

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

**Citation:** *Coles v. Coles*, 2020 NSSC 268

**Date:** 20201002

**Docket:** 1201-67011; SFH-D 85967

**Registry:** Halifax

**Between:**

**David Keith Coles**

Petitioner

v.

**Sharon Lynn Coles**

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Elizabeth Jollimore

**Submissions:** September 5, 2020 by Judith A. Schoen  
September 25, 2020 by Julia E. Cornish, Q.C.

**Summary:** Costs of \$10,212 awarded to former wife following variation application where success was mixed but she was clearly more successful and had made settlement proposals superior to those made by former husband.

**Key words:** Costs

**Legislation:** Civil Procedure Rules 10, and 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.***

**SUPREME COURT OF NOVA SCOTIA (FAMILY DIVISION)**  
***Coles v. Coles*, 2020 NSSC 268**  
**ENDORSEMENT**

**October 2, 2020**

**David Keith Coles v. Sharon Lynn Coles**  
**2013; Prothonotary No. 1201-067011; SFH-D 85967**

- Julia E. Cornish, Q.C. for David Coles (submissions on September 25, 2020)
- Judith A. Schoen for Lynn Coles (submissions on September 2, 2020)

*Lynn Coles requests costs of \$10,212 inclusive of disbursements, following a 2-day variation application.*

**Decision:**

1. David Coles must pay Lynn Coles \$10,212 no later than March 31, 2021.

**Reasons:**

2. David Coles asked to terminate child support, reduce spousal support retroactively and prospectively, reduce arrears of spousal support, impose a termination date on spousal support, and vary his obligation to provide life insurance in a variation application under the *Divorce Act*, R.S.C. 1985 (2<sup>nd</sup> Supp), c. 3.
3. Appropriately, Lynn Coles didn't contest the termination of child support: Mr. Coles had stopped paying it as each child completed university, years before the variation application was filed.
4. I dismissed the request to vary life insurance because I didn't have jurisdiction to grant this request.
5. Mr. Coles proved there was a material change in circumstances and I varied spousal support prospectively and retroactively: *Coles v. Coles*, 2020 NSSC 200.
6. Ms. Coles wants a contribution of \$10,212 to her total legal expense. Including fees, disbursements and HST, her total expense was \$18,060.92.

7. *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.
8. Mr. Coles says that success was mixed, and each party should bear its own costs.
9. I was given copies of settlement proposals between the parties that were made within the week before the hearing.
10. Each of Ms. Coles’s 3 settlement proposals was superior to the result Mr. Coles achieved. He rejected them all.
11. Each of Mr. Coles’s 3 settlement proposals was inferior to the result Ms. Coles achieved.
12. There were no settlement offers made formally under Rule 10.
13. Success was mixed but Ms. Coles was clearly more successful than Mr. Coles. She should have costs awarded to her.
14. Costs under the tariffs are the norm. With reason, I may consider a lump sum. Either way, costs should afford “substantial contribution to the party’s reasonable fees and expenses”: *Armoyan v. Armoyan*, 2013 NSCA 136.
15. For cases which conform generally to the parameters assumed by the tariffs, the tariffs work well.
16. Here, I find it is appropriate to consider lump sum costs: there is no clear amount involved; and numerous proposals were made.
17. Ms. Coles’s submissions include Ms. Schoen’s affidavit outlining fees, disbursements and taxes. Ms. Coles will be able to deduct her expenses from her taxable income – but must also include the amount of the costs award in her taxable income.
18. Ms. Coles’s fees are reasonable.

19. Ms. Coles seeks a contribution of \$10,212, approximately 57% of the total she was billed. This is a significant contribution to her expenses, and I order Mr. Coles pay Ms. Coles costs of \$10,212 no later than March 31, 2021.

**Direction:**

20. Ms. Schoen will prepare the order for review by Ms. Cornish.

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