

**Order**  
**in the Small Claims Court of Nova Scotia**  
Citation: *Patterson Law v. Adshade*, 2019 NSSM 38

**BETWEEN:**

**PATTERSON LAW**  
10 Church Street,  
PO Box 1068,  
Truro, Nova Scotia  
B2N 5B9

**CLAIMANT**

**AND**

**JAMES AD SHADE**

[...]

**DEFENDANTS**

**MICHELLE AD SHADE**

[...]

On April 1, 2019 a hearing was held in the above matter and the following Order is made:

1. That the **CLAIMANT'S** action against the **DEFENDANT** is allowed, as per the attached decision of this court.
2. The **DEFENDANT** Ms. Adshade and her brother are jointly liable for the costs of the account to the **CLAIMANT** Ms. MacKinnon for the outstanding amount of \$8023.12.
3. Pre-judgement interests or costs shall not be awarded in this matter and each party shall bear their own.

Debt: \$8023.12

Costs: \$0

**Total judgement: \$8023.12**

Dated at Truro, in the County of Colchester,  
in the Province of Nova Scotia, on August 6<sup>th</sup>,  
2019.

\_\_\_\_\_  
Shelly A. Martin  
Adjudicator

**Order**  
**in the Small Claims Court of Nova Scotia**  
**Citation: *Patterson Law v. Adshade*, 2019 NSSM 38**

**BETWEEN:**

**PATTERSON LAW**  
10 Church Street,  
PO Box 1068,  
Truro, Nova Scotia  
B2N 5B9

**CLAIMANT**

**AND**

**JAMES AD SHADE**

**DEFENDANTS**

[ ]

**MICHELLE AD SHADE**

[ ]

---

**REASONS FOR DECISION**

**BEFORE**

Shelly A. Martin, Adjudicator  
Hearing held at Truro, Nova Scotia on April 1, 2019  
Decision rendered on August 6, 2019

**APPEARANCES**

For the Claimant  
For the Defendant(s)

Daniel Boyle, Patterson Law.  
Self-represented.

## By the Court

[1] The Defendant Ms. Adshade was not a client of Ms. MacKinnon. Rather, she signed the retainer agreement as a guarantor at the request of Ms. MacKinnon, who had been retained to provide legal services to her brother, the Defendant James Adshade, who required legal assistance for a family matter. The Defendant had indicated to Ms. MacKinnon that he would be receiving assistance from his family for the retainer and on that basis, Ms. MacKinnon requested he provide a guarantor for the agreement. Initially this was to be their brother Chris, but Michelle signed instead.

[2] On April 10, 2017, the Claimant reviewed the agreement with both the Defendants. Section 1 of the Retainer Agreement notes the requirement of an initial retainer of \$2000.00 and contains a caveat that *"I will not commence any work on this file until the retainer has been paid. If your file is still active and your initial retainer has been reduced to a balance of \$500.00, I will require you to replenish your trust account to the original retainer amount or other such amounts as we mutually agreed upon."* Ms. McKinnon explained that the initial retainer of \$2000.00 was a "down payment" and that as work on the file was completed and the retainer was depleted, that it would need to be "topped up" to either the original retainer amount, or some other amount the parties would agree to in future.

[3] Ms. MacKinnon discussed her hourly rate of \$165.00 per hour and the retainer agreement uses plain language to describe how time on the file accumulates: In section 2, I note:

*On my invoices 6 minutes equals .1 of an hour. I multiply time spent by the hourly rate to calculate the fee (i.e., .5 (30 minutes) x \$165.00 = \$82.50). There is a minimum charge of .1 hour for each service rendered. I will invoice you periodically when a particular part of the file has been brought to a conclusion.*

*I deduct the amount of each invoice from your trust account balance as soon as the account is prepared. Any outstanding balances must be paid forthwith upon receipt of the invoice.*

[4] Ms. MacKinnon testified that she took care to bring specific attention to several sections of the retainer agreement that are in bold font and Ms. McKinnon testified that these sections merited particular attention when she reviews the agreement with clients. For example, the retainer was emphatic, in bold letters in section 2, that a fixed quote of costs was impossible but advised that the client would be kept up to date about the status of the account through periodic bills and discussions with the client.

[5] Ms. Adshade's defence to this action is that the agreement does not include her being responsible for any charges in excess of \$500.00 on the account. She took issue with the accumulation of Ms. MacKinnon's bill and understood that she would be notified when the account reached a "zero balance," as she made it clear she "did not want a huge bill" at the end of the proceeding. Considering she believed her brother to be self represented



by the end of October 2017, the Defendant Ms. Adshade testified that she was shocked when contacted by Keltic Collections in February of 2018, who were seeking payment of the outstanding fees that are now subject to this action. Her position is that as she did not know the bill for services was accumulating, she should not be responsible for its payment.

[6] At no point did Ms. Adshade question the quality or value of the work performed by the Claimant on her brother's behalf. However, Ms. Adshade advised her brother to fire Ms. MacKinnon in the fall of 2017, owing to the fact that her family felt her brother "was not doing what he needed to do" in order to have a successful conclusion to any of his matters over which Ms. Adshade had carriage. The Defendant Ms. Adshade testified that her brother deceived his family, assuring them that he had in fact fired the Claimant and was representing himself. In fact, the Claimant continued to act until the end of December, 2017.

[7] Clearly there are issues within the family that stand apart from this matter. The Claimant was not made aware of these developments and continued to provide representation for Mr. Adshade. She testified that after a retainer of \$2000.00 was provided in early June of 2017, she received a phone call from Ms. Adshade and her brother Chris on Father's Day, advising that the Defendant Mr. Adshade was in custody. Both asked Ms. MacKinnon to handle this matter for their brother. No specific details of this work or a retainer for the criminal matter was provided to this court and it appears the that work was conducted under the auspices of the existing retainer agreement, with fees for the work deducted from the retainer in June and July 2017.

[8] Although Ms. Adshade is not Ms. MacKinnon's client and her complaint touches on aspects of contract law, the fact that this dispute involves the payment of legal fees made it necessary to proceed with this matter as a taxation to determine whether the fees charged were reasonable.

[9] Under the circumstances, I proceeded with this matter as a taxation commenced under section 9A(1) of the Small Claims Court Act and the Small Claims Court Taxation of Costs Regulations to assess whether Ms. MacKinnon's account as rendered is reasonable. This required me to look at the facts and weigh the principles that guide this process, found in the Nova Scotia Civil Procedure Rules, the Code of Professional Conduct of the Nova Scotia Barristers Society, and the common law.

[10] Reasonableness is the standard for calculating taxation costs. Section 3.5-1 of the Nova Scotia Barristers' Society Code of Professional Conduct states that a lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion Civil Procedure Rule 77.13 governs entitlement and assessment of fees and disbursements. Rule 77.13(2) offers a list of factors to be considered, it provides that "the reasonableness of counsel's compensation must be assessed in light of all of the relevant circumstances, and the

following are examples of subjects and circumstances that may be relevant on the assessment:

- Counsel's efforts to secure speed and avoid expense for the client;
- The nature, importance, and urgency of the case;
- The circumstances of the person who is to pay counsel, or of the fund out of which counsel is to be paid;
- The general conduct and expense of the proceeding;
- The skill, labour and responsibility involved;
- Counsel's terms of retention, including an authorized contingency agreement, terms for payment by hourly rate, and terms for value billing.

[11] To the same effect, *McInnis Cooper v Staunwhite* (2004 NSSM 3 at para 90) listed factors to be considered when determining what fee is fair and reasonable between a law firm and its client. These factors were first listed in *Cohen v Kealey Blaney* (1985 CarswellOnt 1906 at para 17) and were listed again in *Roebuck, Garbig v. Albert* (1992 Carswell Ont 4825 at para 3). This list of factors includes:

- The time expended by the solicitor;
- The legal complexity of the matters dealt with;
- The degree of responsibility assumed by the solicitor;
- The monetary value of the matters in issue;
- The importance of the matters to the client;
- The degree of skill and competence demonstrated by the solicitor;
- The results achieved;
- The ability of the client to pay; and
- The reasonable expectation of the client as to the amount of the fee.

[12] In *Lindsay v. Stewart, MacKeen & Covert* (1988) N.S.J. No. 9, the Nova Scotia Court of Appeal held that the taxation provisions are "primarily for the protection of the client" and must be enforced. Such protection is not ensured by a " cursory examination of the solicitor's bill." In answer to this, some adjudicators have taken pains to attempt to scrutinize legal bills, examining each invoice in detail in an effort to assign value to each piece of work undertaken on behalf of a lawyer's client. However, I am informed by the decision of Gavin Giles in *Singleton & Associates v. Mathieson*, 2005 NSSM 4 (N.S. Small Cl. Ct.), where Adjudicator Gavin Giles noted that "taxation of a solicitor/client account is a fluid exercise. It is not dependant specifically on any one feature. It is not a science which is to be practiced empirically. It is instead an exercise which attempts to bring facets of order to an amalgam of circumstances which are not easily reconcilable with each other."

[13] The first bill was provided to Mr. Adshade on September 29, 2017 it covered work done between July 20<sup>th</sup> to September 29<sup>th</sup>, 2017. The invoice does not include time entries for each task but I note the invoice is for an extensive amount of work done on Mr.

Adshade's behalf. In addition to reviewing ongoing correspondence with opposing counsel, the Claimant Ms. MacKinnon prepared for an initial settlement conference, which included preparing affidavits, compiling and reviewing financial information and pre hearing briefs. The bill for September also included an office conference with Mr. Adshade and included an additional court appearance on September 19, 2017. The amount for this work was \$1808.97.

[14] A second invoice dated November 30<sup>th</sup> shows services rendered between October 11<sup>th</sup> and November 28<sup>th</sup> included a review of correspondence from courts, documents and correspondence from opposing counsel and Mr. Adshade. It also included drafting of an affidavit and another pre hearing brief and additional office conferences with Mr. Adshade. The bill for this period totalled \$2556.12.

[15] The third and final invoice provided included extensive preparation for a contested hearing in December 2017. This matter was heard days before Christmas and in the weeks leading up to the hearing Ms. MacKinnon performed a detailed review and analysis of the pleadings and then had what she termed in the invoice a "lengthy" office conference with Mr. Adshade to prepare him for direct and cross examination at trial. She also drafted correspondence respecting a settlement, but continued to meet with the client and prepare for the hearing, which she then attended on December 12<sup>th</sup> and later, again on December 19<sup>th</sup>. This invoice totalled \$4228.03, though I note this invoice also reflected a reduction of \$294.00.

[16] Ms. Adshade testified that she attended the initial meeting on April 10, 2017 and asked Ms. MacKinnon to advise her brother on the criminal matter that arose later that year on Father's Day. Ms. MacKinnon testified it was normal for the first 4 months of the retainer for a family member to attend any meeting or court appearances with Mr. Adshade but Ms. Adshade said this stopped after late September 2017. Ms. MacKinnon stated that her practice with respect to billing was to send the invoices directly to Mr. Adshade's attention. This was a practice she felt that was in keeping with her ethical duties with respect to confidentiality. It is also in keeping with the retainer agreement, which Mr. Adshade signed in the first instance and Ms. Adshade as a guarantor to pay only in the event that Mr. Adshade did not pay the invoices within 30 days. By the time Ms. MacKinnon issued the September invoice, only \$540.61 remained of the initial \$2000.00 retainer. This was applied to the September invoice. An additional payment of \$400.00 was made on October 27<sup>th</sup>. When no further payments were forthcoming from Mr. Adshade, the accounting department of Patterson Law sent the matter to Keltic Collections for recovery.

[17] It was at this point that Ms. Adshade was contacted about the outstanding invoices and requested copies. Ms. Adshade did make efforts to have her brother repay the accounts through Keltic, but her brother's job loss made it impossible for him to pay. Keltic collected \$800.00 from Ms. Adshade, she was reported to have defaulted on her own arrangements with Keltic in October 2018.



[18] I cannot find in this case that Ms. Adshade's liability for the legal account was limited to \$500.00. This is not contained anywhere in the retainer agreement, nor was it a discussion that Ms. MacKinnon recalls having. Ms. Adshade was well aware, even before she asked Mr. Adshade to fire Ms. MacKinnon, that a significant amount of work was being done on her brother's behalf. At Ms. Adshade's own direction, Ms. MacKinnon, took on Mr. Adshade's criminal matters and a reasonable person would have understood this work have incurred additional fees. I find that although she herself may not have attended every meeting with Ms. MacKinnon, Ms. Adshade was aware of all of the circumstances surrounding the case her brother had to meet and the services that were being rendered on his behalf. In the minimum, she was sufficiently attuned to opine that he wasn't doing what he was supposed to do in order to have a successful hearing and advised firing his counsel in October 2017.

[19] After the flurry of legal activity owing to the criminal charges and the court appearances in September, it would have been reasonable for Ms. Adshade, who wanted to limit her liability to \$500.00 to have communicated with Ms. MacKinnon on the status of the account, but Ms. Adshade testified she did not communicate any concerns or direct inquiries to the Patterson Office regarding the account. While I accept that Ms. Adshade may have wanted to limit her personal liability for her brother's legal fees, she did not act in a manner that was consistent with this approach. Nor was it fair for her to demand that work be stopped when the retainer hit a zero balance. In fact, refusing to do further work, especially on a time sensitive and high-jeopardy criminal or family matter because a guarantor feels the bill is too high is unethical and the kind of behaviour lawyers must avoid in order maintain the reputation of the profession as a whole.

[20] While Ms. Adshade was not provided with a copy of the accounts on an ongoing basis, she was aware of the fact that Ms. MacKinnon was rendering the services to her brother throughout the summer and fall of 2017. Having signed the retainer agreement and being aware of Ms. MacKinnon's hourly rate of \$165.00 per, she would have had a very good idea of the amount of time being invested by Ms. MacKinnon on behalf of James Adshade. For all of these reasons, her attempt to limit his liability in this case should not succeed.

[21] The Nova Scotia Barristers' Society Handbook, Chapter 12 states that with respect to fees, a lawyer is duty-bound to "stipulate, charge or accept only fees that are fully disclosed, fair and reasonable." There is no better way to substantially comply with this duty than to keep accurate timely records of all services, retainers, disbursements, payments and time spent by the barrister on the client's file.

[22] It would have been helpful to this court's analysis had Ms. MacKinnon provided invoices that actually contained time entries for each task invoiced. It's clear that time dockets were kept and it was Ms. MacKinnon's evidence that she properly reviews each invoice to ensure there is no duplication of time.

[23] It is possible through the application of some basic math to get a sense of the hours spent on the matter during the billing period. The September invoice, for example, shows

a basic fee of \$1518.00, representing about 9 hours of work at a rate of \$165.00 per hour. Similarly, the November invoice was for fees of \$2062.50, representing about 12.5 hours of work; the final invoice in December was the highest at \$3894.00, representing approximately 23.6 hours of work. I note that in December, Ms. MacKinnon reduced her fees, removing 1.78 hours from the final bill. As a whole, I do not find these amounts unreasonable, given the amount of court appearances, trial preparation and the contested nature of the family hearing.

[24] While failing to include the time does not in this instance preclude Ms. MacKinnon from recovering amounts owing, the approach taken above is not helpful to any client seeking an understanding of a lawyer's fees. Nor is it in keeping with the decision of Justice Grant, who in *Boyne Clark v. Nottell* (Guardian ad litem of) [1994] NSJ No. 604 (TD) at paras.46-51 admonished a firm for failing to present time dockets and stated that lawyers are duty-bound to have an account which they could present to the court in a form which the court could readily analyze.

[25] In future, I would expect such invoices to more explicitly state time spent per item. This is helpful to the court but is also useful for the client to understand the amount of time and effort expended on their behalf that is intellectually rigorous and demanding, but unfortunately is often intangible or misunderstood by clients. Failure to provide time dockets in certain circumstances can result in a denial of natural justice and for these reasons, it is imperative that good records are provided to the client.

[26] In summary, I find that the Defendant Ms. Adshade and her brother are jointly liable for the costs of the account to Ms. MacKinnon for the outstanding amount of \$8023.12. I am not inclined to award pre-judgment interests or costs in this matter and each party shall bear their own.

Dated at Truro, in the County of Colchester,  
In the Province of Nova Scotia, on August 6<sup>th</sup>,  
2019.

Shelly A. Martin,  
Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)