

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

**Citation:** *Littlejohn v. Ryckman*, 2020 NSSC 79

**Date:** 20200227

**Docket:** 1206-6754

**Registry:** Sydney

**Between:**

LORETTA LYNN RYCKMAN LITTLEJOHN

Applicant

v.

FRANCIS MICHAEL WALTER RYCKMAN

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Lee Anne MacLeod-Archer

**Heard:** October 21 and 22, 2019 in Sydney, Nova Scotia

**Final Written** February 13, 2020

**Costs Submissions:**

**Written Costs** February 27, 2020

**Decision:**

**Subject:** Costs

**Summary:** Successful litigant awarded costs under *Rule 77*.

**Result:** Costs of \$14,750.00 awarded.

<p><b><i>THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.</i></b></p>
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Written Release: February 27, 2020

Counsel: Candee McCarthy for the Applicant  
Gordon Gear for the Respondent

## By the Court:

### Decision

- [1] Ms. Ryckman initiated divorce proceedings on November 3, 2014, in which she advanced numerous claims. Mr. Ryckman initially disputed jurisdiction because he lives in Ontario, but he eventually filed an Answer on April 3, 2017, in which he disputed the claims advanced by Ms. Ryckman. He did not file the necessary documentation in support of his Answer, despite directions and notices to disclose from court staff, and directions from the court.
- [2] I rendered a written decision in relation to the contested divorce trial on January 31, 2020. Prior to the trial, the parties resolved the parenting and property issues, leaving only the issue of child support and determination of Mr. Ryckman's income.
- [3] In the divorce trial, Ms. Littlejohn was successful in arguing that income above what Mr. Ryckman reported to Revenue Canada should be imputed. Child support was awarded based on that income, both retroactively and prospectively. Ms. Littlejohn is entitled to an award of costs as the successful litigant.
- [4] *Civil Procedure Rule 77* deals with costs. Rule 77.03(3) provides that "costs of a proceeding follow the result". This means that the successful litigant is usually awarded costs. However, costs are always in the discretion of the trial judge. Any decision not to award costs must be based on clear reasons. Those reasons can include a party's ability to pay costs.
- [5] Ms. Littlejohn says that the settlement on parenting was only reached shortly before the divorce trial, and that she incurred legal fees preparing to litigate that matter. She also says that because Mr. Ryckman failed to disclose his income until the eleventh hour, she could not advance a formal settlement offer.
- [6] Ms. Littlejohn also notes that Mr. Ryckman retained counsel late in the process, while she has had counsel throughout. In support of her claim, Ms. Littlejohn references **M.Q.C. v. P.L.T.**, 2005 NSFC 27, in which the judge stated that 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” ... fairness may dictate that the successful party’s recovery of costs not be thwarted by later pleas of inability to pay.

[7] Under *Civil Procedure Rule 77.06(2)*, there is a presumption that costs will be fixed in accordance with the tariffs of costs and fees. Tariff A applies where a trial was held. Costs under Tariff A are based on the amount involved. In this case, Ms. Littlejohn calculates the amount involved at \$18,171.00, based on the retroactive child support award. That amount would result in a costs award of \$4,000.00 under Scale 2. On top of that, costs of \$2,000.00 per day of trial are normally awarded.

[8] Because costs are always in the discretion of the trial judge, Rule 77.07 permits me to increase or decrease the tariff amount, based on a list of enumerated factors. I may also make a lump sum award under Rule 77.08.

[9] Ms. Littlejohn relies on Wood, J.’s comments (as he then was) in **Viehbeck v. Pook**, 2012 NSSC 113:

[6] The underlying principle is that, unless there are exceptional circumstances, an award of costs should represent a substantial contribution to a party’s expenses, but not complete indemnity. The tariffs provide guidance to the court in performing the assessment of costs, with the initial step being the determination of the “amount involved”. This is to be based upon a consideration of the complexity of the proceeding and the importance of the issues to the parties where those issues are substantially non-monetary.

[10] She also relies on the decision of B.A. MacDonald, J., in **Lubin v. Lubin**, 2012 NSSC 93, which references the same principle.

[11] She further refers to the comments of Forgeron, J. in **Cameron v. Cameron**, 2014 NSSC 325, in which the Court of Appeal decision in **Armoyan v. Armoyan**, 2013 NSCA 136 was discussed. She highlights the court’s discretion to raise or lower the tariff costs in view of settlement offers and the conduct of the parties, as well as the fact that a substantial contribution generally means more than 50 per cent and less than 100 per cent of a lawyer’s reasonable bill for services.

[12] My credibility findings at trial are relevant insofar as Mr. Ryckman’s behaviour is concerned. Ms. Littlejohn points specifically to the comments of MacDonald, J. in **Lubin** (supra) and the court’s comments in **Guillena v. Guillena**, 2003 NSSF 6 that:

... Costs is an appropriate sanction when a party to a divorce proceeding fails to comply with the disclosure provisions of the *Civil Procedure Rules*. The *Child Support Guidelines* also allow for costs amounting to a full indemnity when a party to a child support application ignores the disclosure requirements of the *Guidelines*. Further, when a party inexcusably ignores the Court's order to provide financial disclosure, that party should not be surprised if costs are assessed in favor of the opposing litigant.

[13] Finally, she references the decision in **Godin v. Godin**, 2014 NSSC 46, in which the court increased the basic scale by 50 per cent to reflect the unsuccessful party's conduct in the proceeding.

[14] She asks the court to consider the following factors:

1. This proceeding was entirely about child maintenance and subsequently imputation of income for the purposes of determining appropriate support. Ms. Littlejohn was almost entirely successful, with the only exceptions being that support was set retroactive to December 1, 2017, as opposed to November 3, 2014, the date of her Petition and effective notice and the Respondent's income was imputed to \$72,000.00, rather than \$150,000.00.
2. The Petitioner made multiple attempts to obtain the disclosure necessary in order to resolve the matter and avoid a contested court proceeding.
3. The Respondent took an unreasonable position regarding his income and caused delay by consistently failing to provide the required and requested disclosure.
4. The Respondent was found not to be credible in his testimony regarding his income, his business, or its sister business, Dancefit Canada.
5. Based on an imputed income of \$72,000.00, and the finding that the Respondent must pay the Petitioner child support from December 1, 2017, and each month thereafter, based on the Ontario table, the Respondent owes the Petitioner \$673.00 per month for 27 months from December 2017 up to and including February 2020. This is a total of \$18,171.00 in addition to ongoing support in the amount of \$673.00 until Tiara is no longer dependent.
6. Although the parties settled all parenting issues in advance of the hearing, settlement was only reached at the last minute and the

Petitioner still incurred expenses litigating parenting issues subsequent to reaching settlement and preparing for hearing. In particular, the Petitioner incurred the cost of a contested interim hearing, a review, and three *ex parte* motions when the Respondent removed Tiara from the jurisdiction without the Petitioner's knowledge or consent.

7. The Respondent's failure to disclose and repeated refusal to respect court orders led to this matter taking much longer than necessary to reach final hearing and made it impossible for a formal offer to settle on all issues to be presented, which could have prevented a hearing.
8. By providing testimony, which was "rife with inconsistencies and claims that lack credibility", as found by your Ladyship at paragraph 9 of the decision, the Respondent elongated the hearing unnecessarily. With the issues narrowed to only imputation of income and child support, it may have been possible to complete the hearing in less than two days, had the Respondent been more cooperative with presenting his evidence.
9. The Respondent bears most of the blame for the matter having to proceed to hearing. He failed to disclose financial information, even at the hearing (with regard to his businesses), failed to follow court orders, including a Direction and later Order to Disclose, and made it necessary for the Petitioner to file three separate emergency motions. These failures by the Respondent necessitated and prolonged the hearing, as well as prolonged the matter as a whole.
10. As contemplated in **Armoyan** (supra), this led to "a corresponding workload that is far disproportionate to the court time by which costs are assessed under the tariffs".
11. For the majority of the time that Ms. Littlejohn was engaged with present counsel, Mr. Ryckman was self-represented and as such incurred little to no legal fees, while repeatedly engaging in behaviour that increased the costs of Ms. Littlejohn.

[15] Ms. Littlejohn seeks increased Tariff A costs based on **Godin** (supra). She says that Mr. Ryckman's *mala fides* should result in a 50 per cent increase in costs payable. She calculates that as follows:

\$4,000.00 (basic scale)

+\$2,000.00 (50% of \$4,000.00)  
+\$9,000.00 (\$2,000.00 per day multiplied by 4.5 days)  
\$15,000.00

[16] Alternatively, she asks the court to grant a lump sum. Using the percentages set out in **Armoyan** (supra), she calculates a figure of \$14,819.87. While she did not make a settlement offer dealing with child support, she argues that she was unable to do so without the proper disclosure. She asserts that Mr. Ryckman's failure to fully disclose his financial information forced the parties to a hearing.

[17] Ms. Littlejohn presents the figure of \$14,819.87 as a "substantial contribution" to her legal fees. Her legal fees, including disbursements and taxes, amount to \$21,171.27. This is after a deduction of a courtesy discount of over \$6,000.00. She submits that her request for costs in the range of \$15,000.00 is therefore "very reasonable" in the circumstances.

[18] I have considered the *Rules*, caselaw and Ms. Littlejohn's submissions. I received no costs submissions from Mr. Ryckman. However, I do note that he made extensive disclosure shortly before the divorce trial. Despite this, disclosure was not complete and even with that information, I found that his income was higher than he claimed.

[19] There were only two issues left to be addressed. The determination of Mr. Ryckman's income ate up most of the trial time. Once income is determined, child support is simply based on the applicable table under the *Federal Child Support Guidelines*, SOR/97-175. So, the trial might have been shorter had there been timely and complete disclosure.

[20] I find the most appropriate way to deal with costs in the circumstances of this case is to set the amount involved at \$75,000.00. This figure equates roughly to the difference in the income claimed by Mr. Ryckman and the income I imputed, plus the amount of child support arrears owing. This was the real amount involved for the parties.

[21] Using the basic scale, this results in a costs award of \$9,750.00 plus \$2,000.00 per day of trial, for a total of \$13,750.00. In addition, I award costs of \$1,000.00 for the two *ex parte* motions filed by Ms. Littlejohn in 2018, both of which arose as result of Mr. Ryckman's "self-help" approach to this

proceeding. I have not included the 2019 motion for which Gregan, J. awarded costs of \$2,000.00 to Ms. Littlejohn.

[22] Mr. Ryckman must pay costs to Ms. Littlejohn of \$14,750.00 within sixty days (plus any costs outstanding from the 2019 motion). I am satisfied that this award does justice between the parties. Ms. Littlejohn's counsel is asked to draft the costs order.

MacLeod-Archer, J.