

RULE 57

FIXING OF COSTS

GENERAL PRINCIPLES

Factors in Discretion

- 57.01** (1) In exercising its discretion under section 60 of the *Judicature Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,
- (0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;
 - (0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;
 - (a) the amount claimed and the amount recovered in the proceeding;
 - (b) the apportionment of liability;
 - (c) the complexity of the proceeding;
 - (d) the importance of the issues;
 - (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
 - (f) whether any step in the proceeding was,
 - (i) improper, vexatious or unnecessary, or
 - (ii) taken through negligence, mistake or excessive caution;
 - (g) a party's denial of or refusal to admit anything that should have been admitted;
 - (h) whether it is appropriate to award any costs or more than one set of costs where a party,
 - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
 - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer; and
 - (i) any other matter relevant to the question of costs.

Costs Against Successful Party

- (2) The fact that a party is successful in a proceeding or a step in a proceeding does not prevent the court from awarding costs against the party in a proper case.

Fixing Costs: Tariff

- (3) When the court awards costs, it shall fix them in accordance with Rule 57.01 and the Rule 57 Tariff.

Authority of Court

- (4) Nothing in this rule or Rules 57.02 to 57.06 affects the authority of the court under section 60 of the *Judicature Act*,
- (a) to award or refuse costs in respect of a particular issue or part of a proceeding;
 - (b) to award a percentage of assessed costs or award assessed costs up to or from a particular stage of a proceeding; or
 - (c) to award all or part of the costs on a substantial indemnity basis;
 - (d) to award costs in an amount that represents full indemnity; or
 - (e) to award costs to a party acting in person.

Submission on Costs of a Proceeding

- (5) A party shall serve a Submission on Costs (Form 57 A), or such other submission as the court may require, on the other parties and shall file it with proof of service,
- (a) after a trial, the hearing of a motion that disposes of a proceeding or the hearing of an application, if the party has been awarded costs; or
 - (b) before, or at the conclusion of, a hearing, in the court's discretion, if required by the hearing judge.

Costs on a Motion

- (6) (a) On the hearing of a contested motion, unless the court is satisfied that a different order would be more just, the court shall,
- i. fix the costs of the motion and order them to be paid within 30 days; or
 - ii. in an exceptional case, refer the costs of the motion for assessment under Rule 58 and order them to be paid within 30 days after assessment.
- (b) Where a party fails to pay the costs of a motion as required under subrule (6)(a), the court may dismiss or stay the party's proceeding, strike out the party's defence or make such other order as is just.

No Costs on Motion Without Notice

- (c) On a motion made without notice, there shall be no costs to any party, unless the court orders otherwise.

Process for Fixing Costs

- (7) The court shall devise and adopt the simplest, least expensive and most expeditious process for fixing costs and, without limiting the generality of the foregoing, costs may be fixed after receiving oral submissions only, or after receiving written submissions, without the attendance of the parties.

DIRECTIONS TO PROTHONOTARY

- 57.02** (1) Despite subrule 57.01(3), in an exceptional case the court may refer costs for assessment by the Prothonotary under Rule 58.
- (2) Where costs are to be assessed under Rule 58, the court may give directions to the Prothonotary in respect of any matter referred to in Rule 57.01.
- (3) The court shall record,
- (a) any direction to the Prothonotary;
 - (b) any direction that is requested by a party and refused; and
 - (c) any direction that is requested by a party and that the court declines to make but leaves to the discretion of the Prothonotary.

COSTS OF LITIGATION GUARDIAN

- 57.03** (1) The court may order a successful party to pay the costs of the litigation guardian of a party under disability who is a defendant or respondent, but may further order that the successful party pay those costs only to the extent that the successful party is able to recover them from the party liable for the successful party's costs.
- (2) A litigation guardian who has been ordered to pay costs is entitled to recover them from the person under disability for whom they have acted, unless the court orders otherwise.

LIABILITY OF LAWYER FOR COSTS

- 57.04** (1) Where a lawyer for a party has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default, the court may make an order,
- (a) disallowing costs between the lawyer and client or directing the lawyer to repay to the client money paid on account of costs;
 - (b) directing the lawyer to reimburse the client for any costs that the client has been ordered to pay to any other party; and
 - (c) requiring the lawyer personally to pay the costs of any party.
- (2) An order under subrule (1) may be made by the court on its own initiative or on the motion of any party to the proceeding, but no such order shall be made unless the lawyer is given a reasonable opportunity to make representations to the court.
- (3) The court may direct that notice of an order against a lawyer under subrule (1) be given to the client in the manner specified in the order.

LAWYER AND CLIENT COSTS: GENERAL

Costs of a Lawyer Acting as a Trustee, Etc.

- 57.05** Unless an enactment otherwise provides, a lawyer who is a guardian, committee, mortgagee, trustee or personal representative is entitled as against

the estate, fund, or mortgaged property, to make the same charges for services performed by them as a lawyer for or in connection with the estate, fund or mortgaged property as might have been payable out of the estate or fund, or be chargeable against the mortgaged property, as if the lawyer had been employed by some other person acting in that capacity.

Costs Payable Out of Trust Funds

- 57.06** Costs payable out of or chargeable against any trust estate, trust fund or mortgaged property, shall not be so paid as against any person interested therein, unless
- (a) the costs have been assessed;
 - (b) any interested person is *sui juris* and has consented to the payment; or
 - (c) the court has fixed the amount of, and directed the payment or charge.

Payment in Advance or Security Taken

- 57.07** A lawyer may obtain payment in advance or take security for his future fees, charges or disbursements, subject to the right of assessment.

Charging Property for Fees

- 57.08** (1) The court may, on the application of a lawyer, declare that the lawyer is entitled to a charge for their proper fees and disbursements in a proceeding upon the property recovered or preserved through their instrumentality in the proceeding, and may make such order as is just for the payment of the fees and disbursements out of the property.
- (2) Nothing shall defeat any such charge referred to in subrule (1) unless the property has been disposed of to a bona fide purchaser for value without notice.
- (3) An order shall not be made under subrule (1) where the right of a lawyer to recover payment of their fees and disbursements is barred by any statute of limitations.

Proceeding for Costs

- 57.09** A lawyer may bring a proceeding for any costs due to them.

COSTS OF A PROCEEDING REMOVED TO THE SUPREME COURT

- 57.10** The court may deal with the costs of a proceeding transferred or removed to the court from any other tribunal, including the costs arising both before and after the transfer or removal, as it deems just.

Rule 57 TARIFF

PART I - FEES

1. The fee for any step in a proceeding authorized by the Rules of Civil Procedure and the counsel fee for motions, applications, trials, references and appeals shall be determined in accordance with section 60(1) of the *Judicature Act*, R.S.P.E.I. Cap. J-2.1, and the factors set out in subrule 57.01(1).
2. Where students-at-law or law clerks have provided services of a nature that the Law Society of Prince Edward Island authorizes them to provide, fees for those services may be allowed.

PART II - DISBURSEMENTS

Item	Amount
3. Attendance money actually paid to a witness who is entitled to attendance money, to be calculated as follows:	
1. Attendance allowance for each day of necessary attendance.....	\$ 50
2. Travel allowance, where the hearing or examination is held,	
(a) in a city or town in which the witness resides, P.E.I. government mileage rates for each day of necessary attendance;	
(b) where the witness resides outside the town or city where the hearing or examination is held, P.E.I. civil service mileage rates each way between his or her residence and the place of hearing or examination;	
(c) where the witness resides outside the Province of Prince Edward Island and is required to attend a hearing or examination in Prince Edward Island, the minimum return airfare plus P.E.I. civil service mileage rates each way from their residence to the airport and from the airport to the place of hearing or examination.	
3. A reasonable amount for overnight accommodation and meals, where the witness resides elsewhere than the place of hearing or examination and is required to remain overnight.	
4. Reasonable fees or expenses actually paid to a court, or a court transcriber, for transcription services.	
5. For service or attempted service of a document,	
(a) the amount actually paid, subject to reasonableness;	
(b) that was ordered to be served by publication, a reasonable amount.	
6. For an examination and transcript of evidence taken on the examination, the amount actually paid, providing it was a reasonable sum.	

7. For the preparation of a plan, model, videotape, film or photograph reasonably necessary for the conduct of the proceeding, a reasonable amount.
8. For experts' reports that were supplied to the other parties as required by the *Evidence Act* or these rules and that were reasonably necessary for the conduct of the proceeding, a reasonable amount.
9. The cost of the investigation and report of the Official Guardian.
10. For an expert who gives opinion evidence at the hearing or whose attendance was reasonably necessary at the hearing, a reasonable amount.
- 10.1 For a professional who gives evidence at the hearing, a reasonable amount.
11. For an interpreter for services at the hearing or on an examination, a reasonable amount.
- 11.1. Where ordered by the presiding judge, for translation into English or French of a document that has been filed, a reasonable amount.
12. Where ordered by the presiding judge or officer, for travelling and accommodation expenses incurred by a party, a reasonable amount.
13. For copies of any documents or authorities prepared for or by a party for the use of the court and supplied to the opposite party, a reasonable amount.
14. For copies of records, appeal books and factums, a reasonable amount.
15. The cost of certified copies of documents such as orders, birth, marriage and death certificates, abstracts of title, deeds, mortgages and other registered documents where reasonably necessary for the conduct of the proceeding.
16. The cost of transcripts of proceedings of courts or tribunals,
 - (a) where required by the court or the rules; or
 - (b) where reasonably necessary for the conduct of the proceeding.
17. Where ordered by the presiding judge, for any other disbursement reasonably necessary for the conduct of the proceeding, a reasonable amount.
18. Any applicable taxes actually paid or payable on the lawyer's fees and disbursements allowable under Rule 58.05.

PART III - JURY FEE IN CIVIL CASES

19. As per the *Court Fees Act* Regulations.

PART IV - FILING FEES PAYABLE TO THE COURT

20. As per the *Court Fees Act* Regulations.

Field v. Aviva Insurance Company, 2024 PESC 19

On a motion pursuant to Rule 22, the court has a duty to fix an amount of costs that is relevant to the particular step in the proceeding only, and not the entire proceeding.

MacLean v. The Little Poultry Company Inc. & Pitre, 2023 PESC 54

The court ordered costs to impress upon the defendant that there are consequences to their litigation strategy. In this matter, for a second time the defendant noted a third party in default and refused to set aside the note of default, resulting in another hearing.

M.B. v. D.B., 2024 PESC 7 (CanLII)

The wife was largely successful on her motion for a preservation order, child support, and spousal support. The court considered that the relief sought was somewhat novel, there was no specific precedential caselaw dealing with either section of the *Family Law Act*, and the court declined to grant the wife control of the husband's business. The court exercised its discretion to reduce the partial indemnity costs sought by the wife.

Grafton Management Inc. v. Charlottetown (City), 2021 PECA 11

The court set out a framework for costs of a self-represented litigant. Self-represented litigants are not entitled to costs on the same basis as a litigant who retains counsel. A self-represented litigant should not be compensated in relation to time and effort expended on a case which flow from the simple fact of being a litigant. A self-represented litigant must show that the time spent is time for functions ordinarily performed by a lawyer.

M.J. v. T.J., 2022 PESC 6

In fixing costs on a contempt motion, the court considered several factors, including that the contemptuous conduct called out for a costs award.

Estate of Mullen, 2022 PESC 5

On a motion for directions in an estate matter, the court fixed costs against a beneficiary, discounting for tasks which could have been done by junior lawyers.

Beer v. Anschutz, 2020 PESC 37

Under Rule 57.03(1)(a), the court ordered that costs be paid by the plaintiff to the defendant within 30 days of a determination on the issue of liability. The court stated that arriving at an appropriate amount for costs involves much more than a mere formulaic exercise, and the ultimate goal is that of reasonableness.

C.G. v. P.P., 2020 PESC 32

In fixing costs in a family law proceeding, the court considered all relevant factors, and in particular that the defendant bore responsibility for the matter not resolving, and the defendant had been unsuccessful in their argument. However, the plaintiff had not fully complied with timelines, issues arose from a certificate of pending litigation obtained by the plaintiff, and the plaintiff delayed in abandoning the motion. Accordingly, the court reduced the plaintiff's fees by \$2,000.

Fraser v. Runighan, 2020 PECA 5

Throw away costs are meant to compensate a party for costs that have been wasted. They are generally awarded on a full or substantial recovery basis.

CMT et al v. Gov't of P.E.I. et al, 2020 PECA 12

The Court awarded substantial indemnity costs finding there were reprehensible, scandalous and outrageous conduct by one of the parties. The court stated that unfounded serious allegations of fraud and dishonesty merit substantial indemnity costs. The Court stated that

it is reprehensible to make irrelevant and scandalous allegations on the public record against the defendants, lawyers and the judiciary without a solid evidentiary foundation.

King & Dawson v. Government of P.E.I., 2020 PECA 13

The general rule is that the parties are responsible for putting their counsel at the place of trial at their own expense. An unsuccessful party should be called upon to reimburse the successful party for proper travelling and living expenses of counsel who does not practice in this province only where, in the opinion of the Court, based on evidence or other explanation either a) the expertise required to perform the particular case was not available from solicitors practicing in this province, or b) conflicts of interest prevent the solicitors practising here from acting in the matter.

C.G v. P.P., 2020 PESC 22

Following a number of motions in the action, including an abandoned motion for contempt, the issue left to be determined was that of costs. The plaintiff requested costs for her abandoned motion for contempt and a certificate of pending litigation. The defendant requested costs of the abandoned motion pursuant to Rule 37.08(3). The court reviewed the history of the action and the guidance provided by Rule 57. It held that the defendant was primarily responsible for the outstanding issues between certain relevant dates pre-dating the abandonment of the motion and, therefore, awarded partial indemnity costs to the plaintiff for a specific period of time, but not for all of the time frames requested by the plaintiff.

Hughes v. PEITF, 2019 PESC 45

The defendant, which was the successful party on the motion, filed a bill of costs which included fees for both senior and junior counsel, plus disbursements. The unsuccessful plaintiff filed no submissions on costs. The court allowed fees for both counsel, but disallowed the portion of the disbursements related to tabs and binding of documents.

Fraser v. Runighan, 2019 PESC 21

In awarding costs under Rule 49.10, the court considered several Rule 57.01 factors, including the result, offers to settle, the amount of advance sought and the amount ordered, liability, complexity and importance, conduct which tended to shorten or lengthen the motions, whether any step was improper, refusal to admit, the principal of indemnity, and the amount of costs the unsuccessful party could reasonably expect to pay.

Ellerdale Investments Ltd. v. UPEI and Maxim 2000 Inc., 2019 PECA 27

The Court allowed solicitor fees and disbursements with the exception of travel, food and accommodation expenses which were disallowed. Travel time and expenses are recoverable on an assessment of costs but only when it is reasonably necessary to retain out-of-province counsel.

Ayangma v. FLSB & ELSB, 2017 PECA 25

Baseless allegations and actions in surreptitiously attempting to gain a monetary judgment without notice and without any basis are sufficiently outrageous to warrant substantial indemnity costs. Costs were awarded in the amount of \$3,500. being the substantial indemnity costs sought.

Cairns v. PEIHRC and Eastern School District, 2017 PECA 24

Considering the complexity of the case, the duration of the hearing, the lengthy record, and importance of the appeal, the Eastern School District was awarded costs in the amount of \$5,000. plus tax. The amount of time was considered reasonable even though three lawyers had worked on the file.

Ayangma v. FLSB & ELSB, 2017 PECA 18

A lay litigant was awarded costs in accordance with *Ayangma v. Eastern School Board*, 2008 PESCAD 16. Reimbursement was allowed for CD, transcript, filing fees, photocopies and binding. A claim for loss of earnings was also allowed upon receipt of written verification from the employer that the litigant lost pay in the amount claimed.

Lanigan v. PEITF, 2017 PECA 14

The Court awarded costs of \$85,500. plus tax and disbursements at trial, and \$30,000. plus tax and disbursements on appeal. The Court disallowed disbursements on appeal for courier and service of documents on lawyers as they were disbursements which would not have been incurred had both counsel been local counsel.

Lanigan v. PEITF, 2017 PECA 3

When costs follow the result after trial the general rule is that they will be fixed on a partial indemnity basis. The higher level of substantial indemnity costs is reserved to situations where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties. The potential bankruptcy of a plaintiff is not a factor to be taken into account in elevating costs from the presumptive level to substantial indemnity.

James Heath v. Mercantile Financial Service Ltd., 2015 PECA 11

The respondent did not bring a motion under Rule 21 promptly; the respondent waited over two and a half years to bring the motion. For this reason, the usual rule of costs in the cause was not applied. Each party was ordered to bear their own costs.

Morrissey v. Morrissey, 2015 PECA 10

The appellant was awarded costs of the motion for a stay pending appeal in the amount of \$3,900. However, due to the precarious financial position of the respondent, and the possibility of adjustments and tradeoffs made in the divorce proceeding, the obligation to pay costs was deferred.

CASP et al. v. AG of Canada, 2015 PESC 15

The Court awarded costs of the trial in the amount of \$1 million to the defendant on a partial indemnity basis up to the date of the defendant's offer to settle, then on a substantial indemnity basis.

In respect of the recusal motion, the motions judge awarded the sum of \$48,270.40 finding that, notwithstanding the amount may appear to be a large amount of costs for a single motion, the judge found it to be fair and reasonable. He also said the amount does not exceed what an unsuccessful party, in these circumstances, could reasonably expect to pay in relation to that step in the proceedings.

Vail & McIver v. WCB (P.E.I.), 2011 PESC 16

The motions judge assessed costs against the plaintiffs after the defendant successfully made a motion to strike the statement of claim. Despite the fact the plaintiffs were impecunious, costs were assessed against them. The motions judge stated ... "*a litigant's impecuniosity should never be allowed to become a sword which can be wielded in support of baseless litigation.*"

Gunn Estate (Re), 2010 PECA 13

Where there is a dispute between executors and one or more beneficiaries, costs are awarded pursuant to s.10 of the *Probate Act*, R.S.P.E.I. 1988, Cap. P-21. By the operation of Rule 65.49, the factors in Rule 57 are applicable to the assessment of those costs.

Mutch v. Huestis & Century 21, 2011 PESC 13.

On the basis that they constituted a duplication of effort, the trial judge denied the claim for costs incurred by the plaintiff in retaining counsel who were discharged prior to trial.

Ayangma v. Eastern School Board, 2010 PECA 34

Disbursements for “Delivery and Postage” were considered part of office overhead and disallowed as a claim in a bill of costs. Claims in a bill of costs for “electronic research” need to be supported with information upon which the reasonableness of the claim can be assessed.

Griffin v. Summerside (City), 2010 PECA 15

The court made a Bullock Order which required the City to reimburse the plaintiff the costs which the plaintiff was ordered to pay two defendants who were successful in defending against the claim made by the plaintiff.

If the cost of counsel’s travel and accommodations are deemed necessary, the plaintiff is entitled to be indemnified against those costs. Claims for document production and research which are included in office overhead are not recoverable as costs. Griffin was awarded his costs on the appeal of \$25,000. plus tax and disbursements.

Griffin v. Summerside (City), 2010 PECA 19

In his reasons for judgment finding the City liable to the plaintiff, the trial judge deferred the issue of costs until appeals had been exhausted. The Court of Appeal was subsequently asked by all parties to assess the trial costs. In determining when interest on the trial costs accrued due, the Court applied s.59 of the *Judicature Act*, R.S.P.E.I. 1988, Cap. J-2.1 and found that interest was payable from the date of the trial judge’s reasons for judgment and not from the date the Court of Appeal made the order as to the quantum of the trial costs.

J.W.K. v. V.A.K., 2009 PESC 37

Pursuant to Rule 57.01, the court considered the applicable factors in assessing costs. Certain time claimed for the work of a paralegal was deemed administrative work and not allowed as paralegal time for purposes of costs recovery.

D. A. Browning & Associates Inc. v. Tweedy, 2010 PESC 8

Offers made by the successful plaintiff did not qualify as offers under Rule 49.10; however, when the offers were made they were for less than the amount of damages awarded to the plaintiff. Considering the offers and other relevant factors in Rule 57.01, the plaintiff was awarded 65% of its legal fees throughout and 100% of its disbursements, with one exception.

Ellen Creek v. CADC & Ano., 2009 PESC 17

Following a nine-day trial which resulted in complete success for the defendant and where an offer to settle had been made by the defendant pursuant to Rule 49, the trial judge assessed the costs payable to the defendant on a partial and substantial indemnity basis.

Jay v. DHL Express Canada Ltd., 2009 PECA 11; [2009] P.E.I.J. No. 20

The Court of Appeal assessed the costs of the successful party. The overriding objective in the assessment of costs is to achieve reasonableness. In deciding what is fair and reasonable, regard is to be given to the reasonable expectations of the parties in commencing and defending the motion.

Whiteway v. O’Halloran, 2007 PESCAD 22

On an appeal from a decision in a small claims matter, costs are to be fixed in accordance with the provisions of Rule 57 because Rule 74, pursuant to sub-rule 1.01 thereof, is applicable only to proceedings in the small claims section of the trial division.

Oliver v. Severance, 2007 PESCAD 21

Considering the applicable factors and what an unsuccessful party might reasonably expect to pay, the Court of Appeal assessed the costs of the successful party who brought a motion to strike a statement or claim on grounds the court was without jurisdiction.

Ross v. The City of Charlottetown, 2008 PESCAD 6; [2008] P.E.I.J. No. 23 (QL)

Pursuant to Rule 57.03, the court has discretion to dismiss an action for the failure to pay costs. The motions judge, in exercising his discretion, considered the plaintiff's financial situation and provided the plaintiff with time to pay an outstanding order for costs. When payment was not made, the motions judge issued an order dismissing the plaintiff's action. The Appeal Division held the motions judge properly exercised his discretion. The Court of Appeal also held this rule did not violate s.15 or s.7 of the *Charter*.

Prince Edward Island Regional Administrative Unit No. 3 School Board v. Morin, 2008 PESCTD 2

An appeal from the Prothonotary's assessment of costs was allowed, in part. The costs awarded to a self-represented party were substantially reduced.

MacPherson v. Ellis, 2005 PESCAD 19

Costs ordered on a substantial indemnity basis. In assessing costs, the principles of indemnification apply. The amount should reflect what the parties would expect as a reasonable and fair amount to be contributed by the unsuccessful party to the costs of the successful party.

Corps. of Commissionaires v. Labour Rel. Bd. (P.E.I.), 2005 PESCAD 11

The function of the court in assessing costs is to consider what is reasonable in the circumstances. The assessment involves more than the arithmetical exercise of multiplying an hourly rate by the number of hours expended on the task.

Tannereye v. Hansen, 2002 PESCTD 37

In deciding to award the plaintiffs 50% of their costs on a party-party basis the trial judge indicated that four factors were significant: (1) none of the offers attracted cost consequences under Rule 49.10 or 49.11; (2) the plaintiff's claim was disproportionately high in relation to the final award; (3) the major portion of trial time related to claims that were disallowed; and (4) the plaintiffs were partially successful on the issue of general damages. *Terris v. Crossman* [1995] P.E.I.J. No. 16 (Q.L.) (PEISCTD) was applied.

Action Press v. PEITF, 2002 PESCTD 02

The trial judge considered the criteria for awarding solicitor-client costs and awarded costs on a party-party basis.

Polar Foods v. Labour Relations Board et al., 2002 PESCTD 78

The power of the court to award costs of a "proceeding" relates to a proceeding in the Supreme Court and does not extend to a hearing before the Board. The Rules Committee established pursuant to the provisions of the *Supreme Court Act*, R.S.P.E.I. 1988 Cap. S-10, does not have power to make rules with respect to proceedings before an inferior tribunal like the Board. Alternatively, this Rule is rendered meaningless by virtue of the application of *Judicial Review Act* and the procedure it contemplates.

Callaghan v. Montague (Town), 2014 PESCTD 69

Where the applicant sought to recover a variety of costs incurred in preventing the respondent from demolishing her property, the Court found that only those expenses which were directly related to or were incidental to her application for the injunction restraining the respondent from carrying out such demolition, came within the meaning of "costs."

Griffin v. Town of Summerside et al., [1998] P.E.I.J. No. 30 (Q.L.) (P.E.I.S.C.-T.D.)

The fact a party is successful in a proceeding does not prevent the court from awarding costs against that party in a proper case. Where the parties “achieved divided success” on an application for judicial review, the court awarded the applicant his entire party and party costs because the conduct of the respondent and its agents contributed to the applicant having to resort to making the application.

Morrissey v. MacNeill et al. (1997), 151 Nfld. & P.E.I.R. 287 (P.E.I.S.C.T.D.).

After a jury trial, the plaintiff’s claim against the defendants for defamation based on the publication of a newspaper story was dismissed. The Court ordered the plaintiff to pay only one-half of the defendant’s party and party costs because the defendant displayed a lack of care and vigilance in the publication of the story.

Terris v. Crossman, [1995] 2 P.E.I.R. 227 (P.E.I.S.C.T.D.)

The court reduced the amount of the party and party costs to which the plaintiff was entitled by 25% because of certain actions of the plaintiff throughout the course of the proceedings. The court also awarded the defendants their costs in obtaining and consulting independent counsel by reason of the fact the plaintiffs claim was originally in excess of the policy limits of the defendants insurance. The court was of the view the claim was initially unrealistic and as it was reduced to the limits of the defendants’ insurance policy one week before the trial, the defendants should have their costs associated with having to defend the larger claim. The court also noted that where a party calls expert witnesses to give *viva voce* evidence, even when the other party is prepared to accept the expert’s report in accordance with Rule 53, there may be cost consequences. There were none here because of the application of Rule 49.

Huynh v. Mills (1994), 129 Nfld. & P.E.I.R. 9 (P.E.I.S.C.-T.D.)

While an offer may not trigger the application of Rule 49.10, it remains a factor which the court may consider in the exercise of its discretion to award costs.

Clark v. Biggar (1993), 112 Nfld. & P.E.I.R. 330 (P.E.I.S.C.-T.D.)

The general rule in legal proceedings is that costs follow the result. A successful party has no legal right to costs, but only a reasonable expectation of receiving them, subject to the court’s discretion in that regard - this general rule should govern the award of costs in the family proceedings. The rule was developed to foster realistic assessments and realistic settlements. That objective has application in family law matters. Unless a case is an exception to the ordinary rule, the successful party should be entitled to party and party costs.

Rayner v. Knickle and Kingston (1992), 99 Nfld. & P.E.I.R. 35 (P.E.I.S.C.-A.D.)

Costs are in the absolute and unfettered discretion of the court, subject only to the requirement that the discretion must be exercised judicially, and the judge ought not to exercise it against a successful party, except for some reason connected with the case. Action brought against two physicians, only one of whom was found liable. Because the plaintiff had reasonable cause to sue both physicians, the plaintiff was allowed to recover from the negligent physician the costs he had to pay the other physician. This is known as a “Bullock Order.”