

**DOCKET: FKMCA-045047**

**IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA  
[Cite As: D.M.C.T. v. L.K.S., 2007 NSFC 13]**

**BETWEEN:**

**D. M. C. T.  
-APPLICANT**

**AND**

**L. K. S.  
-RESPONDENT**

**BEFORE THE HONOURABLE JUDGE BOB LEVY**

**HEARD AT: KENTVILLE**

**DATE HEARD: JANUARY 30 AND MARCH 1, 2007**

**DECISION DATE: MARCH 9, 2007**

**APPEARANCES: BLAINE G. SCHUMACHER FOR THE APPLICANT  
WILLIAM RYAN, Q.C. AND COLIN PIERCEY FOR  
THE RESPONDENT**

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**DECISION #2**

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Issue: Suit money for income evaluation in child support variation application

By the Court:

1. This is a decision on a request, in fact a second request, for suit money by the Applicant Ms. T. to enable her to pursue her claim for a variation in the amount of child support from the Respondent Mr. S. for the parties' 12 year old son.
  
2. The first decision is reported as 2006 CarswellNS 454, 2006 NSFC 36. In that decision, emanating from a hearing in September of 2006, I ordered suit costs payable by Mr. S. to Ms. T. in the amount of \$6,000. The information as to the parties' circumstances and my findings of fact are contained in that decision and will not be repeated here. I am not aware of any substantial change in their respective circumstances since September. Likewise I will not repeat my legal analysis as to either the court's jurisdiction to award suit costs or the substantive law on suit costs contained in that decision. That decision is currently under appeal to the Court of Appeal.

### **JURISDICTION OF THE FAMILY COURT TO AWARD SUIT COSTS**

3. My only additional comment respecting the court's jurisdiction to award suit costs is that I have since discovered that I made it unnecessarily difficult on myself determining whether the Family Court had jurisdiction to award suit costs. I essentially confined myself to Family Court Rule 1.04 and what flowed from that. Having now reviewed section 22 of the Maintenance and Custody Act I conclude that this clearly and unambiguously establishes the jurisdiction. It reads:

22. Where any matter of practice or procedure is not provided by the rules of the Family Court or the *Summary Proceedings Act*, the rules of the Supreme Court relating to matrimonial causes shall apply with any necessary modification.

4. Since suit money is not in fact otherwise provided for, we go directly to Civil Procedure Rule 57, entitled "Matrimonial Causes", which provides in 57.28 and .29 for an award of suit costs to be made in appropriate circumstances. I believe that settles the jurisdiction question.

### **THE MERITS OF THIS APPLICATION**

5. Civil Procedure Rule 57.29 contemplates the possibility of more than one application for an award of suit costs as the case proceeds. My earlier award dealt with expenses, mostly legal fees, to date and attempted to address, if only in part, such further legal fees or related expenses that were likely on the horizon. This application, brought in January, seeks \$18,000 in suit costs to retain a chartered accountant to do a thorough, even exhaustive, valuation of the financial affairs of Mr. S. and his solely owned company, including the carrying on of detailed interviews with any staff or accountants. For want of a better word it appears to be what I would call a comprehensive 'forensic' audit, peering into every corner, examining every piece of paper or individual to unravel or pry apart what is perhaps by implication seen as an immensely complex financial web.

6. I don't doubt that the Applicant will require professional assistance to examine and to present an opinion about the financial affairs of the Respondent and his company. The Applicant is in receipt of a number of documents, has the benefit of Discovery evidence from the Respondent and has, as does the court, a sworn financial statement and statement of property together with tax returns of the Respondent and his solely-owned company. In short Mr. S. reports assets totaling \$27,679,621.00 and his financial statement reports a monthly income of \$54,355.97 which amounts to \$652,271.64 per year. His 2004 Notice of Assessment from the C.R.A., the most recent I have seen, shows a line 150 personal income of \$285,767. There are no doubt a number of areas where the assistance of an expert will be of assistance.

7. Mr. Duffett, a chartered accountant, in Exhibit "A" to the January 24, 2007 affidavit of the Applicant, proposes an extensive inquiry, including interviews with staff or professionals associated with the Respondent's finances or those of his company and testimony in court. He estimates that this will take the equivalent of "twelve person days" and cost \$18,000.

8. Counsel for the Applicant also tendered a brochure from Mr. Duffett's firm, one item of which identifies the types of valuation reports they can provide. These range from "Calculation" representing "ballpark or best estimates" with a "limited" level of analysis and being of "limited level of assurance". The fee range for this would be \$2,500 to \$5,000. Next is an "Estimate" with

a “moderate level of analysis”, a “less detailed report” and with a “level of assurance” of “moderate, well considered”. The fee range for this is \$5,000 to \$10,000. There is also a “Comprehensive” report available with an “extensive” level of analysis, a “detailed report” of the “highest” level of assurance. The fee range cited is “over \$10,000”.

9. The Applicant’s counsel cited the case of **Agresti v. Hatcher** [2004] O.J. No. 910 (Ontario Superior Court of Justice) wherein the court provided for the payment of up to \$35,000 for an income valuation report in a child support case. However, the apparent complexity of the respondent’s finances in that case seems to have been far beyond those of the present instance. It is not evident to me that the affairs of the Respondent here are particularly complex or opaque. It is also evident that there is an abundance of documentation and evidence already in the possession of the Applicant. While I perceive that the Applicant requires help to understand and to communicate an opinion to the court I cannot see the need for such an elaborate valuation exercise. Rather, I believe that a report in the above-noted “Estimate” category will suffice.

10. Accordingly, I will order the payment of \$8,000 in suit costs for the evaluation and expert evidence. I do so in the conviction that this information and testimony will be essential to the Applicant and because to quote Nelson, J. in **Reynolds v. Reynolds** [2001] O.J. No. 4959 (Ont. S.C.), “...the playing field needs to be levelled somewhat...”. The sum shall be paid forthwith and shall be applied exclusively to the payment of the chartered accountant evaluator.

11. As this matter has now been before the court for over a year now and as I understand that any disclosure requests or requirements have been met I will not order further disclosure. The analysis will have to be made on the basis of information already in the Applicant’s possession.

12. I remind counsel of the Family Court Rules with respect to the admissibility of expert evidence.

13. Mr. Schumacher will please prepare the order.

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Bob Levy, J.F.C.