

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Tanner v Arbuckle*, 2026 NSSC 114

Date: 20260414

Docket: Ken No. SFKPSA-133308

Registry: Kentville

Between:

Kaitlyn Dawn Tanner

Applicant

v.

Kevin Joel Arbuckle

Respondent

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| ENDORSEMENT |
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Judge: The Honourable Justice Jean M. Dewolfe

Counsel: Lynn Marie Connors, K.C. for the Applicant
Kevin Joel Arbuckle, self-represented Respondent

Appearances

- Motions (proceeded by correspondence): July 15, 2024 (Venue Motion – Oral Decision); July 31, 2025 (Motion to Strike)
- Conferences (half hour each): June 5, 2024; July 15, 2024; October 16, 2024; March 26, 2025;
- Settlement Conference: January 31, 2025

- Hearing: September 15, 2025 (full day); October 21, 2025 (1 hour – oral submissions)
- Decision: *Tanner v Arbuckle*, 2025 NSSC 420

Request:

Kaitlyn Dawn Tanner seeks costs of \$65,341.35. Kevin "Joel" Arbuckle seeks that each party pays their own costs, or alternatively, that he pay \$10,000 costs.

Decision:

Mr. Arbuckle shall pay \$55,540 costs to Ms. Tanner on or before or before May 15, 2026. This amount is inclusive of all disbursements and HST.

By the Court:**Introduction**

[1] Kaitlyn Dawn Tanner (“Ms. Tanner”) seeks costs in relation to a hearing on parenting and child support in which she was almost entirely successful. The decision of the Court was issued on December 30, 2025. She continues to be represented by Lynn Connors, K.C.

[2] K. Joel Arbuckle (“Mr. Arbuckle”) was initially represented by Mitchell Broughton, and as of June 26, 2025, by Christopher Robinson. Mr. Arbuckle filed a Notice of Intention to Act on One’s Own on January 5, 2026.

[3] The parties had an opportunity to provide submissions on costs by February 6, 2026. I have reviewed those submissions.

[4] Both parties also filed response letters on February 9, 2026. Mr. Arbuckle objected to portions of Ms. Tanner’s February 9th, 2026 letter, which he said was effectively a reply to his costs submissions, and asked that the Court strike or disregard the offending portions of the February 9, 2026 letter. Further, he requested that all further submissions be closed.

Procedural Background

[5] The matter first came before the Court in June 2024. The primary issues related to decision-making responsibility for the parties’ infant daughter, parenting arrangements, mobility, and child support.

[6] The Court heard two Motions prior to the hearing:

- Change of Venue on July 15, 2024: (\$500 costs ordered to be paid by Mr. Arbuckle)

- Motion to Strike portions of Mr. Arbuckle's May 26, 2025 affidavit.
(The Court struck significant portion of the affidavit).

[7] The Court has conducted four half-hour telephone conferences.

[8] The parties participated in a Settlement Conference in January 2025, which results in a limited, interim parenting agreement.

[9] The Court held a one-day hearing on September 15, 2025. The Court received written submissions and heard oral submissions on October 21, 2025, followed by written submissions on costs on February 6, 2026.

Parties' Positions

Ms. Tanner's Position

[10] Ms. Connors submitted 34 bills which her client has paid throughout this proceeding totalling \$81,676.89, inclusive of tax and disbursements ("Adjusted Legal Fees"). This does not include legal fees related to Mr. Arbuckle's appeal of the Interim Order of this court and related stay application. Mr. Arbuckle was unsuccessful in both and Ms. Tanner was awarded \$21,000 costs by the Court of Appeal in total.

[11] Ms. Tanner seeks costs of \$65,341 (80% of her Adjusted Legal Fees, rounded down).

Mr. Arbuckle's Position

[12] Mr. Arbuckle requested that each party bear their respective costs, or in the alternative, proposes that he pay \$10,000 costs.

[13] Mr. Arbuckle argues the success was divided, that he is now impecunious and cannot pay costs, and that payment of costs will be detrimental to the child. He asserts that he has always been ready to settle, and that the Court should not consider Ms. Tanner's August 27, 2025 Offer to Settle. He also argues that Ms. Connors double billed by charging for her Associates' time, and paid for an unnecessary expert.

Law

[14] The primary issues before the Court were decision-making responsibility and parenting (mobility and shared parenting), which are issues that are not readily quantifiable. Therefore, a lump sum award is appropriate.

[15] Pursuant to Rule 77 in the *Civil Procedure Rules*, I have discretion in the award of costs.

[16] *Civil Procedure Rule 77.03(3)* provides that “Costs of a proceeding follow the result”. Costs are in my discretion. A costs award should afford a substantial contribution to each party’s reasonable fees and expenses and do justice between the parties. These principles are summarized by our Court of Appeal in *Armoyan v. Armoyan*, 2013 NSCA 136.

[17] A cost award should afford a substantial contribution to the parties’ reasonable fees and expenses. This means more than 50% and less than 100% of a lawyer’s reasonable bill for services. *Cameron v. Cameron*, 2014 NSSC 32.

[18] Tariff A costs related to substantial non-monetary issues are commonly assessed at a rate of \$20,000 per day. *Jachimowicz v. Jachimowicz*, 2007 NSSC 303.

[19] *Civil Procedure Rule 77.02(1)* states that I “may, at any time, make any order about costs as [I am] satisfied will do justice between the parties.”

Decision and Findings

[20] Using the daily rate general rule in *Jachimowicz, supra*, plus an additional \$3,000.00 for the one and a half day hearing, the lump sum cost award would be \$33,000.00. In my view, this cost award would fall short of doing justice between the parties.

[21] The Court finds that a costs award of \$55,540 inclusive of disbursements and taxes will do justice between the parties, considering the following factors:

- 1) Ms. Tanner was successful in all significant respects, with minor parenting and child support adjustments. It was not a mixed success as Mr. Arbuckle claims.
- 2) Ms. Tanner made a settlement offer on August 27, 2025, prior to the hearing, which essentially proposed the same terms as the Court's decision. Mr. Arbuckle asserts that the Court should not consider this settlement offer due to "settlement privilege". However, *Civil Procedure Rule 77 (2)* clearly allows the Court to consider same in assessing costs. After the offer was made, Ms. Tanner incurred legal fees, disbursements and taxes of approximately \$25,000.
- 3) Ms. Tanner's positions were reasonable throughout the proceeding. There is no evidence to support Mr. Arbuckle's position that Ms. Tanner set this matter up to be a high conflict proceeding or that she took unreasonable positions.

- 4) Mr. Arbuckle persisted in taking an unreasonable parenting position (shared parenting, joint decision making), which increased costs.

The Court reviewed the detailed accounts submitted by Ms. Connors and finds that:

- (a) Ms. Connors billed time spent by two associate lawyers from time to time on this matter. However, there is no indication that these associates billed time as second chair, *i.e.* for meetings or court time when Ms. Connors billed her time.
- (b) Mr. Arbuckle argues that he should not pay for an expert's report respecting his income as this was not introduced in Court. Ms. Tanner's bills do not include disbursements for an expert report. Ms. Connors' charges include time for a consultation with Ms. Tanner on the possibility of hiring an expert (Mr. Duffett) to impute income to Mr. Arbuckle when he was self-employed. This was not followed through on after Mr. Arbuckle became employed.

- (c) Ms. Connors' bills itemize significant time spent due to Mr. Arbuckle's intransience and rigidity and the parties' complete inability to communicate effectively; e.g. trying to set a form of order, disclosure requests, dealing with conflict over such issues as holidays, providing a breast pump, attendance at a pool, the child's sneakers, etc. The Court has found that Mr. Arbuckle was primarily to blame for this inability to communicate effectively.
- (d) Some of Ms. Connors' bills include time spent on legal matters outside of this proceeding; i.e. related peace bond, RCMP investigation, a civil suit, and Small Claims Court proceeding. These were not redacted. In addition, the Court noted some entries with respect to the Change of Venue Motion, which is already the subject of a costs order (\$500). The Court has generously estimated these charges and deducted 15% from the Adjusted Legal Fees; i.e. \$81,676 less \$12,251 (15% reduction) = \$69,425 (the "Reduced Legal Fees").

[22] The Court declines to reduce costs due to Mr. Arbuckle's arguments of impecuniosity or harm to the child. These arguments were not supported by the evidence at trial. Mr. Arbuckle never provided notice of an inability to pay costs at any time prior to trial.

[23] The Court has not considered the new evidence found in Schedules "I", "J", "K" and "L" to Ms. Connors' submissions.

[24] The Court therefore awards costs of 80% of the Reduced Legal Fees, *i.e.* $\$69,425 \times 80\% = \$55,540$. This is consistent with the decision in *MG v. CG*, 2024 NSSC 125, in which Marche, J., awarded 90% of legal fees after a two-day highly contested parenting hearing.

Summary

[25] Ms. Tanner was successful in all significant aspects of the disputed issues. The terms offered by Ms. Tanner in her Offer to Settle made prior to trial were essentially the same terms as the Court's decision on the primary issues in dispute. Ms. Tanner's Reduced Legal Fees are reasonable given Mr. Arbuckle's rigidity, positions and conduct throughout the proceeding.

[26] I therefore order Mr. Arbuckle to pay Ms. Tanner costs of \$55,540 on or before May 15, 2026. This amount is inclusive of all disbursements and HST.

[27] Ms. Connors, please prepare an order.

Dewolfe, J.