

CASE NO.**VOL. NO.****PAGE**

THE COLCHESTER YMCA

MCR HOLDINGS LIMITED

- and -

(Appellant)

(Respondent)

- and -

MALCOLM MacLEOD, CARMEL CHISHOLM,
DAVE WILSON, BARB McLAUGHLIN, PAUL
MURPHY, DAVID MACHONE, CHERYL
SUTHERLAND, ROD JONES & Dr. DON
JOHNSTON

(Third Parties)

C.A. 155520

Halifax, N.S.

CROMWELL, J.A.

[Cite as: Colchester YMCA v. MCR Holdings Ltd., 1999 NSCA 114]

APPEAL HEARD:

September 28, 1999

JUDGMENT DELIVERED:

October 6, 1999

SUBJECT: **Costs - Taxation - Binding Effect of Taxing Officer's Certificate**

SUMMARY: The appellant is the defendant in an action brought by the plaintiff (respondent on the appeal) who is the assignee of a taxed bill of solicitor and client costs. In the defence, the defendant pleaded that actions taken by the law firm were incurred through over caution, negligence or mistake. The plaintiff moved to strike these paragraphs of the defence. The Taxing Master was obliged to and in fact did consider, pursuant to Rule 63.33(1)(c) and (d) the issues raised in the challenged paragraphs of the defence. The Taxing Master did not reduce the bill on this account. The Chambers judge granted the application, holding that the Taxing Master's certificate, which was not appealed by the defendant, was binding on the parties. The defendant sought leave to appeal.

ISSUE: Did the Chambers judge err in striking out these paragraphs of the defence?

RESULT: Leave to appeal was granted but the appeal was dismissed with costs. Under the **Barristers and Solicitors Act**, R.S.N.S. 1989, c. 30, s. 48 and pursuant to Rule 63.35(2), the Certificate of the Taxing Master,

subject to appeal, is binding upon the parties as to the amount of the bill. Under Rule 63.33, the taxing master is directed not to allow the costs of any proceeding incurred through over caution, negligence or mistake. The defendant had advanced this position on the taxation. The Taxing Master did not reduce the bill and his decision was not appealed. Therefore, the amount of the bill as taxed is binding on the parties and it is not now open to the defendant in defence of the claim on the taxed bill to allege that the amount owing should be reduced or extinguished by virtue of allegations considered and rejected at taxation.

This information sheet does not form part of the court's decision. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 5 pages.