood, C.J.N.S.

Fichaud, J.A.