

2014 ONSC 3524  
Ontario Superior Court of Justice

Seguin v. Oslach

2014 CarswellOnt 7943, 2014 ONSC 3524, [2014] W.D.F.L. 2582, 241 A.C.W.S. (3d) 50

## **Desneiges Seguin, Applicant and Leslie Oslach and James Oslach, Respondents**

C.A. Tucker J.

Judgment: June 10, 2014

Docket: D23724/12

Counsel: James S. Marks, for Applicant  
William V. Frith, for Respondents

Subject: Civil Practice and Procedure; Family

### **Headnote**

Family law --- Costs — In family law proceedings generally — Scale of costs

Applicant sought costs on motion to obtain financial disclosure and compliance with court order — Applicant awarded \$10,000 in costs plus disbursements and H.S.T. — Applicant was successful and number of major items were agreed upon by parties prior to hearing — Respondent, albeit at last minute, provided consent to release of financial records — Issues were important to parties, but not complex — Motion was necessary — Extensive materials were filed by applicant — There appeared to be some duplication of services between law clerk and lawyer, and limited amount of research involved — Nothing lifted costs to substantial indemnity basis — There was no fraud, only delay.

ADJUDICATION on costs.

### **C.A. Tucker J.:**

1 The applicant seeks \$16,147 of costs on a motion to obtain disclosure and compliance with a January 2013 court order of Madam Justice Maddalena. In essence, the applicant was successful on her application and a number of major items were agreed upon by the litigants just prior to the hearing of the matter.

2 The respondent Leslie Oslach disputes the quantum sought by the applicant, citing unnecessary actions, duplication of services and the attempts by the respondent to comply with the previous order. Although the respondent points out that he has suffered from stress-related illnesses since the separation, making it difficult for him to respond to the numerous and detailed allegations of the applicant, he does not mention in his submissions the fact that his counsel suffered over the past few months from a major illness. The applicant's lawyer was aware of this condition including the fact that Mr. Frith is still having difficulties at the present time.

3 The applicant alleges that the respondent controlled the finances of the marriage and that his failure to provide proper financial disclosure is evidence of this controlling behaviour. The allegations have not been proven in court. Any court order

made to date has been based on untested affidavits. The respondent's financial situation worsened to the betterment of the applicant immediately after the consent order was entered into with the splitting of his Canada Pension, but the applicant refused to enter into any revision of the original order citing that additional income may not have been disclosed and the existence of the court order of Justice Maddalena which she wants enforced.

4 I recognized in my ruling the "possibility" of additional income and I enforced Justice Maddalena's order, however I again question the "civility" of the behaviour which did acknowledge the clear changed financial circumstances of the respondent which impacted his ability to pay at least from that source. Much can be achieved by communication and it appears that was not something that occurred in this case.

5 The respondent, albeit at the last minute, provided consent to release of the financial records. Again, it is unclear if these are relevant, as we have the untested affidavits only as to this "allegation". The respondent cited a "catch-22" which prevented the pension valuation whereby he did not wish to order the same until he knew its cost and could for some reason not determine the cost, but seemed to make no effort to resolve the matter. The respondent last year with a lump sum payment brought the spousal support arrears into good standing.

6 Costs are always discretionary. The issues are important to the clients, although not complex. The motion was necessary to achieve the results and in the most part was successful to the applicant with the caveats I have noted above. There were extensive materials filed by the applicant and a factum. I agree there appears to be some duplication of services between the law clerk and the lawyer and a limited amount of research involved. The law cited is no special assistance to me given the divergence of facts and issues. Nothing here lifts the costs to a substantial indemnity basis. There is no fraud — only delay.

7 In all the circumstances, I find that the appropriate amount of costs for the successful party should be \$10,000 plus disbursements and H.S.T.

*Order accordingly.*