

NOVA SCOTIA COURT OF APPEAL
Citation: *Mor-Town Developments Ltd. v. MacDonald*,
2012 NSCA 35

Date: 20120405
Docket: CA 352806
Registry: Halifax

Between:

Mor-Town Developments Limited

Appellant

v.

David MacDonald

Respondent

Judge: The Honourable Mr. Justice Jamie W.S. Saunders

Appeal Heard: February 14, 2012

Subject: **Taxation of a Solicitor's Account. Statutory Interpretation. Jurisdiction. Public Interest. Standard of Review. Onus of Proof. Credibility. Procedural Fairness. Sufficiency of Reasons. Small Claims Court.**

Summary: An adjudicator reduced a solicitor's accounts at a taxation initiated by the client. The lawyer appealed successfully to the Supreme Court where a judge overturned the adjudicator's decision, finding that the adjudicator lacked jurisdiction to tax an account that had already been paid; had reversed the onus of proof; and had breached a duty of fairness to the lawyer. The client appealed.

Held: Appeal allowed, decision of the judge set aside, and decision, order and certificate of the adjudicator are affirmed.

An appeal lies to the Court of Appeal from a decision of the Supreme Court of Nova Scotia with respect to the taxation of a lawyer's account in the Small Claims Court.

Lawyers who practice in Nova Scotia have the privilege of membership in a self-regulating profession. The **Legal Profession Act** should be interpreted in a manner that is consistent with the ethical obligations of the profession. Taxation of a disputed lawyer's account is not barred by the fact that it has already been paid. Whether paid or unpaid, legal accounts are still subject to taxation.

Whether the taxation is initiated by either the client or the lawyer, the lawyer bears the onus of proving that the account is lawful, and reasonable, in all of the circumstances.

The adjudicator did not breach any duty of fairness, either in the manner in which he conducted the taxation, or the way in which he expressed the result in written reasons. No special "notice" is required to permit a decision-maker to consider the issue of credibility, when faced with conflicting testimony about contested facts.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 19 pages.