

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

**Citation:** *E.S. v M.S.*, 2025 NSSC 384

**Date:** 20251202

**Docket:** Bwt No: 1201-074797

**Registry:** Bridgewater

**Between:**

E.S.

Applicant

v.

M.S.

Respondent

**Judge:** The Honourable Justice Aleta Cromwell

**Cost Submissions:** September 10, 2025, in Bridgewater, Nova Scotia

**Endorsement:** December 2, 2025

**Counsel:** Shelley Hounsell, K.C. for the Applicant  
The Respondent, Self-represented

**By the Court:**

**Introduction**

[1] E.S. (the “mother”) and M.S. (the “father”) have two children together. The mother filed a Variation Application on July 15, 2024 to vary the Corollary Relief Order granted February 22, 2023. She sought sole decision-making authority, primary care with limited parenting time to the father, along with the table amount of child support. The father disagreed and suggested a material change in circumstances had not been shown and the terms of the CRO should remain unchanged. The father conceded he would pay child support and the issue related to quantum.

[2] A two day hearing was held on June 23 and 24, 2025 with a written decision reported at *E.S. v. M.S.*, 2025 NSSC 263 released on August 11, 2025. I found there had been a material change in circumstances because there was evidence of a significant sustained increase in the level of conflict impacting the parenting plan and the father had repeatedly failed to comply with the CRO with respect to his parenting time during the school year. I further found the father had exposed the children to family violence and there was a pattern of coercive and controlling behaviour by the father. As a result, it was determined to be in the best interests of

the children to be placed in the primary care of the mother with sole decision-making responsibility to her and to reduce the father's parenting time. He was ordered to pay child support based on the Federal Child Support Guidelines with enrollment of the order in the Administrative Recalculation of Child Support Program.

[3] I invited the parties to come to an agreement on costs, and if unable to do so, to provide written submissions within one month of the decision.

[4] On September 8, 2025, the father filed a Notice of Appeal with the Nova Scotia Court of Appeal of the trial decision.

### **Position of the Parties**

[5] The mother filed written submissions on costs on September 10, 2025 copied to both trial counsel and appeal counsel for the father.

[6] The mother notes she was the successful party. Her legal fees, inclusive of disbursements and taxes totalled \$18,947.32. She sought a lump sum order for costs representing 80% of her legal fees (\$15,157.86). Given the non-monetary nature of the issues, she suggests the tariffs would not be appropriate and a lump sum approach be adopted.

[7] Counsel for the mother further noted in her written submissions, she had discounted her hourly rate by 50% due to the longstanding nature of the mother's retainer. She filed and relied on the decision from Justice Theresa Forgeron in *Tattrie v. Borden*, 2025 NSSC 258.

[8] The father did not file any written submissions by the deadline nor did either of his counsel file any written submissions on his behalf.

[9] Instead, he filed on November 24, 2025, over two and a half months late, written cost submissions seeking an order for costs at 70% of the mother's legal fees with payment of same in monthly instalments of \$500.00 per month.

[10] In addition, he filed a Notice of Intention to Act on One's Own dated November 24, 2025 indicating he discharged his trial counsel on September 12, 2025.

## **The Law**

[11] Rule 77 of the Nova Scotia *Civil Procedure Rules*, addresses awards of costs which are discretionary.

[12] A cost award should provide a substantial contribution to the parties reasonable fees and expenses.

[13] The overall mandate of the Court when assessing the issue of costs is to “do justice between the parties”: *Armoyan v. Armoyan*, 2013 NSCA 136 at paragraph 10 and Rule 77.02(1).

[14] When determining the “amount involved” the tariffs provide where there is a substantial non-monetary issue, an amount is to be determined having regard to the complexity of the proceeding and the importance of the issues.

[15] Further, Rule 77.06 provides, unless ordered otherwise, party and party costs are quantified according to the tariffs. Trial-like hearings in matrimonial matters are more appropriate for Tariff A than Tariff C. *Armoyan v. Armoyan, supra* at paragraph 20.

[16] Rule 77.08 provides discretion to award a lump sum instead of using the tariff costs. There must be a reason to consider a lump sum, as the tariffs are the norm. *Armoyan v. Armoyan, supra* at paragraph 15.

## **Decision**

[17] The mother was successful on all issues and is entitled to costs.

[18] The tariffs are not particularly helpful here, where the issues were primarily of a non-monetary nature with the added complexity related to the issues of family

violence and coercive control. In addition, the parenting issues were important to the parties and engaged an analysis of the best interests of the children. In these circumstances, a lump sum is appropriate in this matter.

[19] The fees charged to the mother, at a 50% discount, are reasonable in the circumstances. A cost award to the mother representing 80% of the discounted legal fees, disbursements and taxes does justice between the parties and represents a substantial contribution to her legal fees based on her success at trial.

[20] The father will pay the costs award of \$15,157.86 within six months of this endorsement – no later than June 2, 2026.

[21] Counsel for the mother will prepare the order.

Cromwell, J.