

**SUPREME COURT OF NOVA SCOTIA**

**Probate Court of Nova Scotia**

**Citation:** *Kenny Estate (Re)*, 2016 NSSC 256

**Date:** 20160928

**Docket:** Hfx. No. 439153

**Probate No.:** 60774

**Registry:** Halifax

**Between:**

Erin Kenny and Jennifer Kenny

Applicants

v.

Angela Moss as executrix of the Estate of Leslie Kenny

Respondent

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**Judge:** The Honourable Justice Arthur W.D. Pickup  
**Heard:** April 25, 26, 27, 2016, in Halifax, Nova Scotia  
**Final Written Submissions:** August 22, 2016, Applicants' Submission on Costs  
August 31, 2016, Respondent's Submission on Costs

**Written Decision:** September 27, 2016

**Subject:** Probate; costs

**Summary:** This was an application for costs in a probate matter. The applicant unsuccessfully applied for proof in solemn form. She sought solicitor-client costs out of the estate on the basis that it was not unreasonable for her to bring the application. The executrix also sought costs, on an elevated party-and-party costs scale.

**Issues:** What was the appropriate costs order?

**Result:**

The current law on costs in probate matters indicated that an unsuccessful applicant who is not the representative of the estate is not automatically or presumptively entitled to costs. Rather, the general rules of costs will guide the court. In this case, the applicant had brought an arguably unreasonable application; while suspicious circumstances were conceded, the applicant was ultimately unsuccessful in challenging testamentary capacity. More importantly, the application was actually decided on the issue of the statutory wording. The applicant was therefore not entitled to costs. She was liable to costs in favour of the estate, however. The court fixed party-and-party costs on the basic scale in favour of the executrix.

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