

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

**Citation:** Thomas v. Joseph, 2009 NSSC 226

**Date:** 20090721

**Docket:** 1201-061648 (SFHD-052420)

**Registry:** Halifax

**Between:**

Simone Altia Thomas

Applicant

v.

Paul Kehinde Joseph

Respondent

**Judge:** The Honourable Justice Beryl A. MacDonald

**Heard:** July 2 & 3, 2009, in Halifax, Nova Scotia

**Decision:** July 21, 2009 (On Costs)

**Counsel:** Angela Swantee, counsel for the Respondent  
Arthur von Kursell, counsel for the Applicant

**By the Court:**

[1] This application involved a request by Simone Thomas to change the residence of the parties' son. She intended to move to Pickering Ontario. I dismissed her application. Mr. Joseph now requests costs be awarded in his favour.

[2] I have reviewed the Civil Procedure Rules and several decisions commenting on costs, including *Landymore v. Hardy* (1992), 112 N.S.R. (2d) 410 (T.D.); *Campbell v. Jones et al.* (2001), 197 N.S.R. (2d) 212 (T.D.); *Grant v. Grant* (2000), 200 N.S.R. (2d) 173 (T.D.); *Bennett v. Bennett* (1981), 45 N.S.R. (2d) 683 (T.D.); *Kaye v. Campbell* (1984), 65 N.S.R. (2d) 173 (T.D.); *Kennedy-Dowell v. Dowell* 2002 CarswellNS 487; *Urquhart v. Urquhart* (1998), 169 N.S.R. (2d) 134 (T.D.); *Jachimowicz v. Jachimowicz* (2007), 258 N.S.R. (2d) 304 (T.D.).

[3] Several principles emerge from the Rules and the case law:

1. Costs are in the discretion of the Court;
2. A successful party is generally entitled to a cost 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 an otherwise successful party or to reduce a cost award;
5. The amount of a party and party cost award should "represent a substantial contribution toward 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 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. Lipon*, 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” by 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 toward 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 among 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.

[4] The primary issues involved in this proceeding related to the parenting plan and thus, there is no amount involved arising directly from this claim.

[5] The trial was set for two days, but was reduced to a day and one half. If the “rule of thumb” amount of \$20,000 per day is used, the basic tariff would be \$3,375. Scale 1 would provide \$2,025.

[6] Mr. Joseph is seeking \$2,500 by way of a contribution by Ms. Thomas to the child’s RESP. This case could have been completed in one day, however, the running file note does indicate that the parties consented to “not be limited to affidavit evidence only.”

[7] There was a witness called by Ms. Thomas who did not contribute any useful information and the requirement for two of Mr. Joseph’s witness to attend to be cross-examined was unnecessary. Their cross-examination was very limited and in neither case was meaningful information elicited.

[8] I consider \$2,500 an appropriate cost award. If Mr. Joseph is prepared to accept payment of this amount by way of a contribution to the child’s RESP that is his choice.

Beryl MacDonald, J.