

SUPREME COURT OF NOVA SCOTIA
Citation: *Ambrose v Ambrose*, 2022 NSSC 285

ENDORSEMENT

Date: 20221012

Docket: *SFHPSA*, No. 113933

Registry: Halifax

Between:

Kimberly Dawn Ambrose

Applicant

v.

Tim Allen Michael Joseph Ambrose

Respondent

Judge: The Honourable Justice Cindy G. Cormier

**Final Written
Submissions:** December 6, 2021

Counsel: Bhreagh MacDonald, for the Applicant
Tim Allen Michael Joseph Ambrose, self-represented

1 Appearances:

1. The parties were originally scheduled to appear in court on August 27, 2019.
Mr. Ambrose requested an adjournment and Ms. Ambrose consented.
2. On September 12, 2019, a court conference was held.
3. On October 16, 2020, a pre-trial conference was held.
4. On November 17, 2020, an interim hearing was completed. An Interim Order was issued on February 19, 2021.
5. On February 11, 2021, a pre-trial conference was held.
6. On May 19, 2021, the final hearing was held. A written decision was released to the parties on November 3, 2021.

2 Request for costs

Ms. Ambrose seeks costs in the amount of \$3,500.00 to be awarded to the Nova Scotia Legal Aid Commission. She sought a contribution towards legal fees or other expenses arising from appearances to address the relief sought as outlined in Ms. Ambrose's Notice of Application and Notice of Motion for interim relief filed April 3, 2019. She sought to address the issues of custody and parenting arrangements, parenting time, child support, and spousal support, requesting

spousal support of \$1000 per month and retroactive spousal support for the period between April 3, 2019, and December 1, 2020.

Ms. Ambrose seeks costs in the amount of \$3,500.00, pursuant to Tariff A, with an amount involved of less than \$25,000.00. Costs of the hearing should be \$3,000.00 (scale 1 – 25%) + \$2,000.00, pursuant to Rule 77.07.

3 Decision:

I agree Tariff A and Scale 1 can be applied in this situation and that \$3,500.00 is an appropriate costs award. I also agree that Rule 77.03(5) and sections 22 and 23 of the *Nova Scotia Legal Aid Act* apply, and I order Mr. Ambrose to pay to the Nova Scotia Legal Aid Commission costs of \$3,500.00, forthwith.

4 Reasons:

[1] On April 3, 2019, Ms. Ambrose file a Notice of Application and a Notice of Motion for Interim Relief.

[2] On or about July 18, 2019, Mr. Ambrose was sent a Direction to Disclose a Parenting Statement and a Statement of Income, with all attachments including but not limited to Income Tax Returns for 2016, 2017, and 2018.

[3] On or about July 17, 2019, Mr. Ambrose was sent an Order to file a pre-conference summary in advance of August 20, 2019.

[4] In advance of the court conference scheduled on September 12, 2019, Mr. Ambrose failed to file a pre-conference summary, a Parenting Statement, a Statement of Income, or a Response to Ms. Ambrose's Application or to her Interim Motion. The interim issues of custody and parenting were resolved by consent of the parties; however, the interim issues of child support and spousal support could not be resolved due to the lack of financial disclosure from Mr. Ambrose. The matter was adjourned to a settlement conference on November 7, 2019 and a pre-trial conference on November 25, 2019.

[5] On November 7, 2019, Ms. Ambrose requested an adjournment of the settlement conference and the pre-trial conference scheduled on November 7, 2019, and on November 25, 2019, respectively. Ms. Ambrose's legal counsel was leaving her firm and Ms. Ambrose needed time to seek new legal counsel. The adjournment was granted.

[6] The settlement conference was re-scheduled to May 13, 2020 and a pre-trial conference was re-scheduled to May 28, 2020. Both were subsequently adjourned due to Covid related concerns.

[7] On October 16, 2020, a pre-trial conference was held. Ms. Ambrose advised the Court that Mr. Ambrose had not yet provided her with full financial disclosure.

Ms. Ambrose confirmed that she continued to be open to attending a settlement conference but only if Mr. Ambrose filed full financial disclosure. I granted an Order for Costs of \$200 to be paid by Mr. Ambrose to Ms. Ambrose forthwith due to his failure to disclose. I directed that in lieu of a settlement conference, an interim hearing be scheduled if Mr. Ambrose failed to file the required financial information within one week, including any relevant records of employment. Mr. Ambrose failed to file his financial information and an interim hearing was scheduled on November 17, 2020.

[8] On November 17, 2020, an interim hearing was held. Mr. Ambrose did not file any evidence. Interim custody and parenting issues were resolved by consent of the parties, with Mr. Ambrose agreeing to make best efforts to improve his relationship with the children. With respect to the financial issues, Mr. Ambrose took the position that he could not pay spousal support while paying child support.

[9] Mr. Ambrose failed to file full financial information making it impossible for the Court to properly assess his income, and the Court drew an adverse inference, imputing his income at \$82,500. He was ordered to pay interim child support of \$1,159.00 and interim spousal support of \$676.00. Mr. Ambrose was once again directed to file full financial disclosure – this time four weeks in advance of the next court appearance scheduled in February 2021. Mr. Ambrose

was advised that if he failed to file the required financial information, the matter would not be scheduled for a further settlement conference but would be scheduled for a final hearing.

[10] On February 11, 2021, a pre-trial conference was held. Mr. Ambrose had not filed full financial disclosure and a final hearing date was set for May 19, 2021. Mr. Ambrose was directed to file an affidavit and full financial information for 2018, 2019, 2020, and recent disclosure for 2021, within one month.

[11] On April 26, 2021, Mr. Ambrose filed T4 information for the period between 2016 and 2020, but no pay stubs or income tax returns. He did not file an affidavit or a trial brief.

[12] On May 19, 2021, a final hearing was held. Custody and parenting issues were resolved by consent. Mr. Ambrose agreed to pay the table amount of child support, but he did not agree to pay spousal support. Because Mr. Ambrose had not filed full financial disclosure, it was necessary for the Court impute income to him. A written decision was released to the parties on November 3, 2021.

[13] Mr. Ambrose's income was imputed at \$82,500.00, and he was ordered to pay \$1,159.00 per month in child support.

[14] Child support paid by Mr. Ambrose was not eligible for the re-calculation program as I had imputed an income to Mr. Ambrose; I found this to be an unfair outcome. As a result, I ordered Mr. Ambrose to file sufficient financial information with the Court and with Ms. Ambrose by April 1st each year (including but not limited to a Statement of Income attaching: proof of income from all sources, evidence of all contracts, his T1 General Tax Returns, and any Notices of Assessment or Re-Assesemnt for 2018, 2019, 2020, and 2021, and for any subsequent years). I determined that should Mr. Ambrose fail to file the required financial information, Mr. Ambrose's annual income for child support would be increased presumptively by 10% on June 1st 2022 and each June 1st thereafter if he failed to provide full financial disclosure.

[15] Ms. Ambrose was ordered to provide Mr. Ambrose and the Court with notice of any change in the number of dependent children by April 1st each year.

[16] Mr. Ambrose was ordered to pay retroactive spousal support of \$13,520.00 and prospective spousal support of \$676.00 per month for an indefinite period.

[17] To ensure both parties could make representations with respect to any documentation they had filed on or before April 1st, 2022, a review hearing was scheduled on July 22, 2022.

[18] Unbeknowst to me, in early December 2021, Ms. Ambrose's counsel filed cost submissions. Mr. Ambrose did not file any cost submissions.

[19] I was alerted to the receipt of Ms. Ambrose's submissions when I reviewed the parties' file in contemplation of the review hearing scheduled on June 22, 2022. At that time, I advised the parties I would review the file and provide a decision regarding costs. Due to the delay in providing the parties with a decision on costs, I gave Mr. Ambrose an additional month to file his submissions. He did not file any submissions.

[20] 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.

[21] In family law, there are three approaches to a determination of a costs award: The "Amount Involved" approach; the "Rule of Thumb" approach; and the "*Armoyan*" approach.

The Amount Involved approach

[22] Although it has been used in some family law matters, this approach is most often used in other areas of civil law.

[23] Courts have found that the “Amount Involved” approach cannot be applied to parenting. Courts have also found that the “Amount Involved” approach is not easily applied to the issue of child support or spousal support. It is often difficult to determine a final amount of child support or spousal support involved based on a Court’s final decision. The amount of child support due and payable is expected to vary over time and spousal support may also be varied.

The Rule of Thumb approach

[24] In family law cases involving issues such as child support, the “Rule of Thumb” approach has been used to determine the “amount involved” under Tariff A. When applying Tariff A, the “daily equivalent” amount of \$20,000.00 per day of trial is used to identify the amount involved. The “Rule of Thumb” approach was introduced by Justice Goodfellow in *Toronto Dominion Bank v. Lienaus*, 1997 CanLII 15017 (NS SC) and then updated by Justice Lynch in *Jachimowicz*, 2007 NSSC 303 (CanLII) at paragraph 26.

[25] The length of trial is fixed by the trial judge. Based on the appearances in this matter: one court conference; a pre-trial conference in advance of the interim hearing; an interim hearing; a pre-trial conference in advance of the final hearing; and a final hearing, I find the matter took up at least one day of court time.

Scale 1, 2 or 3 of Tariff A

[26] Whether there's a substantial non-monetary issue involved, or if it is difficult to determine a final amount involved, the amount involved is determined having regard to the complexity of the proceeding and the importance of the issues. For instance, a court may consider if orders were necessary to obtain disclosure, witnesses required to appear for pointless cross-examination, facts agreed to save time, problems with disclosure, or any other complicating or simplifying factors.

[27] The lack of disclosure from Mr. Ambrose was a complicating factor.

[28] I agree Tariff A and Scale 1 can be applied in this situation and that \$3,500.00 is an appropriate costs award. I also agree that Rule 77.03(5) and sections 22 and 23 of the *Nova Scotia Legal Aid Act* apply, and I order Mr. Ambrose to pay to the Nova Scotia Legal Aid Commission costs of \$3,500.00 forthwith.

5 Directions:

Ms. Ambrose's legal counsel shall prepare the Order, which will include the following terms:

- (a) Mr. Ambrose must file updated financial information for 2018, 2019, 2020, 2021, and 2022 by April 30, 2023.

- (b) A review date will be set for mid-May, 2023. Our scheduling department will reach out shortly to confirm this date.
- (c) Mr. Ambrose's income will increase by 10% on June 1, 2023 if he does not file full financial information or attend the review hearing.

Cormier, J.