

SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)

Citation: *Lamey v. Lamey*, 2017 NSSC 360

AMENDED ENDORSEMENT

Amended on October 5, 2017 to correct the date of Ms. Lamey's costs submission

Sarah Lamey v. Bernard Lamey

1201-064929; SFH-D 072764

- Zachary Chisholm for Sarah Lamey
- Bernard Lamey, unrepresented

Sarah Lamey requests costs of between \$5,500.00 and \$7,250.00 following a divorce and corollary relief proceeding.

Decision:

Mr. Lamey shall pay Ms. Lamey costs of \$6,500.00 by September 1, 2018.

Reasons:

1. Ms. Lamey applied to finalize a divorce and corollary relief proceeding.
2. There were two pre-trial conferences. The hearing lasted for one-half day. Ms. Lamey was present and represented by counsel. Mr. Lamey did not appear and no one appeared on his behalf.
3. Ms. Lamey was successful in her claims.
4. Ms. Lamey made a settlement offer to Mr. Lamey approximately two months before the hearing.
5. Ms. Lamey was awarded greater ongoing child support under section 3 of the *Federal Child Support Guidelines* and greater retroactive child support at the hearing than she had offered to accept in her settlement offer. The terms of access ordered were the same as those proposed in the settlement offer.
6. Ms. Lamey was awarded no contribution to special or extraordinary expenses under section 7 of the *Federal Child Support Guidelines*. She did not pursue this claim at the hearing. In this regard, the settlement offer was less attractive than the result achieved at the hearing.

7. Overall, Ms. Lamey was more successful at trial than Mr. Lamey.
8. Ms. Lamey filed her submissions on costs on August 30, 2017. Mr. Lamey made no submissions on costs.
9. 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.
10. Costs promote the rational conduct of litigation. They discourage parties from pursuing cases which are unlikely to succeed. They encourage parties to settle cases where they are likely to achieve a better result through settlement than through litigation.
11. Mr. Lamey argues that he ought not be ordered to pay costs because he is of limited means.
12. Mr. Lamey is employed and was found to have an annual income of \$33,748.00.
13. Self-representation does not immunize a party against an order for costs. This can only be done by an order granted on a motion under Rule 77.04.
14. Mr. Lamey has not sought or been granted an order under Rule 77.04.
15. Judge Dyer reminds me, in *M.C.Q. [sic M.Q.C.] v. P.L.T.*, 2005 NSFC 27 (CanLII): some litigants may “consciously drag out court cases at little or no actual cost to themselves (because of public or third party funding) but at a large expense to others who must “pay their own way”.” If this happens, Judge Dyer said, “Fairness may dictate that the successful party’s recovery of costs not be thwarted by later pleas of inability to pay. [See *A.E.M. v. R.G.L.*, 2004 BCSC 65 (CanLII)].”
16. I apply Tariff A as is the practice in the Family Division: *Armoyan*, 2013 NSCA 136 at paragraph 20.
17. To apply Tariff A, I must know the amount involved in the case. Mr. Chisholm identifies the “amount involved” as \$25,000.00. Using Tariff A, this would result in costs of \$6,250.00 on the basic scale.
18. Ms. Lamey’s total legal fees and disbursements from October 27, 2015 to date have been \$7,237.31 (\$7,278.85 less “Visa retainer fees” of \$41.54 which I find is not a

- legal cost).
19. 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.”
 20. Under Civil Procedure Rule 77.02(2) I have a general discretion to award costs to do justice between the parties, regardless of whether costs have been specifically claimed.
 21. Having regard to the result achieved, the content and timeliness of the settlement offer, Mr. Lamey’s failure to provide materials and respond to directions or orders to disclose materials, the amount involved, and the duration of the hearing, I order Mr. Lamey to pay Ms. Lamey costs of \$6,500.00. This amount shall be paid by September 1, 2018.

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