

**SUPREME COURT OF NOVA SCOTIA**  
**IN BANKRUPTCY AND INSOLVENCY**

**Citation:** *Freckelton (Re)*, 2021 NSSC 146

**Date:** 20210504

**Docket:** No. 44686, 44720

**Registry:** Halifax

**Estate Number:** 51-2382757, 51-2382759

**In the Matter of:** The bankruptcies of Alexander Cameron Freckelton and Michelle Dawn Freckelton

**Judge:** Raffi A. Balmanoukian, Registrar

**Heard:** April 27, 2021, in Pictou, Nova Scotia

**Counsel:** Tina Powell, for the Trustee, MNP Limited (by teleconference)  
Alexander Cameron Freckelton and Michelle Dawn Freckelton,  
personally (by teleconference)

**Balmanoukian, Registrar:**

[1] On May 3, 2021, I released my decision in *Re Freckelton*, 2021 NSSC 144.

Upon its review, it came to my attention that certain terminology may unintentionally misdirect the reader. These clarificatory reasons should be read in conjunction with that decision. They do not change the underlying reasoning, or results.

[2] In paragraphs 3 through 8 of that decision, I refer to the issue of the Court's jurisdiction over "Trustee's costs," and the Court's general jurisdiction over costs. It would have been more appropriate in places to speak of the Trustee's "fees," as the term "costs" could be misconstrued as meaning only litigation or Court costs, and not the Trustee's claim for services in general. It is common for both Trustees and for me to refer to the latter both in oral proceedings and in orders, somewhat interchangeably.

[3] Nevertheless, the Court's jurisdiction under s. 192(1) BIA refers to the authority to "tax or fix costs and to pass accounts," as well as jurisdiction relating to "practice and procedure in the Courts."

[4] The underlying rationale behind an award of costs, as I discuss in paragraph 4, applies equally to taxations of accounts. It is an important tool by which the Court retains sovereignty over its processes, and sanctions or rewards the positive or negative acts and omissions I discuss. The Court's jurisdiction by both statute and common law is as I discuss.

[5] Similarly, in paragraphs 9 through 17, I refer to the Court's discretion over costs and in doing so, discuss case law respecting the Court's jurisdiction over Trustees' accounts. That case law makes it clear that I have a discretion over both, subject to the 'cap' to which I now turn.

[6] In paragraphs 19 through 34, I again somewhat use the terms "costs" and "remuneration" interchangeably. Once again, the case law I refer to makes it clear that I have authority, in summary administration estates, to lower but not raise the fees "calculated" under Rule 128. The Rule and Section 156 of the BIA creates a calculation mechanism for a maximum, but not a minimum; and Rule 128 clearly provides for taxation of those accounts. As I discussed, taxation to have any meaning at all, must include an authority (subject to the Rule's maximum) to adjust an account downward in appropriate circumstances; and this authority is not dependent on an adverse (or any) input by the OSB. The case law is more precise

than was I in referring to a downward authority on “fees,” “remuneration,” “compensation,” and “tariff.”

[7] Finally, as will appear above, my discussion in the balance of the decision (paragraphs 35 *et seq.*) pertaining to “costs” – that is to say in this context, fees – with respect to summary administrations in general and what could or should have been joint filings in particular, means that I have that self-same discretion, exercised judicially, in those situations.

[8] My summary and disposition in paragraphs 53 and 54 remain unchanged, except again by way of clarification, in item 6 of paragraph 53 by ‘costs’ I mean ‘the Trustee’s account.’

[9] To reiterate, the scope of my jurisdiction (and reasons for that jurisdiction, by common law and statute) pertains both to costs in the narrow sense of juridical proceedings, and (subject to Rule 128’s ‘cap’) to Trustee’s fees and disbursements.

[10] I regret any ambiguity that may have been occasioned by any imprecise terminology.

Balmanoukian, R.