

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** Knox v. Maple Leaf Homes,  
2008 NSSC 114

**Date:** 20080416  
**Docket:** SH 154845  
**Registry:** Halifax

**Between:**

Ronald B. Knox

Plaintiffs

and

Maple Leaf Homes, Birchell Home Sales Ltd,  
Dennis Lively and Richard Murtha

Defendants

Wendy Darlene Ann Knox

Third Party

**Revised judgment:** The original judgment has been corrected according to the erratum dated **April 28, 2008**.

**Judge:** The Honourable Justice Arthur J. LeBlanc

**Heard:** June 26, 2006 in Halifax, Nova Scotia

**Final Written Submissions:** June 21, 2007

**Counsel:** Ronald B. Knox, self-represented  
Alexander S. Beveridge, Q.C., for the defendants.

**By the Court:**

**Introduction**

[1] The defendant Mr. Murtha (hereafter “the defendant”), seeks costs against the plaintiff, Mr. Knox (hereafter “the plaintiff”), following the dismissal of the claims against him in the main action. The facts can be found in the trial decision: see 2007 NSSC 95. Mr. Knox made claims against various parties involved in his purchase of a modular home. His claim against his former lawyer, Mr. Murtha, was dismissed. Mr. Murtha seeks costs.

[2] Mr. Murtha submits that he incurred solicitor’s fees in excess of \$55,000 and disbursements of \$7,168 (of which \$2,914.15 related to the preparation of trial transcripts). He seeks an order for solicitor-client costs; he is prepared to accept \$30,000 plus taxable disbursements in lieu of the full amount. In the alternative, he seeks a lump sum award of \$30,000 plus disbursements. In view of the \$15,000 that he says would be available under Tariff A, he says this amount should be increased to \$30,000 to take into account the actual expense incurred and the offers to settle.

[3] The plaintiff, Mr. Knox, was self-represented. He acknowledges that he is responsible for costs, but requests that the Court “nullify costs” or, in the alternative, reduce the costs awarded to two days at the lowest Tariff rate.

### **Costs**

[4] Costs are in the discretion of the Court: Civil Procedure Rule 63.02(1). Unless the Court orders otherwise, costs follow the event: Rule 63.03(1). Unless the court otherwise orders, costs are fixed in accordance with the Tariffs, with the "amount involved" determined by the Court: Rule 63.04(1). Pursuant to Rule 63.04(2), the Court, in fixing costs, 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;
- (j) any other matter relevant to the question of costs.

[5] Unless the court otherwise orders, a party entitled to costs is entitled to that party's disbursements, determined by a taxing officer in accordance with the Tariffs: Rule 63.10A.

[6] The defendant submits that there is no question as to his entitlement to costs. The only argument, he says, relates to the nature and scope of the costs to be awarded. He seeks solicitor-client costs or, in the alternative, a lump sum in excess of party-and-party costs. He says that up to and including trial he incurred fees of more than \$55,000 (before tax), and disbursements of \$7,168 (before tax).

Solicitor-client costs

***Law and authority***

[7] Solicitor-client costs (or costs “as between solicitor and client”) provide an award on a full indemnity basis. As a rule, solicitor-and-client costs are “reserved for very limited circumstances” and “should not be awarded unless special grounds exist to justify a departure from the usual scale”: M. Orkin, *The Law of Costs*, §219.1. The Supreme Court of Canada has said that solicitor-client costs are “generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties”: *Young v. Young*, [1993] 4 S.C.R. 3.

[8] The primary basis for Mr. Murtha's claim for solicitor-client costs is his submission that Mr. Knox made (unfounded) allegations of professional misconduct, fraud and theft against a member of the legal profession. As to the relevance of such allegations, Orkin says, at §219.1:

... Orders of this kind have been made where a litigant's conduct has been particularly blameworthy, for example, where there were allegations of criminality, ... fraud or impropriety either unproven or abandoned at trial; particularly when the allegations are made against professional persons carrying out their professional duties; or against a person working in a job that required honesty and integrity; ... although not where no harm came from allegations of fraud, or where the allegations were innocuous; or were not made maliciously; or were abandoned; or were not advanced recklessly or with an improper motive; ... or the allegation of fraud was imprecise; or where the allegations were of misrepresentation only.... As has been said, not every unsuccessful allegation of fraud will lead to an award of solicitor and client costs....

[9] Mr. Murtha cites *Campbell v. Lienaux* (2001), 195 N.S.R. (2d) 220 (S.C.), where Hood, J. held that the pursuit of "unfounded allegations of fraud and dishonesty" was "the sort of reprehensible conduct that ... must be rebuked through an award of solicitor-client costs" where the defendant had been "completely vindicated" and where the action had been "pursued almost as a vendetta" (paras. 488-489).

[10] In *Coughlan et al. v. Westminster Canada Ltd. et al.* (1994), 127 N.S.R. (2d) 241 (C.A.) a parent company and a subsidiary alleged fraud and deceit against

former directors. In discussing the trial judge's decision on costs, the Court of

Appeal said:

[194] The appellants rely on the decision of this court in *Lockhart v. MacDonald* (1980), 42 N.S.R.(2d) 29 ... wherein Chief Justice MacKeigan observed that the defendant MacDonald whose conduct was "reprehensible" should not be subject to solicitor and client costs where he was found guilty of negligence. The Chief Justice continued at p. 58, "this is not the kind of very rare and exceptional case where solicitor and client costs should be ordered". Therein is the key phrase to which this court has usually referred when considering an award of solicitor and client costs: "rare and exceptional" circumstances.

[195] Here is what Justice Nunn said, p. 218:

The plaintiffs in each of these actions are entitled to recover costs and on a solicitor client basis. The character of the allegations involved here, fraud and dishonesty, and the circumstances here of the length of time of the outstanding allegations, their national publicity, the length and extent of the pretrial processes and the trial itself, the findings I have made regarding injury to reputations and the lack of any real proof of fraud or dishonesty all contribute to making this a proper situation to award costs on a solicitor client basis as, in my opinion, this does constitute one of those 'rare and exceptional' cases wherein such awards are, and should, be made.

[196] The pleadings reveal that the individual appellants joined with the corporate appellants in common defences to the Nova Scotia actions. They alleged the respondents were guilty of fraud and dishonest conduct. They appended to their defences the statement of claim advanced in the Ontario action. They collectively pled these serious allegations against the respondents which the trial judge found were unwarranted and which finding we in this decision confirm.

[197] Bearing in mind the substantial measure of discretion which a trial judge may exercise in the award of costs and considering the reasons that the trial judge has given for the award he made in this respect, we are unable to say that Justice Nunn erred in the exercise of his discretion. The reasons he gave are founded on circumstances that are indeed "rare and exceptional". We find no cause to interfere with the award of the trial judge. [Emphasis added.]

[11] Mr. Murtha also refers to *Apotex Inc. v. Egis Pharmaceuticals et al.* (1990), 32 *Civil Procedure Rule* (3d) 559 (Ont. C.J. Gen. Div.); *Mcleod v. Ontario*, [1993] O.J. No. 1474 (Ont. C.J. Gen. Div.); *Lawson v. Toronto Hospital Corp.*, [1991] O.J. No. 1586 (Ont. C.J. Gen. Div.); *131843 Canada Inc. v. Double "R" (Toronto) Ltd.* (1992), 7 C.P.C. (3d) 15 (Ont. C.J. Gen. Div.); *Ip v. Insurance Corp. of British Columbia*, [1994] B.C.J. No. 81 (B.C.S.C.); *Gillis v. Eagleson*, [1997] O.J. No. 2070 (Ont. C.J. Gen. Div.); *620637 Ontario Ltd. v. Axton*, [1997] O.J. No. 3637 (Ont. C.J. Gen. Div.); and *Coughlin v. Mutual of Omaha Insurance Co. and Mason*, [1992] O.J. No. 2027 (Ont. C.J. Gen. Div.). These are all cases where solicitor-client costs were awarded on account of unfounded allegations in the nature of fraud or improper conduct. I note that they are all trial court decisions from other jurisdictions.

[12] Mr. Murtha has also drawn the Court's attention to two decisions where unproven allegations of fraud or alleged theft did not lead to awards of solicitor-client costs: *Griffin v. Corcoran* (1999), 179 N.S.R. (2d) 273 (S.C.) and *Banque Indosuez v. Canadian Overseas Airlines Ltd.*, [1990] B.C.J. No. 464 (B.C.S.C.). In *Griffin*, an employer dismissed an employee, alleging theft by the employee. The employee counterclaimed for wrongful dismissal and defamation. While the allegation of theft was not established at trial, the Court held that solicitor-client

costs were not justified merely because the allegation was made and not proven. In *Banque Indosuez*, allegations of fraud were not established at trial, but solicitor-client costs were not awarded because the allegations were not advanced recklessly or with improper motive.

***The defendant's position***

[13] According to Mr. Murtha, the factors that will lead to an award of solicitor-client costs include unproven allegations of fraud or misconduct; allegations of fraud for an indirect or improper purpose; unproven allegations of impropriety against a professional; situations where there have been reasonable attempts to settle made by a successful defendant; the degree of outrageous and scandalous allegations that have been made. He adds that where such allegations are made and no *prima facie* case is established, special costs on a solicitor-client basis should be awarded by for “chastisement.”

[14] The original Statement of Claim alleged fraud against all five of the original named defendants. It included allegations that the five defendants “entered into a contractual agreement with the plaintiff in a fraudulent manner;” that they committed “fraud and theft with respect to the contractual agreement and used coercion tactics to defraud the plaintiff;” and that they “failed to advance a valid



contract deliberately in [an] effort to defraud the plaintiff of money over and above the agreed upon amount.” The allegations were directly at the defendants collectively. The specific allegations against Mr. Murtha were various, including “choosing to ignore his clients [*sic*] well being in an effort to avoid possible litigation” that was purportedly threatened against him by other defendants. It was also claimed that Mr. Murtha “failed to protect the legal rights and financial position of the plaintiff” and that he failed to do as directed or required with respect to various disputes that arose between Mr. Knox and the other defendants. There is also a blanket claim that the defendants “failed to exercise due care of reasonable professionals in their respective occupational fields and the plaintiff thereby suffered damages.” Finally, it was alleged that “[a]s a result of the fraud, theft and attempted fraud by the defendants, or as a result of the defendants [*sic*] unethical actions the plaintiff suffered financial loss and emotional trauma” and that “the threats and coercive tactics of the lawyers involved in the matter have caused the plaintiff to suffer financial loss and emotional duress....”

[15] The Amended Statement of Claim includes allegations of fraud, theft and “coercion” against other defendants, but not against Mr. Murtha. The primary allegation against Mr. Murtha is that he “failed to provide competent legal

services” that he “misrepresented the plaintiff and/or provided negligent legal counsel...”.

[16] The defendant says the plaintiff was aware that there was no basis for such allegations and admitted as much on cross-examination. He also submits that the plaintiff’s cross-examination demonstrates that he had an understanding of the nature of fraud, as well as of the significance of a lawyer’s professional reputation. Mr. Knox’s answers on cross-examination suggest that he understood fraud to be a criminal offence, and understood it to be concerned with deception and false claims. He maintained that he “believed wholeheartedly” that the two defendant lawyers had committed fraud. When asked whether he was withdrawing the allegations of fraud and theft against Mr. Murtha by way of the Amended Statement of Claim, which omitted the word “fraud,” the plaintiff replied that he was only trying to amke the language less “angry,” but that “the overall allegation still remains a fact.”

[17] In addition the plaintiff “wrote to at least two levels of government ... alleging that Birchill Home Sales and Mr. Murtha were involved in fraudulent activity regarding his home,” allegations that the defendant says were made “recklessly, and all allegations of fraud were completely unfounded and were made

with improper and indirect purpose; i.e. to obtain money from various parties in the litigation.” The claim of fraud, he alleges, was “frivolous, vexatious and malicious.”

[18] Prior to discovery examinations, counsel for Mr. Murtha wrote to the plaintiff on March 28, 2000, to warn him that, having made “numerous and very serious allegations of fraud and fraudulent behaviour” that were denied by Mr. Murtha, he could be subject to an order for solicitor-client costs if he failed to prove these allegations at trial. Counsel indicated that this could amount to between \$20,000 and \$30,000. Counsel also indicated that Mr. Murtha was prepared to settle on a “without costs” basis, but would otherwise seek solicitor-client costs if the matter proceeded. By a letter dated April 7, 2000, Mr. Knox indicated that he was “aware costs will be involved should I be unsuccessful in proving your clients guilt during trial.”

[19] Just before trial, on February 6, 2002, counsel for Mr. Murtha wrote to the plaintiff with an offer to settle in exchange for a waiver of costs to date. This offer was also rejected by the plaintiff.

[20] The defendant, claims, then, that the plaintiff had every opportunity to withdraw the allegations of fraud, theft and professional misconduct against a

member of the bar, but instead repeated the allegations at trial. He also had opportunities to settle short of trial with costs to be waived. In the circumstances, the defendant say, solicitor-client costs is called for.

***The plaintiff's status as a lay litigant***

[21] The defendant says the fact that the plaintiff was a lay litigant should not shield him from such an order, referring to the Newfoundland Court of Appeal decision in *Janes v. Deer Lake (Town)*(1993), 110 Nfld. & P.E.I.R. 202, where the Court set aside an award of solicitor-client costs that had been made on the basis that the lay plaintiff had deliberately advanced a frivolous claim. Marshall J.A., writing for the Court on this issue, stated:

[56] From the foregoing resumé of the judge's reasoning, it is evident that his principal reason for awarding these additional costs was that, in his view, Mr. Janes was knowingly pursuing a frivolous action which amounted to a harassment of the Town that ought to be dissuaded. However, no application had ever been made to strike out the claim on that ground. Moreover, it is doubtful if any such action would have succeeded as the weakness of Mr. Janes' claim was not immediately apparent from the pleadings until demonstrated at trial. Even if it should have been clear to him on the filing of the defence that he had no entitlement in law and if the lack of grounds had become even clearer to him at trial, this is the situation in many cases and is not in itself grounds for an award of solicitor and client costs.

[57] The only suggestion of reprehensible conduct comes from the judge's statement that Mr. Janes' evidence was deliberate and presented with intent that it be acted upon. While this might lend itself to an insinuation of improper conduct, it falls somewhat short of a definite finding of impropriety. In the context in

which these words were uttered it could also be interpreted as stating that he was knowingly advancing a frivolous claim.

[58] While, arguably, the deliberate advancing of a frivolous claim may justify an award of solicitor and client costs in some circumstances, it would appear to furnish only borderline grounds where it [was] not accompanied by fraud or other malicious, wanton or scandalous conduct. Certainly in the present case, in my view, the mere fact that Mr. Janes in the circumstances of this case advanced his evidence deliberately, intending that it be accepted and acted upon, without more, is insufficient to render him amendable to the extra costs.

[59] One factor which the learned judge appears to have left out of his assessment is that Mr. Janes was acting for himself and had an obvious imperfect knowledge of the process in which he was involved. While an award of solicitor and client costs is to be made exceptionally in any event, it ought to be made even more rarely in instances such as this purely because the claimant has pursued what turns out to be a frivolous claim. Care should be taken neither to discourage nor penalize litigants acting for themselves or to impede their free access to the courts.

[60] It is recognized that an award of costs is discretionary. However, because solicitor-client costs are awarded exceptionally and rarely, the scope for appellate review should be a little more extensive in the case of such awards. Moreover, in this case, in the absence of the judge's consideration that Mr. Janes was acting for himself in advancing what the judge viewed as frivolous claim, it can be said that he failed to fully exercise his discretion with regard to the full panoply of legal principles grounding the exercise of that discretion in this particular case. For these reasons, in my view, the award of solicitor and client costs against Mr. Janes should be set aside.

[22] The defendant adds that, while the plaintiff was a lay litigant, he was not an uneducated or unintelligent litigant, and was, and professed to be, experienced in litigation.... In addition, by correspondence from Mr. Murtha's counsel to Mr. Knox, it was fully explained at the outset that solicitor and client costs could be awarded against him because of the allegations of fraud and misconduct he was

making. In short, Mr. Knox has grossly abused the judicial process in his action against Mr. Murtha.

[23] The defendant says the plaintiff is not in the position of the plaintiff in *Janes*, who “had an obvious imperfect knowledge of the process in which he was involved....”

***Conclusion on solicitor-client costs***

[24] In all the circumstances, the defendant submits, solicitor-client costs are justified. In submissions, his counsel states that the defendant will waive full indemnity and accept \$30,000 plus taxable disbursements.

[25] With respect to the plaintiff’s allegations of fraud, my conclusion in the trial decision was the following:

47 The alleged fraud relates to the timing and the speed of the transaction. Burchill threatened to sue Mr. Murtha and not Mr. Knox. However, it was Mr. Knox's funds that were turned over to Burchill; additionally, Mr. Knox claims Mr. Murtha was supposed to hold back ten per cent. Mr. Knox claims that Mr. Murtha failed to follow his instructions. Mr. Murtha never told him that if he closed the transaction he could not pursue Burchill in Small Claims Court. He claims that Mr. Murtha deceived him. He claims that Mr. Murtha took money that was earmarked for appliances and used it to close the transaction. He said the action against Mr. Murtha is in negligence or misrepresentation. He was not sure whether he is alleging fraud against Mr. Murtha. In his amended statement of claim he deleted the allegations of fraud or theft with respect to Mr. Murtha, but claims that fraud is implied in paras. 17 and 18.

48 Mr. Knox gave Mr. Murtha \$16,000 to cover the balance of the purchase price on the date of closing. He claims that Mr. Murtha stole money by refusing to release money to him for the sods. Mr. Murtha offered to pay money into court to allow a determination as to who was entitled to it. I am satisfied that Mr. Murtha indicated that he was prepared to interplead. Mr. Knox claims that he didn't understand what interpleading meant. He said he went to the RCMP and they told him that it was going to court, that they were not getting involved. Once Mr. Knox received a letter from the Housing Commission respecting the landscaping, Mr. Murtha released the funds. He continued to accuse Mr. Murtha of theft. Mr. Murtha held that \$2415.61 in this trust account. There is no evidence to support Mr. Knox's allegation on this issue.

[26] I am not satisfied that solicitor-client costs are justified in the circumstances, for several reasons. The plaintiff was a lay litigant, which, while not determinative, is relevant. Despite having some experience with litigation and some familiarity with civil procedure, I am not convinced that the plaintiff had more than a very general understanding of substantive law. As to the pleadings, the impugned allegations in the original Statement of Claim were blanket pleadings, covering all of the defendants. The pleading did not make specific claims of fraud or theft against Mr. Murtha that were distinct from the blanket allegation. The claim against Mr. Murtha was further narrowed in the Amended Statement of Claim. I also note that the evidence does not establish that these claims, to the extent that they were indeed made, were made with improper purpose or in bad faith; I am satisfied that Mr. Knox believed in the truth of what he was alleging, however, legally specious the claims were.

### ***Lump Sum Award***

[27] In the alternative to solicitor-client costs, the defendant seeks a lump sum award of costs, pursuant to Rule 63.02(1)(a), which permits the Court to “award a gross sum in lieu of, or in addition to any taxed costs.” Lump sum costs are available where the figure under the Tariffs is not sufficient to provide a substantial indemnity. In *Campbell v. Jones et al.* (2001), 197 N.S.R. (2d) 212 (S.C.), Moir, J. reviewed the law on lump sum costs and concluded, at para. 69:

... In summary, the discretion to award a lump sum is not so restricted as with an award of solicitor and client costs; tariff costs are usual and a lump sum is a departure from the usual; the discretion has been exercised where tariff costs would not produce a partial but substantial indemnification without artificially setting the "amount involved"; the objective of a partial but substantial indemnification may or may not be sufficient reason to exercise the discretion; care must be taken to avoid employing fixed percentages or embracing the party's actual bill over a more generalized assessment.

[28] The Court of Appeal allowed an appeal, but did not comment on this aspect of the decision: (2002), 209 N.S.R.(2d) 81.

[29] The following summary by Wright J. appears in *Morash v. Burke et al.* (2007), 252 N.S.R. (2d) 335 (S.C.):

[21] Civil Procedure Rule 63.02(1) codifies the well-known principle that the costs of any party, the amount thereof, and by whom they are to be paid, are in the



discretion of the court. Subparagraph (a) confers the further discretion on the court to award a gross sum in lieu of, or in addition to any taxed costs.

[22] Civil Procedure Rule 63.04(1) provides that unless the court otherwise orders, the costs between parties shall be fixed by the court in accordance with the Tariffs and, in such cases, that the "amount involved" shall be determined, for the purpose of the Tariffs, by the court. Rule 63.04(2) goes on to enumerate several factors that the court may also consider in fixing costs, one of which I will revisit later in this decision.

[23] Beyond these listed factors, the principles to be taken into account in considering a request for a lump sum costs award are conveniently summarized in the decision of Justice Moir in *Bevis et al. v. CTV Inc. et al.*, [2004] N.S.J. No. 454; 228 N.S.R.(2d) 34; 723 A.P.R. 34 (S.C.) (at para. 13), from which I quote as follows:

(1) Costs are normally set in accordance with the Tariff. (2) However, the Tariff system serves the principle of a substantial but incomplete indemnity. The Courts do not choose artificial means, such as selection of an artificial 'amount involved', in order to make the Tariff serve the principle. Therefore, when reasonable approaches to amount involved or scale under the Tariff fail to produce a substantial but partial indemnity, the Court may resort to its discretion under rule 63.02(a) and order a lump sum. (3) To settle an appropriate lump sum the Court will have regard to the actual costs facing the successful party or the labour expended by counsel, but the Court will seek to settle the amount objectively in conformity with one of the policies of the Tariff, to provide an indemnity that has nothing to do with the particularities of counsel's retention. The Court will attempt to provide a substantial but partial indemnity against what would ordinarily be charged by any competent lawyer for like services. (4) Finally, the Courts have usually avoided percentages. Substantial but partial indemnity is a principle, not a formula."

[24] The third principle above quoted was earlier elaborated upon by Justice Saunders in *Landymore et al. v. Hardy et al.* (1992), 112 N.S.R. (2d) 410; 307 A.P.R. 410 (T.D.), where he said (at para. 18):

"As it is the court's responsibility to assess the fairness and reasonableness of the effort expended, the trial judge will have to be told how much it cost the successful party

to present or defend its case. Counsel will be expected to outline the amount of time spent on the file and the total fees charged the client, preferably in the form of a short affidavit filed with the court. Only then will a judge be able to assess whether those expenses were 'reasonable' before going on to decide whether the costs to be awarded will in fact represent a significant contribution to such expenses."

[30] The defendant requests a gross sum of \$30,000 plus disbursements. He says it will be difficult to quantify the taxed costs under Tariff A, as the plaintiff did not particularize the damages beyond "vague references to something in the order of \$20,000 or \$25,000." The defendant says the issues involved – the defence of a lawyer against allegations of fraud and theft "cannot rank at anything less than of high importance." The defendant suggests starting with Scale 3 of Tariff A at \$5,000 and adding \$2,000 for each of the five days of trial, yielding a taxed award of \$15,000. In view of the offers to settle and the actual legal expenses incurred, he submits a top-up from \$15,000 to \$30,000 is justified.

[31] This proceeding was commenced in 1999 and is appropriately subject to the former *Tariffs of Costs and Fees*, rather than the 2004 *Tariffs* to which the defendant refers. An amount involved of \$20,000 or \$25,000, as suggested by the defendant, would yield costs under Scale 3 (basic) of Tariff A of \$2,625 or \$3,000, respectively; application of Scale 5 would yield an award of \$3,675 or \$4,200. The

former Tariff did not factor the length of the trial into the analysis as the current Tariff does. Adding \$2,000 per day of trial, as the defendant suggests (and as contemplated by the 2004 Tariff) would yield an award under Scale 3 of \$1,2625 or \$13,000, and \$13,675 or \$14,200 under Scale 5.

[32] With respect to the length of the trial, I note the plaintiff's argument that his own presentation would have been completed more quickly "but for the excessive objections by counsel when [he] incorrectly phrased questions." He submits that the defence cross-examinations "consumed the majority of trial time and the delays involved were by the requests of the defence counsel not the plaintiff. He requests that the Court order no costs award, or that costs be reduced to two days of trial at the lowest rate at the Court's disposal.

### ***Disbursements***

[33] Pursuant to Rule 63.10A, "[u]nless 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." As to disbursements, the defendant notes that of the \$7,168.97 incurred, \$2,914.15 related to preparation of trial transcripts.

### ***Conclusion***

[34] Based on the foregoing analysis, it is my conclusion that Mr. Knox should pay a total of \$7,500 in costs and \$4,500 as a contribution to the defendant's disbursements, for a total of \$12,000.

**J.**