

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

**Citation:** Pittman v. Pittman, 2013 NSSC 374

**Date:** 20131121

**Docket:** 1201-66583

**Registry:** Halifax

**Between:**

Lorraine Margaret Pittman

Petitioner

v.

Darren Robert Pittman

Respondent

**Judge:** The Honourable Justice Deborah Gass

**Heard:** July 16, 2013, in Halifax, Nova Scotia

**Written Costs Submissions:** October 31 & November 15, 2013

**Counsel:** Nicole Figueira, for the Petitioner

**By the Court:**

[1] The Petitioner seeks costs at the conclusion of a divorce proceeding, in the amount of \$7,000.00 - \$9,000.00 plus disbursements on the premise that she was more successful in the result than the Respondent. The Respondent, representing himself, argues that he was more successful and claims costs and other relief relating to child support in his submission. In total he seeks \$12,103.12 including \$4,623.12 in legal fees.

[2] This matter began in May of 2012 when the Petitioner made a motion for interim relief. The Respondent consented to an interim order on the day of the hearing itself and counsel appeared with the Applicant to read the terms of the consent order into the record.

[3] The parties then appeared for a conference on October 9, 2012. The Respondent wished to obtain counsel as he raised the issue of primary care of the children. The matter was adjourned to further conference.

[4] The Respondent obtained counsel, who received a draft separation agreement from the Petitioner's counsel. The parties again appeared at the conference on November 7, 2012 with counsel.

[5] In November 2012 the Petitioner also filed her Petition for Divorce and the Respondent filed an Answer.

[6] The parties attended at a date assignment conference in December 2012 and a settlement conference was scheduled for February 2013.

[7] Following the conference there was an agreement to vary the order to reflect shared parenting and the matter remained on the docket for a full trial and a pre-trial conference. The matter came before the court on March 8, 2013 wherein counsel for the Respondent indicated she would be seeking leave to withdraw as solicitor of record. An organizational pre-trial memorandum was issued at that time, setting out filing deadlines for both parties in preparation for the trial set for May 3, 2013. On March 25, 2013 both counsel appeared and leave to withdraw as solicitor of record was granted to the Respondent's counsel. The parties appeared on April 26, 2013 at the request of the Petitioner's counsel because the hearing

was pending and filings and disclosure were incomplete. The court was advised, however, that an agreement that had been reached on pension and debt division was now confirmed, leaving only child and spousal support for the hearing. Orders were issued reflecting these agreements on May 17, 2013.

[8] The trial was adjourned to July 2013. The time was reduced to a half day.

[9] The trial was held July 16, 2013 and a decision was rendered. Shared parenting for the two younger children was ordered. Child support in the set-off amount of \$622.00/month and spousal support of \$600.00/month was ordered.

[10] The principles for determining costs were summarized in *L(ND) v. L(MS)*, 2010 NSSC 159 (NSSC) by Justice Beryl MacDonald at para. 3:

1. Costs are in the discretion of the Court.
2. A successful party is generally entitled to a costs award.
3. A decision not to award costs must be for a “very good reason” and be based on principle.
4. Deference to the best interests of a child, misconduct, oppressive and vexatious conduct, misuse of the court’s time, unnecessarily increasing costs to a party, and failure to disclose information may justify a decision not to award costs to a otherwise successful party or to reduce a cost award.
5. The amount of a party and party cost award should “represent a substantial contribution towards the parties’ reasonable expenses in presenting or defending the proceeding, but should not amount to a complete indemnity.”
6. The ability of a party to pay a cost award is a factor that can be considered; but as noted by Judge Dyer in *M.C.Q v. P.L.T.* 2005 NSFC27 (Can LII), 2005 NSFC 27: “Courts are also mindful that some litigants may consciously drag out court cases at little or no actual cost to themselves (because of public or third-party funding) but at a large expense to others who must “pay their own way”. In such cases, fairness may dictate that the successful party’s recovery of costs not be thwarted by later pleas of

inability to pay. [see *Muir v. Lipton*, 2004 BCSC 65 (CanLII), 2004 BCSC 65.”

7. The tariff of costs and fees is the first guide used by the Court in determining the appropriate quantum of the cost award.
8. In the first analysis the “amount involved”, required for the application of the tariffs and for the general consideration of quantum, is the dollar amount awarded to the successful party at trial. If the trial did not involve a money amount other factors apply. The nature of matrimonial proceedings may complicate or preclude the determination of the “amount involved”.
9. When determining the “amount involved” proves difficult or impossible the court may use a “rule of thumb” but equating each day of trial to an amount of \$20,000 in order to determine the “amount involved”.
10. If the award determined by the tariff does not represent a substantial contribution towards the parties’ reasonable expenses “it is preferable not to increase artificially the “amount involved”, but rather, to award a lump sum”. However, departure from the tariff should be infrequent.
11. In determining what are “reasonable expenses”, the fees billed to a successful party may be considered but this is only one factor amount many to be reviewed.
12. When offers to settle have been exchanged, consider the provisions of the civil procedure rules in relation to offers and also examine the reasonableness of the offer compared to the parties position at trial and the ultimate decision of the court.

[11] In exercising discretion, it is often challenging in family matters, to determine who is the “successful party”. More often than not there are multiple issues of distinct characteristics, in which “success” may be achieved by one party on one or more issues, and the other party may succeed on other issues. The very nature of family proceedings may result in a disproportionate amount of allotted court time being spent on one very significant issue, such as parenting, which is not able to be quantified monetarily. At the same time, and in the same proceeding a significant amount of time may be spent in determining income for child support purposes, or on the issue of entitlement to spousal support, when the final amount ordered may be relatively low. Litigation in family proceedings

often takes on a life of its own and costs much more than the resulting financial outcome.

[12] The Respondent denies being the cause of unnecessary court proceedings and the consequent time and preparation required therefore.

[13] The Respondent raises a number of issues supporting his argument against the Petitioner's claim for costs and in support of his own.

[14] The source of funds to pay the Petitioner's legal fees is not relevant, nor is communication directly between the parties while counsel are engaged for one or both parties. Communication between the parties after the conclusion of the proceedings is entirely inappropriate and cannot be considered in deciding costs.

[15] While success was mixed, it appears that the result could have been achieved much sooner and with far fewer court appearances necessary to move the matter along. Agreements could have been finalized without having to come to court. On outstanding issues there were offers to settle, and the resulting spousal support was higher following the hearing. However, the court is also mindful of the impact of a costs award on the parent's ability to meet the needs of the children.

[16] Given all the circumstances, I am satisfied that the Petitioner is entitled to some costs, but not the amount claimed and I order the Respondent to pay the sum of \$1500.00 towards the Petitioner's costs.

J.