

SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)

Citation: Bowden v. Brinton, 2018 NSSC 57

ENDORSEMENT

Bernadette Bowden v. Dana Brinton

March 16, 2018

SFH-MCA 098671

- Lydia Billingsley for Bernadette Bowden
- Sean Smith for Dana Brinton

Mr. Brinton seeks costs of \$5,500.00, based on Tariff A and a hearing of one-half day or, in the alternative, \$1,500.00 under Tariff C.

Decision:

Bernadette Bowden shall pay Dana Brinton \$1,250.00 in costs. Her payment shall be made when a decision is rendered in her application. If Ms. Bowden succeeds in her application, Mr. Brinton may offset this costs award against any costs he owes Ms. Bowden. If Ms. Bowden fails in her application, these costs shall be due forthwith and in addition to any other costs she may be ordered to pay Mr. Brinton. If her application does not proceed, this costs award must be paid within fourteen days of her Notice of Discontinuance being filed.

Reasons:

1. Ms. Bowden applied to vary the terms of a custody order on an interim basis. Her application was heard over one-half day and was dismissed.
2. Civil Procedure Rule 77.03(3) provides that “Costs of a proceeding follow the result”. Costs are in my discretion. A decision not to award costs must be principled.
3. Civil Procedure Rule 77.02(1) states that I “may, at any time, make any order about costs as [I am] satisfied will do justice between the parties.”
4. Ms. Bowden argues that I should consider her financial circumstances and how a costs award might impact the child who is the focus of this variation application. I believe this can be done by postponing the payment of a costs award until the conclusion of the hearing. If Ms. Bowden is successful ultimately, this award may be offset against costs owed to her. If Ms. Bowden is not successful, she will have had time to prepare her finances for the payment of this award (and any other which

might follow).

5. Having regard to Tariff C, where the application was heard in a brief period, and on the basis of affidavits and cross-examination, I order Ms. Bowden to pay Mr. Brinton costs of \$1,500.00, which I reduce by \$250.00 to reflect Mr. Brinton's late filing of his materials, so that Ms. Bowden owes \$1,250.00. This amount is inclusive of all disbursements.
6. Mr. Brinton was present at the pre-trial conference when deadlines were set for filing materials. His materials were filed late. Costs awards serve to discourage behaviour. I have reduced the amount of costs awarded to Mr. Brinton by \$250.00 to reflect his late filing.
7. Ms. Bowden's payment shall be made when a decision is rendered in her application. If Ms. Bowden succeeds in her application, Mr. Brinton may offset this costs award against any costs he owes Ms. Bowden. If Ms. Bowden fails in her application, these costs shall be due forthwith and in addition to any other costs she is ordered to pay Mr. Brinton. If her application does not proceed, this costs award must be paid within fourteen days of her Notice of Discontinuance being filed.

Elizabeth Jollimore, J.S.C.(F.D.)