

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

**Citation:** *Edwards v. Edwards*, 2023 NSSC 203

**Date:** 20230623

**Docket:** No. 1201-70292; SFHD 105133

**Registry:** Halifax

**Between:**

Marvin Charles Edwards

Petitioner

v.

Jaime Leigh Edwards

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Elizabeth Jollimore

**Written Submissions:** June 9, 2023, by Christine Doucet  
June 19, 2023 by Bryen Mooney

**Written Decision:** June 23, 2023

**Key words:** Costs, substantial contribution to reasonable legal fees

**Summary:** Father was successful on single issue at 1 day hearing, but fees to which he sought contribution were not reasonable. Mother ordered to pay 65% of costs determined to be reasonable.

**Legislation:** *Civil Procedure Rule 77.03(3)*

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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**Judge:** The Honourable Justice Elizabeth Jollimore

**Decision:** June 23, 2023, in Halifax, Nova Scotia

**Final Written Submissions:** June 9, 2023 by Christine Doucet  
June 19, 2023 by Bryen Mooney

**Counsel:** Christine Doucet, for Marvin Charles Edwards  
Bryen Mooney, for Jamie Leigh Edwards

**By the Court:**

[1] Lawyers and their clients may contract for legal services on any terms they wish. Their contracts do not determine the reasonableness of legal fees claimed in a costs award.

[2] I granted Mr. Edwards' application and gave him custody of Victoria so he could consent to her receiving COVID-19 vaccinations. My decision is reported at 2023 NSSC 141.

[3] Civil Procedure Rule 77.03(3) provides that "Costs of a proceeding follow the result". Costs are in my discretion.

[4] Mr. Edwards was successful and is entitled to costs, which should be a substantial contribution to his reasonable expenses.

[5] Ms. Lysens argued that each party should pay their own costs, particularly where Mr. Edwards made false statements in his affidavit, and was unsuccessful in his request to have me take judicial notice of government documents which supported his case. Finally, she argued that I should consider the child's best interests and deny the costs request.

[6] I accept Ms. Lysens' point regarding Mr. Edwards' statements. While he was not successful in his judicial notice argument, he was successful in having the government documents admitted.

[7] It is correct that I may withhold costs in cases where a child's best interests are at issue and fear of a costs award might deter a parent from pursuing matters that are relevant to the child's best interests. Ms. Lysens offered no evidence challenging the assertion that the vaccine was safe or beneficial and one of the most effective ways to protect Victoria's health and prevent severe illness, hospitalization, and death. Documentary evidence didn't address the merits of vaccination; her evidence focused on whether her position opposing vaccination was reasonable.

[8] I reject Ms. Lysens' claim that I should not award costs. There is no principled reason to deny Mr. Edwards costs.

[9] To date, Mr. Edwards has incurred fees, disbursements, and taxes of \$30,698.72 for the single day hearing. He asks for costs of \$19,597.85, 66% of the actual costs he's incurred to date. There are additional unbilled amounts.

[10] I conclude that \$19,597.85 is not a substantial contribution to reasonable legal fees. For the purposes of a costs award in this case (a single-issue application

which took 4.5 hours of hearing time), I find that Mr. Edwards' actual legal fees are not a reasonable benchmark for a costs award. I conclude this for 4 reasons.

[11] First, according to the affidavit of Jessica Renaud, an associate lawyer at MDW Law, 4 people worked on Mr. Edwards' case. This included a paralegal whose hourly rate was \$200 (pre-tax).

[12] The account itemizes the paralegal's time and the tasks performed. Hours of the paralegal's work are described as "instructions to legal admin," and "quality control and strategy discussion." Without detail I can't conclude that billing \$200 (pre-tax) per hour for this work is reasonable.

[13] In some cases, the paralegal's work is described. For example, the paralegal spent 20 minutes "on hold" when telephoning a doctor's office and Mr. Edwards was billed \$80 (pre-tax). An additional \$40 (pre-tax) was billed for receiving an issued *subpoena* back from the Court.

[14] I am aware that lawyers with 5 or more years of experience earn an hourly rate of \$80 from Nova Scotia Legal Aid for providing actual legal services on family law cases, according to the Regulations under the *Legal Aid Act*, N.S. Reg. 55/2014. While this amount is surely low, it provides context for the \$200 billed

for the paralegal, who cannot provide legal services and, as described above, whose tasks are ones I would expect administrative staff to perform at no charge.

[15] Second, the account provided Mr. Edwards with no relief from the \$940 (pre-tax) he was billed for his wife's affidavit, though it was clear that the affidavit could not be filed in time for use at the hearing.

[16] Mr. Edwards' deadline for filing affidavits was March 23, 2023. The deadline was set 4 months earlier in November 2022.

[17] Ms. Dow-Edwards' affidavit was filed 2 weeks past the filing deadline.

[18] In the letter sent with the affidavit, Ms. Doucet explained the filing delay:

We determined that it was necessary to file an affidavit of Ms. Dow-Edwards after learning that the parties' daughter Victoria and Ms. Dow-Edwards contracted Covid-19 several weeks ago. My own schedule made it difficult to prepare the affidavit earlier in March. I was away from March 10 – 22, at which time I commenced a three-day trial, and then myself was out of the office for several days with Covid-19, returning on March 30, 2023.

[19] According to the account statement, consideration of an affidavit for Ms. Dow-Edwards began on April 3 - 11 days after the filing deadline passed, and *after* Ms. Doucet's absence from the office, her trial, and her illness.

[20] Third, the account statement identifies the person who performed the services as "MDW" 8 times. This is not an actual person identified in Ms.

Renaud's affidavit. In each case, the service is a letter, and Mr. Edwards was billed \$40 (pre-tax) for the letter. Some of these letters were to the court and, as far as these letters are concerned, there is nothing to justify the \$40 (pre-tax) charge. One letter says, for example:

We represent Marvin Edwards in the above noted matter and Bryen Mooney represents Jaime Lysens.

Please find enclosed one (1) original and two (2) copies of Dr. Jeffrey Nicholas Colp's Affidavit for filing in this matter. Please retain one copy for the Court file and return the remaining two copies to our firm's bin at the Court.

Thank you for your assistance in this matter. Please do not hesitate to contact our office should you have any questions or concerns.

[21] Another letter says:

Further to the above-noted matter, please find enclosed one (1) original and two (2) copies of an Acceptance of Service Notice to Appear, Order to file Pre-Conference Summary and Direction to Disclose. Kindly file the original and return the date-stamped copy to our firm's mail bin for pick-up.

Should you have any questions or concerns, please do not hesitate to contact me.

Thank you for your assistance in this matter.

[22] There are similar letters sending a *sub peona* to be issued and sending the exhibit book. These were sent separately on the same day, resulting in 2 \$40 (pre-tax) charges. In each case the letter was sent to the Court by courier and copied by email to Mr. Edwards and to Ms. Mooney. The amount charged for each is exclusive of courier charges because the account statement shows almost \$140 in courier charges.

[23] I don't know the contents of the letters to Ms. Mooney. The account statement describes one as "letter to opposing counsel enclosing filed affidavit." Another is described as "letter to opposing counsel enclosing filed affidavit." A third is "letter to opposing counsel enclosing a Rebuttal Affidavit."

[24] In total, Mr. Edwards was charged \$320 (pre-tax) for MDW correspondence. This amount is not reasonable. Again, the routine task of sending documents to the court or to opposing counsel is one I would expect administrative staff to perform at no charge.

[25] Fourth, Mr. Edwards was billed for services where 2 lawyers were involved. For example, both Ms. Doucet and her associate, Ms. Renaud, attended the hearing. Only Ms. Doucet addressed the Court. Mr. Edwards was billed \$1,575 (pre-tax) for Ms. Renaud's attendance. This is not reasonable.

[26] While I have concluded that the amount sought is not reasonable as it relates to costs for a single-issue one-day hearing, I am making no judgment about the appropriateness of the fees as between Mr. Edwards and his counsel. He is free to contract as he chooses for representation.

[27] In determining a reasonable amount, I look to the duration and complexity of the hearing: 1 issue, 1 day. Costs, inclusive of disbursements and tax, of \$11,000



would be reasonable. This is equivalent to 20 hours (12 hours charged at \$450 and 8 hours charged at \$475), with applicable HST, and the disbursements shown on the MDW statement of account.

[28] I find a substantial contribution to reasonable fees is \$7,150 and I order Ms. Lysens to pay Mr. Edwards this no later than December 31, 2023. I have drafted the Order, which I enclose.

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