

Date: 20011210  
Docket: S.H. 167817

**IN THE SUPREME COURT OF NOVA SCOTIA**  
[Cite as: **Halifax (Regional Municipality) v. Joudrey, 2001 NSSC 185**]

**BETWEEN:**

**HALIFAX REGIONAL MUNICIPALITY,**  
**a municipal body corporate**

**PLAINTIFF**

**- and -**

**VANCE JOUDREY**

**DEFENDANT**

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**DECISION ON COSTS**

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**HEARD BEFORE:**     **The Honourable Justice Walter R. E. Goodfellow in the  
Supreme Court of Halifax (Chambers) on November  
13<sup>th</sup>, 2001**

**DECISION:**           **December 10<sup>th</sup>, 2001**

**COUNSEL:**           **Ian C. Pickard and Benjamin R. Durnford, Solicitors  
for the Plaintiff  
Robert G. Cragg, Solicitor for the Defendant**

**GOODFELLOW, J.:****BACKGROUND**

[1] A Consent Order January the 9<sup>th</sup>, 2000 recited a property owned by Vance Joudrey was in contravention of the Land Use By-Law of HRM and directed general compliance plus certain specific steps to ensure the property remained a single family dwelling. In a decision November the 14<sup>th</sup>, 2001 the Court found Joudrey in contempt and in addition to spelling out the conditions to purge the contempt and consequences or failure to do so, the Court found the background situation exceptional and granted costs to HRM on a solicitor and client basis.

**BILL OF COSTS**

**FOR PROFESSIONAL SERVICES RENDERED** in connection with this matter:

Joudrey: 921 Brussels Street

Our File Number: 17907-33

**FEES:**

		21 Sep,2001 JGK	Voice mail from S. Higgins at HRM; Interoffice conference with I. Pickard; reviewing Municipal Government Act provisions; reviewing consent order; telephone call to S. Higgins at HRM. Left message.		1100.00
25 Sep, 2001	JGK		Interoffice conference with I. Pickard; two telephone conferences with Sharon Bond at HRM.	0.80	136.00
26 Sep, 2001	JGK		Telephone call from S. Higgins at HRM.	0.20	34.00
27 Sep, 2001	ICP		Preparation for and attendance at conference with client.	1.50	315.00
27 Sep, 2001	JGK		Review file in preparation for meeting with clients; meeting with HRM representatives and colleague; memo to file re same.	2.50	425.00
1 Oct,2001	JGK		Telephone call from and reply to S. Higgins at HRM.	0.20	34.00
2 Oct,2001	JGK		Interoffice conference with I. Pickard;	2.00	340.00

		telephone conference with S. Higgins at HRM; research Rule 55.03 on contempt; draft registered mail to V. Joudrey; review of photographs and report from S. Higgins; voicemail from D. Keats at HRM.		
17 Oct, 2001	JGK	Reviewing file; notes to file regarding pictures taken by HRM officials and contents for Affidavits; telephone call to client; letter to S. Higgins at HRM.	1.00	170.00
22 Oct, 2001	ICP	Preparation for and attendance at meeting at City Hall with senior staff to discuss contempt application; preparation of letter to opposing counsel; commenced preparation for Chambers application.	3.80	798.00
22 Oct, 2001	JGK	Interoffice conference with I. Pickard and telephone conference with S. Higgins regarding meeting with area residents.	0.50	85.00
24 Oct, 2001	BRD	Editing memo on contempt; meeting with JGK and ICP; drafting Order, Application and Brief in support of upcoming Chambers Application under Rule 55 for Contempt Order.	3.00	360.00
24 Oct, 2001	ICP	Perusal of all information in file to commence preparation for ex parte application; review of law re contempt order; conference with colleague re recovery of legal fees, fines and recovery of rent; consideration of issues re affidavits, brief, order and application.	2.80	588.00
24 Oct, 2001	JGK	Meeting with I. Pickard and B. Durnford; preparation of draft Affidavits for S. Bond, B. MacGillivray and S. Higgins; telephone conference with S. Higgins and review of fax from him.	5.00	850.00
25 Oct, 2001	ICP	Perusal and revision of brief; preparation for and attendance at conference with senior HRM staff to finalize affidavits; revision of affidavits; review and revision of Order; review and revision of notice; continued	4.30	903.00

		preparation for Chambers application.		
25 Oct, 2001	JGK	Interoffice conference with I. Pickard and Ben Durnford re photographs, Affidavits, etc.; telephone conference with S. Higgins at HRM; finalizing Affidavits.	4.80	816.00
26 Oct, 2001	BRD	Editing Affidavits; having Affidavits sworn at HRM offices; copying Exhibits; preparing order, application and Brief for filing; drafting letter to Bobby Cragg; running documents to Court and confirming special Chambers judge with co-ordination at Court.	3.50	420.00
26 Oct, 2001	ICP	Review correspondence from Plaintiff's counsel; preparation of letter and reply; finalization of all documentation for filing with the Court; preparation of letter to the Court requesting Chambers judge to be appointed to hear the ex parte application.	2.20	462.00
26 Oct, 2001	JGK	Interoffice meeting with colleagues, editing brief to Court and reviewing Affidavits before being sworn; interoffice conference with I. Pickard regarding scheduling of Chambers Application.	2.50	425.00
29 Oct, 2001	ICP	Preparation for Chambers application; numerous conferences with opposing counsel; perusal of letter received from opposing counsel.	1.40	294.00
30 Oct, 2001	ICP	Preparation for and attendance at Chambers application seeking leave for contempt hearing; preparation of letter to opposing counsel; preparation of letter to client; various discussions with colleague concerning additional work for contempt hearing.	2.80	588.00
1 Nov, 2001	ICP	Perusal of additional correspondence received from opposing counsel; letter to client; consideration of strategy.	0.60	126.00
1 Nov, 2001	JH	Word Processing services	0.80	48.00
5 Nov, 2001	ICP	Perusal of correspondence received from	0.80	168.00

		client; preparation of letter to opposing counsel.		
6 Nov, 2001	ICP	Perusal and revision of letter to opposing counsel.	0.30	63.00
7 Nov, 2001	ICP	Perusal, revision and preparation of brief to Court for contempt application and arguing remedy; perusal of correspondence received from client; letter to opposing counsel outlining terms and conditions of acceptable order.	3.50	735.00
12 Nov, 2001	ICP	Preparation for attendance at Chambers application to seek Contempt Order; review of affidavits and correspondence received from counsel for Mr. Joudrey; perusal and revision of case law on issue of contempt, form of Order and solicitor costs; preparation of oral argument; review of affidavits filed by HRM.	5.50	1,155.00
13 Nov, 2001	ICP	Preparation for and attendance at Chambers application seeking Contempt Order; lengthy conference with client to review status of Order.	4.50	945.00
14 Nov, 2001	ICP	Perusal of decision received from Justice Goodfellow; commenced preparation of Order to reflect decision; preparation of correspondence to client; telephone conference with client to update re Court's decision.	1.20	252.00
		Total Fees		11,705.00

**Total Hours and Fees:**

<b><u>Lawyers and legal assistants involved</u></b>	<b><u>Hourly Rate</u></b>	<b><u>Hours Worked</u></b>	<b><u>Fees</u></b>
Kimball, JG		170.00	<del>3285.00</del>

Ian C. Pickard	210.00	<del>7,352.00</del>
Durnford, B. R.	120.00	<del>680.00</del>
Hill, Jolene	60.00	<del>0.80.00</del>
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Total Hours and Fees		<del>11,630.00</del>

**NON-TAXABLE DISBURSEMENTS:**

Prothonotary		30.00
Total Non-Taxable Disbursements		30.00

**DISBURSEMENTS SUBJECT TO HST:**

Taxi		18.27
Delivery		39.25
Copying/printing		116.50
Telecopier Charge		11.25
Total Taxable Disbursements		185.27
HST Input Tax Credit at 15%		1,783.54

**TOTAL DUE UPON RECEIPT: 13,703.81**

**TAXATION**

- [2] Taxation is a difficult and less than scientific exercise. The Court does not wish to add unnecessary and, in many cases, substantial costs by requiring counsel to come forward to present evidence of the appropriateness of certain elements of their account, rates generally charged in the profession based on the seniority and experience of the individual barrister, degree of

- expertise, fees charged generally for comparable Chambers applications, etcetera, etcetera.
- [3] In order to save time and funds, the Court simply calls upon its depth of experience, bearing in mind that it does not preclude counsel from going through a more elaborate exercise.
- [4] In reviewing the account, the first determination is the appropriateness of the hourly rate. There must be some check or indication that the hourly rates charged are the standard rate charged by that particular barrister in comparable files. And further, that the hourly rate is within a generally discernible range of hourly rates charged by comparable barristers for such services.
- [5] The Court must then look at the extent of time involved and be comfortable that the time billed is, in the totality of the circumstances, a reasonable level. The higher the hourly charge the greater the experience that should exist which should be reflected in less hours for such an application than might be otherwise be required.
- [6] I have some concerns with respect to the hourly rates and understand that the solicitor in charge of the file, Mr. Pickard, was admitted to the Bar June the 19<sup>th</sup>, 1992. His hourly rate charged is \$210.00 per hour. In the absence of evidence of a range, etcetera, I consider an appropriate hourly rate for which the Defendant should be responsible to be \$180.00 per hour. This reduces the account at 35.20 hours by \$30.00, the sum of \$1,056.00.
- [7] Mr. Pickard was assisted by Mr. J.G. Kimball who appears to have done a lot of the office and interoffice work and also by Mr. Ben Durnford who was junior counsel in the Chambers Application. Mr. Kimball was admitted to the Bar June the 17<sup>th</sup>, 1996 and his rate is set at \$170.00 per hour. I conclude, again in the absence of evidence of an appropriate range and based upon the Court's experience, that the appropriate rate for which the Defendant should pay is \$140.00 per hour. This reduces the account at 20.50 hours by \$30.00, the sum of \$615.00.
- [8] With respect to Mr. Durnford, he has been at the Bar less than a year. I do note and commend Mr. Pickard for not putting any charge in for Mr. Durnford as associate counsel in the final Chambers Application. There is, however, a charge for Mr. Durnford's services in running documents to court. etcetera. I recall when I was an article clerk and newly minted barrister, included in my duties were running documents to court, attending the post office to get the postal machine filled, etcetera, but these services, while valuable, are not to be billed at any professional rate. Undoubtedly,

much of Mr. Durnford's involvement represents a sharp learning curve and I would tax his contribution at \$90.00 an hour. This reduces the account by \$195.00.

- [9] Mr. Cragg expresses concern with respect to the extent of interoffice conferences reflected within the Statement of Account and also suggests that the totality of hours, some 63 hours represents an excessive amount for the nature of the application. The initial application is an *ex parte* application and the total hours leading up to securing the *ex parte* Order amount to 45.80 hours. Included in these hours is a considerable amount of time designated as preparation for Chambers Application and while it did require production of Affidavits and a Brief, I am inclined to Mr. Cragg's view that there appears to be a fairly heavy measure of time on interoffice discussions and that the preparation time is of such an extent that not all of it should be borne by the Defendant.
- [10] With respect to the main application, it includes such things as substantial preparation for Chambers and an item, 'lengthy conference with client to review status of Order'. In addition, there is an 1.20 hours set aside to peruse my decision which was given orally and heard by counsel in time billed by counsel for attendance in Court. The decision is only 22 pages and while some time element is appropriate for review of the written version and preparation of the Order, it seems to me appropriate for reduction in this and the overall time element. The paralegal fee at the rate of \$60.00 for 0.80 hours, a charge of \$48.00, is accepted.
- [11] I have reduced the account a total of \$1,866.00 by virtue of the reduction in allowed hourly rates and as I stated, this is not a scientific exercise, however, the overall time element does appear to me to be greater than that for which the Defendant should be responsible and I simply make an across the board 10 per cent reduction in the overall reduced account.

Total Account - Total Hours in Fees	-	\$11,705.00
Reduction for Hourly Rates	-	<u>\$1,866.00</u>
	-	\$9,839.00

10% Across Board Reduction



relative to time spent	-	\$ -
		<u>983.9</u>
		<u>0</u>
Total Fees taxed and allowed at	-	\$ 8,855.10
Disbursements allowed as submitted	-	\$ 215.27
HST on \$8,855.10	-	\$ <u>1,328.27</u>
<b>TOTAL</b>	-	\$ <u><b>10,398.64</b></u>

- [12] HST is allowed because the account is a solicitor and client account being taxed to the extent the Defendant is liable. Party and party costs are not subject to HST. *Roose v. Hollett, et al* (1996), 154 NSR (2d) 161 (N.S.C.A. Para 198). As a result, when solicitor and client costs are awarded, there is an additional contribution by the party against whom solicitor and client costs are taxed because the award represents a payment of legal services.
- [13] The total bill taxed and allowed is in the amount of \$10,398.64.
- [14] In expressing the foregoing views, I want to make it clear that the application was handled professionally by all counsel and that I am simply taking the opportunity to indicate that even where the Court grants a solicitor and client costs determination, the Court retains discretion to determine what, in the total circumstances, is the appropriate level of the solicitor's/client bill for which the party against whom solicitor and client costs have been awarded is responsible for. An award of solicitor and client costs is not a determination that the responsible party pays **whatever** the solicitor and client costs bill happens to be, which account may be based upon a number of considerations in the contract for professional services between a solicitor and a client that are not relevant for reimbursement.

J.