

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: J. A. L. v. S. B. J. L., 2009 NSSC 135

Date: 20090327

Docket: 1201-061457, SFHD - 051228

Registry: Halifax

Between:

J. A. L.

Petitioner

v.

S. B. J. L.

Respondent

Judge: The Honourable Justice Beryl MacDonald

Heard: March 4, 2009, in Halifax, Nova Scotia

**Written Decision
on Costs:**

April 27, 2009

Counsel:

Tanya Nicholson, counsel for the Petitioner
Joyce Ruck de Peza, for the Respondent

By the Court:

[1] On March 19, 2009 I delivered a written decision continuing the Father's primary care of the parties children with specific access to their Mother. The Mother had requested she be the primary care parent or that the parties return to the previous shared care arrangement. I decided the parties would have joint custody and I did not give the Father the final decision making authority he requested. The Mother was granted retroactive and current spousal support. Her request for retroactive child support was denied. The Mother was ordered to share the cost of repairs to the matrimonial home. The Father seeks costs as the successful party and requests that I consider, in reaching my decision, the terms of a written offer he made to the Mother prior to the hearing.

[2] I have reviewed the Civil Procedure Rules and several decisions commenting on costs, including *Landymore v. Hardy* (1992), 112 N.S.R. (2d) 410 (T.D.); *Campbell v. Jones et al.* (2001), 197 N.S.R. (2d) 212 (T.D.); *Grant v. Grant* (2000), 200 N.S.R. (2d) 173 (T.D.); *Bennett v. Bennett* (1981), 45 N.S.R. (2d) 683 (T.D.); *Kaye v. Campbell* (1984), 65 N.S.R. (2d) 173 (T.D.); *Kennedy-Dowell v. Dowell* 2002 CarswellNS 487; *Urquhart v. Urquhart* (1998), 169 N.S.R. (2d) 134 (T.D.); *Jachimowicz v. Jachimowicz* (2007), 258 N.S.R. (2d) 304 (T.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, impecuniosity of the parties, 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 or reduce a cost award to an otherwise successful party.
5. The amount of a party and party cost award should "represent a substantial contribution towards the reasonable expenses of presenting or defending the proceeding, but should not amount to a complete indemnity".

6. The tariff of costs and fees is the first guide used by the Court in determining the appropriate quantum of the cost award.

7. 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”.

8. 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”.

9. If the award determined by the tariff does not represent a substantial contribution towards the 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.

10. 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.

[4] If the Mother had not been seeking spousal support, the written offer made by the Father could be considered to be as good as or possibly even better than the result at trial. However, the Mother was seeking spousal support. The Father’s offer was all inclusive. The Mother had to accept the entire offer which required her to waive her claim to spousal support. The other terms of the offer were not so beneficial to suggest she was unreasonable when she rejected this offer. The monetary amount was related primarily to the property division and was not significant enough to represent an amount justifying the release of the spousal support claim as well. The Mother may have been prepared to release her spousal support claim to settle the parenting plan but I cannot find her decision not to do so unreasonable. The two issues are not logically related and it may be considered coercive to associate them. The existence of the offer will not be considered in this cost award.

[5] The Father's primary issues were the parenting arrangement in which he wanted final say and relief from paying spousal support. His parenting arrangement was accepted but he does not have final say and he must pay spousal support. The Mother's primary issues were the same. Her parenting arrangement was not accepted but she is to receive spousal support. The success of these parties at trial was divided. There will be no cost award.

Beryl MacDonald, J.