

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

**Citation:** *Windover v. Windover*, 2019 NSSC 240

**Date:** 2019-07-25  
**Docket:** 1201-67412  
**Registry:** Halifax

**Between:**

Kent Donald Windover

Petitioner

v.

Kristine Dawn Windover

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Elizabeth Jollimore

**Summary:** Mr. Windover ordered to pay costs of \$500.00 following unsuccessful motion for Voice of the Child Report. Costs reduced from the \$1,000.00 requested because Ms. Windover didn't comply with filing deadlines.

**Key words:** Family, Costs

**Legislation:** *Nova Scotia Civil Procedure Rules, Rule 77.03(3)*

***THIS INFORMATION SHEET DOESN'T FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***

## ENDORSEMENT

Citation: *Windover v. Windover*, 2019 NSSC 240

July 25, 2019

**Kent Windover v. Kristine Windover  
2013; 1201-67412 SFH-D 88404**

- Christine J. Doucet for Kent Windover
- Patrick J. Eagan for Kristine Windover

*Request for costs of \$1,000.00 following an unsuccessful ½ day motion for a Voice of the Child Report based on Tariff C.*

### **Decision:**

Kent Windover shall pay Kristine Windover costs of \$500.00 on or before August 30, 2019.

### **Reasons:**

1. Kent Windover moved to have the court order a Voice of the Child Report be prepared for Jacob and Noah. Kristine Windover opposed the motion.
2. Mr. Windover filed two affidavits and Ms. Windover filed one. Each party filed a brief.
3. Anticipating there would be medical evidence, the motion was scheduled for 2 and ½ hours. It took 2 and ¼ hours, without any medical evidence.
4. Mr. Windover's motion was dismissed.
5. Ms. Windover asks for costs of \$1,000.00 based on Tariff C. Mr. Windover proposes costs of \$500.00 because:
  - Ms. Windover failed to proffer a medical witness
  - Ms. Windover attempted to offer hearsay opinion evidence
  - Ms. Windover failed to meet the deadlines of the Civil Procedure Rules for filing her affidavit and her brief
6. 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.

7. The hearing required almost all the time allotted for it even without a medical witness. Ms. Doucet's opening, questioning and submissions took more than one hour while Mr. Eagan's took less.
8. Both parties attempted to offer evidence beyond their capacity: Ms. Windover filed a letter containing a medical opinion from Dr. LeBlanc and Mr. Windover summarized information from the Diagnostic and Statistical Manual (both DSM-5 and DSM-IV) and offered his opinion of his son's diagnosis. There is no evidence that Mr. Windover is trained in psychiatry or psychology.
9. Under Civil Procedure Rule 23.11, Ms. Windover's affidavit and brief were to be filed by Monday, July 15, 2019. She filed them on Wednesday, July 17, 2019. She did not seek leave to file the materials late and Mr. Windover did not object to her reliance on the late-filed material.
10. Costs awards serve to discourage behaviour. I would award Ms. Windover the costs she seeks if she had complied with the rules. I have reduced the amount of costs awarded to her from the \$1,000.00 she seeks to \$500.00 to reflect her late filing.

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