

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

**Citation:** *Arefi-Afshar v. Ehdaie*, 2018 NSSC 286

**Date:** 2018-11-15  
**Docket:** 1201-065819  
**Registry:** Halifax

**Between:**

**Mohammad Reza Arefi-Afshar**

Applicant

v.

**Mina Ehdaie**

Respondent

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**LIBRARY HEADING (DECISION ON COSTS)**

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**Judge:** The Honourable Justice R. Lester Jesudason

**Final  
Submission on  
Costs:** November 1, 2018

**Key words:** Costs

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**Judge:** The Honourable Justice R. Lester Jesudason

**Written Decision:** October 1, 2018

**Final Submission on  
Costs** November 1, 2018

**Counsel:** Christine J. Doucet and Ashley Donald for the Applicant  
Catrina M. Chisholm for the Respondent

**By the Court:**

[1] This is a decision on costs following my written decision with respect to Mr. Arefi-Afshar's variation application released on October 1, 2018: 2018 NSSC 207. I directed that if the parties couldn't agree on costs, each party should file written submissions on costs within 30 days.

[2] Ms. Ehdaie filed written submissions on costs on November 1, 2018. She seeks costs of \$3770.14 broken down as follows:

- \$2000 for the full day of trial;
- Disbursements of \$1296.75 incurred for attending the variation hearing by video-conference; and
- Filing fees of \$473.39.

[3] Mr. Arefi-Afshar didn't file any substantive submissions on costs. His counsel for the variation hearing filed a letter on November 1, 2018, advising that her firm's retainer has now ended. She advised that Mr. Arefi-Afshar's position is that no costs should be awarded but her firm had no instructions from him to prepare any further submissions.

**Ms. Ehdaie's Arguments:**

[4] In support of her position, Ms. Ehdaie advances several arguments. I summarize her main ones as follows:

- While there was mixed success at the variation hearing, her position was closer to what was ordered by me so she should be considered more successful than Mr. Arefi-Afshar.
- Mr. Arefi-Afshar's failure to provide full and frank disclosure made it impossible to explore settlement of the matter prior to the variation hearing.
- This matter has spanned three years if one includes the provisional process which was dealt with by other judges going back to 2015. She says that part of the reason for this was because Mr. Arefi-Afshar failed to provide fulsome and accurate disclosure.
- Mr. Arefi-Afshar has failed to pay any support throughout this proceeding thereby depriving her of same.
- She agreed to attorn to the jurisdiction of Nova Scotia in the interests of a timely resolution to this matter.

- While she initially took the position that *res judicata* barred any variation by Mr. Arefi-Afshar before December 2016, she conceded at the hearing that a variation of support was warranted from April 1, 2016, onward.

**The Law:**

[5] *Civil Procedure Rule 77* deals with the awarding of costs. It gives the court a wide discretion to award costs to do “justice between the parties”.

[6] There is a wealth of jurisprudence written on the awarding of costs. I have nothing novel to add.

[7] In *Armoyan v. Armoyan, supra*, our Court of Appeal provided helpful guidance on the principles that should be considered when determining costs. Justice Fichaud stated:

1. The court’s overall mandate is to do “justice between the parties”: para. 10;
2. Unless otherwise ordered, costs are quantified according to the tariffs; however, the court has discretion to raise or lower the tariff costs applying factors such as those listed in *Rule 77.07(2)*. These factors include an unaccepted written settlement offer, whether the offer was made formally under Rule 10, and the parties’ conduct that affected the speed or expense of the proceeding: paras. 12 and 13;
3. The *Rule* permits the court to award lump sum costs and depart from tariff costs in specified circumstances. Tariffs are the norm and there must be a reason to consider a lump sum: paras. 14-15;
4. The basic principle is that a costs award should afford a substantial contribution to, but not amount to a complete indemnity to the party’s reasonable fees and expenses: para. 16;
5. The tariffs deliver the benefit of predictability by limiting the use of subjective discretion: para. 17;
6. Some cases bear no resemblance to the tariffs’ assumptions. For example, a proceeding begun nominally as a chambers motion, signaling Tariff C, may assume trial functions; a case may have “no amount involved” with other important issues at stake, the case may assume a complexity with a corresponding work load, that is far disproportionate to the court time by which costs are assessed under the tariffs, etc.: paras. 17 and 18; and
7. When the subjectivity of applying the tariffs exceeds a critical level, the tariffs may be more distracting than useful. In such cases, it is more realistic to circumvent the tariffs, and channel that discretion directly to the principled

calculation of a lump sum which should turn on the objective criteria that are accepted by the *Rules* or case law: para. 18.

**Analysis:**

[8] The variation hearing took a full day. Both parties filed extensive pre-hearing submissions. There were several organizational conferences to deal with pre-hearing issues.

[9] Success on the issues in dispute was mixed. The table below summarizes the parties' relative success on the issues in dispute:

<b>Issue</b>	<b>Mr. Arefi-Afshar's Position</b>	<b>Ms. Ehdaie's Position</b>	<b>Result</b>
<i>Res judicata</i>	Doesn't bar his variation application.	Bars any variation from December 1, 2014, to April 1, 2016.	<i>Res judicata</i> didn't bar Mr. Arefi-Afshar's variation application.
Date for any variation	December 1, 2014	April 1, 2016	April 1, 2016
Spousal support quantum	Set at \$0 per month as of December 1, 2014.	Maintain at \$3000 per month from December 1, 2014, to April 2016, and then reduce to \$1500 from April 2016 onwards.	Spousal support maintained at \$3000 per month from December 1, 2014, to April 2016 and then reduced to \$1000 per month from April 1, 2016 onwards.
Requirement to maintain medical insurance	Terminate	Terminate once she obtains her own.	Terminate once she obtains her own.
Requirement to maintain life insurance as security	Terminate	Continue	Continue

[10] I agree with Ms. Ehdaie that when the issues are considered as a whole, she was more successful than Mr. Arefi-Afshar particularly on the issue of whether his spousal support obligation should be varied from December 1, 2014, onwards. I also agree that I had concerns about Mr. Arefi-Afshar's failure to provide an accurate picture of his financial circumstances. Finally, I find that Ms. Ehdaie's willingness to attorn to the jurisdiction of Nova Scotia and participate by video-conference resulted in a speedier and less expensive proceeding for both parties. This should be commended in this day of pressing access to justice issues.

**Conclusion:**

[11] I exercise my discretion to award Ms. Ehdaie costs in the amount of \$2,000 which shall be paid by Mr. Arefi-Afshar within 90 days. I conclude that such an award does justice to the parties when I consider all the relevant factors including, but not limited to:

- the monetary value of the amounts in dispute;
- the relative success of the parties on the various issues;
- the length of the proceeding and the fees and the conduct of the parties which affected the speed or expense of the proceeding; and
- Civil Procedure Rule 77, the tariffs and the guidance from the case law as they apply to the unique facts of this case.

[12] I will be sending the parties a form of Order reflecting my decision on costs. If either party has an objection to the proposed form of Order, he or she should notify the Court within 5 business days failing which the Order will be issued.

Jesudason, J.