2007 S.C.C.H. Number: 277498

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Bishop v. Cragg, 2009 NSSM 6

BETWEEN:

BEVERLEY BISHOP and MICHELLE SOUCY

Claimants

- and -

ROBERT CRAGG

Defendant

DECISION and ORDER

Place of Hearing: Halifax, Nova Scotia

Dates of Hearing: March 17, 2008 and October 29, 2008

Heard Before: **Gavin Giles, Q.C.**
Chief Adjudicator

Appearances: **For the Claimants:** Tim Hill
For the Defendant: The Defendant appeared personally

Date of Decision: February 6, 2009

Gavin Giles, Q.C., Chief Adjudicator

PROLOGUE:

[1] This matter has been before the Small Claims Court of Nova Scotia for over two years.

[2] There are some, perhaps many, who would suggest that that is too long a time for the resolution of any "small claim". With those who might harbour that sentiment, I generally agree.

[3] That said, this matter offered a certain number of complexities which are traditionally not common to the Small Claims Court process.

[4] First, it proved difficult to schedule the necessary hearings. Mr. Hill on behalf of the Claimants and the Defendant on his own behalf are both engaged in very busy and widely varied general legal practices. I, too, operate within a busy practice. Finding time to fit the availabilities of both Mr. Hill and the Defendant often proved a challenge. The result was a hearing spread out over several hours on two separate days separated by more than seven months.

[5] Second, despite the nature of the Claimants' pleadings, the matter proved not to be a "garden variety" wrongful dismissal claim. Instead, it proved to be tinged with bitterness and resentment. At times, testimony was punctuated with rancour and hyperbole.

[6] Though none of the parties is to be faulted in any way for the presentation of

their respective cases, the suggestions that there were (and are) hard feelings amongst the parties is likely an understatement. It was even more important in these circumstances that Mr. Hill on behalf of the Claimants and the Defendant on his own behalf ensured that every witness had the opportunity to "say her piece".

[7] Third, in addition to his defence, the Defendant mounted a significant counter-claim against both of the Claimants. Though the counter-claim was ultimately withdrawn prior to the commencement of the hearings before me, it was the subject of an aggressive response by Mr. Hill on behalf of the Claimants.

[8] Mr. Hill challenged the Defendant's counter-claim on the basis that it was not sustainable as a matter of law. Without conceding the point, the Defendant's counter-claim was withdrawn. But for that, an interlocutory decision would have been required.

[9] Fourth, the Small Claims Court of Nova Scotia is meant as an informal and inexpensive forum for the resolution of parties' civil disputes within the context of "established principles of law and natural justice". One is therefore left to wonder about informality and inexpensiveness in the circumstances of a hearing involving two important counsel (one a party) spread over two days separated by more than seven months.

[10] One is also left to wonder about the application of the "principles of law and natural justice" when decisions are required to be rendered within compressed time frames and without the benefit of a verbatim record of the testimony and

submissions heard.

[11] Though those are serious questions, both generally and in the context of the within matter, they will be best left for another day.

[12] Finally, within the context of the compressed timeframes referred to above within which decisions on all Small Claims Court of Nova Scotia matters are to be rendered, I concede that the within Decision and Order is being rendered outside of the 60-day limit referred to in Section 29(1) of the *Small Claims Court Act*.

[13] That concession notwithstanding, this Decision and Order is the product of many hundreds of pages of handwritten notes taken down in long hand during the course of the hearing, their careful review and what is hoped as the careful application of the traditional employment law principles to them.

[14] Working within the confines of my own professional schedule, it would have been all but impossible to have rendered the within Decision and Order in a more timely way. I appreciate that the Supreme Court of Nova Scotia may comment on that conclusion in the future.

BACKGROUND:

[15] The Defendant is a lawyer who carries on a general practice from an office

located in Halifax. He has been practicing for almost 40 years. The concentrations of his practice are in real property, wills and estates, some minor corporate and commercial transactions, civil litigation, family law and criminal defence.

[16] The Defendant's practice has been robust over many years. Though the Defendant has relied on associate lawyers from time-to-time, he has also carried on his practice as a bit of a "lone wolf". Against that backdrop, the Defendant has attempted to organize his office with a variety of assistants: para-professionals, legal assistants and receptionists.

[17] The Defendant has appeared successful in "keeping all the balls in the air" through his reliance on a team approach. According to the Defendant, each member of the team is important. Each member of the team is reliant on all of the other members of the team.

[18] In turn, the Defendant is reliant on all of the members of his team. A smooth and congenial working relationship was viewed by the Defendant as being an important facet - if not the cornerstone - of his continued professional success.

[19] The Claimant, Beverley Bishop, began working for the Defendant on August 31, 1998. She left her employment with the Defendant some time near the end of March, 2000. She returned to the Defendant's employ some time in the early part of July, 2000.

[20] The evidence was unclear on the precise purpose for which Ms. Bishop was hired by the Defendant. Regardless of whether it was as a para-professional, a

legal assistant or a receptionist, Ms. Bishop came to be heavily and broadly engaged in the Defendant's practice and in his law office.

[21] In particular, Ms. Bishop worked largely independently. She proved herself as reasonably capable in carrying on most aspects of the Defendant's practice. She showed initiative. She was energetic. The Defendant came to rely on her.

[22] Though Ms. Bishop's personality appears early on to have conflicted with that of another of the Defendant's senior employees, the problem was initially viewed as relatively minor. Moreover, Ms. Bishop appeared to more than make up for the problem with her industry and energy.

[23] For much of her employment relationship with the Defendant, Ms. Bishop got along well with him and provided services which were valued, if not highly valued.

[24] The Claimant, Michelle Soucy, commenced employment with the Defendant in mid-March, 2005. Ms. Soucy was no less an important member of the Defendant's "team" than was Ms. Bishop but her employment was at a different level.

[25] Ms. Soucy lacked the knowledge and experience which Ms. Bishop and the other members of the Defendant's "team" possessed. She was diligent, capable and learning all the time. Nevertheless, the position which she came to occupy with the Defendant was more akin to that of a general assistant or receptionist.

[26] Amongst other things, Ms. Soucy was primarily responsible for the Defendant's office reception duties, for the scheduling of client meetings, for the monitoring of the various comings and goings and for the physical flow of the documentation stemming largely from the Defendant's property practice.

[27] Ms. Soucy appears to have "mixed" easily with Ms. Bishop but not so easily with other members of the Defendant's staff. In fact, it appeared that Ms. Soucy and Ms. Bishop became fast friends and became generally reliant on each other both within the Defendant's office and as friends outside of it.

[28] Though not meant in any pejorative manner, it also appeared that Ms. Bishop and Ms. Soucy came to form something of a cliqué in the Defendant's office. They liked each other. They regarded themselves as working well with each other. They shared a mutual respect.

[29] The Defendant's relationships with both Ms. Bishop and Ms. Soucy were not without their difficulties. The "problem" has already been referred to.

[30] The Defendant demonstrated himself to be a single-minded and strongly-willed individual. If he was not, he would not likely have enjoyed the practice success and prominence which has come his way over almost four decades.

[31] Ms. Bishop and Ms. Soucy were likewise single-minded. They came to regard themselves as consummate professionals. They were proud of the fact that

they knew what they were doing. They sought respect and independence in their roles. They did not welcome interference. It might safely be said of them that they did not regard themselves as "suffering fools gladly".

[32] Ms. Bishop and Ms. Soucy were also alleged to have developed a degree of arrogance within the defendant's office. They were said to have regarded themselves as superior employees: more knowledgeable, energetic and committed than were the others.

[33] As often happens when single-minded and strongly-willed people mix, unhappy differences arose between both the Defendant and Ms Bishop and the Defendant and Ms. Soucy. Ms. Bishop and Ms. Soucy became the subject of much discussion within the Defendant's office. Though discussions surrounding office politics and office procedures took place between the Defendant and Ms. Bishop and the Defendant and Ms. Soucy from time-to-time, those discussions were not viewed - at least by the Defendant - as having served to provide for a more harmonious working relationship. In fact, by early 2006, at the latest, the relationship between the Defendant and Ms. Bishop and the Defendant and Ms. Soucy were in a tail spin if not a free fall.

[34] The end result was that Ms. Bishop and Ms. Soucy were terminated from their employment with the Defendant at the end of the business day on September 12, 2006.

[35] Since then, the termination has been aggressively contested.

[36] Ms. Bishop and Ms. Soucy, either together or individually, filed complaints with both the Director of Labour Standards and with the Occupational Health and Safety Division of the Nova Scotia Department of Environment and Labour.

[37] In the context of the latter complaint, Ms. Bishop and Ms. Soucy contended that the Defendant had discriminated against them in a manner contrary to the provisions of Sections 45 and 46 of the *Occupational Health and Safety Act*.

[38] Ms. Bishop and Ms. Soucy also followed-up on their terminations with a complaint about the Defendant to the Nova Scotia Barristers' Society. The substance of the complaint was that the Defendant had conducted himself in a manner unbecoming a barrister given his dealings with certain fee accounts.

[39] The outcomes of Ms. Bishop's and Ms. Soucy's complaints are not specifically germane to their claims outlined herein. As such, they will not be developed further. One possible exception is the extent to which any claims herein which were the subject of past claims to the Director of Labour Standards are now *res judicata*.

[40] The Defendant also responded aggressively following his terminations of Ms. Bishop and Ms. Soucy from their employment.

[41] In particular, a lawyer associated with the Defendant and an Articled Clerk (who was also the Defendant's daughter) caused a complaint against the Claimants to be laid with the Halifax Regional Police Service.

[42] The complaint alleged that Ms. Bishop and Ms. Soucy had committed theft (under $5,000) from their workplace. The subject matters of the alleged theft were some missing client files and a computer "memory stick".

[43] The Defendant's allegations against Ms. Bishop and Ms. Soucy were not the subject of any proof. After taking the report of the allegations, the Halifax Regional Police Service declined to follow-up on them.

[44] The theft allegations against the Claimants and the complaint to the police were not well thought-out. There were many reasons for some of the Defendant's client files to have gone missing. There was at least one good reason for one of the Claimants to have been possessed of the memory stick.

[45] General damages in the sum of $100 have been pleaded on behalf of both Ms. Bishop and Ms. Soucy. They were not the subject of any particular allegation in their claim form. They were nevertheless fleshed out in the course of the hearing. The Claimants testified that the Defendant had unreasonably reported them to the police.

[46] More needs be said about the general damages claims. My findings on them are set out below.

[47] Ms. Bishop and Ms. Soucy, through Mr. Hill, commenced their claims against the Defendant in this Court on February 14, 2007. Ms. Bishop's and Ms. Soucy's claims are relatively straightforward. They allege a wrongful dismissal

and entitlements to pay in lieu of notice and unpaid vacation pay totalling $7,513.58 between the two.

[48] The Defendant's defence amounted to a general denial. In addition, there was as Order by the Director of Labour Standards, in favour of Ms. Bishop, which served to affect the outcome of her claims.

FACTS:

(i) The Defendant's Case

[49] There are, traditionally, only three methods by which a non-contracted, nonunionized employee can be terminated from her or his employment.

[50] The first method is on notice which takes into account the employee's seniority, the importance of their position with the employer and the likelihood of them finding themselves re-ensconced in an equivalent alternative position within a reasonable period of time.

[51] The second method is upon the payment of severance in lieu of that notice; with the severance to continue for the whole of the notice period had it been provided in the first place. I recognize that there are hybrids which encompass facets of both of these methods.

[52] The third method is a summary termination for "cause". In other words, where the employee has so misconducted herself or acted so far in breach of the

furthering of the employer's interests, that termination becomes absolute without any notice or any forms of severance being paid.

[53] In the circumstances of the instant case, it is clear that Ms. Bishop and Ms. Soucy were non-contracted, non-unionized employees. Their employment status had been effectively admitted by the Defendant. It had been for an indeterminant time. What was in issue were the Defendant's reasons for terminating Ms. Bishop and Ms. Soucy from their employment.

[54] With the Defendant having alleged cause, the onus shifted to him to demonstrate, on a balance of probabilities, that he could establish the necessary cause. Accordingly, the Defendant's case was required to be put on first.

[55] Ms. Bishop was hired by the Defendant and initially remained within the Defendant's employ for approximately two years. She was found by the Defendant to have a bit of an "attitude". She was occasionally found by the Defendant and others within his staff as difficult to get along with. The Defendant conceded that Ms. Bishop did her job "reasonably well".

[56] When Ms. Bishop resigned from the Defendant's employ in the early part of 2000, it was for both personal and professional reasons. According to the Defendant's observations, Ms. Bishop regarded herself as superior in energy and abilities to her immediate supervisor. She therefore did not want to continue with her employment in that hierarchy.

[57] Ms. Bishop did not care for her new position and soon returned to the Defendant with the request that he re-hire her. The Defendant was not initially so inclined. He relented when Ms. Bishop "begged" for her old job back.

[58] Ms. Soucy had a much shorter tenure with the Defendant; only about a year and a half. She was hired by the Defendant essentially as a receptionist. She had other duties. She also assumed duties she did not officially have. The Defendant never objected.

[59] Ms. Soucy was found by the Defendant to be obstreperous and obstructive. The Defendant had to warn Ms. Soucy numerous times about her attitude. Ms. Soucy was not so amenable to the Defendant's warnings. Her response to almost all of them was her "favourite expression": "whatever!".

[60] The Defendant's decision to renovate his existing office while relocating to alternative premises for a temporary period only served to highlight what he viewed as the difficulties with both Ms. Bishop and Ms. Soucy. In the Defendant's own words: "It simply got worse and worse and worse."

[61] Ms. Bishop's and Ms. Soucy's immediate supervisor eventually resigned from her position with the Defendant. She told the Defendant, on an exit interview, that she could no longer work with or tolerate Ms. Bishop and Ms. Soucy.

[62] The Defendant became concerned about Ms. Bishop's practices with

respect to Wills. It had appeared to the Defendant that Ms. Bishop was taking instructions - for new W ills and for codicils - drafting the required documentation, attending to its execution, arranging the appropriate billing and filing the resulting documentation away.

[63] The Defendant confronted Ms. Bishop regarding these practices. She denied them. He testified she called him a "liar".

[64] Matters involving Ms. Bishop were said by the Defendant to have escalated to the point that he took her to lunch to have a discussion in an attempt to straighten these matters out. The Defendant testified that in his discussion with Ms. Bishop, he called her behaviour "completely unacceptable" and that it "could not continue".

[65] The Defendant could not say whether at the luncheon meeting, he advised Ms. Bishop that the continuation of her position was in jeopardy. He testified nevertheless that he "thought it would have been implied". This is a significant distinction.

[66] In response to the Defendant's concerns, Ms. Bishop "pledged" to that she would do better. He took her at her word. Additionally, he gave her a small pay rise.

[67] The Defendant dealt with Ms. Soucy in much the same way. He was possibly a little more direct than he had been with Ms. Bishop.

[68] The Defendant told Ms. Soucy of his mind to terminate her employment. Though she denied any wrongdoing, she, too, pledged to the Defendant that she would "change her ways". The Defendant relented and decided that he would not terminate Ms. Soucy's employment.

[69] Upon the return from the temporary premises to the Defendant's newly-rebuilt office, the Defendant hired the services of a new office manager. She was to be "in charge" and to supervise Ms. Bishop and Ms. Soucy.

[70] The new office manager was to be assisted by the Defendant's daughter, an Articled Clerk, who had only recently joined his practice.

[71] Despite the pledges by both Ms. Bishop and Ms. Soucy, neither appeared willing to accept or take direction from either the new office manager or from the Defendant's daughter. In fact, Ms. Bishop "threw a tantrum" over the location of her workspace in the newly-renovated office. That forced the new office manager to re-arrange office and workspace location to accommodate Ms. Bishop and others who felt the domino effect.

[72] With the Defendant's consent, the new office manager tasked Ms. Soucy to attempt to do most of her work at the new office's reception area. The intention was that Ms. Soucy would be available to greet clients and others arriving at the Defendant's office.

[73] Ms. Soucy was also tasked to keep the office boardroom tidy and to re-arrange its chairs after meetings in it had ended. According to the Defendant,

Ms. Soucy flatly refused to do either.

[74] On one occasion, when the Defendant had specifically asked Ms. Soucy to tidy the boardroom after a meeting, she told him that it "wasn't [her] job". When he insisted that it was, she "shoved a chair into the boardroom table just as hard as she could and exclaimed 'whatever' and stomped off".

[75] It was then the Defendant said that he determined of Ms. Soucy that "she had to go".

[76] Shortly thereafter, while away from the office for a vacation, the Defendant received a number of calls from other another lawyer in the office and from the Defendant's daughter in which various misdeeds were alleged against both Ms. Bishop and Ms. Soucy. One alleged misdeed, about which more will be set out below, resulted in the Defendant being asked for his authorization to summarily terminate the employment of Ms. Bishop and Ms. Soucy. The Defendant gave that authorization.

[77] Post their terminations, the Defendant learned that "much" of Ms. Bishop's work had been sub-par. Recorded documents had not been re-filed. Reporting letters were either incomplete or had not been started. Telephone messages had either not been taken, not passed along or not returned.

[78] Notwithstanding what the Defendant called Ms. Bishop's earlier pledge to "do better", he found her to be generally obstructive and disagreeable between that

time and the time that she was terminated. Amongst other things, she was "sore" that the Defendant's new office renovations claimed the parking space which she had used. She complained about that almost daily.

[79] Another of the Defendant's complaints, particularly about Ms. Soucy, was that she and Ms. Bishop most often lunched together. They either brought their lunches to work with them or effectively "ordered in". Their preference was to eat together in a back office well away from the front office goings on.

[80] The Defendant requested on numerous occasions that Ms. Bishop and Ms. Soucy stagger their lunch hours so that each could provide reception area coverage should the need arise. Without expressly saying so, they flatly refused. The continued to eat their lunches, most often together, in the back office, with the door closed, from which they could neither see nor hear any front office goings on.

[81] The Defendant conceded in cross-examination that despite his misgivings and concerns about Ms. Soucy, he gave her a "substantial" pay rise upon the first anniversary of the commencement of her employment with him. He likewise conceded that none of his criticisms or warnings directed to Ms. Soucy had been in writing.

[82] The Defendant also conceded the pay rise he had granted to Ms. Bishop. He disputed that it was a reflection of her standing as an employee. He called it his "show of good faith" upon her pledge to do better.

[83] The Defendant also insisted that his interventions with Ms. Bishop were

regular and that he in the past had warned her of the possibility of dismissal should her attitudes not improve. None of his criticisms of her had been in writing either.

[84] Put to the Defendant in cross-examination was that Ms. Bishop and Ms. Soucy had been given relatively free reign to do as they pleased professionally as he was away for much of the time. The Defendant denied that and insisted that even when he was away, there were others in his office to whom Ms. Bishop and Ms. Soucy could have defaulted for actual legal advice and services.

[85] Elizabeth Wozniak is a lawyer. She was associated with the Defendant in the practice of law at some of the material times.

[86] By the time Ms. Wozniak testified on the Defendant's behalf, she had left his firm. She had joined Duncan Beveridge, Q.C. (now the Honourable Mr. Justice Duncan Beveridge of the Supreme Court of Nova Scotia) in his practice after his then partner, Patrick Duncan, Q.C. had been appointed to the Supreme Court bench.

[87] While associated with the Defendant, Ms. Wozniak and Ms. Bishop worked together for some time. According to Ms. Wozniak, this working relationship went from bad to worse starting some time in 2005.

[88] Ms. Wozniak testified that "it was hard to get work done" and there was "lot's of insubordination by Ms. Bishop and Ms. Soucy". Ms. Wozniak described the Defendant's office as "a real situation", hallmarked by "bad attitudes", and

"insubordination on the part of Ms. Bishop and Ms. Soucy".

[89] In the latter part of the summer/early part of the fall of 2006, the Defendant's office tried to impose some "new rules". The office had re-located back into its newly-renovated premises. There was an initiative expressed, particularly, by Ms. Wozniak to "take the practice up a notch". Ms. Wozniak worked to improve all of the Defendant's office standards; ranging from dress, to demeanour, to working styles, to working hours, to lunch times and breaks. All of these, according to Ms. Wozniak, were resented by Ms. Bishop and Ms. Soucy and resulted in their frequent and aggressive criticisms.

[90] Despite rules regarding reception area coverage, Ms. Wozniak recalled an incident in the latter part of August, 2006 when she went downstairs (from her own office) at the lunch hour to find five people at reception with none of them having been attended to. Her reaction was to look for staff, all of whom, including Ms. Bishop and Ms. Soucy, were eating together in one of the back offices.

[91] Though Ms. Wozniak conceded in cross-examination that she could possibly have been clearer in her reaction, she testified that she thought her message to Ms. Bishop and Ms. Soucy was that the reception area had to be tended all of the time and that what had happened on that one incident could not happen again, ever.

[92] Ms. Wozniak regarded her message as relatively stern. But her wishes - in fact, her directions - with respect to reception area support were ignored. Ms.

Bishop and Ms. Soucy continued to eat their lunches when and where they pleased. When the Defendant's daughter again raised the issue with them in the context of Ms. Wozniak's earlier admonitions and directions, they told the Defendant's daughter that Ms. Wozniak had lied to her and that they had received no such instructions or directions from Ms. Wozniak of the type outlined above.

[93] Ms. Wozniak was away from the Defendant's office the first week of September, 2006. When she returned, she sensed a lot of "hostility". Ms. Bishop and Ms. Soucy were both very unpleasant. Ms. Wozniak recalled that everyone in the office "felt stressed out".

[94] In order to put an end to any doubt about lunch times, Ms. Wozniak called a conference of the office's four staff members. She told the assembled that "in case [she] wasn't clear before, there always has to be someone at the front desk". Accordingly, lunch times had to be staggered. The four office staff members could not have lunch at the same time. As Ms. Bishop and Ms. Soucy provided some of the same support services to the office, they would be expected to have lunch separately so that each could man the office's reception area on a staggered basis.

[95] Ms. Wozniak recalled Ms. Bishop asking why. Ms. Wozniak replied only that "that's the rule".

[96] After the meeting, Ms. Wozniak met individually with Ms. Lawrence, the new office manager. Ms. Lawrence warned Ms. Wozniak, with respect to Ms. Bishop and Ms. Soucy, that "you can't understand what they are capable of".

According to Ms. Wozniak, Ms. Lawrence went on to explain that Ms. Bishop and Ms. Soucy "were not interfering with [the Defendant's] practice but with [Ms. Wozniak's] practice. When Ms. Wozniak asked Ms. Lawrence to elaborate, Ms. Lawrence alleged that Ms. Bishop and Ms. Soucy had accessed Ms. Wozniak's e-mail account and had read all of her e-mail.

[97] Ms. Wozniak then concluded that the Defendant's office was in crisis and that by accessing her private e-mail account, Ms. Bishop and Ms. Soucy "had crossed the line". It was then that Ms. Wozniak called (or asked the Defendant's daughter to call) the Defendant to seek authorization to terminate Ms. Bishop and Ms. Soucy summarily for cause.

[98] After the Defendant had provided the necessary authorizations, he directed Ms. Wozniak to call a friend of his to attend in the office while the terminations were actually being carried out. It was Ms. Wozniak who delivered the actual termination messages. She delivered them in the Defendant's private office. She raised the issues about Ms. Bishop's and Ms. Soucy's access of her private e-mail account. She asked Ms. Bishop and Ms. Soucy to clear their workspaces of their private materials and to leave. Ms. Wozniak had prepared cheques which were presented to both Ms. Bishop and Ms. Soucy on their departures.

[99] Predictably, the scene wasn't pleasant. Ms. Wozniak recalled yelling, screaming and swearing. Her response, primarily to Ms. Bishop, was that Ms. Bishop had received substantial support over the years and that Ms. Wozniak had

regularly stuck up for her. It was on that basis that Ms. Wozniak said (to Ms. Bishop) that she was so upset by the manner in which she (Ms. Wozniak) had been treated.

[100] Though not directly germane to my determinations, Ms. Wozniak related a number of instances in which Ms. Bishop's behaviour, in particular, fell well below that which would be expected of a modern law office (or any office for that matter). There had been a question about a computer warranty. Ms. Bishop called the supplier about it. She was extremely rude and aggressive. The supplier's representative called the office back and said that it would never deal with the Defendant's firm again because of Ms. Bishop.

[101] There were also instances in the past when Ms. Wozniak had witnessed Ms. Bishop do things like throw telephones against the walls of the office.

[102] Additionally, after Ms. Bishop had been terminated, it appears that she accessed the Defendant's Property On-Line account using her own password. She then changed the password so that the Defendant's office staff was temporarily unable to access Property On-Line system.

[103] Ms. Wozniak was questioned about alternatives to the terminations of Ms. Bishop and Ms. Soucy. She denied that there were any. She felt that she had no alternative but to terminate Ms. Bishop and Ms. Soucy on the day in question. She called the situation "unhealthy" and "so far out of control".

[104] Upon cross-examination, Ms. Wozniak described the hierarchy in the Defendant's office. When the Defendant was there, he managed the office with her assistance. When he was not there, usually for two weeks in April, a period in the fall and a week or so in March, she managed.

[105] Ms. Wozniak did not participate in the Defendant's meetings with Ms. Bishop and Ms. Soucy in which the alleged warnings were delivered. She was only aware of the Defendant's meetings with Ms. Bishop and Ms. Soucy because of what she was told by him. She also testified in cross-examination that she had influenced the Defendant to "give Ms. Bishop another chance and some more money".

[106] Ms. Wozniak and Mr. Hill, on behalf of Ms. Bishop and Ms. Soucy, had a spirited exchange in the course of the former's cross-examination over the purported "rules". Ms. Wozniak responded by testifying that Ms. Bishop and Ms. Soucy were consistently flouting the rules. They parked at the back of the Defendant's office when they knew they were not supposed to. They took smoke breaks together. They ate their lunches together. They refused to cover the reception desk as they were repeatedly told to do. They, but particularly Ms. Bishop, carried on as would a lawyer when it came to Wills. Ms. Wozniak was therefore concerned about Ms. Bishop and Ms. Soucy attempting to provide legal services beyond their qualifications and their abilities.

[107] Ms. Wozniak also conceded in cross-examination that she never told either Ms. Bishop or Ms. Soucy that flouting of the rules could lead to their

dismissals.

[108] Ms. Wozniak also conceded in cross-examination that the Defendant may have condoned some of Ms. Bishop's activities, especially as they related to Property On-Line. There was testimony regarding Property On-Line passwords and secret passwords. Apparently, Ms. Bishop had access to Ms. Wozniak's and the Defendant's secret passwords despite the fact that only lawyers should be in the possession of those security devices.

[109] Ms. Wozniak said that it was necessary for Ms. Bishop to have access to secret passwords because there were times when she was attending to property migrations herself. Ms. Wozniak described those occasions as limited.

[110] Also in the course of cross examination, Ms. Wozniak and Mr. Hill discussed some of Ms. Bishop's core competencies. Ms. Wozniak conceded that Ms. Bishop could be relatively good at what she was asked to do. She was confident. She was a relatively quick-study. In the course of her employment with the Defendant, there were few, if any, indications of sub-standard technical job performance.

[111] The Defendant's daughter testified. She had joined the Defendant's firm in May 2006 as an articled clerk. In addition to her normal articled clerk duties, she also had some management duties. The intention was that Defendant's daughter would work with him and take over his practice upon his retirement.

[112] The Defendant's daughter's testimony mirrored that of Ms. Wozniak. She was not critical of Ms. Bishop's and Ms. Soucy's technical abilities. She was critical of their apparent disinterest in creating a harmonious working relationship and getting along with the Defendant's staff and other lawyers.

[113] The Defendant's daughter testified as to the "absolute hostility" displayed by Ms. Bishop and Ms. Soucy. Though perhaps a conclusion which the Defendant's daughter was not positioned to make, she testified that Ms. Bishop and Ms. Soucy that it was "clear they never wanted it to work".

[114] The Defendant's daughter also punctuated her testimony with comments like "you could cut the tension [in the office] with a knife" and that she often felt as if she "wanted to throw up".

[115] The Defendant's daughter had ample management experiences prior to going to law school. She had worked in business. She had subordinates of varying numbers. At various times as few as two people and as many as ten people were reporting to her.

[116] The Defendant's daughter was nevertheless not intimately involved in the management of his office. She testified that management responsibilities were as Ms. Wozniak had testified they were; the Defendant attended to most of them with Ms. Wozniak's assistance. When the Defendant was away, Ms. Wozniak attended to them.

[117] The Defendant's daughter had little actual knowledge of what transpired between Ms. Bishop, Ms. Soucy, the Defendant and Ms. Wozniak. She knew only what she was told. She was present at a meeting with Ms. Bishop and Ms. Soucy when she raised her understanding of Ms. Wozniak's directions that they were not to eat lunch together leaving the office's reception area unmanned. It was then that Ms. Bishop and Ms. Soucy called Ms. Wozniak a "liar" and that she had never provided them with any such direction.

[118] The Defendant's daughter conceded on cross-examination that no one to her knowledge expressly stated to Ms. Bishop and Ms. Soucy that they would be terminated if their attitudes did not improve.

[119] In the course of his examination of the Defendant's daughter, Mr. Hill took her through the exchange of a number of e-mail messages. Some of those were between the Defendant's daughter and Ms. Wozniak. Others were between Ms. Bishop and Ms. Soucy.

[120] The Defendant's daughter could not really explain the e-mail messages she exchanged with Ms. Wozniak in the latter part of August 2006. They appeared to relate to the incident in which Ms. Bishop and Ms. Soucy denied to the Defendant's daughter that Ms. Wozniak had directed them not to eat their lunches together while leaving the office's reception area unmanned.

[121] It was also from the apparent reactions of Ms. Bishop and Ms. Soucy to these e-mails that the Defendant had concluded that the latter (but perhaps only

Ms. Bishop) had been accessing Ms. Wozniak's private e-mail account. Connecting the two is, I conclude, somewhat difficult. The e-mail messages are so poorly structured and so separated by time that it is difficult to draw any conclusions from them at all.

[122] What was clear from the impugned e-mail messages is that the Defendant's daughter took as threatening what was exchanged between Ms. Bishop and Ms. Soucy back in June 2006. Though the latter array of messages contained some intemperate comments by Ms. Bishop and Ms. Soucy about the Defendant's daughter and, perhaps, about Ms. Wozniak, nothing much turns on them from the perspective of the terminations in issue.

[123] Terry Lynn Laurence started working with the Defendant in 1974 and remained in his employee for some 14-15 years.

[124] Initially, the Defendant employed two secretaries, her and one other. Later, it was just the Defendant and her. The Defendant's practice was roughly divided evenly between property and various forms of litigation. She does not recall any problems within the office. She called her working conditions "fine".

[125] After the some 14-15 years, Ms. Laurence simply "went home". She had a young family. She preferred to devote her energies there.

[126] Some time in 1996, the Defendant's wife called Ms. Laurence. The Defendant's wife was a dentist. She maintained a busy practice. She was seeking

some temporary office assistance. She asked Ms. Laurence to come and work for her for some six weeks.

[127] The six weeks morphed into many years. Ms. Laurence stayed in the employ of the Defendant's wife until 2005.

[128] In the fall of 2005, the Defendant called Ms. Laurence and asked her to return to work within his law practice. She returned to his office in December, 2005. She worked primarily as a property secretary.

[129] The office staff at the time was comprised of her, Ms. Bishop, Ms. Soucy, Michelle Raymond, an articled clerk (Janus Siebrits), Ms. Wozniak and the Defendant.

[130] Ms. Laurence described the atmosphere in the office as not good. She labelled Ms. Bishop and Ms. Soucy as "mean and nasty". She tried to get along as best she could "by keeping [her] head down".

[131] Ms. Laurence recalled that Ms. Bishop's and Ms. Soucy's meanness and nastiness were not reserved for her. In Ms. Laurence's recollection, they were mean and nasty to other people as well.

[132] To Ms. Laurence's mind, Ms. Bishop and Ms. Soucy "wanted to run the show". The only way to get along with them was to agree with them. Ms. Laurence described herself as feeling "bullied" by Ms. Bishop and by Ms. Soucy.

[133] Ms. Laurence recalled that things "started to come to a head" in February 2006. At the time, the Defendant's office was under going substantial renovation. He had moved his practice into temporary quarters. Ms. Wozniak had employed a secretary or assistant of her own. The Defendant's daughter also started her articles.

[134] Ms. Laurence testified "that things go worse" after the Defendant's daughter commenced her articles. Shortly thereafter, Ms. Wozniak's secretary left the Defendant's employ. Ms. Bishop and Ms. Soucy were glad about that.

[135] Ms. Laurence recalled numerous dust-ups and confrontations in the Defendant's office in the winter of 2006. Ms. Soucy, in particular, fought and argued with the Defendant's daughter. Ms. Soucy was reluctant to do property work and at times refused to assist with it. There were incidents over lunch hours where closing in which Ms. Soucy was involved went past her normal lunch hour. Ms. Laurence recalled Ms. Soucy as being "irate" when she and Ms. Bishop could not lunch together.

[136] Upon the relocation of the Defendant's office from its temporary premises to its newly-renovated premises, parking became an issue. Ms. Bishop, who had a parking space behind the Defendant's old office, saw her parking space eliminated. She was very angry about that. She brought it up time and again. Though Ms. Laurence was aware that the Defendant had met with both Ms. Bishop and Ms. Soucy prior to the relocation of his office into its newly-renovated premises, there was no noticeable difference in their behaviour. In some respects, testified Ms.

Laurence, "things were worse".

[137] The move of the Defendant's office back into its newly-renovated premises was not without its incidents either. Beyond parking, construction had not quite finished. There were minor details which contractors were attending to. They included some railings and some finish work such as trim, painting and varnishing.

[138] The move out of the Defendant's office into temporary premises and the move back in to the newly-renovated premises caused upheaval. It was hard work. Everyone was required to pitch in. Ms. Bishop and Ms. Soucy were no different. Though they "did their bit" according to Ms. Laurence's testimony, they were reluctant. They were also upset by the upheaval. It made for a very strange and very difficult working environment.

[139] Ms. Laurence began to share an office with Ms. Bishop. Ms. Bishop was easy to anger and frequently displayed her anger, over all and sundry to Ms. Laurence. Ms. Bishop would slam the phone down. She frequently slammed doors. She kicked filing cabinets and she slammed the filing cabinet doors shut.

[140] Ms. Laurence thought that Ms. Bishop was upset about where her new workspace had been assigned by the Defendant's daughter but could not be sure. Ms. Bishop rarely spoke about the root cause of her anger and frustrations. She just took them out on whomever or whatever was around.

[141] Ms. Laurence recalled overhearing several intemperate remarks by both Ms. Bishop and Ms. Soucy. Though these remarks could not have been uttered seriously and would not, inand-of-themselves, warrant Ms. Bishop's and Ms. Soucy's dismissals, they were indicative of the attitudes which Ms. Laurence testified they displayed. On one occasion, Ms. Laurence overheard Ms. Bishop and Ms. Soucy wishing that Ms. Wozniak and the Defendant's daughter would both "fall down the stairs and die". Both Ms. Wozniak and the Defendant's daughter were pregnant at the time.

[142] Ms. Laurence testified that Ms. Bishop and Ms. Soucy appeared to revel in the decisions by other staff members to leave the Defendant's employ. According to Ms. Laurence, they talked about "getting rid of" Mr. Siebrits and another secretary. They also talked about "the next to go" as Ms. Raymond.

[143] Ms. Laurence observed the various discussions and goings-on regarding the manning of the reception area in the Defendant's newly-renovated office. She recalled the instructions and directions given by Ms. Wozniak. She recalled the instructions and directions repeated by the Defendant's daughter.

[144] Following the incidents involving the instructions and directions with respect to the manning of the office's reception area, Ms. Bishop, in Ms. Laurence's presence, "pulled up" the email exchange between Ms. Wozniak and the Defendant's daughter. Ms. Bishop's point to Ms. Laurence was that Ms. Wozniak and the Defendant's daughter were "already emailing back and forth" on that.

[145] Ms. Laurence also testified that Ms. Bishop accessed additional e-mail exchanges between Ms. Wozniak and the Defendant's daughter. Some of these were printed off and shown by Ms. Bishop to Ms. Laurence. Many of the e-mails dealt with the office rules and the discussions Ms. Wozniak and the Defendant's daughter had been having with respect to their implementation and enforcement.

[146] Ms. Laurence conceded in cross-examination that when she returned to the Defendant's office in December 2005, her legal skills were "rusty". She had done not any legal assistant or secretarial work for some time. She had limited experience with the Windows computer operating program. She had no experience whatever with Property On-Line.

[147] Ms. Laurence also conceded that Ms. Bishop, in particular, was "pretty good at what she did". In other words, Ms. Laurence appeared to respect Ms. Bishop's technical abilities as well as her energy. Though Ms. Laurence was critical of some of Ms. Bishop's uncompleted files detected post the terminations in issue, it was unclear how much of that - if any of it at all - could be attributed to Ms. Bishop's fault. The Defendant's office had moved twice on a wholesale basis within 7-9 months. Ms. Laurence accepted the fact - as she should have - that in such circumstances, things could have simply gone missing.

[148] Notwithstanding her treatment at the hands of Ms. Bishop and, to a lesser extent, Ms. Soucy, Ms. Laurence never complained. Despite Mr. Hill's prodding, she never explained why. She simply repeated that she "kept her head down".

[149] By the time she testified, Ms. Laurence could not recall what specific e-mails she had looked at or had been shown to her by Ms. Bishop. She remembered the contents generally. She recalled that she "couldn't believe it" when Ms. Bishop printed the e-mails off and showed them to her. It was at a time when the two were having lunch together. Ms. Laurence did not have access to other people's e-mail accounts.

(ii) The Claimants' Cases

[150] Ms. Bishop was engaged in much of the Defendant's practice with the exception of substantial property work. She did wills, estates, civil litigation, criminal defence work, family law but only a little bit of property.

[151] Ms. Bishop regarded herself as a dedicated employee. She "did what had to be done". Her work was often done "on weekends or at home". In addition to her legal work, she shovelled snow outside of the Defendant's office front door, she cleaned the bathrooms and she dusted.

[152] Ms. Bishop's property work for the Defendant was restricted to sales, migrations and re-financings. Ms. Laurence did the purchases. Prior to Ms. Laurence, another of the Defendant's staff members had done most of his property work.

[153] Ms. Bishop testified that there was always a degree of upheaval in the office. Certain matters were left unattended. Certain regular follow-ups were not

completed. An example was after the staff member's departure in December, 2005, no one bothered to look through her files to ensure that they were up-to-date. Though Ms. Bishop did not regard that as her responsibility, it didn't appear to be anyone else's responsibility either.

[154] Ms. Bishop never received a written warning from the Defendant about her performance. She denied any meetings or discussions about her performance with the Defendant either. She recalled that there were regular meetings about the renovations to the Defendant's office and about the transition into and out of the temporary office premises.

[155] Ms. Bishop denied that the Defendant was critical of her in any way during the luncheon the two had in the latter part of the summer or the early part of the fall of 2006. To the contrary, Ms. Bishop testified that the Defendant told her he was "happy" and he gave her a not insignificant pay rise.

[156] Though there had been much discussion about a transaction involving 133 Anchor Drive in Halifax, it was not a transaction in which Ms. Bishop was involved. Though she could see that there were problems with the transaction's follow-up, she did not regard them as her problems. First, she didn't create them. Second, she was never asked or directed to follow-up on them.

[157] Ms. Bishop freely admitted undertaking certain Will work on behalf of the Defendant. She testified that when he was available, she would take instructions, do up drafts and leave them for his review. When he was not available, she would

do the Wills herself. The Defendant would then review some of them. Others he did not review. According to Ms. Bishop, the Defendant knew that she was doing this. Whether he condoned it or not, he didn't object to it.

[158] Ms. Bishop had password access to all of the e-mail accounts in the office. She was only one who did. The Defendant knew that. Others knew it too. Notwithstanding the availability of the Defendant's office e-mail accounts to her, she never accessed what was not hers. She testified that she had no reason to do so. She described as a "lie" Ms. Laurence's testimony that she had done so.

[159] Though Ms. Bishop assisted with the Defendant's office accounting, it was often times not current. Trust account reconciliations, in particular, were not run regularly. Often times, trust account reconciliations would only be run when the Defendant's practice general account was low and trust accounts were reconciled to check for available fees and disbursements. This was not an accounting regime which Ms. Bishop established or maintained. She assisted with accounting to the extent that she could. Beyond that, there was little in the form of regular accounting within the Defendant's practice.

[160] Ms. Bishop said that there was a "system" within the Defendant's office to ensure that property transactions were fully and finally concluded. There was a "semi-complete" drawer in a filing cabinet. It would be checked when there was time. The checking was intended to result in the management of Releases, the recording and delivery of final documents and the final reporting to purchasers, vendors and financiers. There frequently was not enough time to attend to these

details. Complete property transactions were always behind. Ms. Bishop testified that the Defendant knew that and was never overly concerned about it.

[161] Ms. Bishop testified that the termination of her employment with the Defendant was not expected. At approximately 3:30 on the afternoon of September 12, 2006, she was meeting with a client. At approximately 4:15 on the same afternoon, she was called by Ms. Wozniak into the Defendant's own office. The Defendant's daughter was also there.

[162] The reason given to Ms. Bishop by Ms. Wozniak for the termination related to her accessing of Ms. Wozniak's and the Defendant's daughter's private e-mail accounts. Ms. Bishop denied it. That was what was said. That was all that was said.

[163] After Ms. Bishop's termination had taken place, she was told to "get out" or words to that effect. She was watched until she left. She received two cheques: one for four weeks' pay and one for past due vacation pay.

[164] Ms. Bishop described herself as shocked over her termination. She testified that it took her a month "to be able to leave the house". Thereafter, she easily found equivalent employment. Her salary at her new place of employment was approximately $800 more annually than she had earned from the Defendant. That may have been because she misrepresented her annual salary from the Defendant to her new employer. It may also have been because Ms. Bishop thought she earned $33,200 annually and not only $32,200 annually.

[165] Ms. Bishop testified as to the so-called "memory stick" and the so-alleged "missing files". She testified that the memory stick was the effective PC Law back-up. It was always in place in her computer unless she took it home for evening or weekend work. Objectively, there appeared to be nothing improper or illegal over Ms. Bishop's use of the "memory stick".

[166] The same can be said for the alleged "missing files". As noted by the police in the report tendered into evidence, there was ample objective basis to conclude why files could have gone missing within the Defendant's office without there being any associated wrongdoing.

[167] Ms. Bishop's cross-examination was not particularly telling. She denied all of the Defendant's allegations. There had been no upheaval. The people within the Defendant's office "had their moments" but generally got along fine. In several respects, all were "friends to this day". There was never any meeting with the Defendant in which she was warned that her position was in jeopardy and that she had to mend her ways. She reiterated that Ms. Laurence's testimony about her private e-mail access was a "lie".

[168] Ms. Bishop's testimony with respect to the access to the Defendant's Property OnLine account on September 13, 2006, was more equivocal. She testified only that she did not recall accessing the account. She could not explain why the Property On-Line directorate would conclude that she had. She agreed that she was one of the only ones to have Property On-Line access.

[169] Ms. Bishop's testimony regarding the June, 2006, e-mail exchange tendered into evidence between herself and Ms. Soucy was also equivocal. Though Ms. Bishop could not deny the e-mail exchange, she testified that she did not know who or what it was about. Only on reexamination did Ms. Bishop concede that the June 2006 e-mail exchange with Ms. Soucy "might have been about [Ms. Laurence]".

[170] Ms. Soucy went to work for the Defendant in March, 2005. She described her tenure as "just short of two years before [she] was dismissed". It was actually more like 18 months.

[171] Mr. Hill, in the course of direct examination, put the impugned e-mail exchange referred to above to Ms. Soucy and asked her what it was about. She did not recall the e-mail exchange or who it was about. She did not deny that the e-mail exchange had taken place.

[172] Ms. Soucy also disputed any suggestion by the Defendant that she had received warnings about her conduct as one of his employees. There were discussions with the Defendant about what had to be done with respect to individual files and groups of files. To her recollection, there was never any discussion about her office conduct or about her competence.

[173] When Ms. Soucy went into the Defendant's employ, she had some para-professional legal experience but she "was still new". She thought she had performed admirably as she had received a pay rise after only a few months.

[174] Ms. Soucy described most of the people in the Defendant's office got along well. She thought she got along fine with Ms. Laurence. She testified that she liked Ms. Laurence and respected her. She testified to the odd office "commotion". She described those as relating to the Defendant's personal issues without elaboration.

[175] Much of the rest of Ms. Soucy's testimony related to the day that her employment with the Defendant was terminated. She didn't recall anything special about the day other than it being "busy". She recalled being summoned into the meeting with Ms. Wozniak and the Defendant's daughter. She was told that she was being dismissed. "It was about reading an e-mail".

[176] She was thereafter watched by Ms. Wozniak, the Defendant's daughter and another man. She packed her personal things and left.

[177] Ms. Soucy received her final pay cheque but no vacation pay and no form of severance.

[178] Ms. Soucy denied aggressively in cross-examination that she had ever been the subject of a warning about her conduct by the Defendant or by anyone acting on his behalf. She denied that she had ever been disciplined. She denied that she had ever been told to "change her ways".

[179] She did not recall ever being told that part of her job was to straighten up the office boardroom after meetings in it had adjourned. She did not recall - but

did not deny - that she ever pushed a chair into the office boardroom table as hard as she could.

[180] Ms. Soucy also testified in cross-examination that she knew of a number of "personal issues" around the office. She testified that "stayed out of them to the best [she] could".

[181] Ms. Soucy denied having any idea that her position with the Defendant could be terminated. Her search to find alternative employment commenced almost immediately upon the heels of September 12, 2006. She applied regularly for other positions. It was six months or so before she found alternative employment in March, 2007.

ANALYSIS:

(i) Assessing Credibility

[182] In many respects, the instant case has boiled down into "what he said and what she said".

[183] On the one hand, the Defendant testified to a veritable litany of complaints regarding the Claimants' respective performances and to a regular set of criticisms designed to motivate them to "change their ways".

[184] On the other hand, both of the Claimants have denied receiving any form of discipline from the Defendant. Quite to the contrary, they regarded their

working relationships within the Defendant's office as relatively harmonious. To reiterate, both of the Claimants were shocked when they were terminated from their positions with the Defendant on September 12, 2006.

[185] In assessing credibility, the Courts have set out some helpful rules.

[186] The first is whether a witness' testimony is, in-and-of-itself, improbable or unreasonable.

[187] The second is whether the witness' testimony contains an intrinsic contradiction or set of contradictions.

[188] The third is whether a witness' testimony has been attacked by an opposing witness of equal or greater credibility.

[189] The fourth is whether a witness has been attacked by an opposing witness whose character has not been put into question because of past bad behaviour.

[190] Coupled to whether a witness' testimony is improbable or unreasonable is the question as to whether or not his or her demeanour whilst testifying appeared to support truthfulness on the one hand or lack of truthfulness on the other.

[191] In the instant case, the Defendant is a senior lawyer with almost 40 years of experience. There are many who would no doubt posit that I should conclude, almost as an axiom, that he would be assiduous in his recounting of only the truth.

[192] Though attractive, and certainly easy from the perspective of an ultimate finding, such an approach would be patently unfair to the Claimants. In fact, such an approach might smack of truthfulness being assessed only on the basis of occupation, profession, seniority or standing within the community. Clearly, the Claimants would be entitled to better (and to greater) assessment and balance.

[193] In *Weeks v. Weeks*, [1955] 3 D.L.R. 704 (B.C.C.A.) (per: O'Halloran, J.A.), it was held that:

> … a Court must look for the balanced truth in the corroborative evidence if such exists, and in any event measure all the evidence perspectively by the test of its consistency with the preponderance of probabilities in the surrounding circumstances: …

[194] Put another way, the Ontario Court of Appeal (per: Riddell, J.A.) held in *Wallace v. Davis* (1926) 31 O.W.N. 202 that:

> … the credibility of a witness in the proper sense does not depend solely upon his honesty in expressing his views. It depends also upon his opportunity for exact observation, his capacity to observe accurately, the firmness of his memory to carry in his mind the facts as observed, his ability to resist the influence, frequently unconscious, of interest to modify his recollection, his ability to reproduce in the witness-box the facts observed [and] the capacity to express clearly what is in his mind …

[195] In circumstances where the direct protagonists were in complete contradiction of each other, as in the instant case, courts must often look to whatever independent evidence might exist. Even in that case, the importance of balancing is significant. There are circumstances wherein even "independent"

witnesses can take on or "personalize" a dispute in which they are not directly involved. In such circumstances, their testimony, whether it is in favour of one side or the other must be weighed carefully and granted a premium or a discount as necessary. So it is in the instant case.

[196] The nub of my decision is dependent, as Mr. Hill so forcefully put it, on my assessment of whether or not the events of September 12, 2006, gave rise to the Defendant's right to terminate the Claimants' employment with him summarily and without notice and without severance.

[197] As an adjunct to that, Mr. Hill, equally forcefully, underscored that in the absence of such a conclusion, I must nevertheless be able to find that against the backdrop of all of what had gone on before September 12, 2006, the incident involving the Claimants in the private e-mail messages of others, if it did take place, was sufficient as "the straw which broke the camel's back" with respect to their continuation of their employments with the Defendant.

[198] In that regard, such a finding would be contingent (and contingent only) on the correlative finding that the Claimants had been warned so frequently and in such terms that they could not have helped but have arrived at the conclusion themselves that their positions were in jeopardy.

[199] In support of his analysis, Mr. Hill highlighted in argument that there were no written warnings given to either of the Claimants with respect to the alleged sub-standard nature of their performances or with respect to the possibility

that if they did not "shape up", they would be "shipped out". Additionally, Mr. Hill underscored that there was no greater (or better) evidence of any other forms of warning from the Defendant to either of the Claimants.

[200] The Defendant, on the other hand, testified clearly and over and over as to his litany of concerns regarding both of the Claimants. He testified that he warned them both to mend their ways or that their positions would be in jeopardy. Whether or not actually used the latter words, the Defendant argued that it would be a reasonable inference - in fact, the only inference - to draw from his comments that repeat performances of bad behaviour on the part of either of the Claimants would lead to their dismissals.

[201] On the issue of the Defendant's testimony of the bad behaviour on the part of the Claimants, there was ample corroboration.

[202] Ms. Wozniak found Ms. Bishop and Ms. Soucy in a word to be "intolerable".

[203] Ms. Laurence was more reserved in her criticisms of the Claimants than was Ms. Wozniak. Her conclusions were nevertheless the same. She was intimidated, frightened and bullied by the Claimants. She sometimes "teared up" over their treatment of her. She readily acknowledged the technical skills which they brought to their respective positions. It was their characters, their personalities and the demeanours towards others with which Ms. Laurence found fault. She and Ms. Wozniak both shared that latter view.

[204] Impossible for me to discount is that Ms. Wozniak and Ms. Laurence are no longer reliant on the Defendant for either practice or employment opportunities. Ms. Wozniak, between the Claimants' terminations and the hearing before me, had left her association with the Defendant. Ms. Laurence, too, had left her employment with the Defendant between the Claimants' terminations and the hearing.

[205] Considering that neither Ms. Wozniak nor Ms. Laurence could gain anything or curry any favour with the Defendant as a result of their testimony, I must view it as independent and compelling. I have already noted that it was corroborative of the Defendant's own observations and conclusions.

[206] Whether it leads me to the conclusion about whether or not the Claimants were properly dismissed for "cause", or because of "cause", is another thing. That is an analysis which follows.

[207] Solely on the question of credibility, however, where Ms. Wozniak and Ms. Laurence disagreed with or gave testimony different from that given by the Claimants, it is the former witnesses whose testimony I must prefer. Upon my observation of them, I concluded that their testimony was factual, dispassionate and given from the perspective of ample personal and firsthand observation.

[208] The Claimants, on the other hand, gave rather general denials of all of the allegations cast against them. They thought the Defendant's office ran well - if not perfectly. They regarded themselves as little short of "model employees". They

testified to their enduring friendship with Ms. Laurence. Ms. Bishop labelled Ms. Laurence as a "liar" anyway. They denied both ever being told that anything was wrong with their demeanour and that they had pledged to "do better". They denied having both ever been told that their positions were in jeopardy (likely the case) and that they had any reason to infer that they were (likely not the case).

[209] Sometimes, the Claimants denied the obvious; such as the basis for and the intended target of their nasty e-mail exchange of June, 2006. Whether the subject of that e-mail exchange was the Defendant, his daughter, Ms. Wozniak or any other staff member, they did their credibility no good by denying the impetus of the subject messages.

(ii) Cause

[210] "The onus is on the employer to establish on a balance of probabilities that the misconduct of the employee justifies dismissal": (*Rummery v. Matthews* (2001), 153 Man. R. (2d) 229 Man. C.A.).

[211] In itself, "just cause" can arise from a single incident or from a collection of incidents "built up over time".

[212] Regardless, "just cause" must amount to the type of behaviour which strikes at the fundamental relationship between the employer and the employee. In short, whenever an employee has so misconducted himself or herself when considered against the backdrop of the employer's operations, broadly defined, that an abject disinterest in those operations has been shown, "just cause" will be held

to have been established: Ellen Mole, "*Wrongful Dismissal Practice Manual*" (Toronto: Butterworths, updated to March 2005, at s. 4.1).

[213] In *Amos v. Alberta* (1995), 166 A.R. 146, the Alberta Court of Queen's Bench (per: Veit, J.) held, at paras. 51 and 52 that:

> Usually, one instance of insubordination will not be sufficient to summarily fire an employee. However, one incident of insubordination can be enough if:
>
> - the insubordination be grave;
> - it consists of wilful and deliberate disobedience of an order; \
> - work rules were made known to the employee;
> - work rules were consistently enforced;
> - work rules were clearly communicated to the employee;
> - the work order was authorized, that is, that it came within the scope of the worker's duties;
> - the worker was made aware, unequivocally, that discipline is the penalty for disobedience;
> - the work order was lawful and reasonable in content;
> - the employee has no reasonable excuse for disobedience;
> - the breach be serious.

[214] In summary, a court must assess all relevant circumstances to determine if, in a particular case, insubordination justifies summary dismissal.

[215] I am satisfied, largely on the basis of Ms. Laurence's testimony, that the Defendant established cause to summarily terminate the Claimants' respective employments on September 12, 2006. I find in the circumstances that even the single incident of accessing other people's e-mail sufficient to establish that cause

existed.

[216] My conclusions in this regard have been driven by several factors.

[217] First, e-mail, like all forms of restricted communication, regardless of the casual approaches which have been permitted to develop around it, is designed and expected to be private.

[218] Second, employers must be free to be able to have open and free-wheeling yet confidential discussions about their employees in order to ensure that their business enterprises and professional operations function smoothly and properly.

[219] Third, while far from ideal, e-mail messaging has become a preferred form of communication for many people. It is there that they record their thoughts, their criticisms, their praises, their observations and their suggestions with respect to improvements. If they cannot do so confidentially, the "chilling effect" would be profound.

[220] Fourth, it would be impossible for any employer to maintain any form of standard behaviour or discipline if all of its thoughts and communications in that regard were open to the employees who were the subject or potential subject of them.

[221] In arriving at this conclusion, it matters not to me that for certain circumstances, Ms. Bishop and Ms. Soucy had access to several of the private

e-mail accounts in the Defendant's office. Having access to an e-mail account for particular legitimate purposes and specifically accessing a single or a single set of e-mail messages are two vastly different things. If an employee was to be trusted with the former, he or she should be astute enough to understand that the access does not extend without circumscription.

[222] One would have thought, and I in fact conclude, that if, in the context of general access to an e-mail account, a more junior employee was to come across something relative to their employment, they would resist the temptation to look at it or be prepared to suffer the consequences. The fact that the Claimants could not, for whatever reason, resist that temptation threw their trustworthiness into question. In the result, the Defendant cannot be criticized for having terminated their respective employments summarily and for cause.

[223] Furthermore, the Claimants' decision to access the private e-mail messages of others would tend to discount their disavowal of any knowledge that their positions were in jeopardy. Even if they were unaware, up until the time of the lunch hour incident, of disaffection being held by the Defendant with respect to their respective performances, they surely knew it at that time. The fact that they thereafter chose to access private e-mail messages which addressed how the Claimants would, could or should be dealt with in future, revealed considerable about their knowledge of the Defendant's objective assessment of their roles to that time. More about that will be set out below.

(iii) An Alternative to Cause ? "Cumulative Discipline"

[224] In the event that I am wrong in my conclusion that the incident surrounding the Claimants' access to the private e-mail accounts of other people working in the Defendant's office amounted to cause justifying their summary dismissal without notice and without severance, I will proceed to assess provisionally whether there was any "cumulative discipline" of the Claimants by the Defendant which would have alternatively warranted or justified the dismissals which did take place.

[225] The hallmark of cumulative discipline is the so-called "duty to warn". According to Ellen Mole (*supra*, at s. 4.16) the duty to warn is actually a duty to provide a miscreant or misguided employee with multiple warnings "sufficient to give an employee an opportunity to improve, or to inform him or her of failure to meet the standards expected or to correct the identified problems".

[226] Against the backdrop of the testimony adduced from Ms. Wozniak and Ms. Laurence, it would be impossible for me to find on a balance of probabilities that the Defendant had not discussed with the Claimants, in very clear terms, his expectations with respect to their attitudes and conduct within their workplace. In such circumstances, the actual warning (or threat) of termination as a possible consequence is irrelevant. The authorities are clear that such a conclusion can be inferred from existing circumstances and ought to be inferred by employees facing or involved in those circumstances when obvious.

[227] The problem with the Claimants in the instant case was not so much their attention to the technical aspects of their employment as it was their attention (or

lack of it) to basic civility around the Defendant's office. One exception, of course, was Ms. Soucy's abject failure to fulfil the Defendant's expectations with respect to where within his office she would actually carry out most of her work and how she would continue to occupy the front office reception area even when Ms. Bishop had chosen to go to lunch on her assigned hour.

[228] Though written warnings to employees in such circumstances are generally to be preferred, that is an evidentiary expedient. The authorities make clear that written warnings are not an absolute requirement in face of reasonably compelling evidence that the warnings were in fact given. As was held by the Newfoundland Supreme Court Trial Division (per: Easton, J.) in *Parsons v. N1 Cablesystems Inc.*, [1994] N.J. No. 275 (at paras. 78-79):

> Warnings are sufficient where they refer to the areas of employer concern, and where, objectively, it could be implied that the employee's job is in jeopardy unless the employer's concerns are satisfied. There is no requirement that the warnings be in writing. However it must be given in clear terms and the employee must understand and appreciate the significance of the warning (Legge v. Newfoundland Telephone Co. Ltd. ([(1989) 75 Nfld. & P.E.I.R.. 21]).
>
> I agree that warnings given to an employee need not be in writing, but I believe, as the court said in Legge that any warning must be given in clear terms and it must be affirmatively shown that the plaintiff in this case understood and appreciated the significance of the warning. Not only here do we have the plaintiff denying that any warnings were, in fact, given, but we have his supervisor agreeing that, in fact, if there was anything said it was more or less said in a casual conversation and he goes as far as to say on one occasion that there was 'nothing official'. Under these circumstances, it is difficult to see how the company can say that the plaintiff was in fact told in sharp, clear and unmistakable tones that he would have to improve or his

> job would be in real jeopardy. There is just no evidence here to satisfy that requirement.

[229] As a counterpoint to the findings of Easton, J. in *Parsons*, there was a veritable litany of evidence adduced from and on behalf of the Defendant with respect to the types of warnings given to the Claimants. It may be that none of the warnings were given in directive or angry tones. But that would not have been expected in a professional workplace anyway. Instead, the Defendant and his senior second-in-command appeared to have been careful yet deliberate in the delivery of their messages to the Claimants. They had come to resent the Claimants' attitudes and personal mannerisms within the workplace. They had come to understand that the Defendant's other employees felt similarly assailed by the Claimants' insensitivity and overt nastiness. They wanted the Claimants to "stop it". They could have been plainer. But not much more so.

[230] I find that the Claimants' behaviour combined insolence and insubordination with an overall "negative attitude". Though the inability to get along with co-workers and superiors will not ordinarily be an acceptable basis for a summary dismissal, it will be where the impugned behaviour strikes negatively at the heart of the fundamental working relationship.

[231] In that regard, the Defendant's office was a small one wherein the team approach to the delivery of the clients' legal services was a true requirement. Each employee had to be able to rely upon every other employee to ensure that the client service ends of the Defendant's practice were fulfilled. Creating an environment of oppression would not have been conducive to that end. Raising it with the

Claimants frequently and in fashions which were temporally connected with individual incidents was appropriate on the part of the Defendant.

[232] The Claimants' failures to improve were their own doing and their own fault. The circumstances complained of by the Defendant were not of his making. I have already commented on the stresses which the two moves of the Defendant's office would have caused. Incidents arising from those moves, alone, have been essentially rejected as a basis for the Defendant's actions. They were not argued by the defendant as the basis for anything anyway.

(iv) Mixed Messages

[233] Much has been made of the Claimants of the pay rises accorded to them by the Defendant even in the course of what he testified were meetings aimed at securing their pledges to more positive conduct and his warnings of negative consequences should they have failed to improve.

[234] It is trite that an employer will fail in his duty to warn if his warnings are not clear and unambiguous. The authorities are nevertheless clear simple fact of pay rises alone will not be held to create an ambiguity in favour of the affected employees.

[235] The concept of "mixed messages" was considered by the British Columbia Court of Appeal (per: Goldie, Donald and Huddart, JJ. A.) in *Rieta v. North American Air Travel Insurance Agents Limited*, [1998] B.C.J. No. 640.

[236] *Rieta* was an appeal from a trial court's wrongful dismissal award in favour of an employee. The employee had been summarily dismissed. The employer had argued at trial that there was sufficient cause.

[237] The nub of the trial judge's reasons was found at paras. 40-42 ([1996] B.C.J. No. 816):

> In the case at bar the Defendant relied on the meeting of November 23, 1993 as constituting a warning to the Plaintiff. The Defendant could not rely on any other aftermath following the incidents of misconduct because Dr. Plotkin openly admitted that he did not discuss the Plaintiff's misconduct with her. He said he was 'flabbergasted' by the Plaintiff's treatment of Ms. Brueghel, but he never spoke to her about it.
>
> Similarly, he was "shocked" by the Plaintiff's conduct in the meeting of January 26, 1994 but all he did was to query whether they had been a bit harsh. He asked the Plaintiff to correct her attendance records, but never told her that her job was in jeopardy if she didn't. Similarly, in the meeting of November 23, 1993 Dr. Plotkin never told the Plaintiff that her job was in jeopardy and that she would be fired if her performance did not improve. He asked her to stop 'politicking' but even that was unclear as to what was expected of her. The Plaintiff thought politicking meant gossiping. Dr. Plotkin meant garnering support for her advancement.
>
> Furthermore, at the meeting of November 23, 1993 Dr. Plotkin gave the Plaintiff a raise and promotion which is inconsistent with a clear warning that her job was in jeopardy.

[238] In synthesizing these reasons, the British Columbia Court of Appeal held (at para. 10) that:

> I can find no ground for interfering with the learned trial judge's appreciation

> of the evidence. It was open to her to find that the criticism fell short of what was required and that when it was combined with a promotion and raise, the plaintiff received a mixed message.

[239] In context, the Claimants in the instant case could not have inferred a mixed message from the Defendant's comments that they were expected to improve their behaviours. His testimony was that in the course of his discussion with Ms. Bishop, in the latter part of the summer or the early part of the fall of 2006, he offered her a pay rise as a good faith gesture. That cannot reasonably be construed as a balm on the sting of his remaining comments.

[240] Quite apart from that, Ms. Bishop would have had to have known, as a result of the Defendant's direct comments, that he was most dissatisfied with her behaviour around his office. The fact that he responded somewhat in kind to her pledge to do better simply cannot be construed against him.

[241] The same comment cannot necessarily be made with respect to Ms. Soucy. There was no testimony about the timing of her pay rise during the course of her relatively limited tenure with the Defendant. There was no indication that it was offered by him in conjunction with any of his stated expectations that she improve on her office behaviour too.

(v) Provisional Assessment of Damages

[242] In the event that I am wrong regarding all of the above, it is incumbent upon me to provisionally assess damages in favour of the Claimants had they been successful in convincing me that they had been wrongfully dismissed.

[243] Ms. Bishop's tenure with the Defendant was the longer of the two affected tenures, quite a bit longer. Even bearing in mind the hiatus in Ms. Bishop's tenure, she was still with the Defendant for some six and a quarter years.

(a) Damages

[244] There are numerous suggestions within the practice of employment law that severance for wrongful dismissal is to be calculated on the basis of a "scale" or a "rule of thumb". In fact, if there was a rule of thumb with respect to the assessment of damages in wrongful dismissal cases, it would be that there is no rule of thumb.

[245] Rather, wrongful dismissal damages are assessed on the basis of many factors. The age, seniority and length of tenure of the employee. The market in which the job search for alternative employment must ensue. The manner in which the termination of the employee occurred (was there circumstances to suggest that the employee had been terminated for dishonesty such that any alternative employer might be in jeopardy in the extension of alternative employment. And other things of that nature.

[246] Generally speaking, though counter-intuitive, terminated employees with the shorter tenures tend to receive proportionally more in damages in lieu of severance than longer-serving employees - the benchmark being the numbers of years of service.

[247] For employees having tenure of six to eight years, there is a preponderance of authorities which point in the direction of one month of damages in lieu of severance for each year of employment. For employees having tenure of more than 16 years, the tendency arising from the authorities is that proportional damages per year of service are lesser than one month per year.

[248] Ms. Bishop has argued that she would have been entitled to one month of damages in lieu of severance for each of her roughly six years of employment with the Defendant. For the sake of argument, I am prepared to accept that Ms. Bishop was correct.

[249] Ms. Bishop also made no or no effective job search in the first four weeks after her termination by the Defendant. She had received severance equal to four full weeks of pay. When that ran out, or in spite of its not having yet run out, Ms. Bishop found herself re-employed, earning more money than she had earned with the Defendant, within six weeks of her termination. That effectively capped Ms. Bishop's entitlement to damages to equal to two weeks of regular pay - six weeks of regular pay less the four weeks of regular pay remitted to her as severance on termination.

[250] Ms. Soucy's circumstances were somewhat different. Her tenure with the Defendant was shorter than Ms. Bishop's tenure. She had worked for the Defendant for only 18 months. She earned less than did Ms. Bishop. Her annual salary was approximately $27,000. Her responsibilities in the Defendant's office were fewer than Ms. Bishop's responsibilities as well.

[251] Based on the analysis set out above, Ms. Soucy would have been entitled to severance of some six weeks. Mr. Hill had argued eight weeks on her behalf. I would not quibble with him for the sake of argument.

(b) Mitigation

[252] The difficultly I had with both Ms. Bishop's and Ms. Soucy's claims for damages was that neither were backed by any specific evidence as to mitigation. In the case of Ms. Bishop, she testified only that it was four weeks or so after the termination before she could leave her house.

[253] The invitation to me might have been that I was to have inferred from Ms. Bishop's testimony that she was prevented from leaving her house because of the manner in which she had been terminated. That would be a dangerous inference in Ms. Bishop's case.

[254] I have arrived at that conclusion for five reasons.

[255] First, there was nothing particularly noteworthy about the manner in which Ms. Bishop was terminated. I appreciate that her termination came as a shock. Most terminations do. That, in and of itself, does not constitute an excuse or waiver from the duty to mitigate.

[256] Second, Ms. Bishop had proved herself capable in the past of landing on her feet very quickly in the employment sense. She had left the defendant's

employ for a brief hiatus and had gone to work in the office of the late Simon Gaum, Q.C. When issues there very quickly arose, she resigned her position with Mr. Gaum and was re-employed immediately.

[257] Third, there was no question that Ms. Bishop had a solid set of technical legal support skills. They would have been a valuable addition to any legal office.

[258] Fourth, I think because of my own primary position as a practicing lawyer and manager in one of Atlantic Canada's largest law firms, I can take judicial notice of the fact that in the latter part of 2006, the demand for legal assistants bearing the skills which Ms. Bishop possessed, was exceptionally high.

[259] Fifth, as soon as Ms. Bishop turned her attention to finding alternative employment after she was terminated by the Defendant, she was hired by another firm.

[260] The result is that I cannot conclude other than that had Ms. Bishop sought alternative employment immediately after she had been terminated by the Defendant, she would have found it. I therefore find that her failure to mitigate disentitled her to even the two weeks of damages in lieu of severance she was seeking.

[261] That analysis with respect to Ms. Soucy is decidedly more difficult. Her position was more junior than that which Ms. Bishop held. She had less experience. Her range of skills was not as broad. There were therefore legitimate

questions raised by Mr. Hill about the timeliness and efficiency with which Ms. Soucy could have found alternative employment after she was terminated by the Defendant.

[262] Asked of Ms. Soucy only as an "omitted question" after her cross-examination had been completed was the extent to which she attempted to locate alternative employment post termination. I observed her answers carefully and made close notes about what she said.

[263] Despite clearly acceptable prompting by Mr. Hill, Ms. Soucy offered only that in the time between her termination by the Defendant and her commencement of her work in an alternative position, she had applied for other work. When, where, how and how often were not details which Ms. Soucy disclosed. I was therefore left to wonder about the extent and legitimacy of Ms. Soucy's efforts in mitigation.

[264] According to Ellen Mole (*supra*) (s. 10.1), an employee is required to "take all reasonable steps" to reduce the amount which might become payable by an employer in any case of wrongful dismissal. Regrettably, "all reasonable steps" is not a concept borne of any comprehensive definition in the authorities.

[265] Neither, it seems, is there any comprehensive consensus on which party - the employer or the employee - bears the initial onus where mitigation is an issue. In fact, the authorities seem split on the issue on whether the employee must demonstrate mitigation or whether the employer must demonstrate that alternative

work was available and the employee nevertheless failed to seek it out.

[266] Being in mind the judicial notice set out above, a finding that she had sufficiently attempted mitigation would have to be based on more than Ms. Soucy's bare statement that she had made applications for alternative work before finally succeeding in landing a new position some six months after she had been terminated by the Defendant. I therefore find that her failure to mitigate disentitled her to even the eight weeks of damages in lieu of severance she was seeking. In substitution for that claim, I would - subject to my finding above on "liability" - have allowed damages in lieu of severance equal to the same two weeks it took Ms. Bishop to locate alternative employment after she decided to start looking for it.

(vi) Additional or "Aggravated" Damages

[267] Of all aspects of this case, I found myself troubled most about the allegations made by Ms. Wozniak and the Defendant's daughter against Ms. Bishop and Ms. Soucy to the Halifax Regional Police. Though the allegations may have been made without the Defendant's expressed consent or even knowledge, they were made by those tasked by him to address the issues surrounding these two employees. He must therefore take vicarious responsibility for what was alleged.

[268] Argued by Mr. Hill on behalf of Ms. Bishop and Ms. Soucy was that they were entitled to so-called "Wallace damages" because of the patently unfounded

allegations of theft which had been made against them. I generally agree.

[269] In *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, the Supreme Court of Canada held as follows with respect to the obligation of good faith on behalf of the employer when contemplating the termination of an employee (at para. 98):

> The obligation of good faith and fair dealing is incapable of precise definition. However, at a minimum, I believe that in the course of dismissal, employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive. [underlining added]

[270] While the recent Supreme Court of Canada decision in *Honda Canada Inc. v. Keays*, [2008] S.C.J. No. 40 might have limited how "Wallace damages" are to be applied, it did not limit the ability of courts to award "Wallace damages" or even punitive damages, in the context of a wrongful dismissal action, provided there is a reasonable basis for doing so.

[271] Thus, while the decision in Honda stated that "Wallace damages" should not be awarded simply by an arbitrary extension of the notice period, the Supreme Court of Canada did not preclude the ability of court to award "Wallace damages" for bad faith conduct on the part of the employer.

[272] In the present case, the bad faith exercised by Defendant was significant, if not profound, and it clearly justified an extension of the notice period by which damages in lieu of severance were provisionally calculated. It also justified consideration of an independent award of damages to both compensate the

Claimant's for the hurt and senses of anxiousness they must have felt as a result of the police investigation and express the Court's denunciation of the allegations of theft which could not legitimately have been maintained.

[273] I find that notwithstanding the exclusionary provisions of section 10(c) of the *Small Claims Court Act*, the Defendants are entitled to the general damages they have claimed. In the circumstances, these damages are not assessed only provisionally nor are they in any way contingent on all of the other findings.

CONCLUSIONS and DECISION:

[274] I find that the Defendant acted reasonably in dismissing the Claimants when and as he did. The Claimants' actions in accessing the private e-mail accounts of others in the defendant's office were either a single incident falling so far below the Claimants' obligations to the Defendant or represented the culmination of incidents which indicated the Claimant's incongruity with the Defendant that their dismissals summarily and without notice or severance were justified. The Claimants' basic claims in wrongful dismissal are therefore dismissed.

[275] As a provisional assessment only, both Claimants were re-employed after their terminations by the Defendant; Ms. Bishop within two weeks and Ms. Soucy within six months. Accordingly, but for the seminal findings dismissing their claims for wrongful dismissal, both Claimants would have been entitled to

damages in lieu of severance.

[276] In both cases, the Claimants would have been entitled to damages equal to two weeks regular pay. It would have taken both no longer than that to locate and secure alternative employment had they undertaken reasonable efforts at mitigation.

[277] The decision by Ms. W ozniak and the defendant's daughter to involve the police in this matter was ill-conceived and was doomed to failure. The decision nevertheless would have had a significant impact on the Claimants who were purely and simply not guilty of any criminal wrongdoing.

[278] While there is no doubt that emotions were running high all around at all of the material times, parties in such circumstances nevertheless have an obligation to maintain balance and perspective. In all of the circumstances, there was no reason - none whatever - for the Defendant, broadly defined, to have alleged theft against the Claimants. That activity thus falls into the proscribed categories of behaviour set out in Wallace and Keays (*supra*).

[279] The Defendant will pay general damages to each of the Claimants in the sum of $100, the Court's maximum general damages award.

[280] In the consideration of all of the above, there will be no order as to costs.

ORDER:

[281] The Claimants' claims in general damages for $100 each are allowed.

[282] All of the Claimant's remaining claims are dismissed.

[283] There are no costs payable by any party to any other party.

DATED at Halifax, Nova Scotia, this 6 day of February, 2009.

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Gavin Giles, Q.C., Chief Adjudicator,
Small Claims Court of Nova Scotia