

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

**Citation:** *Ivey v. Ivey*, 2014 NSSC 257

**Date:** 20140708

**Docket:** 1206- 6192

**Registry:** Sydney

**Between:**

**JUDY EILEEN IVEY**

Applicant

v.

**JOHN WILSON IVEY**

Respondent

**Judge:** The Honourable Justice Theresa M. Forgeron

**Cost Submissions:** May 2, 2014

**Decision:** July 8, 2014

**Counsel:** Alan Stanwick, for the Applicant, Judy Eileen Ivey  
TJ McKeough, for the Respondent, John Wilson Ivey

**By the Court:**

[1] Judy Ivey seeks costs from her former spouse, John Ivey, as a result of a successful motion granted on March 24, 2014. The court amended the corollary relief order so that the employment pension of the husband would be subject to an equal division. A drafting error led to the wife only receiving 25% of the husband's employment pension. The drafting error was rectified pursuant to *Civil Procedure Rule 78.08*. The court held that the husband was not entitled to a windfall because of an inadvertent drafting error on the part of the wife's lawyer. Such a result would be contrary to principles of fairness and justice.

[2] Following the release of the decision, counsel requested an opportunity to present written submissions on costs. These submissions were received on May 2, 2014.

[3] In her submissions, Ms. Ivey seeks costs of \$1,000 noting that, although the motion was necessitated because of an inadvertent drafting error, Mr. Ivey should not have contested the motion. Ms. Ivey states that she was successful. Costs should be awarded pursuant to Tariff C for a half day motion.

[4] For his part, Mr. Ivey seeks costs of \$500 against Ms. Ivey, noting that the motion was necessitated because of sloppy draftsmanship. Mr. Ivey requests the

court apply the reasoning found in *Poirier v. White*, 2010 NSSC 406, wherein Murray, J. stated at para. 55, as follows:

55 In the circumstances, the court has considered the matter of costs and because the Defendant has been placed in the position of making this application due to the state of the pleadings, the Court hereby awards costs to her in the amount of \$1,000. In granting these I am exercising my discretion pursuant to tariff C as set out in Rule 77. I find this amount to be just and appropriate in the circumstances, notwithstanding there was divided success.

[5] Mr. Ivey also notes that, although the motion was scheduled for one half day, the actual motion lasted substantially less than an hour. Costs should, therefore, fall within the range of \$250-\$500, although to award such costs would surely bring the administration of justice into disrepute.

[6] I have reviewed the submissions of counsel and *Rule 77*. I award costs of \$200 in respect of the motion, for the following reasons:

- Less than an hour of court time was actually used to hear the motion;
- The matter was of significant importance, in that the division of the husband's employment pension was tangentially being determined;

- Mr. Ivey's consent should not have been withheld when it was clear that the consent corollary relief order did not mirror the agreement reached during the pretrial telephone conference; and
- The motion was necessitated because of an inadvertent drafting error, and Ms. Ivey must bear some responsibility for the error from a cost perspective.

[7] Mr. Stanwick is to draft and forward the order to Mr. McKeough and the court to finalize this proceeding.

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Forgeron, J.