



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: Lisa M. Wight and the Professional Standards (Family) Committee

Date: January 26, 2024

Subject: Family Law Standards Committee – New Standard – Costs, Standard #16

For: **Approval** **Introduction X** **Information**

DATE January 26, 2024	Council	Introduction
	Council	Approval

Recommendation/Motion:

This is the introduction to Council of a new Standard #16 – Costs – by the Professional Standards (Family) Committee. This standard will be concurrently sent to the Equity Committee for review and comment in accordance with the Society's Equity Lens Application in Policy Development guideline. Following introduction to Council, the standard will be circulated to the membership for review and consultation. The FLSC will review any comments received by members and the Equity Committee, and then present the final form, amended if necessary, to Council for approval. An equity lens was applied while revising this standard.

Executive Summary:

One of the Committee's mandates is to review and update existing standards, and create new standards, as appropriate and necessary so that they align with current practice. After annual review, the Committee determined that there was no standard but there should be.

Exhibit:

Standard 16 – Costs - with rationale.

Family Law Standards Committee - New Standard #16 Costs

Existing Standard	Proposed Standard	Rationale
<p>This is a new Standard</p>	<p>16 - COSTS</p> <p>STANDARD</p> <p>A lawyer should be aware of the Civil Procedure Rules and caselaw on costs awards and should explain these to a client before engaging in litigation.</p> <p>ADDITIONAL RESOURCES</p> <p>Notes</p> <ol style="list-style-type: none"> 1. Part 16, Rule 77- Costs, of the Nova Scotia Civil Procedure Rules dictates that the courts have discretion in determining costs and sets out guiding principles to consider while calculating costs. 2. Conrad v Bremner, 2006 NSSC 99. - Establishes the guiding principles when determining costs, and how HST should be applied. <p>Related legislation</p> <ol style="list-style-type: none"> 1. NS Civil Procedure Rules <p>- Part 16, Rule 77- Costs</p>	<p>The Committee determined that it would be prudent to establish a Standard to align with current practice, case law and legislation.</p> <p>This Standard is intended to provide guidance and assistance to lawyers with respect to providing advice to clients.</p>

Family Law Standards Committee - New Standard #16 Costs

- Nova Scotia Civil Procedure rules set out the rules for awarding costs and fees.
 - a. Tariff A- Fees for solicitors services allowable to a party entitled to costs on decision or order in a proceeding.
 - b. Tariff B- Party and Party costs allowed on an appeal to the Nova Scotia Court of Appeals.
 - c. Tariff C-Costs payable following an application heard in chambers by Supreme Court of Nova Scotia.

Case Law

[Conrad v Bremner, 2006 NSSC 99](#)

Justice Beryl MacDonald sets out the factors and principles that emerge from the relevant case law and the Nova Scotia Civil Procedure Rules that must be taken into consideration when determining costs. Important factors in calculating costs are the conduct of the parties, the complexity added to the hearing, and the addition of HST to calculations. This decision was recently considered in [Wolfson v Wolfson, 2022 NSSC 263](#).

[Urquhart v Urquhart, \[1998\] NSJ No 310, 169 NSR \(2d\) 134, 81 ACWS \(3d\) 1003](#)

Justice Walter Goodfellow lays out the rules for calculating Costs for trial. Justice Goodfellow sets out that one day of trial is worth \$15,000.

Family Law Standards Committee - New Standard #16 Costs

	<p>This decision was upheld but adjusted for inflation to \$20,000 By justice Beryl McDonald in JWL v CBM, 2008 NSSC 387. Currently, Tariff A adjusts this cost to \$25,000.</p> <p>S.N. v. I.F., 2009 NSSC 23</p> <p>Justice Deborah Gass ruled that parties are to bare their own costs in issues of custody where each party has a reasonable position but requires the court to make a decision. This case was followed most recently by Justice Jollimore in O'Reilly v Purgin, 2022 NSSC 240.</p>	