

**NOVA SCOTIA COURT OF APPEAL**  
**Citation: *Barkhouse v. Wile*, 2014 NSCA 11**

**Date:** 20140129  
**Docket:** CA 418266  
**Registry:** Halifax

**Between:**

Kimberley Barkhouse

Appellant

v.

James Wile

Respondent

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**Judge:** Bryson, J.A.

**Appeal Heard:** December 3, 2013, in Halifax, Nova Scotia

**Subject:** **Family law. Civil Procedure Rules – costs – set-off.**

**Summary:** Ms. Barkhouse unsuccessfully litigated child support, among other issues with her former partner, Mr. Wile. He was awarded trial and appeal costs. Trial judge described Ms. Barkhouse's conduct as unreasonable and appeared to be an effort to damage Mr. Wile financially. Ms. Barkhouse did not pay costs. One child resided with Mr. Wile, the other with Ms. Barkhouse. Both children were about to attend university. Trial judge ordered costs owing by Ms. Barkhouse to be set-off against child support payable by Mr. Wile. Shortly thereafter, the trial judge terminated child support. The set-off amount in issue was \$2,125. The set-off order would not adversely affect the child residing with Ms. Barkhouse. She appealed, arguing that child support was right of child and not subject to set-off against costs owed by her.

**Issues:** Could child support be set-off against costs in this case?

**Result:**

Appeal dismissed. While child support was the right of the child, it was a right arising from litigation on the child's behalf by a parent. That parent's unreasonable conduct in litigation could be damaging to the payor spouse and ultimately the dependent child. It may also not be in public's interest to insulate an unreasonable litigant from costs.

Where, as here:

- the costs award was connected to litigation of child support;
  - there was no reasonable prospect of collecting costs;
  - a set-off would not adversely affect the child for whom support was paid;
  - it would otherwise not be inequitable to order a set-off
- the trial judge may order that costs be set-off in whole or part against child support. The burden of establishing that set-off would not adversely affect a dependent child rests with the payor seeking set-off. In this case, it was conceded that there would be no adverse effect.

<p><i>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 12 pages.</i></p>
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