

RULE 57

COSTS OF PROCEEDINGS BETWEEN PARTY AND PARTY AND BETWEEN LAWYER AND CLIENT

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,
- (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;
 - (j) 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;
 - (k) 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.

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: Tariffs

- (3) When the court awards costs, it shall fix them in accordance with subrule (1) and the Tariffs.

Assessment in Exception Cases

- (3.1) Despite subrule (3), in an exceptional case the court may refer costs for assessment under Rule 58.

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 an unrepresented party.

Bill of Costs

- (5) After a trial, the hearing of a motion that disposes of a proceeding or the hearing of an application, a party who is awarded costs shall serve a bill of costs (Form 57A) on the other parties and shall file it with proof of service.

Costs Outline

- (6) Unless the parties have agreed on the costs that it would be appropriate to award for a step in a proceeding, every party who intends to seek costs for that step shall give to every other party involved in the same step, and bring to the hearing, a costs outline (Form 57B) not exceeding three pages in length.

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 written submissions, without the attendance of the parties.

DIRECTIONS TO PROTHONOTARY

- 57.02** (1) Where costs are to be assessed, the court may give directions to the Prothonotary in respect of any matter referred to in Rule 57.01.
- (2) 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 A MOTION

Contested Motion

- 57.03** (1) On the hearing of a contested motion, unless the court is satisfied that a different order would be more just, the court shall,
- (a) fix the costs of the motion and order them to be paid within 30 days; or
 - (b) 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.
- (2) Where a party fails to pay the costs of a motion as required under subrule (1), the court may dismiss or stay the party's proceedings, strike out the party's defence or make such other order as is just.

Motion Without Notice

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

COSTS ON SETTLEMENT

- 57.04** Where a proceeding is settled on the basis that a party shall pay or recover costs and the amount of costs is not included in or determined by the settlement, the costs may be assessed under Rule 58 on the filing of a copy of the minutes of settlement in the office of the Prothonotary.

COSTS OF LITIGATION GUARDIAN

- 57.05** (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 the costs only to the extent that the successful party is able to recover them from the party liable for his or her costs.
- (2) A litigation guardian who has been ordered to pay costs is entitled to recover them from the person under disability for whom he or she has acted, unless the court orders otherwise.

LIABILITY OF LAWYER FOR COSTS

- 57.06** (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 had 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

Contingent Fee Agreement

57.07 A lawyer may, with respect to an intended or existing proceeding, make an agreement with a client for the amount and manner of payment of the whole or any part of past or future services, fees, charges or disbursements rendered and incurred, or to be rendered and incurred, by him with respect to the proceeding, and the form of payment may consist of a gross sum, commission, percentage or otherwise in an amount which may be the same, greater or less than that which the lawyer normally receives as remuneration, subject however to assessment under Rule 58.

Agreement Must Be in Writing

- 57.08** (1) Where an agreement referred to in Rule 57.08, a lawyer's compensation is dependent or contingent, in whole or in part upon the successful disposition of the subject matter, then the agreement shall be in writing and signed by the client or his authorized agent.
- (2) The agreement shall contain,
- (a) the name and address of each client;
 - (b) the name and address of the lawyer;
 - (c) a statement of the nature of the claim;
 - (d) a statement of the contingency upon which the compensation is to be paid, and, whether and to what extent the client is to be liable to pay compensation otherwise than from amounts collected by the lawyer;
 - (e) a statement that reasonable contingent compensation is to be paid for the services, and the maximum amount or rate which the compensation is not to exceed, after deduction of all reasonable and proper disbursements; and
 - (f) a statement to the following effect:
"This agreement may be reviewed by the Prothonotary at the client's request, and may either at the instance of the Prothonotary or the client be further reviewed by the court, and either the Prothonotary or the court may vary, modify or disallow the agreement".

Agreement Must Be Filed

- 57.09** (1) Within ten days after it is signed, a copy of an agreement referred to in Rule 57.08 shall be filed with the Prothonotary, and the Prothonotary shall file the agreement separately from any proceeding and, unless the court otherwise orders, the agreement is not available for inspection by, or its contents shall not be communicated to any person, other than the client, lawyer, or Prothonotary engaged in the assessment.

- (2) Where an agreement as mentioned in Rule 57.08 does not comply with Rule 57.09, or is not properly filed as provided in subrule (1), the lawyer is, upon the successful disposition of the subject matter, entitled only to the compensation as would have been payable in the absence of any contingency arrangement and without regard to the contingency.

Review of Agreement by Prothonotary or Court

- 57.10**
- (1) Any agreement as mentioned in Rule 57.08 may, at any time after its making until the expiry of six months from the last date on which a lawyer has received, on his own account, the fee or any part of it, be reviewed by the Prothonotary at the instance of the client.
 - (2) At any time after he has given his decision on review, the Prothonotary may, and on the request of the client shall, refer the agreement to the court. The Prothonotary shall obtain an appointment for the review by the court and shall notify the lawyer and the client of the appointed time.
 - (3) The court and Prothonotary have power on review to,
 - (a) approve the agreement,
 - (b) vary, modify or disallow all or any of the provisions of the agreement, and if the agreement is so disallowed, any amount payable to the lawyer shall be determined in accordance with Rule 57.10(2), and
 - (c) exercise the powers which a Prothonotary has on the assessment of a lawyer and client bill of costs in a proceeding.

Void Provisions in Agreement

- 57.11**
- (1) A provision in an agreement respecting lawyer and client fees which purports to,
 - (a) relieve a lawyer from liability for negligence or other liability to which he might be subject as a lawyer;
 - (b) provide that a proceeding cannot be abandoned, discontinued or settled without consent of the lawyer.is void.
 - (2) Notwithstanding anything in an agreement to the contrary, a client may change his lawyer before the conclusion of the retainer.

Death of a Lawyer

- 57.12**
- (1) Where a lawyer dies or becomes incapable of acting before his retainer has been completely performed by him, an application may be made by or on behalf of either party to the Prothonotary to determine the amount, if any, due in respect of the services rendered under the retainer and, subject to subrule (2), the Prothonotary in determining the amount shall have regard to terms of any agreement between the parties.
 - (2) Where an agreement provides that payment is to be contingent, in whole or in part, upon the successful disposition of the subject matter,

the Prothonotary has the powers provided by Rule 57.11 or may refuse any compensation, and no monies in respect of the agreement are payable until the disposition has been made.

- (3) Where a client changes or discharges his lawyer before the conclusion of the retainer, the lawyer shall be deemed to have become incapable of acting within the meaning of subrule (1).
- (4) Where a client personally settles any matter which is the subject of an agreement as described in subrule (2), without changing or discharging his lawyer, he shall be deemed to have discharged him within the meaning of subrule (3).
- (5) Where a client discontinues or abandons any matter which is the subject of an agreement as described in subrule (2) without changing or discharging his lawyer, then the lawyer may apply to assess his costs against his client, and the Prothonotary may, if he finds the discontinuance or abandonment to be wholly unreasonable, allow to the lawyer reasonable compensation therefor, and has the powers provided by Rule 57.11.
- (6) Payment of any amount found to be due under Rule 57.13 may be enforced in the same manner as if the lawyer had completely performed his retainer, except that in any case falling within subrule (2), payment may not be enforced prior to the successful disposition, and then only with the leave of the court.

Costs of a Lawyer Acting as a Trustee, Etc.

- 57.13** 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 him 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

- 57.14** 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

- 57.15** 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

- 57.16** (1) The court may, on the application of a lawyer, declare that the lawyer is entitled to a charge for his proper fees and disbursements in a proceeding upon the property recovered or preserved through his 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 his fees and disbursements is barred by any statute of limitations.

Proceeding for Costs

57.17 A lawyer may bring a proceeding for any costs due to him.

COSTS OF A PROCEEDING REMOVED TO THE SUPREME COURT

57.18 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.

Lanigan v. PEITF, 2017 PECA 3

Rule 57

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.

Gallant v. Social Assistance, 2015 PESC 24

The Court awarded substantial indemnity costs in a case where the court found the lawyer did not have much prospect of getting paid.

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.

Matthews v. Gallant 2015 PESC 12

The Court declined to order costs to the successful party. Instead, the Court ordered each party to bear their own costs considering the presentations and submissions of the parties.

Vail v. Workers Compensation Board of Prince Edward Island 2011 PESC 16; [2011] P.E.J. No.22; (2011), 310 Nfld & P.E.I.R. 35

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; [2010] P.E.I.J. No. 35; (2010), 299 Nfld. & P.E.I.R. 197; (2010), 57 E.T.R. (3d) 217.

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.

Diversified Metal Engineering Limited v. Trivett 2010 PESC 47; [2010] P.E.I.J. No. 53.

The motions judge assessed costs based on the applicable principles. The successful party's claim for costs was reduced based on what the unsuccessful party might reasonably expect to pay in costs. Disbursements claimed were allowed and found not to be part of the normal office overhead expenses.

Mutch v. Huestis & Century 21 2011 PESC 13.

Form 57A requires that the party seeking costs provide copies of dockets which contain the detail necessary to allow an assessment of the value of the service

performed. Invoices for disbursements must also be provided. Form 57B - The Costs Outline - requires that submissions be made on almost all of the factors guiding the court's exercise of discretion as set forth in Rule 57.01(1). 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.

Vail & McIver v. Workers Compensation Board 2011 PESC 16; [2011] P.E.I.J. No. 22.

Impecunious litigants are subject to an order which requires that they pay the costs of the successful litigant. A detailed accounting of the time spent by counsel is not required by Form 57A in every case. In cases which focus mostly on legal argument, a detailed accounting of hours may be unnecessary and of little or no value.

Ayangma v. Eastern School Board 2010 PECA 34; 2010 P.E.I.J. No. 34; (2010), 299 Nfld. & P.E.I.R. 60.

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; [2010] P.E.I.J. No. 38; (2010), 299 Nfld. & P.E.I.R. 119.

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 v. Summerside (City) 2010 PECA 19; [2010] P.E.I.J. No. 51; (2010), 302 Nfld. & P.E.I.R. 196.

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.

ERI Engine Rebuilders Inc. v. MacEachern (Trustee of) 2010 PESC 25; [2010] P.E.I.J. No.22.

The motions judge considered the applicable factors in Rule 57.01 and assessed costs on a partial indemnity basis.

Senechal v. MacPhee 2010 PESC 11

The plaintiff made a motion for summary judgment. The defendant did not appear. The motions judge awarded the plaintiff costs on a substantial indemnity basis and costs were assessed.

J.W.K. v. V.A.K. 2009 PESC 37; [2009] P.E.I.J. No. 57

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 secretarial work and not allowed as paralegal time for purposes of costs recovery.

Ready John Inc. v. 100368 PEI Inc. (c.o.b. Kenneth MacDonald Inc.) 2009 PESC 36; [2009] P.E.I.J. No. 58

Court assessed costs and disallowed time of a paralegal for doing what was in essence secretarial work that is part of the law firm's overhead and not properly costs recoverable from a losing party. The court also disallowed the time of a second counsel to prepare and attend at the hearing of a motion for an injunction.

D. A. Browning & Associates Inc. v. Tweedy 2010 PESC 8; [2010] P.E.I. No. 6; (2010), 293 Nfld. & P.E.I.R. 264.

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.

Lidstone v. Business Development Bank of Canada 2009 PESC 16; [2009] P.E.I.J. No. 26

The court fixed costs in accordance with the principles in Rule 57. The successful party is entitled to costs that are fair and reasonable in the particular proceeding.

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.

Ross v. Charlottetown (City) 2008 PESCAD 06; (2008), 276 Nfld. & P.E.I.R. 162; (2008), 62 C.P.C. (6th) 333

The motions judge dismissed the plaintiff's action because of the plaintiff's failure to pay costs awarded to the defendant in various motions. The Court of Appeal found the motions judge did not err in the exercise of his discretion pursuant to Rule 57.03(2) in dismissing the plaintiff's action. The Court of Appeal also held this rule did not violate s.15 or s.7 of the *Charter*.

Whiteway v. O'Halloran 2007 PESCAD 22; (2007, Nfld. & P.E.I.R. 239

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; (2007), 272 Nfld. & P.E.I.R. 170

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.

Prince Edward Island Regional Administrative Unit No. 3 School Board v. Morin 2008 PESCTD 2; (2008), 273 Nfld. & P.E.I.R. 65

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

Mullin v. PricewaterhouseCoopers 2007 PESCTD 33; [2007] P.E.I.J. No. 47

The court assessed costs and in doing so, the motions judge considered the applicable factors including the reasonable expectations of the parties as to the costs they might expect to pay should they be unsuccessful in bringing or defending the motion.

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.

Branton v. Dixon 2002 PESCTD 11

In exercising his discretion not to make an award of costs to either party, the trial judge considered the fact there is some importance to be attached to not upsetting the balance achieved by the award itself.

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) (2000), 195 Nfld. & P.E.I.R. 190; 286 A.P.R. 190

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."

Aucoin v. Martin (1999), 185 Nfld. & P.E.I.R. 178 (P.E.I.S.C.T.D.)

On an application for support, the applicant was represented by counsel who, in accordance with Practice Note 22, filed a statement of costs. The applicant was awarded costs of preparation for trial but was not awarded a “counsel fee” as he did not set forth in the statement of costs the basis upon which the counsel fee was sought.

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 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."