

SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)

Citation: *MacLean v. Cox*, 2018 NSSC 62

ENDORSEMENT

Kelly MacLean v. Greg Cox
1201-068809; SFH-D 096826

February 3, 2018

- Bryen E. Mooney for Kelly MacLean
- Greg Cox, self-represented

Request for costs of \$33,140.75 and disbursements of \$1,326.29, following a divorce and corollary relief proceeding. Total costs requested: \$34,467.14.

Decision:

Greg Cox shall pay Kelly MacLean costs of \$15,000.00 on or before April 30, 2018.

Reasons:

1. This was an application for a divorce and division of property.
2. The hearing required two days: September 13 and 14, 2017. Post-trial submissions were received on September 25, 2017 and October 27, 2017. My decision was released on December 5, 2017.
3. The parties were instructed to file any submissions on costs by December 31, 2017. Ms. MacLean filed submissions. Mr. Cox did not.
4. At trial, Ms. MacLean claimed an unequal division of property, asking that Mr. Cox be ordered to reimburse her for her post-separation payment of the home's mortgage and related costs, credit card and cared line payments. She asked that her employment pension be undivided and that she keep the entire proceeds from the sale of the matrimonial home.
5. Ms. MacLean received a division of property which equally divided the net proceeds from the sale of the matrimonial home and equally allocated some of the debts she serviced post-separation (after deducting a portion of certain costs related to her own use). Household contents were divided equally *in specie* since values could not be determined on the evidence provided. Ms. MacLean's employment pension was equally divided for the period from September 2006 to June 7, 2014.

6. In his brief, Mr. Cox said he was claiming compensation for the “lost” equity in the sale of the matrimonial home (\$15,000.00); certain household contents; reimbursement of medical expenses (\$9,800.00); the cost of a replacement telephone (\$400.00), his “last pay” (\$5,250.67) and an equal share of a cash outlay of \$30,000.00.
7. Mr. Cox offered no testimony and tendered no documentary evidence in support of his claims. In the absence of evidence to support the claims, they were not granted.
8. In total, Ms. MacLean made seven comprehensive settlement offers. Mr. Cox made four settlement offers.
9. At different times, one aspect or another of an offer may have been better or worse than the trial result. It is not possible to compare the comprehensive offers against the trial result because Ms. MacLean offered lump sum amounts in lieu of a pension division and the value of the pension division awarded is not known.
10. Ms. MacLean did not succeed in having her employment pension remain intact or in keeping the entire proceeds from the sale of the matrimonial home. She did succeed in having Mr. Cox share the debt.
11. Ms. MacLean was more successful than Mr. Cox at trial though not as successful as her offers.
12. 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.
13. To apply Tariff A, I must know the amount involved in the case. According to Tariff A, where there’s a substantial non-monetary issue involved, the amount involved is determined having regard to the complexity of the proceeding and the importance of the issues. Here, since no financial value was attached to the household contents and Ms. MacLean’s pension, there are substantial non-monetary issues.
14. In both *Collins v. Speight* 1993 CanLII 4668 (NS SC), and in *Wyatt v. Franklin* 1993 CanLII 4580 (NS SC), Justice Goodfellow concluded that the amount involved in two and one-half day trials was \$45,000.00. *Collins v. Speight* 1993 CanLII 4668 (NS SC), was a case involving a dispute over an entitlement to a right of way and *Wyatt v. Franklin* 1993 CanLII 4580 (NS SC), was a land dispute. Justice Goodfellow described both as not complex. Later, in *Toronto Dominion Bank v. Lienux*, 1997 CanLII 15017 (NS SC), Justice Goodfellow suggested a general rule for cases where

- a substantial non-monetary issue was involved. He treated each day or part day of the trial as equivalent to \$15,000.00 for the purpose of determining the “amount involved”.
15. In 2007, Justice Lynch reviewed this general rule in *Jachimowicz*, 2007 NSSC 303 (CanLII), at paragraph 26. There, the parenting trial took approximately thirteen days: six days of evidence from the initial trial, five days of review evidence and numerous other appearances which added approximately two more days. She adjusted the daily equivalent amount from \$15,000.00 to \$20,000.00 “to reflect the increased costs of litigation.”
 16. Applying these decisions, the amount involved in this trial is \$40,000.00. To this, must add \$2,000.00 per day.
 17. I am to consider whether there were any complicating or simplifying factors: were orders necessary to obtain disclosure? Were witnesses required to appear for pointless cross-examination? Were facts agreed to save time?
 18. There were complicating factors: there were multiple pre-hearing conferences and a motion had to be filed to list the home for sale (under a different court action) and to retire debts prior to the trial. Much time was taken at the trial to establish that Mr. Cox brought the majority of the household contents to the marriage, though this had little relevance in light of the clear statement in section 4 of the *Matrimonial Property Act* that matrimonial assets include “all [. . .] personal property acquired by either or both spouses **before** or during the marriage” (emphasis added).
 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. I have considered Tariff A, the amount involved, the duration of hearing, the complicating factors, and the principle that Ms. MacLean should receive a substantial contribution to her costs. The jurisprudence suggests a substantial contribution means more than 50% of a lawyer’s reasonable bill. Here, Ms. MacLean has not provided a detailed bill of costs. Absent this, I cannot assess the fees.
 21. I order that Mr. Cox pay Ms. MacLean costs of \$15,000.00. This amount is inclusive of disbursements, and must be paid by April 30, 2018.

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