

**Claim No. SCCH 265566
Date: 20060921**

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Haney v. Wall, 2006 NSSM 41

BETWEEN:

CHRISTOPHER HANEY, CHARLES SCOTT ABBOTT, JOHN HANEY AND EDWARD MARTIN WERNER and HORN ABBOT LTD (formerly HORN ABBOT PRODUCTIONS LIMITED)

APPLICANTS

- and -

DAVID H. WALL

RESPONDENT

**Adjudicator: David TR Parker
Decision: September 21, 2006**

Counsel: Kevin A. MacDonald Represented the Applicants

William L. MacDonald Q.C.

Christa M. Hellstrom Represented the Respondents

DECISION AND ORDER

This matter involves a taxation of disbursements pursuant to an Order of the Nova Scotia Court of Appeal. The Court of Appeal Allowed costs of \$2,500.00 to the successful Appellants or Applicants in this taxation together with disbursements as agreed or taxed, to each of the Appellants.

The Appellants in this matter before the Court of Appeal were several individual Appellants and one Corporate Appellant.

Following the Order this taxation was commenced by the Appellants pursuant to Form 1 entitle "Notice of Taxation in the Small Claims Court of Nova Scotia." The hearing was held pursuant to the provisions of the *Small Claims Court Act* Section 9A(1)

The briefs provided by Counsel as well judicial notice of the proceedings between the parties have shown that they are lengthy and a series of applications have been made to the Supreme Court as the proceedings continued their way through the Supreme Court and as it turns out the Court of Appeal

The matters concerning this taxation involve one of those applications. The individual Appellants/Defendants made an application to the Supreme Court, pursuant to section 34(a) (ii) of the *Judicative Act*, R.S.N.S. 1989 c. 240 requesting an Order of the Supreme Court to have the Respondent's (Plaintiff's) Notice of Trial with a Jury set aside. The Applicants also sought an order that the matter be tried by a judge without a jury. This Application was dismissed by the Honourable Justice MacAdam. As a result the Applicants both individuals and corporate launched an Appeal of Justice MacAdam's decision which was heard by the Court of Appeal on February 10, 2006. Following the hearing, the Deputy Registrar at the Court of Appeal on behalf of the panel hearing the matter requested additional submissions and a canvassing of authorities. At the end of the day this all resulted in the following Order of the Court of Appeal:

NOVA SCOTIA COURT OF APPEAL

Docket: CA 257198

Registry: Halifax

Between:

Horn Abbot Ltd., 679927 Ontario Limited
(formerly, Horn Abbot Productions
Limited), Christopher Haney, Charles Scott
Abbot, John Haney and Edward Martin
Werner

Appellant

v.

David H. Wall

Respondent

ORDER FOR JUDGMENT

REASONS FOR JUDGMENT having been delivered this day by Oland,
J.A.; Saunders and Fichaud, J.J.A. concurring;

IT IS ORDERED THAT appeal is allowed with costs of \$2,500, together
with disbursements as agreed or taxed, to each of the appellants.

IT IS FURTHER ORDERED THAT the trial of the proceeding, which is
scheduled to commence in Supreme Court, will be without a jury.

DATED at Halifax, Nova Scotia this 24th day of March, 2006.

Both the individual Applicants and Corporate Applicant submitted their respective Bill of Costs to be taxed which are as follows:

2006

C.A. No. 257198

IN THE NOVA SCOTIA COURT OF APPEAL

BETWEEN:

Horn Abbot Ltd, 679927 Ontario Limited (formerly, Horn Abbot Productions Limited), Christopher Haney, Charles Scott Abbott, John Haney and Edward Martin Werner

APPELLANTS

- and -

David H. Wall

RESPONDENT

INDIVIDUAL APPELLANT'S BILL OF COSTS

FEES (Allowed by Court of Appeal):

\$ 2500.00

DISBURSEMENTS (To be Taxed):

Photocopies	\$ 2815.50
Prothonotary / Filing fees	\$ 175.00*
Law Stamp (does not include HST)	\$ 25.00
Courier / Delivery	\$ 91.61
Stationary / Bookbinding	\$ 496.60

\$3603.71

HST at 15% on \$3428.71

\$ 514.31

TOTAL COSTS:

\$6618.02

TAXED AND ALLOWED AT \$ _____

Prothonotary

* Not subject to HST

2006

C.A. No. 257198

IN THE NOVA SCOTIA COURT OF APPEAL**BETWEEN:**

Horn Abbot Ltd, 679927 Ontario Limited (formerly, Horn Abbot Productions Limited), Christopher Haney, Charles Scott Abbott, John Haney and Edward Martin Werner

APPELLANTS

- and -

David H. Wall

RESPONDENT

CORPORATE APPELLANT'S BILL OF COSTS**FEES (Allowed by Court of Appeal):**

\$ 2500.00

DISBURSEMENTS (To be Taxed):

Photocopies	\$ 451.20 (done at Osler, Hoskin & Harcourt)	
Photocopies	\$ 606.00	
Legal research	\$ 324.59 (not claiming)	
Airfare	\$ 2173.00	
Transportation to and from Pearson Airport and to and from Halifax Airport	\$ 236.49	
Hotel (including meals, phone and internet)	\$ 291.70	
Prothonotary / Filing Fees	\$ 175.00*	
Law Stamp (does not include HST)	\$ 25.00	\$3958.39
HST at 15% on \$3783.39		\$ 567.51
<u>TOTAL COSTS:</u>		\$7025.90

TAXED AND ALLOWED AT \$ __________
Prothonotary

*Not subject to HST

In the taxation hearing Christina M. Hellstrom who was assisting Senior Counsel William L. Ryan, Q.C. representing the Applicants, provided an Affidavit and Supplemental Affidavit filed with Small Claims Court on May 2 and May 31, 2006, respectively Ms. Hellstrom also spoke to the Affidavits at the taxation hearing and was thoroughly cross-examined by Counsel Kevin A. MacDonald representing the Plaintiff and Respondent in this Application. Ms. Hellstrom also provided a thorough brief to this Court along with a book of authorities. Mr. MacDonald provided an Affidavit of Shirley M. Backman, Counsel's assistant, who spoke to its contents following the hearing Mr. MacDonald provided the Court with a through brief on June 23, 2006, outlining the Respondent's position, supporting arguments and authorities.

The Applicants responded with a final brief on June 30, 2006.

As indicated previously this action has resulted in lengthy proceedings between the Plaintiff, the Respondent in this taxation and the Defendants, the Applicants herein. The Affidavits, Briefs and Counsels' very able arguments reflect Counsels' dedication to their respective client's positions and their efforts and preparation is greatly appreciated.

The Order awarded costs on a party and Party basis and the Tariff applicable with respect to the disbursements is Tariff "D" Section 2 as set out in the *Costs and Fees Act*, R.S.N.S. 1989, c.104 as amended.

TARIFF D

**Tariff of Disbursements Allowable
to a Party Entitled to Costs**

2. Disbursements recoverable from opposite party:

(1) Attendance money paid to witness.

(2) Reasonable cost of

(a) plans;

(b) models;

(c) photographs,

when necessary to understand the evidence.

(3) Reasonable cost of

- (a) medical reports;**
- (b) hospital records;**
- (c) reports of experts,**

intended to be used at trial which, unless the proceeding is disposed of beforehand, were supplied to the other parties at least 10 days before trial.

(4) Reasonable fees paid to an expert witness who gives evidence, up to \$600.00 for each day examined and each additional day authorized by the taxing officer.

(5) Reasonable fees paid to an interpreter for services at trial or on an examination, up to \$75.00 per day, subject to increase by the taxing officer.

(6) In the discretion of the taxing officer, reasonable traveling and accommodation expenses incurred by a party in attending discovery or trial.

(7) Reasonable costs of copies of documents or authorities prepared for the use of the court and supplied to the opposite party.

(8) The cost of certified copies of documents such as judgments, orders, birth, marriage and death certificates, abstracts of title, deeds, mortgages and other registered documents where made exhibits.

(9) The cost of transcripts when required by the court or the rules, or where, in the discretion of the taxing officer, they were reasonably required for the preparation for trial or necessary to the understanding of the evidence.

(10) Reasonable fees paid for necessary personal service of documents where service is made in the Province.

(11) Fees paid to a clerk of a court, a prothonotary of the Supreme Court or the Registrar of the Appeal Division of the Supreme Court.

(12) Fees paid to a sheriff.

(12A) Reasonable fees paid to a taxing officer for taxation of costs in an uncontested proceeding for foreclosure or foreclosure and sale, up to \$50.00 per taxation.

(13) All other reasonable expenses necessarily incurred, when allowed by the taxing officer.

Tariff D sets out what disbursements are lawful but those disbursements must also pass the reasonableness test. This notion is emphasized throughout Tariff D and it is a tenet of taxation as incorporated under section 66 of the *Legal Professional Act*, as well as case law.

Counsel for the Applicants suggests that the applicable sections of Tariff D that relate to this taxation is Section 2, subsections 6,7,9,10,11 and 13. Subsection 9 it was suggested incorporates the photocopies however it is my view that section is not applicable in this taxation, however the other referred to sections are applicable

Matters in Dispute and/or Items To Be Taxed:

- (1) Photocopies:
- (2) Computerized Research
- (3) Stationery/Bookbinding
- (4) Courier Charges
- (5) Travel Accommodations
- (6) Transportation Costs
- (7) The Law Stamps and Filing Fees

(1)Photocopies:

The individual Applicants are requesting that photocopies be taxed at \$2,815.50 and the corporate applicant submits photocopy charges of \$451.20. The original bill submitted by the Corporate Applicant listed an additional \$606.00 for photocopies, however, it would appear that it is seeking the \$451.20 and not the additional \$606.00 all of which is expressed in Counsel's brief to this Court. Both Applicants submitted their costs of photocopies per page at 15 cents and the total amount being claimed is \$3,266.70.

The Respondent's Counsel in his brief state, the Respondent is prepared to agree to photocopy charges for both individual and corporate Applicants in the amount of \$2,275.84.

The argument is not the cost being charged per page but rather over the number of pages for which the Applicants are claiming. Ms. Backman counted all the documents and deducted those pages related to the supplemental factum.

Analysis

It appears that the Respondents and Applicants have agreed to the amount of 15 cents per page. This is within the acceptable limits as determined by recent case law in this province. I refer to *Bank of Montreal v. Binder*, [2005] N.S.J. No. 378 a decision of this Court that references numerous cases on the acceptable costs of taxation. All of these cases include amounts in excess of 15 cents per page, *Halifax Regional Municipality Pension Committee v. Nova Scotia (Superintendent of Pensions)*, [2005] N.S.J. No. 344 (28 cents per page) and *Elliott v. Nicholson* (1998) 179 N.S.R. (2d) 264 (20 cents per page)

The authorities have a protendency to discount the total amount being charged for photocopies on the basis that part of the charges for photocopies are related to administrative or overhead costs or are not necessary items and therefore should not be included.

Justice Goodfellow in *Wyatt v. Franklin* [1993] N.S.J. 624, at paragraph 20 stated:

“Counsel advise that photocopying is at the rate of \$0.25 per page. There is no breakdown of the photocopying expense as to how much of it was in relation to what would clearly be party and party expenses and such things as copies, documents, cases, correspondence, etc. for the client. Some limitation and control must be placed upon the use of photocopying, otherwise the unsuccessful party would simply stand at the mercy of the successful party. In addition the cost of \$0.25 per page undoubtedly includes administrative and office costs, and such overhead costs are and should be reflected in the cost of operation of the law practice and not be laid at the doorstep of the unsuccessful party. Under the circumstances I allow the sum of \$185 for photocopying”

The *Binder* case also references a number of decisions where the Supreme Court have put a limitation on the costs attributed to photocopies or the number of photocopies submitted as a valid disbursement to be claimed .

There also appears to have been a fairly general reluctance to accept the "standard charge" of .20 or .25 cents a page as reasonable. In *Balder's Estate v. Halifax (County) Registrar of Probate* (1999), 181 N.S.R. (2d) 201 (T.D.) the court was of the view that a claim of \$903.75 for 3,600 copies at .25 cents a page in respect of a Chambers application was "astounding," and reduced the charge by 50%: per Saunders J. at para. 27. In *Hudgins v. Danka Business Systems Ltd.* [10002] N.S.T.R. 202 (T.D.) the photocopying charge was reduced to 60%: see para. 14. In *Inrich Business Development Centre v. LeBlanc* (1997), 161 N.S.R. (2d) 140 (T.D.) the court allowed a little less than 50% of the photocopying charge (which had been billed at .25 cents a page): see para. 22. In *Newman (Guardian ad litem of) v. LaMarche* (1994), 121 N.S.R. (2d) 165 (T.D.) photocopying charges were reduced by 25%: see para.105; see also *Day v. Day* (1994), 120 N.S.R. (2d) 186 (T.D.) where photocopying charges were reduced by 25%. In *Osborne v. Osborne* (1994), 130 N.S.R. (2d) 282 (T.D.) a photocopy charge of .50 cents a page was considered to be an "unreasonable" rate; .25 cents a page was considered to be "more reasonable," but even at that rate would be subject to a further 25% reduction: see para. 46.

The Individual Applicants submitted the following documents to the Appeal Court in their Appeal: The Appellant's Factum, the Appeal Book, the Supplemental Appeal Book, the Individual Appellant's Book of Authorities, the Individual Appellants Supplemental Factum, the Individual Appellant Supplemental Book of Authorities and the Individual Appellant's Cross Reply. The Applicants produced eight copies of each of the above referenced items for a total of 18,080 pages at 15 cents per page or \$2,712.00.

The Corporate Applicants have similar breakdown of documents filed, the number of copies filed with respect to each books and that total number of pages resulting in their amount be claimed for photocopies of \$451.20.

In this particular case there is no disagreement in any event that 15 cents per page is reasonable. There is no dispute that the actual costs per page was less than 15 cents or that it could have been taken to a commercial photocopier and reduced the costs. Provided the photocopies are a required part of the litigation fifteen cents per page is very reasonable.

The disagreement in this particular case before me however is over the number of factums and whether the supplemental submissions and authorities should be included.

The issue that I have been requested to address relates to the requirements for supplemental submissions and authorities. That is should the photocopies related to the supplemental factum and cross reply filed by the Applicants be included as a disbursement pursuant to Tariff "D" sections 2(7), (13)

Following the Hearing before the Court of Appeal the parties received the following letter from the Deputy Registrar:

Dear Counsel:

RE: Horn Abbot Ltd., et al v. David H. Wall • CA 257198

The Chair of the panel has asked me to send you this letter to confirm the directions you were given at the close of argument today.

The panel asks for your written submissions in response to two matters:

1. Can a judge decide to take some matters away from a jury mid-trial without the consent of all parties? What would happen if that arose during the course of a trial? If one party did not consent, could they be forced to proceed? Would such an order to proceed by the trial judge provide good grounds for a mis-trial? Have such circumstances been considered at the appellate level - if so, with what result?

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2. **Has there been any judicial treatment of a case where the trial judge has, arguably, made a pre-trial decision that anyone who chooses not to serve on a jury will receive an automatic exemption? Does such a pre-trial decision amount to a violation of the proper exercise of judicial discretion, thereby constituting an error of law? Have such circumstances been considered in the case law or by academic scholars?**

The panel asks that you carefully and thoroughly review the Canadian and American authorities, but that you not confine yourselves to those two jurisdictions. For example, you would likely wish to consider British and Australian jurisprudence and any other jurisdictions you thought worthwhile.

Each of the three of you is obliged to file your initial written submission by the close of business on Friday, February 24, 2006. Each of the three of you is asked to file any cross-reply by the close of business on Wednesday, March 1, 2006.

Thank you for your assistance.

While the letter to the parties concerning the above supplemental submissions is from the Deputy Registrar, she is writing and has the delegated authority to write on behalf of the Court of Appeal. Further the Registrar in the above referenced letter simply confirms the directions given to all Counsel at the end of the Appeal Hearing. The Court directs the Applicants and Respondents to survey the authorities on specific questions related to the appeal and to file written submissions and any replies to same within a specific time period. The Applicants, both individual and corporate, did as directed. To face the consequences of not doing so required by Justices Oland, Saunders and Fichaud would have no doubt been uncomfortable for Counsel and a disservice to their clients. However that did not happen, briefs and cross-replies were submitted for use by the Court and those disbursements are reasonable under 2(7) of Tariff D.

With respect to the supplemental factum, book of authorities and cross-reply the Applicants argue Rule 62.15(1) requires 5 copies to be sent to the Court. However 62.15 is in reference to an initial appeal on a matter that is correctly before the Court. In this case the supplemental material requested was for a panel of three and it would be reasonable for the panel to expect the factum, authorities and cross-replies requested to be for each of the members hearing the appeal and any additional copies would be redundant or unnecessary.

Therefore to this extent I would accept that there should be three copies going to the court, not five, and this would be a reduction of 1160 pages for the individual Applicants or \$174.00. Therefore for photocopies for the individual Applicants I would allow \$2,712.00 less \$174.00 or **\$2,538.00**. For the corporate Applicants \$451.20 I would use the same reasoning and reduce the number of copies by 108 pages at 15 cents per page or \$16.20 and I would therefore allow \$451.20 less \$16.20 or **\$435.00**.

The corporate Appellant's bill of costs referenced further photocopies being claimed as \$606.00 however the Applicants are not seeking this amount as outlined in its reply brief of June 30, 2006.

(2.) Computerized Research

The individual Applicants in their final submissions to this Court state,

“In addition to the above noted disbursements at the hearing, the Applicants requested payment of \$1,000.00 for computerized research required after the appeal hearing. This amount claimed is reduced by almost \$300.00 from the amount charged to the clients.”

The argument being used by Counsel is that extensive research was required by the Court of Appeal following the hearing from three jurisdictions other than Canada.

The Applicants in their initial brief to this Court dated May 31, 2006, indicated that computerized research should be considered by the Court in light of the Court of Appeal's request to complete additional research in relation to Canadian, American, British and Australian jurisprudence. And while there is support for allowing computerized research the Applicants decide to forego this as a disbursement.

The Respondents argue that Chief Adjudicator Giles has it right in a prior taxation between the parties wherein he stated,

“ The only remaining “item” to consider with respect to the first Applicant’s claim for “office expenses” is the computerized legal research charge of \$355.52. Assuming once again that I am bound by the decisions of Mr. Justice Goodfellow in Bank of Montreal [v.Scotia Capital Inc./Scotia Capitaux Inc.,(2002) Carswell NS 514] and by Mr. Justice Hall in Elliott v. Nicholson (1999), 179 N .S.R. (2d) 264, it appears that those types of charges are outside of both Tariff “0” and my discretion. Accordingly, they are disallowed.”

See also *Kimberly-Clark Inc. v. Julimar Lumber Co*, 2004 N.S.S.C. 71. These cases are in line with the analogous thinking that lawyers are expected to do the research and that is incorporated as part of their fee structure or it should be considered as part of their fee structure or it should be considered part of office overhead required for maintaining a law firm. [Overhead costs, are not taxable: *Wyatt v. Franklin* (1993), 123 N S R (2d) 347

Ormrod (Litigation Guardian of) v. Goodall [2002] N S I No 487 3664902
Canada Inc. v. Hudson's Bay Company (Ont. S.C.J.) 22 CPC (5th) 102; *Kimberly-Clark Inc. v. Julimar Lumber Co.*, [2004] N S I No 128, 2004 NSSC 71 *Day v. Day* (1994), 129 N S R (2d) 186

There are also inherent problems in dealing with exactitude with this type of disbursement if it is to be considered a disbursement. Some suggest it is quicker than when lawyers had to solely rely on cases in the library. Of course, the contrary argument exists that it opens more information to the researcher. There is also the

question of how is the research charged out. Counsel for the Applicant on cross-examination could no say if their office was charging out as a flat fee or if it can be broken down as to a certain percentage is overhead. It is because of these uncertainties, because the individual Applicants earlier decided in my view to forego this as a disbursement “in an effort to be reasonable” and in light of the persuasive nature of Giles in a previous decision between these parties, I am inclined to disallow it in this case, notwithstanding Counsel’s persuasive arguments referred to earlier.

With respect to the Corporate Applicant while they have included legal search as a costs it incurred its application indicates it is not claiming same and it is also stated as such in the brief filed by the Applicants on May 31, 2006. Therefore that disbursement has been agreed and I shall not include it as a taxable item.

3. Stationery/Bookbinding

The amount being sought by the individual Applicants is \$496.60 for stationery and bookbinding. In the Respondents written submissions to this Court Counsel initially includes stationery/bookbinding as an agreed disbursement and later attaches a caveat that they are prepared to agree to \$100.00 for this item.

Sections 2(7) and 2(13) are sufficient to allow the costs for stationery and bookbinding. The amount claimed is \$496.60. This amount is supported by affidavit but this affidavit is of a general nature in referencing the stationery and bookbinding as part of all the disbursements incurred on behalf of the Applicants. There was no testimony to support the amount claimed here and there were no receipts. I have searched through the numerous documents filed and I have been unable to discover any receipts or other proof for same other than to take judicial notice of the numerous documents filed in the appeal. If I have missed this proof in the exhibits and submissions filed with the Court, I would be required to revisit same upon application by Counsel or if this matter is appealed to the Supreme Court then it can be handled at that level. No doubt there was a cost associated with Bookbinding and stationery and in this case I shall allow same and being somewhat discretionary I shall allow **\$250.00** which is somewhat higher than the amount agreed to by the Respondent in this Application and lower than what the affidavit of Counsel indicated was incurred.

4. Courier Charges

The Respondent contended the courier charges were not necessary. The documents could have been mailed which would be part of the Applicant Counsel's overhead and therefore mail would not be taxable.

\Courier charges are acceptable costs and have been allowed by the Courts in Nova Scotia again if reasonable. These would fall within section 2(13) of the Tariff D. I refer to *Flynn v. Halifax (Regional Municipality)* 2006 N.S.J. No. 262; *Sand Surf and Sea Ltd. V. Nova Scotia (Department of Transportation)* [2005 N.S.J. 396; *Colmen Fraser Whittome and Parcels v. Canada (Department at)* [2003] N.S.J. No. 272, which all support the notion of courier charges being allowed as a disbursement again when reasonable. Justice Nathanson in *Halifax Shipyard Ltd. V. Moving Office and Technical Employ* [1997] N.S.J. No. 242 did not allow courier charges as there were no receipts for same and he had no way of knowing. In this case the courier expenses are documented. There is no question that numerous documents were sent by the Applicant in this appeal, some with strict time requirements and based on the decision of the Court of Appeal this ended up being a matter that took more than a short paragraph to grant the Appellant, Applicant's herein their appeal. I shall allow the courier charges in the amount of **\$87.81** which amount reflects the supporting receipts and also appears to include HST

5. Travel

In an earlier application between these same parties which resulted in an Order of the Supreme Court and subsequent taxation which resulted in a decision of the Adjudicator Giles the Court allowed disbursements in connection with each appearance as is the case at bar but the Order of Justice Simon J. MacDonald went on to say the disbursements allowed shall include airfare from Halifax to Sydney and hotel accommodations along with the regular disbursements. The current Order for which I am charged to deal with does not specify travel and hotel accommodations.

Justice McLellan in a decision *Westmount Transfer Limited v. Mill Joy Enterprises Ltd.* [1975] N.S.J. No. 484. At that time the practice of requesting travelling expenses was not part of lawyers' practise and in quoting a former taxing master who said "if you don't like it, hire a lawyer with an office at place of trial." Even Justice McLellan had difficulty with that notion but sided with it as it was acceptable practice at that time. Today however travelling expenses are enshrined in section 2(6) of Tariff D.

Counsel for the Respondents urged the Court to consider the *Westmount Transfer* case and to consider persuasive *Alto-Import v. Fairbanks*.

Justice Freeman in the Alto case quoting from Orkin said,

The rationale for taxation of disbursements in a solicitor's bill of costs is explained in Orkin, *The Law of Costs* Second Edition, paragraph 204:

"Since costs are an indemnity only, it follows that they cannot be made a source of profit to a successful party. Thus, if costs have not been incurred or the party is not liable for any particular item or fee, he cannot recover them as part of the costs of the litigation; nor can he by a voluntary payment increase the burden cast on his opponent. The reason is simple: where the successful party incurs no pecuniary loss, there is nothing in respect of which he should be indemnified. The statement is often made that party and party costs are only a partial indemnity to the successful litigant against his liability to pay his solicitor's costs. A successful party cannot recover more in party and party costs than he has paid to his own solicitor ..."

I agree with the above captioned quote. With respect to travel however both cases occurred prior to the current provisions of Tariff D. Counsel says that 2(6) makes it clear that while travelling expenses and accommodations are limited to a party attending trail and this does not encompass a solicitor's travel and accommodation costs. In order to allow solicitor's travel and accommodation it should be specifically ordered as was the case in the previous taxation between the parties and before Chief Adjudicator Giles.

It may well be that 2(6) is restrictive and is intended to not disadvantage a successful party. However there is support for allowing a party's reasonable travel and accommodations there is also available to a judge or adjudicator section 2(13) of Tariff D where appropriate.

Further in today's global environment it would be unrealistic and without merit to take the view as espoused within a decision of Justice McLellan referred to earlier – if you don't like it hire a local lawyer. It would be narrow to suggest a client has to defend a matter by using another lawyer who is not familiar with the client and subject matter of hand. That is not to say local counsel could not be helpful and beneficial in the proceeding. I do not accept Counsel for the Respondent's argument "if you were allowed out of province counsel to claim disbursements for airfare, hotels and travel to attend Court then a party who is wealthy could effectively stifle an impecunious or modest income Plaintiff by hiring one or more lawyers from out of province in hopes that on any Application or Appeal where costs are awarded, they could then tack on several extra thousand dollars in costs for travel." There is no evidence of this happening. Why a wealthy party should be put at a disadvantage or have an advantage. It is reasonable to expect a party to retain the most acceptable counsel and the issue is, are the disbursements for travel and accommodations reasonable?

The Corporate Applicant submitted its Counsel's air travel costs. The Respondents argue that Counsel could have flown on regular class. There is no evidence before me what that amount would be. Executive First Class travel might be unreasonable in certain situations however business class is not unreasonable and the receipts for same have been produced in evidence and should be allowed. The ticket receipt indicates \$2,034.34 plus GST \$143.20 I allow that total amount in the amount claimed **\$2,177.54** which shall include applicable taxes .I shall not include the reservation fee.

6. Accommodations

I have reviewed the room and room service bill and the Respondents' Counsel suggests that room service charged should be backed out and high speed internet. These are reasonable expenses associated with Counsel's stay for one night and I would allow same in the amount of **\$269.99** which excludes a gratuity charge but does not include the HST

HST at 15% on \$2788.00 = \$ 418.20

TOTAL COSTS: \$5,997.76

TAXED AND ALLOWED AT **\$5,997.76**

B. CORPORATE APPELLANT'S BILL OF COSTS

FEES (Allowed by Court of Appeal):

\$ 2,500.00

DIS BURSEMENTS (Taxed):

Photocopies

\$ 435.00

Airfare

\$ 2,177.74*

Transportation to and from Pearson

Airport and to and from Halifax Airport

\$ 236.49*

Accommodations

\$ 269.99

Prothonotary / Filing Fees

\$ 175.00*

Law Stamp

\$ 28.75*
\$3,322.9

*taxes included in the amount or do not apply

HST at 15% on \$704.99 = \$ 105.74

TAXED AND ALLOWED AT **\$5,928.71**

7. Transportation Costs

The receipts for Counsel’s transportation costs to and from the airport and to the hotel to the Court House are reasonable, were explained and I shall allow the amount claimed **\$236.49**. The receipts for transportation amount to \$273.99 however that has a gratuity ,administration and tax component attached to it and I accept the amount of \$236.49 as reasonable and I take it as including a HST amount.

8. The Law Stamps and Filing Fees

Both these fees have been agreed to and I would allow same in any event for both the Individual and Corporate Appellants. That is Filing fees **\$175.00** for both Applicants and Law Stamp **\$28.75** for Applicant

Therefore I shall allow costs as follows:

A. INDIVIDUAL APPELLANT’S BILL OF COSTS

FEES (Allowed by Court of Appeal): **\$2,500.00**

DISBURSEMENTS: (Taxed)

Photocopies	\$ 2,538.00
Prothonotary / Filing fees	\$ 175.00*
Law Stamp	\$28.75*
Courier/Delivery	\$ 87.81*
Stationary / Bookbinding	<u>\$ 250.00</u>
	\$3,079.56

There is an \$80.00 fee associated with this taxation and I shall allow that amount to be shared between the individual Applicants and the corporate Applicants and if the **IT IS THEREFORE ORDERED THAT** the following accounts are certified inclusive of fees, disbursements and HST

A. Individual Applicants CHRISTOPHER HANEY, CHARLES SCOTT ABBOTT, JOHN HANEY AND EDWARD MARTIN WERNER Account in the amount of \$5,997.76 plus \$40.00 costs of this Taxation for a total amount of **\$6,037.76** and;

B. The Corporate Applicant HORN ABBOT LTD (formerly HORN ABBOT PRODUCTIONS LIMITED) Account in the amount of \$5,928.71 plus \$40.00 costs of this taxation for a total amount of **\$5,968.71**

DATED at Halifax, this 21 day of September, A.D. 2006.

David T.R. Parker
Small Claims Court Adjudicator