

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Woodill v. Tiller*, 2019 NSSC 325

Date: 2019-10-31

Docket: 109624

Registry: Sydney

Between:

Keith Woodill

Applicant

v.

Kimberley Tiller

Respondent

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Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: June 12, 13, and 14, 2019 in Sydney, Nova Scotia

Final Written Cost September 30, 2019

Submissions:

Written Decision: October 31, 2019

Result: Costs awarded under Tariff C, with offer considered.

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Written Release: October 31, 2019

Counsel: Steve Jamael for the Applicant
Christopher Conohan for the Respondent

By the Court:

[1] This matter came before the court for a focused hearing on June 12, 13, and 14, 2019. I rendered a written decision on August 30, 2019. The parties were unable to agree on costs and filed submissions. Ms. Tiller’s comprehensive brief and book of authorities was received on September 24, 2019. Mr. Woodill’s brief response was received on September 30, 2019.

[2] Ms. Tiller seek costs of the application as the successful party, in accordance with *Civil Procedure Rule 77*. She advances three alternative claims: 1) solicitor-client costs; 2) lump sum costs; 3) party-party costs.

[3] Ms. Tiller’s claim for solicitor-client costs includes fees of \$30,022.50, plus disbursements of \$401.20, plus taxes for a total of \$34,985.26. *Rule 77.03(2)* allows such an award “in exceptional circumstances recognized by law”.

[4] The law recognizes the need to censure parties who advance frivolous or vexatious claims. Ms. Tiller says that Mr. Woodill used the law to intimidate, compel, and harass her, and that he showed disregard for the legal process in general. She says that he falls into that category of exceptional circumstances and that the court cannot condone his actions.

[5] In my written decision, I did not find Mr. Woodill to be a frivolous or vexatious litigant. I **did** conclude that some of his actions were consistent with the argument advanced by Ms. Tiller’s counsel that he sought retribution against Ms. Tiller for ending the relationship. That factored into my assessment of credibility and the weight to be assigned to each party’s evidence. But it doesn’t elevate his claim and actions to the reprehensible level reflected in cases where solicitor-client costs are awarded.

[6] Justice Wright in **Thirteen Rivers Ltd. v 3285548 Nova Scotia Ltd.**, [2016 NSSC 232] noted:

24. After much deliberation in the application of the foregoing legal principles, I have concluded that this is a case where the unfounded allegations of fraudulent conduct made against the third parties approach the line for the imposition of solicitor-client costs (reserved for reprehensible, scandalous or outrageous conduct in rare

and exceptional cases), without crossing over it. I therefore decline to make an award of solicitor-client costs as requested.

25. The conduct of the defendants in making these unfounded allegations is nonetheless deserving of censure which ought to be given effect by the imposition of a party-party costs award in excess of Tariff C. The authority of the Court to do so is embodied in Civil Procedure Rule 77.07(1) which provides that “A judge who fixes costs may add an amount to, or subtract an amount from, tariff costs”.

[7] I agree. *Rule 77* presents options that allow the court to exercise its discretion in crafting an order that will “do justice between the parties” (*CPR 77.02(1)*) without awarding solicitor-client costs.

[8] Ms. Tiller asks next for a lump sum costs award under *Rule 77.08* or Tariff costs. In support of a lump sum, she argues that where a case didn’t reach the level of reprehensible conduct required for a solicitor-client costs award, enhanced costs are still an option.

[9] Ms. Tiller hasn’t suggested a figure for a lump sum award, but her submissions indicate that “If she pays a single dollar, [she] will... have suffered a penalty of process at the hands of a vengeful power[ful] boyfriend.” I take that to mean that she’s requesting a lump sum in the range of the legal bills she incurred to defend Mr. Woodill’s claim.

[10] Mr. Woodill didn’t expressly address the possibility of a lump sum award in his submissions. However, he references Justice Smith’s decision in **Tri-Mac Holdings v Ostrom**, 2019 NSSC 44, in which the court notes that the starting point in awarding costs is the *Tariff of Costs and Fees* under *Rule 77*. He also references the Court of Appeal decision in **Armoyan v Armoyan**, 2013 NSCA 136 in which the court noted that the Tariffs are the norm, and there must be a reason to depart from them.

[11] I will assess costs under Tariff C in order to determine if a departure is warranted. Under that Tariff, for a 3 day hearing, costs would normally be \$6,000.00 (\$2,000 per full day). This amount may be multiplied 2 – 4 times, depending on a) the complexity of the matter; b) the importance of the matter to

the parties, and; c) the amount of effort involved in preparing for and conducting the application.

[12] Given that a significant effort went into preparing affidavits for numerous witnesses, the fact that the hearing was determinative of the main claim, and the fact that it involved a claim to Ms. Tiller's home, which for her is a major asset, it would be appropriate to use a multiplier of 4 for a total of \$24,000.00. With disbursements and taxes, the total would be just under \$28,000.00.

[13] The question is whether party-party costs in the amount of \$28,000.00 will do justice between the parties, or whether a higher lump sum should be awarded, in order to make a more "substantial contribution" to Ms. Tiller's reasonable legal costs.

[14] Ms. Tiller's total legal bill was \$34,985.26. I have reviewed the detailed bills submitted by her counsel. The work completed is reasonable given the issues at play, i.e. not just whether a common-law relationship was established, but also whether Mr. Woodill could advance a claim for unjust enrichment. The hourly rate is not outrageous for counsel of that experience. Time was spent on negotiations, which is to be encouraged, and time was spent on costs submissions, which is necessary where the parties could not agree.

[15] In addition, Ms. Tiller's counsel reduced his fees as a courtesy, which reduces the total Ms. Tiller claims from Mr. Woodill.

[16] Mr. Woodill suggests that a costs award of \$7,500.00 would be appropriate. I reject that submission. Ms. Tiller's legal fees were far more extensive than that, but still reasonable, given the factors I've identified above. A costs award of \$28,000.00 under Tariff C would offer a "substantial contribution" towards Ms. Tiller's legal costs. An enhanced lump sum is not appropriate.

[17] That might be the end of my decision, but for the offer made by Ms. Tiller that wasn't accepted. Ms. Tiller sent an offer to Mr. Woodill by fax on June 7, 2018. The offer provided that Mr. Woodill could discontinue the action with costs payable to her of \$2,500.00 plus taxable disbursements. The offer was not accepted.

[18] In **Armoyan v. Armoyan**, 2013 NSCA 136, the Court of Appeal provided guidance where an offer is made that is not accepted. In this case, Ms. Tiller's offer was more advantageous to Mr. Woodill. It was left open until the hearing,

and could even have been accepted after the evidence commenced. In accordance with the **Armoyan** decision, the amount which Mr. Woodill would be required to pay is calculated as follows:

- Pre-offer Fees \$3,180.00 at 66% = \$1,908.00
 - Post-offer Fees \$26,842.50 at 80% = \$21,474.00
- \$ 23,382.00

Ms. Tiller's legal account doesn't show the date disbursements were incurred, so I have split the difference between 66% and 80%.

- Disbursements 73% = \$292.88
- Taxes on Fees = \$3,507.30
- Tax on Disbursements = \$43.93
- Total = \$27,226.11

[19] This figure is almost the same as the amount calculated under Tariff C (above). Having determined that an enhanced lump sum is not necessary to "do justice between the parties", I direct that Mr. Woodill pay costs to Ms. Tiller in a lump sum of \$28,000.00 inclusive of disbursements and tax, within thirty days.

[20] Counsel for Ms. Tiller will prepare the order.

MacLeod-Archer, J.