

IN THE SUPREME COURT OF NOVA SCOTIA  
**Citation:** 23201072 Nova Scotia Ltd. v. Lienaux, 2004NSSC234

**Date:** 20040713

**Docket:** S.H. 93-6909

(Being the Consolidation of S.H. 93-5807 and 93-6906)

**Registry:** Halifax

**Between:**

2301072 Nova Scotia Limited

Respondent

[Plaintiff]

(Defendant by Counter-Claim)

-and-

Charles D. Lienaux and Karen L. Turner-Lienaux

Applicant

[Defendant]

(Plaintiffs by Counter-Claim)

-and-

Marven C. Block, Q.C.

-and-

The Toronto-Dominion Bank

Respondent

(Defendant by Counter-Claim)

-and-

Wesley G. Campbell and Grant E. MacNutt

Third Parties

**Judge:**

The Honourable Chief Justice Joseph P. Kennedy

**Heard:**

July 6, 2004, in Halifax, Nova Scotia - Taxation Hearing

Oral Decision July 13, 2004

Written Release of Taxation Decision: November 18, 2004

**Counsel:**

Gavin Giles, Alan Parish, Q.C. for the Applicants/Plaintiffs

Charles Lienaux representing himself and Ms. Turner-Lienaux

Marjorie Hickey for Mr. Block, not present.

**By the Court:** (Orally)

- [1] This is a contested application to tax costs. Those costs were awarded on a solicitor-client basis on an application that was argued before me on July 6, 2004, that is the application specific to the awarding of solicitor-client costs.
- [2] The application that was dealt with on July 6th, was the application to tax costs, involved both argument and testimony.
- [3] On June 10, 2004, I had awarded costs to the plaintiff, 2301072 Nova Scotia Limited; to the defendant by counterclaim, The Toronto-Dominion Bank and to the Third Party, Wesley Campbell, I awarded costs to those parties to be paid by the defendants, Lienaux and Turner-Lienaux on a solicitor-client basis, for reasons set out in that decision, that is the June 10, 2004 matter.
- [4] These costs were specific to an application to strike pleadings that was brought before me, way back on July 10, 2003. Counsel for 2301072 Nova Scotia Limited, the Toronto-Dominion Bank and Mr. Campbell, those counsel being: Mr. Parish and Mr. Giles in this application to have their costs approved rely on the affidavit of Gavin Giles dated May 17, 2004, which has attached as exhibits thereto the accounts rendered for legal services provided to those clients until the date of that affidavit.

- [5] These accounts included, but were not limited to, the services that were rendered with respect to the application that had come before me on July 10, 2003, that is, the application to strike. Exhibit 6 attached to that affidavit of Mr. Giles particularized those services that were rendered to those clients specific to that July 10th, application. Those are the costs that Mr. Parish and Mr. Giles seek to be approved by this application.
- [6] That summary, Exhibit 6, to Mr. Giles' affidavit, included the dates upon which the services were rendered, the nature of the services and the time entailed to provide those services at the hourly rates indicated and the resulting, the total fee charged to those clients pertaining to those professional services rendered.
- [7] The total of the fees for those services, as set out in the exhibit attached to May 17, 2004, affidavit, was \$31,784.50. Those fees were then discounted to those clients by an average of 36%, which, when applied to that total of \$31,784.50 resulted in total fees charged of \$20,342.08.
- [8] Also filed as part of the costs taxing application was a supplementary affidavit by Gavin Giles dated June 24, 2004, which addressed fees charged to their clients by Mr. Parish and Mr. Giles between the date of the first affidavit and the application to tax costs. These fees, added to the total set

out in the May 17 affidavit, added to that total bring the total fees that the applicants seek to have approved to \$23,140.08, together with disbursements of \$995.84 and Hospital Service Tax of \$3,471.01.

[9] Applicants asked that their fees be approved in that amount.

[10] The respondents, Mr. Lienaux and Ms. Turner-Lienaux, contest the solicitor-client costs claimed by the applicants. Firstly, let me say that I fully agree with Mr. Lienaux that the party against whom solicitor costs are awarded can stand in the place of the client and raise any complaint that the client might have raised in challenging the fees.

[11] Mr. Lienaux, on behalf of himself and on behalf of Ms. Turner-Lienaux, questioned the hourly rate charged by Mr. Parish and Mr. Giles. He questioned the participation of both senior counsel in the matter. He pointed out that, for instance, in some circumstances, full hourly rates were charged for the same hour. Mr. Lienaux pointed out that Joel Fichaud, who is now a Justice of the Court of Appeal of this Province, but was then a senior litigation counsel in Halifax, on behalf of Marven Block, his client on the application to strike, Mr. Fichaud billed a lower hourly rate than was billed by either Mr. Parish or Mr. Giles, and that his total fees charged were

significantly less than what Mr. Parish and Mr. Giles charged their clients for the same application.

[12] Mr. Giles testified in support of his fees. He said that both he and Mr. Parish represented these clients, Mr. Parish would sometimes review his work, make suggestions, but Mr. Giles testified that it was not in a supervisory capacity, it was in a collegial capacity of two senior counsel working on the same file.

[13] Mr. Parish charged, I think, an average of \$300.00 an hour for most of the work done on the file, Mr. Giles \$265.00 an hour.

[14] Mr. Giles testified that this was the commonly charged rate of both of these counsel at that time. This is what they commonly charged for their services. Mr. Giles submitted that the participation of his clients in this application was significantly more involved than that of Mr. Fichaud's client and further that Mr Fichaud was billing at \$150.00 an hour as the standard fee when acting for lawyers, matters connected with Bar insurance and, in fact, when Mr. Parish and Mr. Giles acted in the same capacity they charge that same hourly rate, or whatever the standard hourly rate was that pertained at that time.

- [15] Mr. Lienaux questioned the manner in which the application to strike was presented by Mr. Parish and Mr. Giles. Particularly, he criticized the appending of pleadings and decisions to Mr. Giles' affidavit in that matter and the form of the affidavit generally. This is a substantial affidavit that was filed in support of the application to strike. Mr. Giles argues significantly that Mr. Lienaux had not complained about the process of the use of that affidavit during the application itself.
- [16] I find that the manner in which the application was presented generally by Mr. Parish and Mr. Giles, does not compromise in any way the billing of their clients herein. The application might have been presented in another manner by other counsel. I suppose it is trite to say that the application was successful. Mr. Giles explained why they decided to proceed with the application in the manner that they did.
- [17] Mr. Lienaux further argues that, had Mr. Parish and Mr. Giles made any effort by way of consultation with Mr. Lienaux during the course of, or prior to that application, that many of the issues could have been narrowed. Mr. Giles in response to that submission pointed out the history of acrimonious litigation between these parties and suggested that it was not likely that consultation would have resulted in any agreement. Certainly, the

history of the litigation does not disclose very much in the way of agreement or narrowing of issues, I have to agree.

[18] Solicitor and client costs are governed by *Rule 63.16, Civil Procedure Rules*.

I will cite a portion of that Rule.

*Rule 63.16(1)* read in part that:

A solicitor is entitled to such compensation from a client, who is a party, as is reasonable for the services performed, having regard to

(a) the nature, importance and urgency of the matters involved,

...

(d) the general conduct and costs of the proceeding,

(e) the skill, labour and responsibility involved, and

(f) all other circumstances, . . .

[19] Also, lawyers are assisted and Taxing Masters are assisted when determining proper fees by **Legal Ethics and Professional Conduct Handbook**,

published by the Nova Scotia Bar, which, at page 51, reference to 'Fees' states:

A lawyer has a duty to:

(a) stipulate, charge or accept only fees that are fully disclosed, fair and reasonable; . . .

and then, under the heading 'Guiding Principles' the Bar Handbook goes on to say:

For the purposes of this Rule in determining whether a fee is fair and reasonable the following factors should be considered:

(a) the time and effort required and spent;

(b) the difficulty and importance of the matter;

...

(d) the customary charges of other lawyers of equal standing in the locality and in like matters and circumstances;

...

(g) the results obtained;

[20] I conclude, after having read the affidavits, listened to the testimony, heard arguments, I conclude that the fees charged their clients by Mr. Parish and



Mr. Giles for professional services rendered pertaining to the application of July 10, 2003, those fees charged are fully disclosed, fair and reasonable, given the nature and the complexity of the application and the history of the litigation between the parties.

[21] I would be concerned about two senior counsel, two senior lawyers billing full hourly fees for periods in which they were consulting on the file. That may cause concerns in some circumstances. However, in this case counsel has addressed my concern by discounting their fees by 36%. After the fees were calculated in this matter they were discounted by 36%, which is a significant discount. The fees are explained in detail, they are well set out in the exhibits that are attached to the affidavits of Gavin Giles and further explained by his testimony in this matter.

[22] On the basis of the totality of the information provided, I hereby approve the fees charged their clients by counsel Mr. Parish and counsel Mr. Giles for services rendered pertaining to the application of July 10, 2003, and ancillary matters in the amount of \$23,140.08, with disbursements of \$995.84 and the resulting H.S.T. being \$3,471.01.

Chief Justice Kennedy