

**SUPREME COURT OF NOVA SCOTIA**  
**(FAMILY DIVISION)**

**Citation:** Austin v. Jewkes, 2012 NSSC 186

**Date:** 20120515

**Docket:** 1201-065392

**Registry:** Halifax

**Between:**

Colleen Anne Austin

Petitioner

v.

Bradley Robert Jewkes

Respondent

**Judge:**

The Honourable Justice Moira C. Legere Sers

**Heard:**

January 31, 2012 in Halifax, Nova Scotia

**Written  
Submissions:**

Barbara Darby for Colleen Austin on April 13 and  
April 30, 2012

Bradley Jewkes on April 30, 2012

**Counsel:**

Barbara Darby for Colleen Austin  
Bradley Jewkes, Self-Represented

**By the Court:**

- [1] The petitioner seeks cost arising out of the Divorce proceeding.
- [2] The petitioner and respondent lived together and were married for less than 2 and 1/4 years.
- [3] The petitioner sought an equal division of assets and debts and a lump sum spousal support award.
- [4] The respondent sought an unequal division of assets in his favour and a division of debts. He successfully contested the spousal support award.
- [5] There were three appearances before the Court: two court directed administrative pre-trials (the latter resulting after an unsuccessful settlement conference); one Motion by the petitioner to amend the Petition to include a request for spousal support; and a full day hearing.
- [6] The Motion to amend the Petition was granted; the request for spousal support was denied.
- [7] Both parties were represented by counsel until very late in the proceedings when the respondent's counsel withdrew on January 24, 2012. The respondent proceeded to represent himself.
- [8] The proceeding was complicated by the respondent's failure to fully disclose in a timely fashion.
- [9] The respondent failed to disclose all his assets, failed to provide reliable valuations and simply did not disclose in accordance with directions in spite of the directions issued in two administrative pre trials in October 14, 2011 and November 24, 2012.
- [10] The respondent prematurely removed the petitioner from his health plan resulting in costs to the petitioner. The petitioner was compensated for these costs in the decision.

[11] The respondent submitted last minute documentation just before the hearing and supplemented this with documentation after the case has concluded in his written submissions necessitating further consultation with the petitioner's lawyer to allow an opportunity to respond.

[12] He failed to cooperate with the realtor, sold assets and failed to divide the proceeds or keep records of the sales for valuation and subsequent division.

[13] He made a claim to Revenue Canada regarding the child tax credit resulting in a demand to repay sent to the petitioner. This required the petitioner to seek the assistance of counsel and the court to ensure the child tax credit repayment was fairly addressed.

[14] The respondent increased the conflict and financial cost to both parties by this behavior. This required counsel and ultimately court intervention.

[15] On November 28, 2011 the petitioner communicated to the respondent an offer to settle for \$8,000 in addition to a division of his pension at source for the period of cohabitation to separation.

[16] The petitioner offered to sign over the home providing she be removed from all debts including joint loans. Each party would retain their own property and debts.

[17] Aside from the pension division (which was unequal in that it represented only that portion for which they were in relationship) and his motor bike (which he retained), all else that was disclosed was divided equally.

[18] The decision resulted in an equalization payment to the petitioner of \$16,826, a lump sum to cover the medical costs and child tax credit claim in the amount of \$1,574 and ½ the estimated equity in the home which is estimated to be \$8,662.

[19] The offer to settle was more advantageous to the respondent than was the court decision.

[20] The petitioner asks for costs of \$9,375 or \$6,250 (Tariff "A" Basic) plus 50%.

[21] I received cost submissions from the respondent on April 30, 2012, only after the respondent was reminded to file his comments.

[22] In his submissions, he advises of his financial difficulties and criminal court involvement arising out of the marriage. He acknowledges the offer to settle and advises his involvement in the resolution of these proceedings has resulted in a reduction of his work related duties, a considerable sum of money for lawyers' fees and he has instituted bankruptcy proceedings.

[23] The petitioner has responded by asking the court to order a lump sum award of spousal support which might survive a potential bankruptcy.

[24] Such an award would have to come after an application to vary. The respondent must have an opportunity to respond. A court must hear evidence to satisfy itself that this is merited.

[25] In recent years the law on costs in family proceedings has been thoroughly reviewed. Generally speaking, the successful party is entitled to have its costs or at least substantial recovery unless there are reasons why this would not be equitable.

[26] The respondent by his conduct frustrated what could have been an orderly separation. He failed to cooperate with resolution in a timely basis, failed to cooperate with evaluation of assets for sale (the house) and failed to fully disclose in a timely basis.

[27] His conduct required the matter be set down for a full day of court time for resolution by a court.

[28] One appearance was required because of the petitioner's last minute amendment to the Petition requesting spousal support. This took preparation time and less than an hour of court time. While the motion was allowed, the decision provided for no spousal support.

[29] The petitioner also asked for a division of cash deposits not fully identified and disclosed. This was disallowed.

[30] The petitioner also asked that the motor bike be included in the assets and initially overestimated the value of the possessions. All of these requests required evidence and court time to address the claims.

[31] It is extremely unfortunate that the respondent did not provide full and timely disclosure.

[32] This short term marriage has cost him considerably. His approach to ending the marriage and resolving the division has resulted in considerably more expense than was necessary had he complied with disclosure and presented his evidence in a timely fashion, had he cooperated in the process of valuation to bring this marriage to a complete conclusion.

[33] Costs in accordance with the tariff are \$6,250. His conduct complicated the timely disposition fo the proceeding.

[34] Costs of \$7,500 are to be paid by the respondent to the petitioner.

[35] Counsel for the petitioner shall draft the order.

Legere Sers, J.