

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

**Citation:** *JH v. RH*, 2023 NSSC 380

**Date:** 20231130

**Docket:** *SFH1201-074542*

**Registry:** Halifax

**Between:**

JH

*Petitioner*

v

RH

*Respondent*

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

**Costs Submissions:** September 15, 2023 and September 27, 2023

**Decision:** November 30, 2023

**Counsel:** Derek Sonnichsen, counsel for the Petitioner, JH  
Christopher Robinson, counsel for the Respondent, RH

**By the Court:**

**Introduction**

[1] JH, the mother, asks that I order RH, the father, to pay her costs of \$8,400, plus disbursements of \$535.82, for a total costs award of \$8,935.82. The father states that costs should be limited to \$4,000.

**Issue**

[2] What is the appropriate costs award?

**Background**

[3] The parties are separated spouses who have a teenage daughter. Because there was no agreement, a contested interim hearing was held on July 7 and 18, 2023. The mother sought primary care; an imputation of the father's income; child support; and spousal support. In contrast, the father sought a shared parenting arrangement, with no support payable, except that each party would be responsible for paying half of all s. 7 expenses. The father asked that income be imputed to the mother.

[4] On July 25, 2023, I rendered my written decision, cited as *JH v. RH*, 2023 NSSC 237. I awarded the following interim relief:

- The mother was granted primary care and decision-making, while the father was granted reasonable parenting time.
- Both parties were directed to participate in counselling, with specified objectives, so that the child's emotional health needs would be properly addressed.
- The father was ordered to pay \$1,161 in monthly child support, together with 82% of the child's uninsured medical expenses, including physiotherapy, orthodontic and counselling expenses.
- The father was ordered to pay \$1,000 in monthly spousal support.

[5] Following my decision, I invited costs submissions, noting that “[c]osts will be granted for the interim motion according to Tariff C”: *JH v. RH*, *supra*, para 77.

[6] On September 15, 2023, the mother filed her costs submissions; on September 27, 2023, the father filed his submissions.

### Analysis

#### [7] **What is the appropriate costs award?**

##### *Position of the Mother*

[8] The mother states that a tariff C costs award would not do justice as between the parties, but rather, a lump sum award is appropriate for the following reasons:

- She was the successful litigant on all issues.
- She made an offer to settle which was more favourable to the father than the decision outcome. Notably, her offer confirmed settlement on the basis that she would have primary care and sole decision-making. She proposed that the father would have parenting time but subject to participating in counselling to regain the daughter’s trust. The mother offered to accept \$1,000 per month in child support, together with an equal sharing of all s. 7 expenses. The mother also offered to accept a monthly spousal support payment of \$500.
- Tariff C would only produce an award of \$4,000 plus disbursements. The mother’s legal fees and disbursements were \$18,535.93. \$4,000 would not produce a substantial contribution towards the mother’s legal fees. In *Armoyan v. Armoyan*, 2013 NSCA 136, the court confirmed that a substantial contribution is more than half but less than 100%.
- The court should depart from tariff C because I found that the father was not credible; the father failed to disclose which led to a waste of court time; the father’s interim position was not reasonable; and the father did not accept the mother’s settlement offer.
- \$8,400 represents 70% of the mother’s legal fees. Such would result in a costs award that would do justice as between the parties.

*Position of the Father*

[9] For his part, the father stated that costs should be restricted to \$4,000 because costs on motions are presumptively based on tariff C as noted in *Armour Group Ltd v. Halifax (Regional Municipality)*, 2008 NSSC 12. *Armour Group* held that costs for motions should only exceed tariff C if special circumstances are present, singularly or collectively, which would justify a costs increase because of the need for exceptional legal services. Special circumstances include increased complexity; public interest; pre-chambers process; unsettled questions of law; conduct; settlement alternatives; associate counsel or multiple counsel; or expert witnesses.

[10] The father argued that no special circumstances exist in the case before me. He also noted that the reasonableness of the mother's legal fees cannot be determined absent detailed evidence of the actual expenses incurred.

*Decision*

[11] When determining costs, I must apply Rule 77 which confirms that costs are a discretionary award meant to do justice as between the parties by providing a substantial contribution towards the successful party's reasonable legal fees. Tariff C is the presumptive costs award in chambers matters.

[12] The parties agree, and I concur, that in this case, tariff C would produce an award of \$4,000, exclusive of disbursements. Should I order an amount different than that produced by applying tariff C? Yes. To do justice as between the parties, I will add an additional \$1,000 in costs because of the father's failure to disclose<sup>1</sup>.

[13] As noted in my decision, the father failed to file some of the financial information required of him. The failure to disclose is properly captured by the *Armour Group* exception factors, such as pre-chambers process and conduct, and accordingly justifies an increase in the tariff C costs award.

[14] Further, s. 22 (2) of the *CSG* provides me with the jurisdiction to order costs:

(2) Where a court makes an order under paragraph (1)(a) or (b), the court may award costs in favour of the other spouse up to an amount that fully compensates the other spouse for all costs incurred in the proceedings.

[15] Additionally, increasing costs because of a lack of disclosure underscores the essentiality of disclosure in family law proceedings. In the November 20, 2023

*Family Law Newsletter*, Franks and Zalev presented case references confirming the court's intolerance in the face of nondisclosure:

*Cunha v. Cunha*, 1994 CarswellBC 509 (S.C.) (non-disclosure is the cancer of family law litigation); *Wu v. Sun* (2011), 97 R.F.L. (6th) 104 (B.C. C.A.) (non-disclosure is the "Achilles Heel" of family litigation; *Leitch v. Novac* (2020), 38 R.F.L. (8th) 1 (Ont. C.A.) ("invisible litigants"); *Frick v. Frick* (2016), 91 R.F.L. (7th) 129 (Ont. C.A.); *Manchanda v. Thethi* (2016), 84 R.F.L.(7th) 341 (Ont. S.C.J.), aff'd (2016), 84 R.F.L. (7th) 374 (Ont. C.A.) (a party who does not make early, voluntary, and complete financial disclosure is not participating in the process, and such parties must be assessed a game misconduct and ejected from the proceedings); *Mackey v. Rerrie*, 2016 CarswellOnt 10853 (C.A.); *Roberts v. Roberts* (2015), 65 R.F.L. (7th) 6 (Ont. C.A.) (disclosure is the most basic family law obligation and the obligation is immediately, ongoing and automatic and should not require orders); *Gray v. Rizzi* (2016), 74 R.F.L. (7th) 272 (Ont. C.A.); *Fielding v. Fielding* (2015), 70 R.F.L. (7th) 253 (Ont. C.A.); *Arenburg v. Arenburg*, 2016 CarswellNS 937 (C.A.); *Burke v. Poitras* (2018), 22 R.F.L. (8th) 266 (Ont. C.A.); *Martin v. Watts*, 2020 CarswellOnt 8657 (C.A.); *Mullin v. Sherlock* (2018), 19 R.F.L. (8th) 1 (Ont. C.A.); *Jayawickrema v. Jayawickrema*, 2020 CarswellOnt 6052 (S.C.J.) at 27 (disclosure is not transactional and it is automatic, immediate and ongoing and nondisclosure strikes at the heart of the administration of family justice).

[16] Similar comments were noted in *Donner v. Donner*, 2021 NSCA 30, at para 42.

[17] In contrast, I will not increase costs because of the settlement offer. Although the settlement offer contained more favourable support provisions than my decision, and similar parenting provisions, the offer also contained provisions which I did not order, such as the sale of real property and the transfer of a vehicle. The offer did not suggest that the property issues could be severed from the parenting and support issues. Therefore, the settlement offer cannot be used to support an increased costs award.

[18] Further, I will not increase the costs award because of the amount of the mother's legal bill for two reasons. First, I do not have sufficient detail to analyse the various charges and to identify those charges which relate to the interim motion. Second, in *3021386 Nova Scotia Limited v Municipality of the District of Barrington et al*, 2019 NSSC 337, Brothers J held that the "[t]he quantum of the Plaintiff's legal account cannot, on its own, justify a departure from the tariffs": para 19.

[19] As the hearing involved an interim motion, I apply tariff C, together with an increase of \$1,000, for a total costs award of \$5,000 plus disbursements.

**Conclusion**

[20] In summary, I order the father to pay to the mother costs of \$5,000 plus disbursements of \$535.82, for a total costs award of \$5,535.82. In so doing, I have increased the tariff C award because of the disclosure issue.

[21] The mother's counsel will draft the order.

Forgeron, J

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<sup>1</sup> The \$1,000 increase does not nullify potential sanctions at the time of the final hearing. Rather, this costs increase is limited to what is appropriate for an assessment of costs flowing from an interim hearing.