SUPREME COURT OF NOVA SCOTIA
Citation: *Mazac v. Muise*, 2026 NSSC 138

Date: 20260428
Docket: *Yar*, No. 526156
Registry: Yarmouth

Between:

Marie Mazac

Plaintiff

v.

Gordon H. Muise

Defendant

v.

Viewpoint Realty Services Inc. and Jordan Langille

Third Party

Judge:	The Honourable Justice Muise
Heard:	May 12, July 8, September 22, and October 14, 2025
Final Written Submissions:	October 31, 2025
Counsel:	Marie Mazac, Self Represented Calvin Dewolfe, for the Defendant Liza Myers, for the Third Party

COSTS DECISIONS FOLLOWING VARIOUS MOTIONS

By the Court:

COSTS DECISION FOLLOWING PARTIALLY SUCCESSFUL MOTION TO AMEND STATEMENT OF CLAIM

[1] Ms. Mazac filed a motion for permission to file a second amended statement of claim on April 16, 2025. That was long after the Notice of Defence had been filed, which was on November 14, 2023, and after discoveries had been held. She was partially successful on the motion.

[2] The amendments included allegations that her reliance on misrepresentations by the Defendant, Mr. Muise, in a Property Disclosure Statement had resulted in her suffering pain and health issues, including physical strain, chronic back pain and exacerbated her osteoarthritis, as well as the negative health impacts of exposure to hazardous living conditions such as mold and flooding. They also sought damages for those specific adverse effects.

[3] The Defendant seeks $20,000 in costs because that portion of the amendments will require him to obtain and review extensive medical records and re-discover the Plaintiff on those records. He estimates an added expense of 61.5 lawyer hours at $325 per hour because his lawyer will need four days for review and preparation, one day for the discovery examination, plus travel between Halifax and Yarmouth for that purpose as the Plaintiff has indicated she cannot be discovered virtually.

[4] In response, the Plaintiff submits the following:

- The amount requested by the Defendant is predicated on the false assumption she has added a new cause of action requiring new avenues of discovery and is disproportionate.
- She is simply providing factual support or context for her existing general damages claim and only intends to disclose and refer to medical records in support of her own testimony regarding effects on her health and physical condition. She does not intend to call expert evidence of causation. Therefore, the need to review medical records and engage in further discovery is much more limited than estimated by the Defendant.

- $2,000 to $3,000 would be a more reasonable range of costs for the additional work required by the amendments.

[5] Prior to the second amended statement of claim, the Plaintiff had pled that she was seeking damages for mental distress, expressly alleging that she had suffered mental distress resulting from reliance on the Defendant's representations. She had also pled that she was seeking damages for pain and suffering. However, she had not included any allegation that she had experienced any pain caused by reliance on those representations, or any pain at all for that matter.

[6] Therefore, especially considering she is self-represented it would not be reasonable to expect the Defendant to have read the statement of claim as alleging that she suffered pain, such as physical strain, chronic back pain and exacerbation of her osteoarthritis, resulting from reliance on his representations. Rather, it would be reasonable to expect him to read the reference to "pain and suffering" as having been a reproduction from sample pleadings, with the "pain" portion of that reference meaning the pain of mental distress or having no application to the case at hand because there was no allegation of physical pain having been caused.

[7] Consequently, the Defendant could not be expected to question her on discovery regarding physical pain, such as physical strain, chronic back pain and exacerbation of osteoarthritis, nor regarding any other physical health issue. The Plaintiff had also refused to disclose her medical records, further limiting the Defendant's ability to discover her even on the mental distress claim.

[8] Although no new cause of action is being pled, a new head of damages is being claimed. It is one which brings in causation and mitigation issues. Those issues will need to be explored and canvassed in discovery, including through extensive preparation.

[9] The court in *Altschuler v. Bayswater Construction Limited*, 2019 NSSC 197, concluded that the amendments did not constitute a new cause of action, but still ordered that the plaintiffs undertake to pay the cost of the defendant's expert to address the new deficiencies alleged, plus $1,000 in costs of the amendment motion despite the plaintiffs being completely successful on their motion to amend.

[10] Similarly, in the case at hand, new damages are alleged, requiring at least review of medical records and re-discovery of the Plaintiff.

[11] The Plaintiff cannot limit her disclosure of medical records to those which she intends to submit in support of her own testimony. As indicated by the

Defendant, she will need to disclose all her medical records dating back to at least 2016 so that he can explore pre-existing conditions and their progression. So, the review of medical records will be more extensive than anticipated by the Plaintiff.

[12] Causation of physical pain or health issues in a fraudulent or negligent misrepresentation claim appears to be much more nebulous than, for instance in a personal injury claim. Therefore, it would likely require more expansive probing on discovery.

[13] Plus, the issue of mitigation would have to be explored on discovery.

[14] 61.5 hours still seems a little high for review of medical records, preparing for the discovery examination and attending it, including travel. 50 hours appears more reasonable. That would result in additional costs of $16,250. With the addition of HST and travel / accommodation expenses, that would result in a total expense of about $20,000.

[15] In addition, despite the Plaintiff saying she will not be submitting expert evidence on the issue, it is difficult to conceive how she could prove causation in the absence of expert evidence on the issue. Therefore, the Defendant is likely to require at least consultation with an expert, further adding to his legal costs.

[16] The court in *Shea v. Whalen*, 2008 NSSC 422, following an application (as it was then called) to amend a statement of defence, ordered the defendants to pay the plaintiff a total of $10,500 to cover the costs of preparing for, attending and conducting discovery examinations of two doctors and a dental expert, plus $1,000 in costs of the application, and also ordered the defendants to undertake to pay the costs of the expert dental report prepared by the plaintiff's expert.

[17] The amendment in that case was to allege that treatment the plaintiff had received after the motor vehicle collision in question caused or contributed to her injuries and damages. That is comparable to the additional damages claimed in the case at hand and the causation and mitigation issues associated with them. I highlight that legal expenses and the cost of experts have increased significantly since 2008.

[18] For these reasons, the $20,000 in costs to cover additional expenses is a reasonable estimate.

[19] On the within motion to amend, the Defendant was required to address a 43-page second amended statement of claim, a significant portion of which was comprised of improper pleadings which were not allowed. So, the motion itself

has already resulted in the Defendant incurring additional legal expenses. However, the Defendant has only requested costs related to the extra expenses arising from the amendments adding a claim for damages that will require review of medical records and a new discovery examination. He agrees it is appropriate that the parties each bear their own costs of the motion to amend, given the divided success.

[20] The Plaintiff obtained permission to defer disclosure of medical records until this Court rendered this decision on costs, with the intention of discontinuing damage claims to which the medical records relate if she considered the related costs too high.

[21] If those damage claims are discontinued, she will not be required to pay the within $20,000 costs award.

[22] She will have until 6 weeks in advance of any re-discovery date that may be set or have been set, to either pay the $20,000 costs award or formally discontinue the damage claims to which the medical records relate.

COSTS DECISION FOLLOWING MOTION TO STRIKE AFFIDAVIT EVIDENCE FILED BY MS. MAZAC HEARD JULY 7 AND 8, 2025

[23] The Defendant, Mr. Muise, requests costs of the motion to strike affidavit evidence filed by the Plaintiff, Ms. Mazac, and heard July 7 and 8, 2025, in the amount of $9,000 representing a substantial contribution towards his actual legal costs pursuant to Rules 77.09 and 39.04(5).

[24] The Plaintiff, Ms. Mazac, submits that I should deny this request for costs because: she sincerely did her best to comply with affidavit requirements; as a self-represented litigant it is difficult for her to navigate a complex legal process; she did not deliberately misuse that process; and, the Defendant ought to have alerted her sooner to the improprieties in her affidavits instead of waiting until she had filed six affidavits before raising objections.

[25] Ms. Mazac also submits that I stated the costs of this motion would depend on the outcome globally and ruled that they be reserved for global determination. I listened to the recording of the discussion on costs of the motion to strike on July 8, 2025, and I did not hear any such comment. If I had made such a comment, it would have been an error in principle. Determination of costs on such motions to strike is not something that is dependent on the outcome of the main proceeding. It

is a separable procedural issue disconnected from a substantive determination on the ultimate merits of the case.

[26] She further submits that the Defendant is partially to blame for the improper content in her affidavits because similar affidavit issues are present in his own filings. However, the only motion she brought to strike affidavit evidence submitted by the Defendant was dismissed. There has been no ruling regarding improper content in his affidavits (as of the time of the motion to strike to which this costs decision relates).

[27] Similarly, she cannot blame the Defendant for the improper content in her affidavits on the basis he did not raise issues with them when she first filed affidavits. It was reasonable for him to wait until preparation for the summary judgment motion before reviewing her affidavits in detail, particularly considering she ultimately abandoned her summary judgment motion, and he brought the motion to strike in advance of the hearing of the reciprocal summary judgment motions.

[28] In addition. The onus is on each litigant to ensure they are submitting proper and admissible evidence.

[29] I agree with the Defendant that, in the circumstances of this case, Civil Procedure Rules 77.09 and 39.04(5), in combination, justify a costs award that provides a substantial contribution towards his actual legal expenses.

[30] As he states, content from over 100 paragraphs in 6 six affidavits were struck, many of them in their entirety, along with 17 exhibits. One affidavit was struck in its entirety.

[31] The Plaintiff engaged in lengthy oral argument with little expansion upon her written submissions, even though the Defendant made only brief oral comments clarifying or slightly expanding upon his written submissions.

[32] Despite the Plaintiff's assertion that she came to the motion having prepared extensively, as I stated on July 8, 2025, during the oral submissions related to costs, it was obvious during the motion that she was spending a lot of time reading the affidavits and then making argument, revealing inadequate preparation. She replied that there was so much material she could not remember it all. I noted that none of us can remember it all and that is why preparation must include notes of what one is going to argue. In the end, her inadequate preparation caused the Defendant to have to incur unnecessary legal expense associated with several hours

of court time that would not have been needed if the Plaintiff had been properly prepared.

[33] To prepare for the motion, the Defendant had to review voluminous materials and consider them in the context of very lengthy pleadings, because of voluminous improper content filed by the Plaintiff.

[34] The time sheets attached to the affidavit of Trinity MacKenzie confirms the Defendant's estimate that his legal expenses related solely to the motion to strike total about $10,000.

[35] A $9,000 costs award would represent 90% of that amount.

[36] The Court in *Armoyan v. Armoyan*, 2013 NSCA 136, at paragraph 37, stated:

> [G]enerally speaking the "substantial contribution" should exceed fifty percent of the appropriate base sum, but should not approach the full indemnity of a solicitor and client award. The percentage should vary, in a principled manner, according to the circumstances of the case.

[37] In *Armoyan*, the Court determined that, because of litigation misconduct, a proper substantial contribution was 66% of the reasonable legal expenses, before the rejected settlement offer, and 80% thereafter.

[38] The litigation misconduct included spurious applications, avoidance of disclosure, stay and adjournment motions, failure to obey orders, and attempts to have Florida recognized as the proper jurisdiction, all in an attempt "to plummet the Wife and children to financial oblivion, and to deprive her of access to legal counsel".

[39] Though Ms. Mazac forged ahead blindly submitting reams of improper affidavit content, there is no indication that she has done so to deliberately increase legal expenses for the Defendant. Nevertheless, during the motion, when it ought to have been clear to her that much of her affidavit evidence was improper and inadmissible, she continued to defend the improper content on grounds which she ought clearly to have known would be rejected. Instead of giving serious consideration to arguments raised by the Defendant and perhaps seeking legal advice on at least some of those points, she continued putting forward her personal views on admissibility, even though they conflicted with clear legal principles. That wasted the Defendant's and the Court's resources.

[40] The wasted resources were partly due to her lack of legal experience and partly due to her own stubbornness. Though she may be given some leeway for the fact she is self-represented, her stubborn approach, inadequate preparation, along with submission of voluminous and often repetitive affidavit evidence, reveal a level of litigation misconduct which justifies some upward variation of the substantial contribution percentage, beyond being merely more than 50%.

[41] Also, the combination of Rules 77.09 and 39.04(5) recognizes that submitting of significant affidavit content needing to be struck, to the extent it needed to be struck in the case at hand, is itself litigation misconduct, irrespective of the reason for it.

[42] Considering these points, in the circumstance of the case at hand, it will do justice between the parties to award substantial contribution representing 60% of the actual legal fees.

[43] For these reasons, I order the Plaintiff to forthwith pay the Defendant $6,000 in costs of his motion to strike her affidavits or portions of them.

COSTS DECISION FOLLOWING MOTION TO STRIKE AFFIDAVIT EVIDENCE FILED BY MS. MAZAC HEARD SEPTEMBER 22, 2025

[44] On the second motion to strike, heard September 22, 2025, the Defendant seeks costs in the amount of $9,500, representing full indemnity, for the reasons which follow:

- When the Plaintiff prepared the affidavits in question, the Court had already provided guidance for preparation of future affidavits and cautioned her to review the applicable guidelines or consult with a lawyer. Yet, the additional affidavits she filed contained a large amount of the same type of improper and inadmissible content.
- She used an artificial intelligence application to prepare her brief on the motion to strike without cross-referencing with authoritative sources or legal databases, including free ones such as CanLII. Such cross-referencing is expressly required, including from self-represented litigants, by virtue of the notice document published on the Nova Scotia Courts Website entitled ENSURING THE INTEGRITY OF COURT SUBMISISONS WHEN USING GENERATIVE ARTIFICIAL INTELLIGENCE (“AI”). The AI App she used generated misplaced citations, including citations to

non-existent cases. That increased the legal resources the Defendant was required to expend in dealing with this motion to strike.

[45] The Plaintiff submits no costs should be awarded for the September 22, 2025, motion to strike for reasons which include the following:

- The Defendant's own affidavits are "permeated with argumentative statements, hearsay, speculation and self-serving denials" and, in preparing her affidavits, she was using his affidavits as a guide and mirroring his evidence. So, to penalize her with costs would be applying a double standard.
- She includes, in her costs brief, argument regarding the admissibility of portions of the Defendant's affidavits, and attaches as appendices thereto, three tables outlining the specific portions of three affidavits she objects to and the grounds for her objections. She states she did not have time to bring a motion to strike.
- She acknowledges having used AI as one of several tools to assist her as a self-represented litigant. She asks to "review the Defendant's specific accusations at a later stage, as [her] immediate priority is addressing the substantive issues before the Court on October 14". She adds that an isolated citation error does not change the inadmissible material in the Defendant's affidavits.

[46] Ms. Mazac's primary argument against a costs award being made in favour of the Defendant for the motion to strike heard September 22, 2025, is that the Defendants own affidavits are "permeated with" improper content.

[47] Despite her not having filed a formal motion, her challenges to the Defendant's affidavits were determined in an informal motion to strike heard October 14, 2025. Very little was struck and much of what was struck was agreed to or not disputed by the Defendant.

[48] In addition, as noted by the Defendant, she received this Court's directions on the previous motion to strike before preparing the later affidavits which contained reams of the same type of inadmissible material.

[49] As such, these minor issues with the Defendant's affidavits do not justify the voluminous portions of her affidavits that had to be struck, and do not justify relieving her of costs consequences or even reducing those costs consequences.

[50] Ms. Mazac did acknowledge having use generative AI to prepare her brief dated September 18, 2025, opposing the Defendant's motion to strike, not simply AI for research.

[51] She, nevertheless, asked for, and was granted time, to review the Defendant's allegations regarding her citing of non-existent cases attributed to her use of generative AI to prepare her brief on the motion to strike, and to make submissions in writing on the point.

[52] She subsequently writes submitting, among other things, the following:

- They were not non-existent cases. They were "erroneous citations" created by "simple clerical mislabels".
- The case she cited as *Darkallah v. Walsh*, 2015 NSSM 35, was intended to be a reference to *Darkallah v. 3223701 Canada Inc.*, 2016 QCCS 3245 (aff'd 2018 QCCA 937), which was included and correctly cited and reproduced in the Book of Authorities she filed September 16, 2025.
- The case she cited as *Frawley v. Rawleigh*, 2012 NSSC 213 (incorrectly noted in her subsequent brief as 2003 NSSC 105) was intended to be a reference to *Frawley v. Buckley*, (1988) 93 N.B.R. (2d) 139 (T.D.) / 238 A.P.R. 139 correctly reproduced in the Book of Authorities she filed September 16, 2025, but incorrectly cited in the Table of Contents as *Frawley v. Rawleigh*, 2003 NSSC 105.
- Both cases stand for the principles for which they are cited.

[53] However, Ms. Mazac confirmed, during the hearing on October 14, 2025, that the Book of Authorities she filed on September 16, 2025, was not filed in support of her position on the Defendant's motion to strike.

[54] The cases do not stand for the principles for which she presented them in her brief dated September 18, 2025.

[55] She presented *Frawley v. Rawleigh*, 2012 NSSC 213, (purportedly meant to be *Frawley v. Buckley*, (1988) 93 N.B.R. (2d) 139 (T.D.) / 238 A.P.R. 139) for the principle that the power to strike portions of affidavits is to be used sparingly. However, *Frawley v. Buckley* makes no mention of striking portions of affidavits or of evidence of any kind, so it cannot stand for that principle.

[56] It is not completely clear for what principle or principles she presented *Darkallah v. Walsh*, 2015 NSSM 35 (purportedly meant to be *Darkallah v. 3223701 Canada Inc.*). It appears to be to support her submission that she was not "interpreting science" (ie. giving expert opinions) by describing the effects of "contaminated" water or to support her submission that water test results from a lab had been accepted as reliable records, or to support both submissions. However, in *Darkallah v. 3223701 Canada Inc.*, both sides called expert witnesses to testify as to deficiencies of the type Ms. Mazac says she can testify about, and those who conducted water analyses or inspections testified. So, the case does not stand for either principle.

[57] It is difficult to see how a "simple clerical mislabelling" could result in changing a numbered company party to a name like "Walsh" when there is no "Walsh" mentioned in the case. It was also not explained how such a clerical error, in addition to including erroneous names for the responding / defending party, resulted in case citations using completely different formats, years and provinces. These points, combined with the fact that these cases do not stand for the principles for which they are cited, combined with Ms. Mazac's acknowledgement that she use generative AI to prepare her brief, shows that, more likely than not, the citations for these non-existent cases were generated by the AI program, and that Ms. Mazac is mistaken as to their genesis, or has simply tried to figure out an alternate reason for them after-the-fact, or both.

[58] A link to the AI notice in question appears prominently in the first section following the introduction to the resources for persons representing themselves in court on the Nova Scotia Courts Website. The Plaintiff had been advised of that resource for self-represented litigants. If she had accessed it, it is difficult to see how she could have missed the AI notice.

[59] Yet she either did not read it or paid insufficient heed to it.

[60] Even if the case names and citations had been actual cases, the cross-referencing requirement would include ensuring the cases stand for the principles for which they are cited, which Ms. Mazac obviously did not do.

[61] That said, if the actual cases had been cited, it would have been easier and less time-consuming to discover the error. Using a non-existent case name unnecessarily wastes legal resources by causing those responding to the brief to waste time looking for something which does not exist.

[62] Considering these circumstances, an increase in the percentage of substantial contribution is warranted. However, complete indemnification is not warranted.

[63] As the Plaintiff has continued the same type of litigation conduct which caused the Defendant to incur unnecessary expenses, and applying the principles discussed in the costs decision for the July 2025 motion to strike, awarding the Defendant 75% of his reasonable legal expenses will do justice between the parties in the circumstances.

[64] The affidavit of Trinity MacKenzie establishes the Defendant's actual reasonable legal expenses of $9,500.

[65] 75% of that amount is $7,125.

[66] For these reasons, I order the Plaintiff to forthwith pay to the Defendant, $7,125 in costs of the September 22, 2025, motion to strike.

DECISION ON COSTS OF INFORMAL MOTION TO STRIKE PORTIONS OF DEFENDANT'S AFFIDAVITS HEARD OCTOBER 14, 2025

[67] During the Plaintiff's informal motion to strike heard October 14, 2025, she raised objections to 72 paragraphs in three of the affidavits sworn by the Defendant. Only portions of 10 of those paragraphs were struck. They were largely of little or no consequence to the points the Defendant was making or the case in general.

[68] The hearing of the motion spanned more than one hour but less than one-half day, so the Tariff C range of costs is $750 to $1,000.

[69] The Defendant seeks Tariff C costs at the high end of the range, i.e. costs of $1,000, payable forthwith, on the basis that the Plaintiff's motion was largely unsuccessful and was made without notice to the Defendants.

[70] However, as noted by the Plaintiff, though she did not file a formal notice of motion to, she did raise the objections in her brief filed October 1, 2025, and included tables detailing her objections and the grounds for them. It was clear that the Defendant had prepared responses based on those materials in advance of the October 14, 2025, appearance. The Defendant also agreed that the Court should hear the informal motion and not adjourn it to give the Plaintiff time to file a formal motion (given her position that she had not had time to do so).

[71] The Plaintiff agrees that the portions struck were “limited”. However, she highlights that at least some of her objections were valid, emphasizing that she was successful in having struck the inadmissible, improper or invalid portions of the Defendant’s affidavits.

[72] She further argues that the reason many of her objections were dismissed was largely the distinction between an objection as to the truth or falsity of a statement and an objection as to its admissibility. As such, she submits that “the true measure is not whether all objections succeeded, but that the Defendant’s evidentiary material contained significant defects that required a response”.

[73] I disagree with her characterization of the Defendant’s affidavits as containing significant defects. Only portions of a small fraction of the challenged paragraphs were struck and as noted, they were largely of little consequence to the Defendant’s case. As well, the Defendant conceded some of the points raised.

[74] I also disagree that the unsuccessful parts of her motion should be ignored in assessing her level of success because of the reasons for dismissing the objections. I agree with the Defendant that she was largely unsuccessful, which generally attracts a damage award.

[75] I do agree with the Plaintiff that the fact that the affidavits did contain some inadmissible material made the motion necessary. However, it was not necessary for the motion to cast such a wide net.

[76] I, nevertheless, agree with the Plaintiff that the fact she is self-represented, with no legal training, is a factor to consider.

[77] That said, I disagree with her suggestion that she should be shielded from costs associated with her substantial lack of success on the motion because the Defendant’s affidavits contained inadmissible material despite him being represented by experienced counsel and that “counsel should be held to a higher standard”, making it such that they ought not be able “to seek costs for defending their own defective evidentiary material”.

[78] Ultimately, litigation is between the parties, and, except in the rare circumstances where costs may be sought against counsel personally, the parties themselves bear the costs implications. To relieve a largely unsuccessful self-represented litigant of costs consequences because the other party was represented by counsel would result in doubly penalizing the other party. They would be left having to pay their own lawyer for defending the motion and be unable to recover any contribution towards those expenses from the self-represented litigant. Such an

approach would encourage self-represented litigants to make over-inclusive or extensive motions with only minimal merit.

[79] Contrary to the Plaintiff's suggestion, awarding costs against a largely unsuccessful self-represented litigant ought not discourage other self-represented litigants from "raising appropriate procedural and evidentiary concerns". Rather, it would encourage them to avoid raising unmeritorious or frivolous concerns and limit their objections to appropriate concerns.

[80] The Plaintiff submits that, since this motion was made within the Defendant's summary judgment motion, costs should await the outcome of the summary judgment motion. However, costs of motions to strike are generally assessed following the motion, as it is a separate procedural issue disconnected from a determination on the ultimate merits of the case, and I see no reason to depart from that approach.

[81] Ultimately, a costs award must be one that "the judge is satisfied will do justice between the parties": *Civil Procedure Rule* 77.02(1).

[82] The Defendant has had to incur legal expenses to respond to objections to his affidavits, which objections were largely baseless. Therefore, it would not do justice between the parties to dismiss the request for costs or defer it until the outcome of the summary judgment motion is known.

[83] However, the legal expenses incurred are less than they would have been if the motion had proceeded on formal notice. The fact that the matter was heard as an informal motion obviated the need for the preparation and filing of materials in advance of the motion. In addition, the Plaintiff was partially successful. Therefore, it would not do justice between the parties to order Tarff C costs at the high end of the range.

[84] I find that, to do justice between the parties, the costs award must be below the Tariff C range. Therefore, I order the Plaintiff to pay the Defendant costs of her largely unsuccessful motion to strike heard October 14, 2025, in the amount of $500, payable forthwith.

ORDERS

[85] I ask counsel for the Defendant to prepare an order reflecting these costs decisions.

Muise, J.