IN THE SUPREME COURT OF NOVA SCOTIA
Citation: *Rhyno Demolition Inc. v. Nova Scotia (Attorney General)*, 2005NSSC147

Date: 20050603
Docket: SH 179668
Registry: Halifax

Between:

Rhyno Demolition Incorporated, a body corporate

Plaintiff

v.

The Attorney General of Nova Scotia representing Her Majesty The Queen in Right of the Province of Nova Scotia and The Department of Transportation and Public Works for the Province of Nova Scotia and Dineen Construction (Atlantic) Inc., a body corporate

Defendant

Judge:	The Honourable Justice Walter R.E. Goodfellow
Heard:	May 25, 2005 in Halifax, Nova Scotia
Counsel:	David G. Coles and James D. MacNeil for Rhyno Demolition Incorporated, Michael T. Pugsley for AGNS William Leahey Mahody for Dineen Construction Construction (Atlantic) Inc.

By the Court:

BACKGROUND:

[1] Trial lasting eight days determined that Rhyno, the successful bidder on Phase A of the demolition of the Province's J.W. Johnston Building in Halifax and the second lowest bidder by $90,800 on Phase B, failed to establish the lowest tender was non-compliant.

[2] Court unable to say that if Snyder's bid was non-compliant that Rhyno's tender would have been accepted and relationship between Dineen, Province of Nova Scotia with Rhyno established no cause of action by Rhyno against the Province of Nova Scotia.

[3] Claim for Loss of Profit advanced in the range of $332,000 to $349,000. The Court determined, if Rhyno had been successful, loss fixed at $185,000. Counsel heard on costs.

ISSUES:

1. Does the recently approved of Tariff of September 29, 2004 apply?
2. What is the “amount involved”?
3. Should there be any denial of costs to Dineen for its conduct?
4. Taxation of disbursements.

Counsel having been unable to agree on the issue of costs, required this determination.

[4] **CIVIL PROCEDURE RULES:**

Costs in discretion of court

63.02 (1) Notwithstanding the provisions of rules 63.03 to 63.15, the costs of any party, the amount thereof, the party by whom, or the fund or estate or portion of an estate out of which they are to be paid, are in the discretion of the court, and the court may,

(a) award a gross sum in lieu of, or in addition to any taxed costs;

(b) allow a percentage of the taxed costs, or allow taxed costs from or up to a specific stage of a proceeding;

(c) direct whether or not any costs are to be set off.

(2) The court in exercising its discretion as to costs may take into account,

(a) any payment into court and the amount of the payment;

(b) any offer of contribution.

(3) The court may deal with costs at any stage of the proceeding.

Party and party costs fixed by court

63.04 (1) Subject to rules 63.06 and 63.10, unless the court otherwise orders, the costs between parties shall be fixed by the court in accordance with the Tariffs and, in such cases, the "amount involved" shall be determined, for the purpose of the Tariffs, by the court.

(2) In fixing costs, the court may also consider

(a) the amount claimed;

(b) the apportionment of liability;

(c) the conduct of any party which tended to shorten or unnecessarily lengthen the duration of the proceeding;

(d) the manner in which the proceeding was conducted;

(e) any step in the proceeding which was improper, vexatious, prolix or unnecessary;

(f) any step in the proceeding which was taken through over-caution, negligence or mistake;

(g) the neglect or refusal of any party to make an admission which should have been made;

(h) whether or not two or more defendants or respondents should be allowed more than one set of costs, where they have defended the proceeding by different solicitors, or where, although they defended by the same solicitor, they separated unnecessarily in their defence;

(i) whether two or more plaintiffs, represented by the same solicitor, initiated separate actions unnecessarily; and

(j) any other matter relevant to the question of costs.

Disbursements

63.10A Unless the court otherwise orders, a party entitled to costs or a proportion of that party's costs is entitled on the same basis to that party's disbursements determined by a taxing officer in accordance with the applicable provisions of the Tariffs.

TARIFFS OF COSTS AND FEES DETERMINED BY THE COSTS AND FEES COMMITTEE TO BE USED IN DETERMINING PARTY AND PARTY COSTS

To be used in determining party and party costs in a proceeding commended on or after January 1, 1989.

In these Tariffs, the “amount involved” shall be

(a) where the main issue is a monetary claim which is allowed in whole or in part, an amount determined having regard to

(i) the amount allowed,

(ii) the complexity of the proceeding, and

(iii) the importance of the issues;

(b) where the main issue is a monetary claim which is dismissed, an amount determined having regard to

(i) the amount of damages provisionally assessed by the court, if any,

(ii) the amount claimed, if any,

(iii) the complexity of the proceeding, and

(iv) the importance of the issues;

(c) where there is a substantial non-monetary issue involved and whether or not the proceeding is contested, an amount determined having regard to

(i) the complexity of the proceeding, and

(ii) the importance of the issues;

(d) an amount agreed upon by the parties.

[5] **ISSUE NO. 1**

Does the recently approved of Tariff of September 29, 2004 apply?

Answer "No" - This action was commenced October 30, 2002 therefore the trial and any interlocutory proceedings whenever heard are to be governed with respect to costs by the Tariff of January 1, 1989 (*Little v. Chignecto,* 2004, NSSC 265*)*.

[6] **ISSUE NO. 2**

What is the "amount involved"?

Civil Procedure Rule 63.04(2)(a) permits consideration of the amount claimed.

Dineen takes the position that "the amount involved" should be the amount claimed namely, $349,000 which utilizing Scale 3 would provide costs in the

amount of $15,295. The Province takes the position that the "amount involved" should be the amount of the claim, $349,000 and seeks costs on Scale 4 stating in its view the litigation was more complex than in an ordinary case. Using Scale 4 the party and party costs would be $18,810.

Rhyno takes the position, first: that the court should deny Dineen costs due to the erroneous information provided pre-commencement of the action which in Dineen's view contributed to or fuelled the litigation. There are two questions to determine, the first is the issue of the amount involved and then the issue of whether or not there should be any denial in whole or in part of any costs to the successful party. The latter point will be dealt with separately as Issue 3.

The amount awarded can be readily related in the end to the amount of "exposure**"** or "risk". This can be varied if it provides an inordinately high or an inordinately low result but, as is the case here, the "exposure" or "risk" is the amount determined by the court, $185,000 and that is the appropriate "amount involved" in this case for the purposes of a cost award.

The court, in determining the amount involved, has almost always chosen a figure equal or close to the amount awarded, *Timmons v. Parkes* 1998, 175 N.S.R. (2nd) 145.

I want to comment that the court through a committee chaired by Justice John Murphy has introduced a new Tariff of Costs and some effort has been made to try and provide a more reasonable measure of indemnification to the client who is successful in relation to that client's solicitor and client costs. The new tariff will provide a greater measure of indemnification however, in my view, it is becoming increasingly apparent that the court's comments in *Gilfoy v. Kelloway* (2000), 184 N.S.R. 226, p. 235 will remain appropriate namely:

> The court should follow the existing guidance and determine the "amount involved: and tax accordingly, even with the recognition that such party and party costs are usually far from being substantial indemnification of the solicitor and client costs of the party entitled to costs.

It has become increasingly clear these past few years that the costs of litigation have increased to the point that the public often resorts to alternate mechanisms for resolution such as mediation and arbitration. The costs of legal

services and disbursements to present or defend an action have reached such heights that if the court were to try and provide a substantial indemnification of the solicitor and costs of the party entitled to costs the pendulum would have swung so far that only the wealthy with deep pockets or those such as corporations who have the possible capacity to ease the burden of the costs of litigation through possible tax set-offs would seek access to the court. I have no doubt that even if I applied Tariff A, Scale 3 that such would not provide either Dineen or the Province of Nova Scotia with substantial indemnification of their solicitor and client costs. Had there been no further factors to take into account I would have utilized Scale 3 as the upper limit. As a matter of interest, under the new Scale of fees the basic cost allowance for $185,000 would be $21,275, a fairly substantial increase from the basic scale here of $9,925. The basic scale of $21,275 would also be subject to a possible increase at the rate of $2,000 for each day of trial which here would have added another $16,000 bringing the party and party costs to a possible level of $37,275.

[7] **ISSUE No. 3**

Should there be any denial of costs to Dineen for its conduct?

It is clear from *Civil Procedure Rule* 63.02 that costs are in the discretion of the court. That discretion must be exercised judicially. *Civil Procedure Rule* 63.03 makes it clear that unless the court otherwise orders, the costs of proceeding shall follow the event. The use of the mandatory direction 'shall' indicates that any departure from this basic direction must be justified by the circumstances of the particular proceeding.

In an appropriate circumstance, the court can exercise its discretion to not only deny costs to a successful party but to award costs to the unsuccessful party. I gave such a direction in *HMC Group Inc. v. (Nova Scotia) Attorney General et al.* (2000), 188 N.S.R. (2d) 268 at 292. Counsel followed that direction and the unsuccessful party received costs.

The conduct of the Province in the *HMC Group Inc.* case is spelled out in the decision and suffice to comment the cumulative impact of the conduct by the Province included reneging on a major undertaking and commitment to the unsuccessful party which produced the result of denial of costs following the event and the awarding of costs to the

unsuccessful party. The cases cited to me such as *Morrissey v. MacNeill*, [1997] P.E.I.J. No. 35 (S.C.T.D.), where the successful party's cost recovery was limited to a 50% level are cases where the conduct was far more serious and with a greater impact on the litigation than is this case.

The situation before me in this case falls markedly short of such a determination, however, there are features of the conduct of Dineen which, in my view, had an impact on the determination to proceed with this litigation. Mr. Rhyno, who I suspect is typical of people in the demolition field, is a hard-working, up-front kind of individual who would not respond lightly to being mislead and indeed would, in all probability, as he did here react in a stronger manner.

In *Fraser v. Westminer Canada Ltd.*, [2005] N.S.J. No. 89 dismissing an appeal from Justice Moir's denial of costs to the successful party at trial. M.J. Hamilton JA. at para. 35 states:

> The Rules approach costs in the same way. They provide for discretion, 63.02(1), set the presumption that costs will go to the successful party on the whole

proceeding or on any issue of fact or law, 63.03(1), and then in Rule 63.04(2) set out some factors that may be considered by a court in fixing costs. As indicated in s. 28, supra, these factors include conduct which unnecessarily lengthens the duration of the proceeding, 63.04(2)(c), the manner in which the proceeding was conducted, 63.04(2)(d), any step which was prolix or unnecessary 63.04(2)(e) and any other matter relevant to the question of costs, 63.04(2)(j). This does not suggest a party's action must be almost abusive to warrant a costs sanction. It suggests a broad discretion in the trial judge.

Rhyno completed the tender form for Phase B Demolition of the Johnstone Building February 7, 2001. The tender deadline was February 9, 2001 and on February 20, 2001 Dineen advised the Province that they wished to meet with the apparent low tender to clarify a couple of issues before they could make a recommendation and on February 21, 2001, Dineen presented the tender results for Demolition - Phase B and recommended the awarding of the tender to Snyders. On February 26, 2001, Dineen advised Snyders of its intention to award the Phase B Demolition contract. February 27, 2001, Snyders provided Dineen with a cheque in the amount of $20,000. On February 27, 2001, Rhyno wrote to Dineen conveying their understanding that Snyders were not in good standing with the Nova Scotia Construction Association and were not registered with the Registrar of Joint Stock Companies.

Rhyno obtained legal counsel and its counsel A. Mark David wrote to Dineen on March 12, 2001 raising these two issues and also expressing their concern whether or not Snyders had provided what Rhyno took to be the prerequisite bid tender amount. Mr. David specifically requested:

1. Whether the certified cheque for the ten (10%) percent tender amount was deposited with you prior to the award of the tender as required by the tender form?

I interject that I concluded that there was no requirement of a bid deposit but rather bid performance security which is post the awarding of the contract.

On March 16, 2001, Dineen provided an advance by way of a joint cheque to Snyders in the amount of $18,300. By this time, I readily concluded Snyders had done substantial work and had an entitlement to an amount far greater than the $18,300. The cheque for the balance of Snyders' bid security in the amount of $18,300 is dated March 20, 2001. On March 20, 2001, Rhyno's solicitor wrote to the Province of Nova Scotia expressing the same concerns previously expressed including

the concern with respect to the certified cheque for 10%. In writing to the Province, Rhyno pointed out that it did not receive any response to its concerns from Dineen and, in fact, no response to its letter of March 12, 2001. At this point Rhyno's solicitor expressed the view that the job was improperly awarded to Snyders. I would indicate at this point that Dineen did not owe a duty to provide information, merely the courtesy of an acknowledgement of Rhyno's solicitor's letter. The response Dineen chose to make was to advise the Province on March 22, 2001:

1. We have received the required security deposit.

Based on this the Province responded to Rhyno's solicitor March 29, 2001 indicating their understanding that the security deposit had been received. On April 3, 2001 Rhyno's solicitor made a further inquiry. Dineen, on April 10, 2001, provided the Province with the following memorandum:

Further to Garson, Knox and MacDonald's letter of 3 April, 2001 we advise as follows:

1 Security deposit from A. Snyder is in the form of a certified cheque in the amount of 10% of tender amount.

2 Attached is copy of Worker's Comp. Clearance that had been provided.

The response by Dineen was not accurate or the truth and Dineen was aware that it was neither accurate or truthful. Rhyno's solicitor by this time was advancing the suspicions of his client and wrote to the Province April 29, 2001 asking for a photocopy of the face and rear of the certified cheque representing the security deposit. On April 23, 2001 Dineen provided a copy of the two cheques and for the first time the Province learned that there were, in fact, two cheques and not one certified cheque as it was previously advised. On April 30, 2001, the Province wrote to Rhyno's solicitor advising that Dineen did receive the 10% security deposit and went on to confirm that they have the deposit which was received in two cheques. This is a measure of deception as it was clearly intended to convey to Rhyno's solicitor that the total amount of

security deposit was received before the award of the contract. Mr. Rhyno's solicitor raised the issue again with the Province May 10, 2001 and the Province took the position that it was a matter between Dineen and Rhyno and that, in any event, they were not at liberty to provide any further information due to concerns with respect to privacy.

It was not until probably January 2002 that Rhyno had a clear picture of what had transpired which had been falsely conveyed to Rhyno.

In my decision, on the merits I commented under costs:

> Counsel are entitled to be heard on costs. It may be appropriate to give some consideration to Rhyno arising out of the less than candid responses to his lawyer's inquiries by Dineen. This probably had some influence on his determination to pursue this suit.

In most of the cases where there is a denial or a substantial reduction in costs, the conduct of the successful party had a causal connection to the conduct of the litigation.

Dineen's deceit in this case was clearly understood and known by Rhyno no later than January 2002 and while I conclude that it played a part initially in the fuelling of this litigation, it is also clear that by the time the litigation was commenced by the Notice of Intention to Proceed filed by Rhyno May 14, 2002, Rhyno ought to have recognized that there

were substantial hurdles to establishing liability upon the defendants. Without repeating my decision on the issue of liability Rhyno would have had full appreciation of the difference between the tender form on Phase A and Phase B and the fact that Rhyno had been cut some slack in relation to security on Phase A and in my determination a very clear change from Phase A to Phase B so that the Phase B tender form was not one that had any bid bond requirement. The main, but by no means the only thrust advanced by Rhyno was that the Phase B tender form should be interpreted as a bid bond security and not, as I readily concluded, a security performance requirement. This leads me to the conclusion that some limited relief from costs should be provided but by no means does it fall within the category of the cases that I referred to and was more in the nature of the waiving of a red flag to a bull which started the charge but certainly early in the two years plus litigation that followed its commencement in May of 2002 the real issues were clear and governed.

In my view, it is an appropriate exercise of discretion to reduce the costs entitlement of Dineen by a limited degree due to its pre-commencement of action conduct. The deceit which, to a limited degree, fuelled the litigation also required Rhyno to incur unnecessary legal expenses for the fairly extensive correspondence by its then solicitor. In my view, it is an appropriate exercise of discretion to reduce the otherwise award of Tariff A, Scale 3 costs of $9,925 by 20% to $7,940. With

respect to the costs entitlement of the Province, I recognize the substantial contribution its counsel made to the proceeding but, on the other hand, the Province did not have to engage, instruct or deal directly with an expert witness and in many respects throughout the trial the Province was able to defer to the time and effort of Dineen's counsel. I also conclude that while this was a trial with some difficulties and required a great deal of time and effort by all counsel, nevertheless, it was not in the final analysis a complex matter and certainly Scale 4 is not warranted and, in my view, a fit and proper exercise of judicial discretion is to allow the Province costs in accordance with Tariff A, Scale 2, $7,600.

[8] **Taxation of disbursements**

Dineen seeks the payment in full of the following disbursements:

l.	Expert Fees	$46,031.24
2.	Discovery Service Fees	$900.00
3.	Service of Documents	$51.75
4.	Witness Fees	$95.00
5.	Photocopying	$1,591.00
6.	Travel Costs	$162.00
7.	Postage	$13.49
8.	Courier	$159.56
9.	Facsimile	$117.00
10.	Quicklaw	$102.88
11.	Long Distance	$51.00
12.	Miscellaneous Expenses	$95.00
		$49,363.92

Rhyno contests Items 1 Experts Fees, 4 Witness Fees, 5 Photocopying, 6 Travel Costs and 11 Long Distance.

1 Expert Fees - The court is concerned with the submitting of what is almost global accounts for Dineen's expert who prepared a limited critique. My remarks and determination with respect to the degree of liability in costs to be imposed upon Rhyno is not meant nor is it any criticism of the professional approach and services performed by the experts on both sides. The court has a duty to address the reasonableness of an expert's account and when the account itself is lacking in substantial detail, the court has really two alternatives; one - to forge ahead because there has been ample notice of this taxation and the court has had the opportunity to review the reports and to observe and obtain a reasonable grasp of the involvement of the respective experts or put the parties to yet substantial additional costs of taxation before a Small Claims adjudicator and delay. As a matter of interest, the expert called by Mr. Rhyno was on the stand before me for four hours and forty-one minutes and the expert called by Dineen was on the stand for two hours and six minutes.

ination that must be made with respect to Expert Fees is whether or not it was

> necessary and reasonable to engage an expert. In *Osborne v. Osborne* (1994), 130 N.S.R. (2d) 283, the court concluded that the expenditure for an actuary was not all warranted and denied its recovery. In this case it was reasonable and probably essential for Dineen to engage an expert for an analysis of the expert report being presented by Rhyno. When I accepted the qualifications of the expert advanced by Dineen, I did so over the objections of Rhyno that the Dineen expert did not do a full and comprehensive report but rather a limited critique. The court felt then that it was necessary for Dineen to have an expert to provide assistance in the interpretation and understanding of Rhyno's expert's report and to provide a response. Separate from the determination of my ruling on admissibility of the limited critique I thought then that it was an extremely reasonable approach to keep down what can be very heavy experts' fees and expenses by pursuing a limited critique rather than a full, detailed, comprehensive analysis and rebuttal. It comes therefore as somewhat of a surprise, if not a measure

of shock, to me to see a claim for Dineen's expert of the magnitude of $46,031.24. My concern is no reflection whatsoever on the professional standing and approach of Dineen's expert which was impressive.

a Court of Appeal has stated in *Claussen Walters & Associates Ltd. v. Murphy* (2002), 201 N.S.R. (2d) 58. Per Saunders, J.A., page 61:

> . . . Before obliging the unsuccessful appellants to pay a significant disbursement of almost $16,500, the trial judge was required to consider whether the amount charged was just and reasonable. The proper approach was described by Chief Justice Cowan in J.D. Irving Ltd. v. Desourdy Construction Ltd. (1973) 5 N.S.R. (2d) 350 at p. 362:
>
> > In my opinion, Civil Procedure Rule 63.37, Clause (5) is to the same effect as the old Order LXVIII, r. 23 (vii) and the taxing master is to allow any just and reasonable charges and expenses as appear to him to have been properly incurred in procuring evidence and the attendance of witnesses. Charges by experts and others who are called as witnesses or attend as witnesses are to be allowed, but the amount allowed is to be fixed by the taxing master, having regard to the test of what is just and reasonable in the circumstances.
>
> And further Saunders J.A. at page 61:
>
> There is simply no evidence before him upon which to conclude that the disbursements incurred by Mr. Walters in engaging Mr. Hardy were "just and reasonable". The onus was on the respondent to justify this charge against the appellants. He did not.

The account submitted by Dineen includes a charge entitled ‘finance charge’, $544.77. This is related to the terminology on their invoice that unpaid balances which are thirty days or more past due shall be subject to a service charge of 1.5% per month (19.46% per annum). There is no evidence before me that Dineen acknowledged or agreed to such a term of its engagement and, in any event, there is no justification advanced as to any responsibility for such being imposed upon Rhyno. The Court of Appeal dealt with invoice interest in *Robb (K.W.) & Associates Ltd. v. Wilson* (1998), 169 N.S.R. (2d) 201 per Hallett, J.A. pg. 217, paras. 72 and 73:

> I agree with Justice Goodfellow’s remarks in *Tannous v. Halifax (City)* (1995), 145 N.S.R. (2d) 13; 86 A.P.R. 13 (T.D.) at p. 32:
>
> “...however, modern practice is for almost all commercial accounts to have some reference to interest on overdue balances stated on invoices. The mere statement of an interest term on an invoice by itself raises no legal obligation for payment of such interest, and the Taxing Master was correct in declining any award of invoice interest.”
>
> In short, the mere presence of a statement on an invoice that interest is claimed at a particular rate, standing alone, is an insufficient basis to warrant a finding that the debtor is obliged to pay interest; there must be something more in the course of dealings between the parties. If a debtor, for instance, has paid interest on an agreement to the payment of interest on overdue accounts. As a general rule, a court should be slow to imply a term in a contract and this is recognized by the general principle of law that I have set out. . . .

> Accordingly, this finance charge item is disallowed. In fairness, during the course of argument, Dineen's solicitor, Mr. Mahody, acknowledged this charge was not recoverable. I had my legal assistant make an inquiry post the argument on costs and learned that the finance charge is not included in the amount claimed.

I want to deal first with some specific items of the expert's invoices before making a determination as to whether or not there ought to be a further overall deduction. I want to repeat that my determinations in this regard are no reflection on the contractual relationship between the expert and Dineen. It should be recognized that the mere fact one enters into a contractual relationship with an expert does not create an obligation for the unsuccessful party to accept that contractual arrangement and it is for the court to make a determination of what in the circumstances is reasonable, *Halifax (Regional Municipality) v. Joudrey* (2001), 198 N.S.R. (2d) 356.

nting on the invoices submitted by the expert to Dineen I want to note that the

> objection by Rhyno to the account probably including the attendance of Dineen's expert at lengthy discoveries of Rhyno's

expert is no longer an issue as I have the assurance of Dineen's counsel that the accounts for which recovery is being sought do not include any account for their expert's attendance at that time and also, I am advised that Dineen's expert had additional accounts for services performed that are not included in the invoices for which recovery is sought.

The initial invoice to Dineen dated October 31, 2004, commences with his hourly rate at $215. It subsequently increases in short order to $220 to $250. No explanation has been given for the change in the expert's hourly rate since the initial engagement and in the absence of such explanation the hourly charge to be applied throughout is that of the initial engagement, $215. This results in a decrease of $2,827.50.

lty is that there is no explanation or justification advanced for a fellow worker of the expert whose time is charged at $260 per hour. I do recall some reference to this individual in the expert's evidence but in the absence of backup I would limit recovery for his time to the initial contractual hour of the expert, namely $215 which is a decrease of $585.

In addition, the account lists "others", one for $1,062.50, another for $472.50, another for $50 and another for $150**.** They are listed at varying rates from $75 to $100 to $125 per hour without identifying the name, qualifications and services performed and therefore are to be deleted. The total being $1,735.

interest the account for the plaintiff's expert who was a somewhat more senior and experienced professional came in at a total of $25,644.30 plus H.S.T. which would be roughly one-half of the cost of Dineen's expert, particularly when you add in the additional services not included in the account advanced for taxation. I have reduced Dineen's expert report by $5,147.50 and there would be a reduction of H.S.T. of $772.13, a total of $5,919.63.

at both experts were necessary and I was certainly impressed with the analysis and critique of Dineen's expert which had a foundation in most instances of common sense. I think, however, there was probably some measure of extra time spent in review as Dineen's expert apparently had never before been qualified by

the court. Being as fair as I can I simply reduce the account by a further global amount of $5,000 so that the total reduction from the account of $46,031.24 by $10,919.63 results in the expert's account being taxed at $35,111.61.

- Rhyno contests the witness fees of $95 on the basis that the witness was not called. Failure to call a witness does not automatically result in the witness fee being eliminated from party and party costs. It is a factor that in many cases will prevail, however, in this case the witness had been discovered, his company's financial statements had been considered and it was reasonable to have him on hand should something arise in the plaintiff's evidence. Accordingly, the witness fee is allowed.

5 Photocopying - The claim for photocopying is in the amount of $1,591.50. The court has not been provided with any indication of the actual cost per page or the utilization of the photocopied documentation. In *Bank of Montreal v. Scotia Capital Inc.* [2002], N.S.S.C. 274 at para. 13 the court said that photocopying to be claimed as a disbursement:

> ... must be necessary for the party and party dealings and not expenditures for communication with one's client beyond reporting that which transpired on a party and party basis.

As occurred in that case the Photocopying charge in this case will be reduced by 50% to $795.75.

6 Travel Costs - No explanation of what travel costs were incurred or their reasonableness has been provided. Rhyno notes that the litigation took place in Halifax, all discoveries took place in Halifax, the experts are all located in Halifax and in the circumstances Travel Costs claimed of $162 is disallowed.

11 Long Distance - There is a long distance charge of $51. Rhyno notes that the President of Dineen and their principal witnesses reside in Halifax and their expert is located in Bedford. In the absence of an explanation justifying this item, it must be disallowed.

Dineen is entitled to its party and party costs taxed in the amount of $7,940 plus the following disbursements:

	Expert Fees	$35,111.61	1.
	Discovery Service Fees	900.30	
2.	Service of Documents	51.75	
3.	Witness Fees	Nil	
4.	Photocopying	795.75	
5.	Travel Costs	Nil	
6.	Postage	13.49	

7.	Courier	159.56	
8.	Facsimile	117.00	
9.	Quicklaw	102.88	
10.	Long Distance	Nil	
11.	Miscellaneous	95.63	
	Total:		**$37,347.97**

The brief filed by Dineen asks that Items 5 -12 (but numbered as above), photocopying, travel costs, postage, courier, facsimile, quicklaw, long distance and miscellaneous expenses be recovered at the rate of 60% with a further adjustment relating to H.S.T. and I accede to that request leaving the mathematics of this further reduction to be calculated by Dineen. Subject to this calculation Dineen's costs are taxed at $7,940 and disbursements of $37,347.97 a total of $45,287.97.

PROVINCE OF NOVA SCOTIA:

The Province of Nova Scotia is entitled to its taxed costs in the amount of $7,600.

The Province seeks the payment in full of its disbursement for discoveries totalling $1,687.08 and there is no quarrel with that disbursement. The Province does not have computer generated or other records readily capable of identifying

its disbursements in a particular law suit, a situation, I am told, will be rectified but for the purposes of this trial no further recovery by way of disbursements can be allowed. The total costs and disbursements recoverable from Rhyno by the Province is $9,287.08

J.