

Date: 19980512

Docket: CA 145934

NOVA SCOTIA COURT OF APPEAL
Cite as: Haynes Group of Lawyers v. Regan, 1998 NSCA 139

Chipman, Freeman and Roscoe, JJ.A.

BETWEEN:

THE HAYNES GROUP OF LAWYERS

Appellant

Ross H. Haynes
for the Appellant

- and -

SUSAN MARIE REGAN

Respondent

David W. Richey
for the Respondent

Appeal Heard:
May 12, 1998

Judgment Delivered:
May 12, 1998

THE COURT:

The appeal is dismissed without costs as per oral reasons for judgment of Chipman, J.A.; Freeman and Roscoe, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by:

CHIPMAN, J.A.:

This is an appeal by a law firm from a decision of Davison, J. in Chambers respecting payment of legal fees for services and disbursements provided by the appellant to the respondent.

On January 12, 1995, the parties entered into a contingency fee agreement respecting services to be performed by the appellant firm to the respondent with respect to a claim asserted by her for damages for personal injuries. The contingency agreement contained the following paragraph:

6. If the client discharges the lawyers prior to final recovery of compensation, the client agrees to pay the lawyers forthwith upon the tendering of the account by the lawyers:

- (a) for all costs;
- (b) for all disbursements incurred by the lawyers;
- (c) for all services rendered to the date of discharge.

(i) by paying the lawyers their hourly fee at the existing hourly rate at the time of discharge for each hour or part thereof, understanding that at the date of this agreement the hourly rate of the lawyers ranges from \$185.00 to \$200.00 per hour and the hourly rate of the para-legal members of the lawyers' firm ranges from \$70.00 to \$90.00 per hour. The client acknowledges that they are aware that the hourly rate may change and the client agrees to pay any reasonable increases in the hourly rates and waives notice of any change in the hourly rate. The client acknowledges that the lawyers' fees include the hourly charges of both lawyer staff and para-legal staff of the lawyers. The lawyers agree to maintain a record of their work in the normal course of business and to provide this to the client on request. This clause is subject to clause 6(c)(ii).

The agreement also, in compliance with **Civil Procedure Rule 63.18(1)(f)**,

contained the following paragraph:

14. This agreement may be reviewed by a taxing officer at the client's request, and may either at the instance of the taxing officer, the client or the lawyers, be further reviewed by the court, and either the taxing officer or the court may vary, modify or disallow the agreement.

The solicitor in the appellant firm who was handling the matter for the respondent was forced to leave the practice of law due to an injury. The solicitor in the firm who took over the matter later left the firm. On October 21, 1997, the respondent notified the appellant that she had retained another solicitor to handle the case and would no longer require the services of the appellant firm.

The appellant firm submitted its bill for services on a time spent basis pursuant to paragraph 6 of the contingency agreement in the amount of \$8,242.00, plus disbursements and taxes. It was not paid, and the parties attended in Chambers before Davison, J. where the matter was, by agreement, taxed. He fixed the amount of the bill at \$6,742.00, plus disbursements and taxes. Before an order was taken giving effect to the decision, counsel made further representations to Davison, J. following which he revised his decision to provide that the contingency fee agreement be modified by providing that payment of the bill as taxed "be not enforced prior to the successful disposition" of the proceedings commenced by the respondent for damages. Davison, J., in support of his decision to modify the agreement referred to **Civil Procedure Rule 63.20(3)(b)**:

63.20 (3) The court and taxing master has power on review to,

...

(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 solicitor shall be determined in accordance with rule 63.19(2);

In modifying the agreement, Davison, J. was exercising a discretion conferred upon him by the **Civil Procedure Rules**. The appellant has failed to satisfy us that he erred in the exercise of that discretion.

The appeal is dismissed without costs. However, we vary the order granted by Davison, J. by adding the following paragraph thereto pursuant to **Civil Procedure Rule 63.26**.

It is further ordered that the amount of said judgment of \$7,924.31 is a charge upon any amount recovered by the plaintiff in these proceedings or arising out of the cause of action asserted in these proceedings, upon notice of this order being given to the defendants or their solicitor.

Chipman, J.A.

Concurred in:

Freeman, J.A.

Roscoe, J.A.