

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *AB v. MB*, 2023 NSSC 92

Date: 20230315

Docket: No.1201-72379; SFHD - 116919

Registry: Halifax

Between:

AB

Petitioner

v.

MB

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Elizabeth Jollimore

Written Submissions: February 24, 2023, by Jennifer L. Schofield
February 27, 2023 by Kerri-Ann Robson

Written Decision: March 15, 2023

Key words: Costs, substantial contribution

Summary: Wife was successful (or more successful than the husband) in each of the 5 issues raised in the parties' divorce and was awarded 60% of her costs and disbursements.

Legislation: *Civil Procedure Rule 77.03(3)*

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ENDORSEMENT

March 15, 2023

AB v. MB

2019 1201-72379; SFH-D116919

- Jennifer L. Schofield for Ms. B, submissions filed on February 24, 2023
- Kerri-Ann Robson for Mr. B, submissions filed on February 27, 2023

At the end of a 3-day divorce trial where there were 5 discrete contested issues, Ms. B requested costs of \$16,174.44, inclusive of disbursements.

Decision:

Mr. B must pay Ms. B costs of \$16,174.44 (inclusive of disbursements) on or before August 31, 2023.

Reasons:

1. At trial, 5 issues were to be determined:
 - a. where the children would live during their father's deployments;
 - b. whether the children's schools should be changed;
 - c. how the parents would pay for specific children's expenses;
 - d. what contact there would be between oldest child and their mother;
and
 - e. whether there was a material change in circumstances allowing a variation of parenting arrangements imposed at a binding settlement conference.
2. Ms. B was either entirely successful or more successful than Mr. B on all issues. The decision in this case is reported at 2022 NSSC 388.

3. Civil Procedure Rule 77.03(3) says that “Costs of a proceeding follow the result”. Costs are in my discretion.
4. Ms. B says I must consider his former wife’s actions that unnecessarily increased his costs. In this regard, he refers to one matter unrelated to the trial: Ms. B’s withdrawal from the collaborative family law process. He also refers to her move from the matrimonial home. No one is required to participate in a collaborative family law process and, given my finding that there has been family violence, Ms. B’s withdrawal from that process (and her move from the matrimonial home) may be reasonable, in any event.
5. While Ms. B’s variation application did require pre-trial conferences, she was successful in proving a material change. Severing the question of material change from the merits of the variation application ensured that, if Ms. B did not prove a material change, Mr. B would avoid the expense and delay of a variation application.
6. Ms. B seeks a lump sum award of \$16,174.44, equal to 60% of her costs incurred after January 2022. It includes nothing for the collaborative family law process or the binding settlement conference.
7. The trial took 3 days and there were multiple pre-trial conferences. Legal fees (and disbursements) of less than \$27,000 are entirely reasonable.
8. Ms. B is entitled to a substantial contribution to her reasonable legal fees. I find that a 60% contribution is such a contribution.
9. I order Mr. B to pay Ms. B costs of \$16,174.44, inclusive of disbursements, no later than August 31, 2023.

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