

UPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Armoyan v. Armoyan*, 2015 NSSC 46

Date: 2014-02-12

Docket: SFHNo. 1201-065036

Registry: Halifax

Between:

Vrege Sami Armoyan

Petitioner

v.

Lisa Armoyan

Respondent

LIBRARY HEADING

Judge: The Honourable Justice R. James Williams

Heard: January 31, March 31, April 17, June 23, July 7 and October 24, 2014, in Halifax, Nova Scotia

Written Decision: February 12, 2015

Subject: Costs arising from one party cancelling Settlement Conference.

Summary: One party cancelled Settlement Conference after the filing date for Settlement Conference briefs, materials. Other party filed as directed.

Issues: Costs

Result: Costs ordered in the amount of \$9,996.38

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Judge: The Honourable Justice R. James Williams

Heard: January 31, March 31, April 17, June 23, July 7 and October 24,
2014, in Halifax, Nova Scotia

Counsel: Gordon Kelly and Stacey O'Neill, for the Petitioner
Mary Jane McGinty and Christine J. Doucet, for the Respondent
(January 31, April 17, June 23, 2014)
Leigh Davis, for the Respondent (October 24, 2014)

By the Court:

[1] This is an application for costs arising from a settlement conference that was cancelled by one of two parties.

[2] The parties, Lisa Armoyan and Vrege Armoyan, have been engaged in acrimonious litigation arising from their separation and divorce. It has gone on for years in different levels of Courts in Florida and in Nova Scotia. The Nova Scotia proceedings started in 2010.

Background

[3] I do not intend to review the complex litigation history. It cannot have been or be satisfactory for either party.

[4] The background of the settlement conference (and its scheduling) is as follows:

- (a) In early January 2014 I was advised that counsel for the parties were jointly seeking settlement conference dates. Weeks of trial dates were scheduled for the fall of 2014.
- (b) On January 31, 2014 a conference was held with counsel to review the context of the settlement conference and to set dates. At that time I said:

Clearly it's going to involve a lot of work to do a settlement conference in this and...I think to be blunt I want some understanding that the both of you are committed to attempting to resolve the matter...

We proceeded on that basis.

We set the week of June 23, 2014 for the settlement conference. The Court docket had to be adjusted to accommodate these dates. It was adjusted at the direction of Associate Chief Justice O'Neil.

It was agreed that the settlement conference would deal with all issues between the parties, including support and property issues in and arising from Florida proceedings.

I requested that counsel provide me a summary of the legal proceedings which had occurred and which were outstanding both in Nova Scotia and in Florida. (Mr. Kelly filed this on March 21, 2014 as requested.) It was revised somewhat at Ms. McGinty's request, by the April 17th appearance. Ms. McGinty, for Ms. Armoyan, indicated she would file a book of the pleadings that had been made. (This was done on March 24, 2014.) Counsel were asked to each provide the Court, in bullet form, a list of the issues they would like dealt with at the settlement conference.

The matter was adjourned to a further conference on March 26, 2014.

- (c) The March 26 conference was rescheduled to March 31 by the Court.
- (d) On March 31, Mr. Kelly appeared for Mr. Armoyan. Ms. McGinty, Ms. Armoyan's counsel, did not appear. Efforts to contact her were not successful. The matter was adjourned to April 17, 2014.
- (e) On April 17, 2014, counsel appeared – Gordon Kelly and Stacey O'Neill for Mr. Armoyan; Mary Jane McGinty and Christine Doucet for Ms. Armoyan. At this appearance, I indicated:

We are scheduled for a Settlement Conference June 23rd to 27th and we are here to organize that...My understanding is that you both agreed that everything is on the table for the settlement conference in terms of all the outstanding litigation between the parties.

I indicated that I was proposing that we proceed as follows:

- That the settlement conference be done by caucus – the Court meeting individually with each litigant and their counsel.
- That each counsel file the following directly with the Court and that it not be shared with or copied to the other party:
 - a personal statement from each party how they felt about the legal system (Florida and Nova Scotia) at this point;
 - an indication from each party as to what they want their lives to look like in two years and ten years – in terms of their financial circumstances and their relationship with their children;

- (f) Mr. Armoyan's material was filed by Mr. Kelly on May 30, 2014 as directed. It was extensive. Ms. Armoyan's material was not filed.
- (g) On June 6, 2014, Ms. McGinty wrote to Court Administration on behalf of Ms. Armoyan:

We write with respect to the settlement conference...that is currently scheduled for the week of June 23, 2014... Our client has instructed us to cancel the settlement conference. Please bring this letter to the attention of Justice Williams.

- (h) I wrote both counsel on June 13, 2014:

I have Ms. McGinty's note of June 6, 2014 stating, 'Our client has instructed us to cancel the settlement conference'.

As you undoubtedly know, Associate Chief Justice O'Neil made significant efforts in adjusting my docket to accommodate the requested Settlement Conference. I request that you both appear as was scheduled at 10:00 a.m. on Monday, June 23, 2014 to confirm that this process has been 'cancelled'.

- (i) On June 18, 2014 (filed June 19, 2014), Ms. McGinty wrote the Court:

I write in response to your letter of June 13, 2014.

You may be unaware that we have made application to withdraw as solicitors of record on this file. The motion has not yet been heard or scheduled.

I enclosed the relevant documentation for your information.

I do not believe that I am in a position to speak for Ms. Armoyan on Monday. Ms. Armoyan would like to appear by phone if that is satisfactory to the court. If this takes place, please advise if you wish us to be present as well.

Ms. McGinty's presence was requested, she remained solicitor of record. She was advised that Ms. Armoyan could appear by telephone as requested. The material filed June 19 by Ms. McGinty included her own Affidavit of June 16, 2014. It stated, in part, that:

5. ... (Mrs. Armoyan) has retained new counsel in Florida to oversee the conduct of her case globally. Those lawyers will have full control over settlement. We will be unable to discharge our obligation to encourage compromise or settlement.

6. We advised the client verbally on June 14, 2014 that we could no longer represent her.

- (j) On June 19, 2014, Ms. Armoyan wrote the Court (filed June 20, 2014 – I believe the faxed copy was received June 20, the couriered copy on June 24), saying, in part:

I am writing with respect to the June 23, 2014 conference before Your Lordship.

Although Ms. McGinty still remains my lawyer of record in this case, she recently filed an application to withdraw as counsel and has informed Your Lordship in her June 18, 2014 correspondence that she is not in a position to speak on my behalf. She attached her motion to withdraw and affidavit stating that I have retained new counsel in Florida to oversee the case globally, with full control over settlement.

While I have in fact engaged Florida lawyers, Brad Edwards of Farmer, Jaffe, Weising, Edwards, Fistos & Lehrman, P.L. and Mr. Edward H. Davis, Jr. of Astigarraga David Mullins & Grossman, P.A., they were hired to assist me with other aspects of the case, including the collection of monies owed to me (well over \$20 Million) from my ex-husband, Vrege Armoyan. They do not have ‘full control over settlement,’ but rather, I do. As Ms. McGinty knows, the Florida lawyers are not licensed to practice in Nova Scotia, or anywhere else in Canada for that matter, and they are thus not able to represent me in this case – particularly on such short notice given Ms. McGinty’s abrupt withdrawal as my counsel. I therefore wish to be heard through this letter at the settlement conference. I understand that Ms. McGinty is arranging for me to be heard by phone.

I made a settlement offer in this case upon advice of Ms. McGinty dated March 13, 2014. On March 20, 2014, in response to my offer, Mr. Kelly wrote to my attorney, rejecting my offer and noting that ‘[w]e are concerned that the distance between the parties respective positions is significant. We are therefore concerned about either party expending further resources towards the Settlement Conference, particularly Ms. Armoyan.’ Mr. Kelly called my lawyers approximately one week later to request that the conference be cancelled.

In anticipation of the settlement conference, and in response to any inquiries pertaining to my request to cancel the settlement conference, I wish you to know that I informed Ms. McGinty on May 8, 2014 of my desire to withdraw my March 13, 2014 settlement offer, particularly in light of Mr. Armoyan’s rejection of the offer, his refusal to negotiate in good faith, and his request to

cancel the settlement conference. Just two weeks later, she acknowledged that it seemed unreasonable to participate in a settlement conference when Mr. Armoyan has no intention of compromising.

Although Ms. McGinty eventually did send a letter to Mr. Kelly (Mr. Armoyan's counsel), informing him of my withdrawal of the offer, it appears that Your Lordship did not receive notice of such withdrawal or my wish to cancel the conference until June 6, 2014. Please also note that I do not have a copy of this communication but have seen references to it in later communications.

In light of Mr. Armoyan's rejection of my offer, his feigned concern about my spending money on a settlement conference, and my lawyer's agreement that a settlement conference seemed unreasonable given the circumstances, it was always my understanding that the conference would be cancelled. To my knowledge, Ms. McGinty did not submit any settlement brief on my behalf (due around May 30), consistent with my belief based on my instructions on May 8, 2014 that the conference in fact would be cancelled. I also understood that she would inform everyone involved of such cancellation so as not to incur needless costs.

...

I simply cannot afford to be physically present at the settlement conference, which would require me to purchase airfare and lodging while missing a day of my post graduate internship (I am an unpaid intern therapist fulfilling my post graduate internship hours) – particularly to watch Mr. Armoyan continue his antics of gamesmanship designed to even further deplete whatever remaining resources I have. He has never paid the support owed to me or his children that the court ordered him to pay and falsely is claiming that he does not have the money.

While I ultimately requested that the conference be canceled, I did so solely because of Mr. Armoyan's rejection of my settlement offer, which upon reflection I wished to withdraw in any event, and because of my inability to afford to be present with counsel at the settlement conference at my expense. As noted, it was my understanding until recently that the settlement conference would be cancelled given the circumstances I mention above.

Thank you for considering this information.

Respectfully submitted,

Lisa Armoyan

- (k) On June 23, 2014, Ms. McGinty and Ms. Doucet appeared as solicitor(s) of record for Ms. Armoyan. Ms. Armoyan appeared at her own request by telephone from Florida. Mr. Kelly and Ms. O'Neill appeared with Mr. Armoyan.

Ms. Armoyan indicated that she wished to speak on her own behalf.

Ms. Armoyan confirmed that she wanted the settlement conference cancelled. When asked if she wanted an alternative date for the settlement conference, she said:

Well, Harold Niman is taking on the case and I will be able to answer that later on this week.

Mr. Kelly indicated that he was not seeking alternative dates for the settlement conference. He did indicate he was seeking costs and wanted to be heard on the costs issue.

He also wanted to speak to Ms. Armoyan's letter of June 19 (which he had). He indicated:

Mr. Kelly: Yes, My Lord, the...what I want to critically address is on page 1 of the letter of June 19th, 2014. The final paragraph of that page 1, the last sentence where it says 'Mr. Kelly called my lawyer approximately one week later to request that the conference be cancelled.' Again on page 2, first paragraph the second last sentence and it talks about again, 'his request to cancel the settlement conference', My Lord, that's entirely incorrect. There is a reference to a letter and to settlement discussions between counsel. That was received when we were at court on March 13th of 2014. We did respond, I have a copy of the letter but it was without prejudice so I'm not...I don't know if we want to file that, but I do have a copy of an e-mail that was follow- ...we followed up with respect to the settlement conference and whether we would be going ahead.

The Court: Mr. Kelly is providing a copy of that to Ms. Doucet and Ms. McGinty.

Mr. Kelly: And, My Lord, if you will note that the...the e-mail is to Ms. O'Neill of our office. 'Stacey, thanks for...thanks for the phone call yesterday. I have spoken to Mary Jane and she has received instructions from Lisa, she does not wish to cancel the settlement conference.' The date of that is April 3, 2014.

The Court: Right. Have you heard Mr. Kelly, Ms. Armoyan?

Ms. Armoyan: Somewhat.

The Court: All right, Mr. Kelly says two things, as I understand it. He'll correct me if I'm wrong. Number one, he says that the sentence at the bottom of page 1 of your letter of June 19th, saying, 'Mr. Kelly called my lawyer approximately one week later to request that the conference be cancelled.' He says that that is inaccurate. And I take it from his point of view, untrue, as is a similar reference on the next page. And number two, he says there's an e-mail dated April 3rd, 2014 from Ms. Doucet of...saying to Mr. Kelly's associate, 'Thanks Stacey, and thanks for the phone call yesterday. I have spoken to Mary Jane and she has received instructions from Lisa, she does not wish to cancel the settlement conference. If you wish to speak further about this I am booked most of the day today but available tomorrow except over the noon hour.' And it's from Ms. Doucet of the McGinty Doucet Walker Law Firm.

Presumably Ms. McGinty will send you a copy of that e-mail if you request it. My question, Mr. Kelly is, is there a cost issue?

Mr. Kelly: Yes, there is...

...

The Court: All right, Mr. Kelly, is indicating there's a cost issue from his point of view with the cancelling of the settlement conference. Ms. Armoyan, you're indicating you're going to have counsel...

Ms. Armoyan: Yes.

The Court: ...who is licensed to practice in Nova Scotia in place within a week?

Ms. Armoyan: Hopefully, yes, a week.

The Court: All right. What I'm going to do is I'll...I'll set this matter on my docket approximately...when is the motion before Justice Forgeron on your status on the file, Ms. McGinty?

Ms. McGinty: My Lord, it hasn't been set down, but I wrote to Her Ladyship this morning and asked it be sent down ...July 2nd or 3rd when Her Ladyship intended to have another pre-trial conference.

The Court: And do you expect, Ms. Armoyan, to have...to be in a position at that time to advise Justice Forgeron, the trial judge, as to who your counsel will be on the trial?

Ms. Armoyan: What was the date?

The Court: ...July 2nd or 3rd.

Ms. Armoyan: I should be able to, yes.

The Court: All right. To be clear at this then, there...I am...my understanding is, Mr. Kelly, that you're indicating there will be a motion for costs arising from the course of events with respect to the settlement conference. I will adjourn the matter to my docket on July 7th or 8th. We'll schedule it for 15 minutes and Mr. Kelly, I'll deal with that by telephone if Ms.-...if Ms. Armoyan has counsel in place. Ms. Armoyan, that's well beyond the week that you've given me, so what I'm saying is, I don't know who your counsel is going to be. Mr. Niman is a lawyer in Toronto as far as I know. I have no idea whether he's licensed to or able to practice in Nova Scotia. I assume he is and I'll deal with this by way of basically a 15 minute telephone conference. I want you to understand my view of this, I'm trying to accommodate everybody in this and not draw people into court. If I don't get cooperation on something then I'll be ordering that everybody appear because I don't have any alternative, so my expectation is really simple, that you have counsel in place or somebody to speak to you by the July 7th or 8th date. You'll be advised of the time on the 7th or 8th and it'll likely be sometime between 9 and 10 a.m. Atlantic Time, which would be an hour earlier in Toronto, so I know full well there's no court in Toronto between 8 and 9, so from my point of view there shouldn't be a problem with this.

Ms. Armoyan: Thank you, My Lord. I appreciate it.

...

The Court: And the matter is adjourned. What will happen, Ms. Armoyan, Mr. Kelly and Ms. McGinty are going to take the adjournment slip that we produce here. My understanding is you've been here at this court before, so you know what the routine is. Our scheduling office will set it down on my docket for July 7th or 8th, as I've indicated. And they'll set a time. Ms. McGinty is, as I've said, technically from my point of view still on the record. ...

- (l) The matter was scheduled for July 7, 2014 at 9:45 a.m. for a telephone conference.
- (m) On July 7, 2014, Mr. Kelly appeared by telephone as scheduled. Ms. Armoyan was apparently not available. There was no response to

calls made to the phone number on the Civil Index for her or the law office number she had previously called from on June 23.

Mr. Kelly advised that Ms. McGinty was no longer representing Ms. Armoyan (as a result of an order granted by Justice Forgeron of this Court). He advised that Ms. Armoyan had not retained new counsel to his knowledge.

The matter was scheduled for Justice Forgeron's docket for July 22, 2014. (Trial dates of September 8-12, 15-19, 22-25, 29, 30, October 20-24, 27-31, November 3, 4, 5 were pending.)

I requested that Mr. Kelly secure Ms. Armoyan's contact information at that appearance.

- (n) The Court running file indicates that those present on July 22, 2014 before Justice Forgeron were:

Vrege Armoyan, with his counsel, Gordon Kelly and Stacey O'Neill

Leigh Davis and Amber Penny, counsel for Lisa Armoyan

Nigel Jenkins, counsel from Mary Jane McGinty's firm

Participating via phone:

Lisa Armoyan, with counsel Harold Niman and Brad Edwards (from Florida)

Deborah MacKenzie and Sarah Straehopolous, counsel from Toronto

Current or former lawyers of Ms. Armoyan were "present" - from variously Nova Scotia (2), Toronto (3) and Florida (1).

- (o) On July 23, 2014 Mr. Kelly wrote me (copying Ms. Armoyan):

Further to your request at the Court Conference of July 7, 2014 conducted by telephone before Your Lordship, we write with respect to Ms. Lisa Armoyan's contact information.

At yesterday's Motion hearing before the Honourable Justice Forgeron, Her Ladyship directed that Ms. Lisa Armoyan's address, phone and fax numbers to be the following:

Ms. Lisa Armoyan
425 North Andrews Avenue, Suite 2
Fort Lauderdale, Florida
33301
USA

Telephone: (954) 524-2820

Facsimile: (954) 524-2822

Should there be any questions or concerns in this regard, please do not hesitate to contact me or Ms. Stacey O'Neill.

(p) On August 7, 2014, I wrote Mr. Kelly and Ms. Armoyan:

Dear Ms. Armoyan and Mr. Kelly:

Re: Armoyan – SFH 1201-065036

Mr. Kelly indicated he was seeking costs arising from the cancellation of the Settlement Conference scheduled before me in June past.

A telephone conference scheduled for July 7, 2014 to address this. Mr. Kelly was present. Ms. Armoyan was not available by phone. I asked that Mr. Kelly secure contact numbers for Ms. Armoyan. He provided the Court with the attached letter.

I am unclear whether Ms. Armoyan has counsel. I have not heard from her nor counsel on her behalf.

I am scheduling a hearing on this costs issue for October 24, 2014 at 10:00 a.m.

Mr. Kelly's written submission on costs should be filed three (3) weeks before this date, Ms. Armoyan's one (1) week before this date. One hour is set aside. Each party may make an oral submission, should they choose to be present or have a representative present.

I saw no other way of moving the matter forward.

(q) On September 4, 2014 a Notice of New Counsel was filed on behalf of Ms. Armoyan indicating Mr. Harold Niman was now representing her.

The Costs Application

[5] To summarize:

The Settlement Conference was scheduled at the request of both parties in early January 2014. It was scheduled for a week, five days. Its scheduling in June considered weeks of trial dates in the fall of 2014. Its scheduling accommodated this and took some effort from Court staff. Counsel for the parties appeared January 31, March 31 (Mr. Kelly) and April 17 to schedule, organize and set expectations. Filings for the Settlement Conference were to be made May 30, 2014. Mr. Kelly, on behalf of Mr. Armoyan, did so. Ms. McGinty, on behalf of

Ms. Armoyan, did not. Ms. McGinty advised the Court June 6, 2014 that Ms. Armoyan's instructions were to cancel the Settlement Conference. On June 23 the parties appeared (Ms. Armoyan by telephone). Mr. Kelly indicated he was seeking costs. Ms. Armoyan indicated she was in the process of changing counsel. To accommodate that the matter was adjourned to July 7 for a telephone appearance. Mr. Kelly was present. Ms. Armoyan was not. On August 7, the Court scheduled the costs hearing for October 24.

[6] The application for costs is made pursuant to the following:

Rule 59.39 - Settlement conference procedure

(6) A judge may cancel a settlement conference and may make an order for costs against a party who, after agreeing to participate in a settlement conference, fails to comply with all of the following;

(a) any directions provided under Rules 59.39(2) and (3);

(b) the filing requirements and deadline for the settlement conference brief under Rules 59.39(4) and (5);

(c) the requirement to appear at the settlement conference at the appointed date and time.

Rule 59.39

(8) Rules 10.11 to 10.15, concerning the conduct of a settlement conference, do not apply to a family proceeding, unless a judge directs otherwise.

Rule 10.11 - Settlement conference

(1) A settlement conference may be organized at any stage of a proceeding, if the party making a claim and the party against whom the claim is made agree to participate....

Rule 10.12 - Procedures for settlement conference generally

(1) A judge may adopt any procedure for a settlement conference, and the adopted procedure prevails over procedures provided by this Rule 10.

...

(4) A judge may order a party who participates in a settlement conference and does not comply with Rule 10.12(3) and, as a result, causes the settlement conference to be cancelled, to indemnify another party for the expenses of the conference.

(5) A judge may order a party who cancels a settlement conference after another party incurs expenses for the conference to indemnify the party for the expenses.

Rule 77.09 - Amount under a Rule about indemnification

(1) This Rule 77.09 applies to an indemnification under any of the following Rules, or a similar Rule:

... (c) Rules 10.12(4) and (5), of Rule 10 - Settlement;

(2) A judge may order indemnification for all of the following amounts under a Rule to which this Rule 77.09 applies:

(a) a substantial contribution towards the cost of necessary services of counsel, or a fair payment for the work of a person who acts on their own;

(b) necessary and reasonable out of pocket expenses or disbursements;

(c) fair compensation for a harm or loss referred to in the applicable Rule.

(3) The indemnification is payable when the order is made, unless the order provides otherwise.

[7] I conclude that Rules 10.11 to 10.12 apply here.

[8] Ms. Armoyan failed to follow the directions provided for the Settlement Conference (R. 59.39(a)). She failed to comply with the filing requirements (R. 59.39(b)). She failed to appear July 7 (R. 59.39(c)). Ms. Armoyan cancelled the settlement conference after the filing date of May 30, 2014.

[9] Mr. Kelly's position on behalf of Mr. Armoyan is outlined in the material filed and his submissions. It includes:

(a) The Affidavit of Joyce Webber which includes:

1. A summary of the legal fees and disbursements billed to Mr. Armoyan in relation to the Settlement Conference – from January 21, 2014 to May 30, 2014. The total time, disbursements and HST billed was \$7,546.88.
2. A summary of the legal fees and disbursements billed to Ms. Armoyan in relation to the costs issue arising from the cancellation of the Settlement Conference – from June 1 to July 7, 2014. The time, disbursements and HST billed for this time period was \$2,449.50.

- (b) The total of \$9,996.38 referred to in Ms. Webber's affidavit was asserted by Mr. Kelly to not include entries in Mr. Armoyan's Statement of Account where Ms. Webber could not determine what portion of the entry was in relation to the Settlement Conference (including the costs issue) versus other tasks. Mr. Kelly asserted that those entries were left out. He asserted that the \$9,996.38 does not include fees and disbursements in relation to the costs issue after July 7, 2014.
- (c) Mr. Kelly seeks an award of costs in the amount of \$9,996.38. It does not include costs incurred after July 7 by Mr. Armoyan. There were letters (July 23) to this Court, submissions (written October 3, 2014), the preparation of Ms. Webber's Affidavit, and the appearance on the costs issue (October 24, 2014) after July 7, 2014, and subsequent correspondence to the Court. He relies on Rules 59.39(6), 10.11-10.12, and 77.09. I conclude that the requested amount does not include all of Mr. Armoyan's costs arising from the cancellation of the Settlement Conference.

[10] The submissions from Deborah MacKenzie (of Mr. Niman's office) on October 17, 2014 on behalf of Ms. Armoyan included assertions:

- (a) That Mr. Armoyan has not approached the proceedings in good faith. He has refused to provide full and complete disclosure and has blatantly ignored Court orders...

The Nova Scotia Court of Appeal has commented on Mr. Armoyan's conduct in the proceedings generally. The parties jointly requested the Settlement Conference. It was cancelled after the filing date of May 30. The Request for scheduling of and organization of the Settlement Conference was not done subject to further disclosure. It was not done subject to any conditions.

- (b) That Ms. Armoyan made an Offer to Settle to Mr. Armoyan on March 13. Mr. Armoyan rejected it March 20. No counter-offer was made.

This has little to do with the Settlement Conference or its cancellation. One would expect that settlement discussions could and should continue when a Settlement Conference is scheduled.

(c) That Mr. Armoyan's counsel expressed concern about the efficacy of the Settlement Conference in his correspondence rejecting the offer. He did not cancel the Settlement Conference. He did comply with the Court's directions.

(d) That:

8. The parties attended two further Court Conferences on March 31, 2014 and April 17, 2014. Although Mr. Armoyan rejected Ms. Armoyan's Offer to Settle, Ms. Armoyan remained committed to pursuing settlement before the fall 2014 trial.

The suggestion seems inconsistent with the previous submission (b) and indicates that the Settlement Conference process was still committed to.

(e) That:

9. It was not until May 2014 that Ms. Armoyan received information that led her to believe that the limited financial disclosure Mr. Armoyan had provided was inaccurate and misleading.

10. As a result, Ms. Armoyan withdrew her Offer to Settle on May 16, 2014.

The offer had previously been rejected. The Settlement Conference was not cancelled before May 30. No particulars of this "new information" were provided. I do not know who it was from, the date, its' content. This assertion suggests that the new information changed Ms. Armoyan's view of the Settlement Conference, but there is no evidence to support the assertion.

(f) That:

12. Ms. Armoyan was advised by her previous counsel, Ms. McGinty, that attending a settlement conference without the necessary disclosure and with a clear indication that Mr. Armoyan had no intention of compromising would be unproductive and an unreasonable waste of the Court's resources.

13. On her counsel's advice, Ms. Armoyan provided instructions to cancel the Settlement Conference. Without full and complete disclosure from Mr. Armoyan, meaningful settlement discussions would clearly not have been possible.

14. Ms. Armoyan provided these instructions prior to Mr. Armoyan filing his Brief and Personal Statement on May 30, 2014.

15. During this period of time, Ms. Armoyan's relationship with Ms. McGinty also began to deteriorate.

16. For reasons unknown to Ms. Armoyan, Ms. McGinty did not advise Mr. Armoyan's counsel that she had instructions to cancel the Settlement Conference until June 4, 2014. The Court was advised that Ms. Armoyan sought to cancel the conference in correspondence dated June 6, 2014 (attached hereto at **Tab E**).

No affidavit was filed by Ms. Armoyan, nor Ms. McGinty. Ms. McGinty was Ms. Armoyan's counsel to and after June 6. Mr. Armoyan was entitled to rely on Ms. McGinty's representation of Ms. Armoyan. The issues described may, if accurate, be relevant to issues between Ms. McGinty and Ms. Armoyan. They are not, in my view, relevant to this application.

(g) That:

18. On June 14, 2014, Ms. McGinty verbally advised Ms. Armoyan that she intended to withdraw as her counsel. Ms. McGinty confirmed this intention in writing on June 16, 2014, by filing a Motion to Withdraw as Counsel.

...

20. While Ms. Armoyan took immediate steps to secure new counsel, without funds for a retainer, this was difficult. Ms. Armoyan was without counsel from June 16, 2014 to September 4, 2014 (when she retained Niman Gelgoot & Associates LLP).

The cancellation of the Settlement Conference took place before these dates. I remain uncertain as to why Ms. Armoyan was not personally available for the telephone conference of July 7.

(h) That:

30. Mr. Armoyan has refused to provide full and complete disclosure since initiating these proceedings in December 2009. This lack of disclosure has and continues to be the primary barrier to settlement. Mr. Armoyan had the opportunity to make full and complete financial disclosure, but purposefully chosen not to do so.

Yet the Settlement Conference was scheduled. No conditions were attached to its being scheduled. The earlier and somewhat inconsistent submission is that it was information that came to Ms. Armoyan in May 2014 that triggered the cancellation of the Settlement Conference (and see the next argument).

(i) That:

32. Mr. Armoyan is unreasonably seeking indemnification for costs incurred from January 21, 2014 to July 7, 2014. The Settlement Conference was scheduled jointly by the parties in January 2014. When the parties appeared before Your Lordship in January and April 2014, Ms. Armoyan sincerely intended to proceed with the Settlement Conference in early June 2014. It was not until May 2014 that Ms. Armoyan was left with no alternative but to cancel the Settlement Conference through no fault of her own.

There is no evidence before me that would allow me to agree with this conclusion.

(j) That:

33. The materials prepared by Mr. Armoyan, namely the Summary of Proceedings and Brief, can be utilized if the parties attend for a Settlement Conference prior to the May/June 2016 trial, as well as to prepare for trial. This is not a case where the cancellation of the Settlement Conference had the effect of creating a total loss to Mr. Armoyan. Minimal to no "throw away costs" have been incurred by Mr. Armoyan.

There is no indication that a further Settlement Conference is to be scheduled. Mr. Kelly appears to have been Mr. Armoyan's counsel for years. The summary was for the Court.

(k) That:

22. Rules 59.39, 10.12 and 77.09 are discretionary and permissive in nature, not mandatory. Costs and indemnification are not required following the cancellation of a Settlement Conference.

(l) That:

34. In exercising discretion, Ms. Armoyan submits that Your lordship should consider the income and assets of each party, the relative means of each party to bear his or her own costs, and the effect of the award on the ability of a party to meet the obligations

imposed by the judgment (*Andrews v. Andrews* (1980) 32 O.R. (2d) (ONCA) at para 20).

35. Ms. Armoyan respectfully submits that given the financial circumstances of the parties, no costs should be ordered payable by her. Mr. Armoyan is in a much superior financial position to Ms. Armoyan. As of June 30, 2014, Mr. Armoyan was in default of support and costs in the amount of \$1,645,780.27 (as described above).

...

37. The prejudice to Ms. Armoyan as a result of Mr. Armoyan's failure to provide disclosure and comply with Court Orders far outweighs any nominal costs incurred by Mr. Armoyan as a result of the cancelled Settlement Conference or the deferred payment of costs, in the event that costs are ordered.

23. Ms. Armoyan respectfully requests that Your Lordship exercise discretion and find that no costs should be payable by her. If Your Lordship finds that she is required to pay any costs, Ms. Armoyan submits that such payment should not be required to be made until Mr. Armoyan has remedied his breaches of the Orders of this Court.

...

29. Ms. Armoyan acted reasonably in cancelling the Settlement Conference scheduled for June 23, 2014.

31. In addition, Mr. Armoyan has continued to show a complete disregard for the Orders of this Court (and the Florida Court). Mr. Armoyan's non-payment of support and costs has significantly and directly impacted Ms. Armoyan's ability to move forward in these proceedings. Ms. Armoyan is struggling financially.

[11] I have considered these assertions in making my decision.

Conclusion

[12] I conclude the Settlement Conference is a discrete part of the proceedings between the parties.

[13] It was scheduled with no conditions set for further disclosure, no conditions for payment or partial payment of outstanding orders (here or in Florida) for support or costs. It was scheduled at the request of both parties.

[14] Both parties had an opportunity to have input to the filing process, requirements and dates suggested by the Court. Both parties agreed to the filing date suggested and directed by the Court.

[15] Mr. Armoyan complied with the Court's direction. Ms. Armoyan did not. Ms. Armoyan cancelled the Settlement Conference after the filing date. I conclude Mr. Armoyan is entitled to an order of costs pursuant to Rules 59.39, 10.11, 10.12 and 77.09.

[16] The reference(s) to difficulties between Ms. Armoyan and her (then) counsel Ms. McGinty is not supported by evidence. Any such difficulties between Ms. Armoyan and Ms. McGinty are not relevant to this application for costs. The Court and Mr. Armoyan relied upon Ms. McGinty's representation of Ms. Armoyan. Ms. Armoyan cancelled the Settlement Conference process after Mr. Armoyan had complied with the directions of the Court. Her reasons for doing so do not, in my view, excuse her from a costs award. Her decision to cancel the Settlement Conference at that time clearly caused unnecessary costs to Mr. Armoyan. These are precisely the circumstances contemplated by the Rules referred to.

[17] I do not conclude that the asserted default(s) (by Mr. Armoyan) of payment of previous orders of costs and support insulates Ms. Armoyan from an award of costs here.

[18] The parties respective financial circumstances are relevant. I do not conclude an award of costs would unduly impact Ms. Armoyan. I would order that the award of costs against her be set-off first against any unpaid costs order (from Nova Scotia) against Mr. Armoyan, and second (if necessary) against the division of their matrimonial property here in Nova Scotia.

[19] I conclude the requested order of costs - \$9,996.38 – to be reasonable and I order it paid subject to the set-offs I have referred to. I conclude that the amount is a substantial contribution to Mr. Armoyan's costs arising from the cancelled Settlement Conference. I have considered the factors and rules referred to above. The amount is not significant when seen in the shadow of the amount(s) of legal fees the parties have incurred. Ms. Armoyan's fees in Nova Scotia and Florida were described as being well over one million dollars by her then counsel in April 2014.

[20] There is no shortage of acrimony here. Jurisdiction is fragmented. Child support is in Florida. Spousal support (periodic and a large capital sum that is reviewable when property is “resolved”) is in Florida. Matrimonial property is scheduled for trial here in Nova Scotia. The result is an extraordinarily difficult family law dispute for the parties, counsel and the Court to manage, negotiate and determine. The Trial that is scheduled here in Nova Scotia concerning matrimonial property is not likely to resolve or end the litigation between Mr. and Mrs. Armoyan. It is difficult to foresee an end to the parties’ disputes in the absence of a process that is capable of dealing with all of the issues between them.

[21] The Settlement Conference process remains one option, should the parties agree.

Williams, J.F.C.

Halifax, NS