

Supreme Court of Nova Scotia (Family Division)
Citation: *Harris v. Delaney*, 2023 NSSC 349

Endorsement

John Harris v. Samantha Delaney
October 31, 2023

File No. 125717

- **Alan Stanwick, counsel for the Applicant, John Harris**
- **Heidi Fahie, counsel for the Respondent, Samantha Delaney**

Background and Overview

1. A contested hearing was held on August 31, 2023, and a written decision was released September 21, 2023: *Harris v. Delaney*, 2023 NSSC 306.
2. The court invited written submissions on the issue of costs.
3. Written submissions were received from counsel for John Harris on October 23, 2023, and counsel for Samantha Delaney on October 26, 2023.
4. This endorsement will address costs and is to be read in conjunction with the written decision released September 21, 2023.

Position of the Parties

Position of John Harris

5. John Harris seeks costs from Samantha Delaney in a lump sum of \$5,000.
6. In support of his position, Mr. Harris argues:
 - He was entirely successful in his claim for shared parenting. A successful party is generally entitled to a cost award.
 - A lump sum cost award is appropriate because parenting issues cannot be assigned a dollar value.

Position of Samantha Delaney

7. Samantha Delaney submits she should not pay costs or, in the alternate, that the amount of costs sought against her be significantly reduced. She does not suggest an alternate cost award or an appropriate method for calculating such an award.
8. Ms. Delaney argues:
 - The position she put forth was not unreasonable.
 - She was a well-behaved litigant. She provided proper disclosure and did not delay the proceeding.
 - An order of costs will create an undue hardship given her modest financial circumstances. This would be contrary to the child's best interests. She asks me to consider:
 - She is a Legal Aid client.
 - Her limited financial circumstances are made worse by the court's decision to "diminish child support" and to find "that she is now to receive only half of the Child Tax Credit."
 - The claim for costs is approximately the same amount as her retroactive child support award.

The Law

9. Nova Scotia *Civil Procedure Rule 77* governs awards of costs in matters before the Supreme Court of Nova Scotia.
10. Costs are in the discretion of the Court. A successful party is generally entitled to costs and a decision not to award costs must be principled and reasoned. *Gagnon v. Gagnon*, 2012 NSSC 137.
11. The Nova Scotia Court of Appeal confirmed the principles to be applied when determining costs noting the overall mandate of the Court when ordering costs is to "do justice between the parties." *Armoyan v. Armoyan*, 2013 NSCA 136.

12. In *Gomez v. Ahrens*, 2015 NSSC 3, Justice B. MacDonald addressed the issue of awarding costs in parenting cases (para. 16):

.... Many parents want to have primary care or at the very least shared parenting of his or her children but that desire must be tempered by a realistic evaluation about whether his or her plan is in the best interest of the children. The potential for an unfavorable cost award has been suggested as a means by which those realities can be brought to bear upon the parent's circumstances.

13. In *Chisholm v. Chisholm*, 2016 NSSC 325, Justice MacLeod-Archer awarded costs to a party represented by Nova Scotia Legal Aid noting “the service comes at a cost to the public” (para. 15). Justice Forgeron, in *Nova Scotia (Community Services) v. K.M.*, 2021 NSSC 10 endorsed the principle that involvement of Legal Aid does not preclude a cost order from being made.

Decision

14. The fact that Ms. Delaney is a Legal Aid client does not shield her against an award of costs, although her financial circumstances and ability to pay may be taken into consideration.

15. The reasonableness of a lump sum costs award can best be assessed within the context of the related cost of legal services and expenses. Without this information, it is difficult to accord with the principle that “a cost award should afford a substantial contribution to the parties’ reasonable fees and expenses which means not a complete indemnity, but rather more than 50 and less than 100% of a lawyer’s reasonable bill for services”: *Cameron v. Cameron*, 2014 NSSC 325, para 16. This information was not included in Mr. Harris’ submissions on costs.

16. Although Mr. Harris was successful in his bid for shared custody, the Court also awarded retroactive child support to Ms. Delaney in the amount of \$5,186. While Mr. Harris did not actively contest the payment of retroactive child support at hearing, he failed to appropriately pay child support for many months prior to the hearing.

17. The determination of prospective child support on a set off basis is not a punitive finding against Ms. Harris but rather a reflection of the financial

realities associated with the shared parenting arrangement. The Court made no finding in relation to the Child Tax Credit and, in fact, has no jurisdiction to do so: *Bradley v. White*, 2022 NSSC 391.

18. The position put forth by Ms. Delaney in terms of parenting was not reasonable. However, nor was it reasonable for Mr. Hariss to delay paying child support commensurate with his income. Given the mixed success, I decline to award costs in this matter.

Marche, J.