Claim No: 44433

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
AND IN THE MATTER OF A TAXATION

Cite as: Bunford v. Bunford, 2016 NSSM 55

BETWEEN:

MARIE-CLAUDE BUNFORD

Applicant

- and -

DOMINIC A. BUNFORD

Respondent

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on March 30, 2016

Decision rendered on September 28, 2016

APPEARANCES

For the Applicant William Mahody, Q.C.

For the Respondent Basile Chiasson, C.R.

BY THE COURT:

1. I am charged with the responsibility to tax costs on a solicitor and client basis, pursuant to the direction of Justice Moir of the Supreme Court of Nova Scotia in his decision on costs dated July 30, 2015 (the CANLII citation is *Molhant Proost v. Ferncroft Equities Ltd.*, 2015 NSSC 231, though there were several proceedings being heard together). The operative paragraph of that decision (also reflected in an order) is this:

> [110] I will order that Mr. Bunford pay Ms. Molhant Proost's costs and Mde. Bunford's costs on a solicitor and client basis in all three proceedings to be taxed by an adjudicator. I dismiss Ms. Molhant Proost's claim for an indemnity against amounts paid by Ferncroft or Coloony to their lawyers in connection with the three proceedings.

2. It is the bill of costs of Mde. Bunford that is the subject of this ruling, although the other is also before me and is being released at the same time.

3. The Applicant, Mde. Bunford, is the mother of the Respondent, Dominic A. Bunford. Ms. Molhant Proost is the daughter of Mde. Bunford and sister of Mr. Bunford. To avoid confusion, I propose (mostly) to refer to them as "Mother," "Son" or "Brother", and "Daughter" or "Sister" respectively.

4. The underlying proceedings included several corporate entities and trusts, which are unimportant for present purposes in the sense that the underlying beneficial interests all belong to some or all of Mother, Son and Daughter. For reasons that are not really germane, this litigation occurred in Nova Scotia, notwithstanding that equally, if not more substantial

connections to the underlying facts can be found in New Brunswick, Monaco and France. This multi-jurisdictional scenario contributed to the complexity of the matters in litigation.

5. Earlier in his decision, Justice Moir reviewed the law on solicitor-client costs - specifically, when they are appropriately awarded - and made the following statement:

> [74] .... I am satisfied that some of Mr. Bunford's allegations against Ms. Molhant Proost were reprehensible. I find that he abused the processes of this court in numerous ways and his abuses are reprehensible. Primarily because of the abuses of process, I say that Mr. Bunford crossed the line into rare and exceptional circumstances that justify his being ordered to fully indemnify Mde. Bunford and Ms. Molhant Proost for their legal expenses.

6. I mention this because his words "fully indemnify" may bring into play principles that are rarely considered in our courts. The vast majority of reported cases assessing "solicitor and client costs" are, in fact, disputes over a bill between a solicitor and his or her client. What is at issue here is different and might better be characterized as "party and party costs on a full indemnity basis," similarly to what is done in Ontario.[1] The particular wording highlights an important difference between full indemnity costs and solicitor-client costs. Where a solicitor is taxing a bill against his or

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[1]The types of costs awarded in Ontario are referred to as partial indemnity, substantial indemnity and full indemnity, the latter of which is rare and is only referred to tangentially in rule 57.01(4)(d) which provides that "[n]othing in this rule or rules 57.02 to 57.07 [dealing with partial and substantial indemnity costs] affects the authority of the court under section 131 of the *Courts of Justice Act* .... to award costs in an amount that represents full indemnity."

her client, the court ultimately decides what the solicitor is entitled to be paid. If the client has overpaid, the solicitor must refund the difference.

7. Where, as here, the intention is to fully indemnify a party for legal expenses incurred, if the bill is reduced by the court, it is the client and not the solicitor that suffers. By way of illustration, if the client (Mother) has paid her lawyer $100.00, and I tax the bill to be paid by the opposing party (Son) at $80.00, the $20.00 difference is borne by the client, not the lawyer. My order would not legally oblige the lawyer to refund $20.00 to the client.

8. Other adjudicators or taxing authorities have appreciated this distinction between taxations between the lawyer and client, as opposed to the party-party scenario, which are slightly different things. Adjudicator Richardson in *Campbell v. Smith's Field Manor Development Ltd., 2001 NSSM 7* wrote the following in 2001:

> [30] The intent of an award of solicitor and client costs against a party is to provide the successful party with "complete indemnification for all costs (fees and disbursements) reasonably incurred in the course of prosecuting or defending the action or proceeding, but is not, in the absence of a special order, to include the costs of extra services judged not to be reasonably necessary:" *Apotex Inc v. Egis Pharmaceuticals* (1991) 1991 CanLII 2729 (ON SC), 4 OR (3d) 321 (GD), per Henry, J at p.325; Van Bork v. Van Bork [1994] OJ No. 3408 (GD) at ¶ 5-6.
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> [31] In other words, a person who has the benefit of such an order is to receive from the party against whom the order is made "payment for all costs relating to the litigation that ... [the former's] solicitor could properly ... [have asked him or her] to pay:" *Mintz v. Mintz* (1983) 1983 CanLII 1870 (ON SC), 43 OR (2d) 789 (HCJ), per Trainor, J.
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> [32] A taxing officer is obligated to tax a solicitor and client costs [] award as though his or her client were the one resisting the bill: *Harwood v.*

> *Harwood* [1998] AJ No. 217 (Taxing Officer); aff'd [1998] AJ No. 296 (QB). In other words, the defendants here are entitled to raise any objection that the client could raise to the "reasonableness" of the charges on a taxation.
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> [33] There are of course certain distinctions between a client who undergoes a solicitor and client taxation, and a party who has been ordered to pay another party's solicitor and client costs. One such distinction occurs with respect to charges in respect of unreasonable steps that a client insisted be taken. In such a case, the resulting charges might be "reasonable" if the client was the one expected to pay; but not if the other party were expected to pay: *Magee v. Trustees RCSS Ottawa* (1962) 32 DLR (2d) 162 (Ont HC) per McRuer, CJHC at pp.165-66. Similarly, a party charged with another's solicitor and client costs cannot be expected to pay in respect of costs and disbursements incurred before the action in which the order is made is commenced: see Gordon's Law of Costs (1884) at pp.187-88, cited in Magee, ibid., at p.163.
>
> [34] In other words, a person who has the benefit of such an order is to receive from the party against whom the order is made "payment for all costs relating to the litigation that ... [the former's] solicitor could properly ... [have asked him or her] to pay:" *Mintz v. Mintz* (1983) 1983 CanLII 1870 (ON SC), 43 OR (2d) 789 (HCJ), per Trainor, J.

9. While the distinction may be a subtle one in most cases, the additional question (apart from the usual questions) that I propose to ask myself, when taxing the bill, is this:

> Given Justice Moir's stated intention to see her <u>fully</u> indemnified for her legal expense, is there some principled and just reason why Mother should <u>not</u> be fully indemnified for what she has willingly paid (with no expectation of recovery from another litigant) in connection with the particular item under scrutiny?

Background to Dispute

10. There is no reason to spend time in this decision describing the dispute, or detailing the many procedural steps taken during this intense, multi-facted

piece of litigation. Justice Moir has already done that, and concluded in no uncertain terms that the conduct of Son was reprehensible and an abuse of the court's process, such that he should pay costs on the highest scale available - full indemnity.

11. Justice Moir reviewed the law as to when full indemnity costs might be ordered. It is useful to quote those paragraphs:

> **Principles of Solicitor and Client Costs**
>
> [66] The discretion to order a full indemnity, and the extraordinary circumstances required to exercise the discretion, are recognized in Rule 77 – Costs. The scope provision includes "solicitor and client costs, which may be awarded in exceptional circumstances to compensate a party fully for the expenses of litigation": Rule 77.01(1)(b). Thus, full indemnity is exceptional to partial but substantial indemnity through party and party costs.
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> [67] What circumstances give rise to the exception? This question is left to jurisprudence by Rule 77.03(2): "A judge may order a party to pay solicitor and client costs to another party in exceptional circumstances recognized by law."
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> [68] Mr. Bunford's counsel referred me to *Armoyan v. Armoyan*, 2013 NSCA 136 (CanLII), which reaffirmed, at para. 11, that there has to be "litigation misconduct … that would support an award of solicitor and client costs." The required circumstances are described not only as "exceptional", but as "rare". Counsel also surveyed Nova Scotia cases in which a full indemnity has been allowed or refused, and compared the circumstances in those cases with those in this one.
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> [69] Justice Hood reviewed authorities on solicitor and client costs at paras. 479 to 486 of *Smith's Field Manor Development Ltd. v. Campbell*, 2001 NSSC 44 (CanLII). The award is aimed at "reprehensible, scandalous or outrageous conduct". See the discussion at paras. 479 to 481.
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> [70] The reprehensible behavior may be in the making of allegations, the conduct of one's case or defence, or both. Reprehensible allegations of

> fraud, perjury, breach of fiduciary duty, and other kinds of dishonesty may lead to a full indemnity (paras. 484 to 486). Reprehensible conduct of one's case or defence may consist in "high-handed and unilateral actions" (para. 491). Abuse of process is now expressly recognized as a ground for a full indemnity: Rule 88.02(1)(d).
>
> [71] An abuse of process is "reprehensible" when it is "deserving of censure or rebuke" (paras. 482 and 483). However, reprehensible allegations or abuses of process do not always justify a full indemnity: *Brown v. Metropolitan Authority*, [1996] N.S.J. 146 (C.A.) at paras. 94 to 98.
>
> [72] When does a reprehensible allegation or abuse of process justify a full indemnity? I think the discussion at paras. 94 to 98 of Brown tells us that there is no simple demarcation.
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> [73] Justice Pugsley recognized the discretion at para. 94. At para. 95 he noted, "This court has refused to award costs as between solicitor and client even though the conduct of the party in question has been found to be reprehensible." The Metropolitan Authority's conduct was "reprehensible" in the sense of "deserving censure or rebuke": paras. 96 and 97. Yet, Justice Pugsley concluded, at para. 98:
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> > There is, however, a difference between reprehensible conduct as demonstrated here, and those rare and exceptional circumstances which attract the sanction of costs as between solicitor and client. In my opinion, the Authority's actions do not cross that line, and accordingly, I would not award costs as between solicitor and client.

12. These principles are important, insofar as they provide a measure of the serious disapproval of Son's conduct in the litigation, which led to Justice Moir's order that Mother be "fully indemnified" for the expense of having to pay lawyers to represent her. As found, Son's conduct was more than merely reprehensible; it was a serious affront and an abuse of the court's process.

13. I propose not to lose sight of this finding, as I consider the body of law which may be better described as “Taxation Principles in cases of Solicitor Client Costs.”

Taxation Principles in cases of Solicitor Client Costs

14. The parties have referred to several cases and other authorities in their submissions. They are, in no particular order of importance:

a. *Mor-Town Developments Ltd. v. MacDonald* 2012 NSCA 35
b. *Re Toulany* (1989) 90 N.S.R. (2d) 256 (S.C.)
c. *J.T. v. Planetta* 2010 NSSM 52
d. *Jovcic v. Garson, Knox & MacDonald* [2005] N.S.J. No. 368
e. *Campbell v. Smith’s Field Manor Development Ltd.* 2001 NSSM 7
f. *Singleton & Associates v. Matheson* 2005 NSSM 4
g. *Lindsay v. Stewart McKean & Covert* [1998] N.S.J. No. 9

15. I was also referred to the Nova Scotia Barristers Society Code of Professional Conduct (which reinforces the view that a solicitor must only charge “fair and reasonable” fees), as well as a 2006 article by W. Augustus Richardson, QC, entitled “*A Running Commentary on the Taxation of Legal Accounts in the Small Claims Court of Nova Scotia.*”

16. Also cited is Nova Scotia Civil Procedure Rule 77.13, which also captures many of the applicable principles.

17. From these cases, rules and texts there can be distilled a set of very well-known principles, which (as mentioned) mostly derive from issues between a solicitor and the actual client:

a. A lawyer's fees must be fair and reasonable.

b. The fairness and reasonableness must be assessed in light of all of the relevant circumstances, including (as set out in rule 77.13):

i. counsel's efforts to secure speed and avoid expense for the client;

ii. the nature, importance, and urgency of the case;

iii. the circumstances of the person who is to pay counsel, or of the fund out of which counsel is to be paid;

iv. the general conduct and expense of the proceeding;

v. the skill, labour, and responsibility involved;

vi. counsel's terms of retention, including an authorized contingency agreement, terms for payment by hourly rate, and terms for value billing.

c. The taxation may disallow fees charged for proceedings taken that were <u>unnecessary</u> (such as by overcaution or merely error);

d. Fees may be disallowed if, objectively speaking, too much time was spent on any particular step, or overall, which reflects poorly on the lawyer's skill;

e. The results achieved may be considered, but in some instances may be totally irrelevant;

f. The client's ability to pay <u>may</u> be relevant;

g. The client's expectations may carry some weight, for example where the lawyer's fees significantly exceed an estimate given;

h. The degree of skill demonstrated may, in some cases, be important, though the lawyer may not have had to exercise all of his or her skills to achieve the result;

18. It is with these principles in mind that I approach the bills in issue. They consist of three invoices, totalling $91,169.99, broken down as follows:

a. Inv. 11011 - $29,087.24
b. Inv. 11302 - $45,504.78
c. Inv. 11523 - $17,108.97

19. The uncontested evidence is that the client, Mother, who lives in Europe, came to learn that she would need Nova Scotia counsel for litigation that was already underway between her two children. She sought out (or was referred to) John Merrick, QC, of the firm Merrick, Jamieson, Sterns, Washington & Mahody (hereafter "the Merrick firm"). She arranged to meet with John Merrick, who brought William Mahody into the meeting. The meeting was fruitful, in the sense that the client accepted the lawyers, and vice versa. Shortly thereafter, on October 3, 2013, a letter was sent by Mr. Merrick to Mother, confirming the terms of the retainer. The operative part of the letter ("the retainer letter") states:

> I confirm that you have retained us to act as counsel on your behalf in relation to the various proceedings that are underway, or intended, in Nova Scotia relating to the Ferncroft shares.
>
> You are our client, and our responsibility is to act on your behalf. We will report to you and will take instructions from you.

Whatever you tell us will be held in strict confidence. You are to feel completely at liberty to contact either myself or Bill at any time to discuss the proceedings or to ask any questions that you may have.

We will advise the lawyers representing your son that we are retained on your behalf and will request that all further communications be directed to us.

We are reviewing the documents that have been filed and will also have further discussions with John Keith in order to get a full and complete briefing as to the background of the present proceedings.

Once we have completed that review, we will be in touch with you to give you our assessment and recommendations. You should hear further from us within the next day or two. At that time we may set up a telephone call with you.

Our services are billed on an hourly rate basis. My hourly rate is $440.00 an hour and Bill's hourly rate is $295.00. We will bill you periodically for work performed. That may be either monthly or every few months, depending on how active we may be in your representation. Our accounts will break down the hours worked and [sic] times, and a description of the service provided. Our accounts will also contain a listing of any disbursements which we may have incurred. Our accounts are payable within 30 days of receipt. Should you have any questions concerning any of the accounts, please do not hesitate to call.

If you have any questions or would like to discuss our retainer, please contact us.

We will be in touch with you shortly.

20. Counsel on behalf of Son argues that the entirety of the lawyer-client relationship is captured by this letter. The significance of this position is that, in the course of the retainer, the Merrick firm used another lawyer, Erin Cain, and a litigation paralegal, Beth Whalen, to perform some of the work on the file. Because these individuals were not mentioned in the retainer letter, it is argued that the firm had no right to charge Mother for these services, amounting to a little over $5,000.00 in billings. As such, it is further contended that Son should not have to indemnify mother for these parts of the bills.

21. The evidence in support of Mother in this taxation was provided by Mr. Mahody. He was present at the initial meeting with the client, who travelled to Halifax for the purpose of retaining counsel. He did not give any evidence (one way or the other) to the effect that the firm might assign other lawyers or paralegals to the file. He did point out that the initials for Ms. Cain and Ms. Whelan were shown next to their docket entries on bills sent and paid, without any questions from the client, let alone objections. Mr. Mahody testified that it was the practice of the firm to use more junior lawyers, who are billed at a lower rate, for matters that do not require the expertise of a more senior lawyer. Also, he said, the use of a litigation paralegal (such as Ms. Whelan) for tasks such as document management is more efficient than having one of the senior lawyers perform such tasks, and as such the client benefits.

22. I do not see the Retainer Letter as an attempt to capture all terms of the contract for services. I have no hesitation in finding that it was an implied term of the legal retainer that the senior lawyers (with whom the client was familiar) had the discretion to assign other lawyers or paralegal staff to perform tasks on the file, and they did not need express permission to do so. The client, Mother, visited the firm's office and had to have known that it was a medium-sized, full-service firm. She was a reasonably sophisticated and experienced client. She had to have known, and indeed <u>expected</u>, that the lawyers she trusted (Merrick and Mahody) would utilize the strengths of the firm to her benefit, when appropriate. She would certainly have drawn that conclusion if, like many sophisticated clients, she would have visited the firm's website which touts:

There is no substitute for depth of experience and hard work. But it also requires a team effort on the part of lawyers, paralegals and support staff working with the client.

23. If this taxation were between the lawyers and their client, it would have been an extremely difficult position for the client to take, that every task - no matter how simple, in the grand scheme of things - had to be done by Merrick or Mahody and no one else. I would have resisted such a position in the absence of an express contractual term to that effect. I also would have taken her payment of the accounts, clearly showing the involvement of Cain and Whelan on the file, as a waiver of any right to object.

24. In actual fact, Mother paid the bills without complaint.

25. It is at this point that I ask the question, is there some principled and just reason why Mother should not be fully indemnified for what she has willingly paid for the services performed by Cain and Whelan?

26. The answer is a resounding “no.” There is no sound reason why Son should benefit from, and Mother be penalized for, what is <u>at its highest</u> a technicality, namely the fact that the retainer letter makes no mention of Cain or Whelan. As I have already found, there was an implied term of the retainer that the resources of the firm would be used, where appropriate. Ms. Cain was billed at an hourly rate ($175) that was appropriate to her then 5 to 6 years at the bar. The $85 rate applied to the litigation paralegal seems reasonable, on its face. I find that it was

reasonable to use these people, and the amounts billed for their work was reasonable.

27. Had it been otherwise, and a bill were before me showing that John Merrick had spent a large number of hours doing the tasks at $440 per hour that were delegated to Ms. Whelan at less than 1/5 the cost, I would have been inclined to say that this was not efficient and might have reduced the bill accordingly.

28. The question of whether law clerks can be charged out directly for their time, or must be absorbed into the lawyers' overhead, was discussed more than a generation ago by legendary taxing officer McBride in Ontario, in *Re Solicitors* [1971] 3 OR 470; 1971 CanLII 656 (ON SC), and his words have been quoted many times since, including in Nova Scotia:

> A factor that has recently become significant in the assessment of the quantum of a solicitor's fees is the time charge claimed for the services of law clerks and law students. In the present case, the solicitors seek compensation for these services at the rate of $10 per hour. My immediate reaction is that the services of both law students and law clerks are part of a solicitor's overhead, just as are the services of his stenographers and receptionist. The solicitor has been traditionally entitled to charge what would otherwise be astronomical hourly and daily rates of fees specifically because of the overhead charges he must meet.
>
> However, on reflection, I do not think the matter can be so easily and neatly disposed of. As usual, this coin, too, has two sides. If a solicitor charges $50 per hour for his own time and personally renders all those services traditionally reserved to be looked after by a solicitor, then he cannot charge an extra fee for some strictly clerical work done by a student or law clerk. That work would be clearly a part of his overhead. But, if a solicitor is fortunate enough to have in his employ a law clerk or law student, or both, with the brains or experience, or both, to successfully undertake certain services normally or traditionally performed by solicitors, thereby reducing his own time spent on a particular client's affairs to a

> minimum, then I am not at all sure that one could object to that solicitor charging an additional fee for the services, or some of the services, of the law clerk or law student. As is so often the case, the matter may be clarified by a hypothetical case. Solicitor A has a clerk or student in his employ and spends some 25 hours on a domestic matter, e.g., acting for the petitioner in a contested divorce action. His clerk or student delivers papers, watches the list and that sort of thing for an additional expenditure of 10 hours. Solicitor B also has a clerk or student on the payroll, but he contrives to reduce his own time in a similar matter to 15 hours and has his clerk or student and in doing so, perform some of the services solicitor A himself did. In this kind of situation, I think one reaches the point where, as solicitor B's time expenditure shrinks and that of his clerk or student expands, specific recognition must be given to the involvement of the student or clerk instead of just burying him in the solicitor's overhead. Another example might suffice to establish why this must be so. If both solicitors A and B in my first example generally docket 30 so-called billable hours per week and are both entitled to charge their time at, say, $50 per hour, their gross will be $1,500 per week. The first charge on that gross is their overhead. Obviously, solicitor B, who makes much the greater use of law clerks and students will have the greater overhead. His net will be less than that of solicitor A who has busied himself doing much of the pedestrian legal work that solicitor B has managed to delegate to his clerk or student. Consequently, solicitor B must be entitled either to charge his own time at a higher rate or to charge a separate fee in the area of $10-15 per hour for his student or clerk. Since he expends less of his own time on the affairs of each client than does solicitor A, his clients benefit from the utilization of clerks or students even with this extra charge.

29. The evidence here is that Ms. Whelan has special expertise in document management, which is an important feature of modern, complex litigation.

Duplication of effort

30. The other main objection to the bill is the alleged duplication of effort by Mr. Merrick and Mr. Mahody. There are many instances, particularly in the early stages, where both of them were spending considerable time. Mr. Chiasson on behalf of son argues that this “labour intensive” involvement

was at odds with the terms of their retainer, which was not to duplicate the efforts of Daughter's counsel.

31. Mr. Mahody's evidence was that his firm did make every effort not to duplicate the efforts of Cox & Palmer, on behalf of Daughter, but that Mother had a personal stake in the litigation that required significant work and effort. Part of the Merrick firm's retainer was as a watching brief in the application brought by Son, but they were also directly prosecuting an application by Mother for certain relief that she was seeking against her Son.

32. I find that it was reasonable for both Mr. Merrick and Mr. Mahody to be fully up to speed on the file, and it was reasonable for them to work in tandem when it seemed appropriate. It is far from unusual to see two counsel - including two experienced counsel - involved in major litigation. I do not detect any duplication of effort. While not argued in these terms, the accusation is to the effect that they "milked the file" by spending more time, and using two lawyers, when a slimmer approach involving less time and fewer lawyers may have been sufficient.

33. This criticism overlooks the fact that there was a lot at stake in this litigation, involving as it did (among other issues) the beneficial ownership of an estate (called the Domaine) in Southern France worth tens of millions of Euros. Mother was a wealthy woman, who wanted her legal position upheld. She was pitting herself against an adversary (sadly, her own son) who was also wealthy and determined to have his way. The Merrick firm had to take its task seriously, and it would have been

unrealistic and likely in direct opposition to their standing instructions, to put less than a full effort into the task.

34. As a taxing officer, I am keenly aware that costs should bear some proportionality to what is at stake. I find it significant that Justice Moir knew the order of magnitude of Mother's legal expenses when he ordered that she be fully indemnified. Had he been shocked or offended by these amounts, I would have expected some comment from him, or a different disposition of the costs issue. Instead, he wrote:

> [61] Interlocutory and Preparatory Expenses. Despite the fact that Mr. Bunford did not prosecute his claims in Nova Scotia to anything approaching maturity, his defence of the Molhant Proost proceeding and prosecution of his own proceedings caused numerous interlocutory disputes and much unnecessary work. Ms. Molhant Proost spent in excess of $400,000. Mde. Bunford, $80,000. In the end, Ms. Molhant Proost obtained the determination she needed without having received disclosure as ordered, discovery as scheduled, or Mr. Bunford's evidence.

35. Nowhere in his decision did he suggest that these expenses were disproportionate to what was accomplished in the litigation. The Merrick firm can hardly be criticised for having prepared for all-out battle, only to learn later that the opponent was capitulating.

36. I do note that the firm itself reduced one of its bills by approximately $6,500.00 from what would have been a straight calculation of hours times billing rates. Mr. Mahody testified that the firm believed the lower amount was the reasonable amount. This suggests that the lawyers were not trying to take advantage of their client, despite the fact that her ability to pay was never an issue.

37. In the final analysis, nothing has been demonstrated to my satisfaction that would characterize any of the fees or disbursements as unreasonable, and I see no reason why Mother should not be fully indemnified for the bills under taxation. The certificate of taxation will reflect this.

38. I note with respect to disbursements that photocopying and other charges are not as low as they would be had the firm been adhering to the new guidelines adopted by the Supreme Court of Nova Scotia in its new Practice Memorandum #10 respecting Taxable Disbursements Under Rule 77.10(1), promulgated on June 24, 2016. I do not propose to apply this retroactively, but the entire profession is on notice that there are now severe limits on taxable amounts that can be passed on to clients and opposing parties for things like copies, faxes and other common charges.

39. Even so, in the past and long before this Practice Memorandum, I have been critical of some lawyers and firms for their copying and other charges. A charge for sending faxes or scans, where there is no direct cost (e.g. for paper or toner) should more properly be part of overhead. And while the cost of commercial copies has steadily decreased over the decades, the practice of law firms to charge 25 cents or more per copy has remained as a vestige of the time when expensive equipment may have justified such a charge.

40. In *Cunning v. Doucet*, 2009 NSSM 35, I wrote extensively on the subject of photocopies and faxes. I will not clutter up this decision with lengthy

quotes from that case, but suffice it to say that I did not accept then (nor now) the charging of 25 cents for photocopies or printing. In *Cunning*, I reduced the copies to 15 cents, and also cut back on fax charges.

41. Mr. Chiasson did not specifically raise an objection to the disbursements in this case, although he did in the companion proceeding to tax Sister's costs, and at the hearing he did not explore what the specific charges were, so I am in no position to apply a reduction.

42. In the result, the accounts are taxed as presented at $91,169.99.

43. The parties may make submissions on the question of the costs of this taxation.

Eric K. Slone, Adjudicator