

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
AND IN THE MATTER OF A TAXATION
Citation: *Annapolis (County) v. Gillis*, 2021 NSSM 61**

Date: 2021-11-14
Docket: SCCH 505244
Registry: Halifax

Between:

Municipality of the County of Annapolis

Applicant (Client)

- and -

Gilbert McGloan Gillis

Respondent (Lawyers)

PRELIMINARY DECISION ON JURISDICTION

Adjudicator: Eric K. Slone

Heard: Via zoom in Halifax, Nova Scotia on September 23, 2021

Appearances: For the Applicant (Client)
Michael M. Gallagher, counsel

For the Respondent (Lawyers)
Rodney Gillis, Q.C.

BY THE COURT:

Introduction

[1] In this proceeding the applicant Municipality of the County of Annapolis (“Annapolis County”) seeks to tax legal accounts rendered to it by the respondent Gilbert McGloan Gillis (“hereafter “GMG”) rendered between June 2018 and December 2020, totalling some \$406,398.57. Those accounts were paid some time ago.

[2] GMG has raised a preliminary objection to this court proceeding with the merits of the taxation. It argues that because it is a New Brunswick law firm, and because (in a sense) most of the legal services were rendered in New Brunswick, this is not the proper or appropriate forum for the taxation of the accounts. It says that any taxation proceeding initiated by Annapolis County should proceed before a reviewing officer appointed by the New Brunswick Law Society, according to the prevailing practice in New Brunswick.

[3] A preliminary hearing was held via zoom on September 23, 2021, to hear argument on the jurisdictional issue. Three affidavits were submitted in connection with the jurisdictional question, and, prior to the oral argument, short cross-examinations were held on the affidavits filed. Both parties filed written briefs in advance of the hearing.

The parties

[4] The respondent GMG is a law firm based in Saint John, New Brunswick. One of its partners is Mr. Rodney Gillis, Q.C. Throughout this decision I will refer to him as “Rodney Gillis” because there is another lawyer with the surname Gillis, namely Bruce Gillis Q.C., of Middleton, Nova Scotia, who also played a role in the matter.

[5] Rodney Gillis is a member of the Law Society of New Brunswick, and not of the Nova Scotia Barristers Society, though like almost every other licenced lawyer across Canada he enjoys the privilege of practicing in Nova Scotia on a limited (and fairly liberal) basis pursuant to the so-called Mobility rules.

[6] Rodney Gillis is an experienced counsel with particular expertise, it appears, in municipal law and litigation generally.

[7] Annapolis County is a municipal entity providing services to parts of Annapolis County, with its main office in the Town of Annapolis Royal. As I understand the arrangement, Annapolis County provides services to areas within the county not otherwise covered by local municipal governments within the county, such as, for example, the Town of Middleton or the Town of Annapolis Royal itself.

The facts

[8] Annapolis County has complex and sometimes fractious relationships with other municipalities in the county and in neighbouring Kings County. These include a recent dispute over something called (for short) Valley Waste, as described in a 2018 Supreme Court of Nova Scotia court case involving those various municipalities, *Kings County (Municipality) v. Annapolis County (Municipality)*, 2018 NSSC 303:

[1] Several municipalities in the Annapolis Valley got together in 1999 and created a municipal service corporation to provide solid waste management for their communities. The entity is called the Valley Region Solid Waste-Resource Management Authority or just Valley Waste. ValleyWaste owns a property in Lawrencetown, Annapolis County that served as the Western Transfer Station. Recently the parties got into a dispute about the running of Valley Waste. Annapolis County gave notice that they wanted to withdraw from the intermunicipal service agreement that governed the arrangement. Annapolis County stopped paying fees to ValleyWaste and in August 2018 Valley Waste stopped providing services to residents of Annapolis County. Annapolis County then gave Valley Waste notice that the Western Transfer Station in Lawrencetown was being expropriated by Annapolis County.

[2] The other municipalities applied for judicial review of the decision of Annapolis County Council to expropriate the property. The *Municipal Government Act*, SNS 1998, c. 18 does not permit a municipality to expropriate the property of another municipality. They argue that the property in Lawrencetown owned by Valley Waste is the property of a municipality.

[9] The court agreed with the other municipalities and overturned the expropriation. The case was heard in Annapolis Royal on November 20, 2018, and decided eight days later. It is of some significance that Rodney Gillis is listed as one of the counsel for Annapolis County, alongside Bruce Gillis. It is admitted that Rodney Gillis was in court that day, having drafted at least some of the materials filed in court, although it appears that Bruce Gillis actively argued the case for Annapolis County.

[10] It is not disputed that Rodney Gillis had been retained earlier in 2018 to provide advice and other legal services to Annapolis County, at the invitation or suggestion of Annapolis County's then-Chief Administrative Officer John Ferguson and was tasked with assisting or complementing Annapolis County's local legal counsel, Bruce Gillis.

[11] Rodney Gillis understood that because matters were highly political, Annapolis County was looking for someone outside the county, if not outside the province, to offer advice and other services.

[12] Rodney Gillis swore in his affidavit that he was approached by John Ferguson. Upon being asked to provide legal services, Rodney Gillis sent Mr. Ferguson an Engagement Letter and Retainer Agreement which Mr. Ferguson signed on behalf of Annapolis County. Rodney Gillis described it as a “standard retainer agreement” which I take to mean that most of the language used was part of a precedent in common use in his office, with modifications made according to the unique circumstances of the engagement.

[13] The Retainer Agreement contained a number of provisions that are noteworthy within the context of this jurisdictional question.

[14] The “Re: line” sets out what the retainer was in reference to:

Re: Matters relating [to] Waste Valley Resource Management Authority (“the Authority”) and the Intermunicipal Services Agreement in relation to the Authority

[15] It then goes on to elaborate:

All business and legal matters handled by our law firm on behalf of Municipality of the County of Annapolis (‘Annapolis’) including those instructed by Tim Habinski and or John Ferguson or agent of Annapolis from time to time. All advice in relation to Annapolis and its business and legal matters. All contracts, negotiations, proposals and other obligations of Annapolis including advising, meetings, drafting and attending on execution of documents: All court, administrative body or other proceedings and representation of Annapolis and any or all of the persons who represent Annapolis’s interests, including all hearings, examinations for discovery, trials, research, advising, commencing proceedings, prosecuting proceedings and all legal representation related thereto. All travel, meetings and other services in relation to the foregoing.

[16] Under “Scope of Employment” it states:

We are instructed by Annapolis and we are hereby authorized to assume conduct of the legal matters presented to us for representation as your solicitors. In the course of our representation of Annapolis, we will provide reports and updates to you on an interim basis when the

matters are active. You authorize us to do all things necessary relating to the legal matters affecting Annapolis, all for the protection of Annapolis' interest, and to act as Annapolis' solicitor, either in such manner as the authorized directors, officers or agents of Annapolis instruct or otherwise, only in the event of an emergency, as we consider expedient in those instances where authorized persons are not readily available to instruct us and cannot be found. Our firm's objective is to work with you in achieving your legal goals as efficiently as possible.

By signing this agreement, you agree that where our law firm is instructed to perform legal services on behalf of Annapolis, we shall receive and be entitled to rely upon instructions provided by any director, officer or agent of Annapolis until we are presented with a duly passed resolution of the directors acting for Annapolis (or companies) changing the same. As you may already be aware, when acting for Annapolis, we will not be able under our Law Society Rules to represent the individual directors, officers or shareholders of Annapolis in relation to Annapolis matters. Our undivided loyalty must be to Annapolis and [its] best interests only. (emphasis added)

[17] The other reference to the Law Society - which was emphasized by GMG in its argument, is found under the heading "Privacy and Related Legislation":

We are pleased to advise that our Law Society Rules require us to protect your confidential information. The laws protecting solicitor/client communications further ensure that your engagement of our law firm will enable you to obtain the best legal advice possible on the matters of concern to Annapolis, all protected by privilege

[18] Mr. Ferguson also swore an affidavit in which he says, among other things:

2. As CAO pursuant to the Municipal Government Act and as directed by Council, I was authorized to hire services, including legal services, for the Municipality as I determined were necessary.
3. During the period I was the CAO the Municipality had engage [sic] the services of a Nova Scotia lawyer to provide legal advice as needed and that individual was Bruce Gillis Q.C.
4. By the early spring of 2018 issues had arisen concerning the Intermunicipal Services Agreement involving the Municipality and other Municipalities in the Annapolis Valley

and a corporation, the Valley Regional Solid Waste-Management Authority (Valley Waste)

5. Knowing that the issues would be a sensitive political issue involving both the Environment and Municipal Government departments as well as other municipalities in Nova Scotia I wanted to retain the services of a lawfirm not practicing in Nova Scotia to provide advice from time to time when required.
6. In March of 2018 I approached Rodney Gillis of the law firm of GilbertMcGloan Gillis, located in Saint John, New Brunswick, to inquire if that law firm would provide advice from time to time to the Municipality as I might request.
7. Rodney Gillis advised that the law firm of Gilbert McGloan Gillis didnot carry on the practice of law in Nova Scotia and further its only officewas in Saint John, New Brunswick. Both facts were known to me.
8. The law firm did provide a Retainer Agreement which they had signed inMay of 2018, and I subsequently signed in June of 2018. A copy of the retainer agreement was within the files of the Municipality while I was CAO.
9. Several terms of the retainer agreement concerned issues between a lawyer and a client and referenced to the Law Society Rules of the LawSociety of New Brunswick.
10. I was aware and agreed that any issues concerning the relationship between the Municipality and the law firm would be governed by the LawSociety of New Brunswick.
.....
17. During the period between May of 2018 and November 2020 I did ondifferent occasions attend the offices of Gilbert McGloan Gillis in Saint John in relation to the Municipality.
18. I make this affidavit to set forth the fact that the Municipality knew and agreed that the retainer of Gilbert McGloan Gillis was to be governedby the Law Society Rules of the Law Society of New Brunswick and not that of Nova Scotia and further details of the services provided by GilbertMcGloan Gillis to the Municipality.

[19] Mr. Ferguson was cross-examined on his affidavit, which cross-examination revealed that he was terminated from his position in December 2020. He is in ongoing litigation with Annapolis County concerning his termination, and currently resides in Ontario.

[20] When asked how he arrived at the conclusion that New Brunswick would have exclusive jurisdiction over the solicitor-client relationship, he pointed to the two references in the retainer agreement and stated that “this is my interpretation.”

[21] In his affidavit, Rodney Gillis deposed:

11. Several terms of the retainer agreement concerned issues between a lawyer and a client and referenced the Law Society Rules of the Law Society of New Brunswick.

.....

12. I only agreed that any issues concerning the relationship between the Municipality and the law firm would be governed by the Law Society of New Brunswick.

[22] In an affidavit filed on behalf of Annapolis County, Municipal Clerk Carolyn Young provided a copy of the retainer agreement as found in Annapolis County's records. She also gave details of the several pieces of litigation and other proceedings that were ongoing at the relevant time in the Nova Scotia courts (5 actions), as well as proceedings at the Ministerial level. She also appended a letter from lawyer Bruce Gillis of the Durland, Gillis firm in Middleton, Nova Scotia, who was the solicitor of record on several matters before the Nova Scotia courts (including the matter cited and quoted from earlier) and who was the lawyer that supposedly required the assistance of outside counsel. He confirmed in that letter that Rodney Gillis (of GMG) prepared and submitted the "actual responding documentation" in connection with the actions against the Municipality on behalf of Valley Regional Solid Waste Resource Management Authority and the other municipal units, in which he (Bruce Gillis) was named as counsel of record.

Did the parties contract out of Nova Scotia jurisdiction?

[23] Although there are legal arguments that will be addressed, GMG takes the position that as a matter of contract the relationship with Annapolis County is entirely governed by New Brunswick law. With respect, I do not come to that conclusion.

[24] Had the parties to the contract sought to oust the jurisdiction of the Nova Scotia courts, whether to tax a solicitor's account or otherwise, they should have at least attempted to do so with explicit language. The two references to the Law Society of New Brunswick are in relation to privacy and conflict of interest. These references confirm that as members of the New Brunswick bar the members of the GMG firm adhere to that Law Society's ethical rules. It would be surprising to see a reference to any other jurisdiction's rules. To the extent that there are any differences between the New Brunswick and Nova Scotia ethical rules, I suppose it could be argued that GMG would be bound only by the New Brunswick rules, although even that argument is dubious in connection with GMG's activities within Nova Scotia.

[25] But that is not the question. The question is whether these two references to the New Brunswick Law Society Rules (read together or separately) have the effect of:

- a. importing all those rules, including any relevant New Brunswick legislation, and also
- b. ousting the jurisdiction of the courts of Nova Scotia or Nova Scotia statutes such as the *Legal Profession Act*, or equivalents in any other province where GMG may engage in occasional practice.

[26] On the face of it, I do not see that they have done that.

[27] I have considered the evidence of Rodney Gillis and of John Ferguson. With respect, I found that evidence to be unconvincing. Mr. Ferguson is, with due respect, a former employee of Annapolis County with what appears to be an axe to grind. I give no weight to his “interpretation” of the contract, both because I find it unpersuasive and also because his opinion is - strictly speaking - irrelevant.

[28] And as for Rodney Gillis’s statement in his affidavit “*I only agreed that any issues concerning the relationship between the Municipality and the law firm would be governed by the Law Society of New Brunswick*” I find this to be very carefully worded and also unconvincing in terms of the narrow question of whether or not his firm might face a taxation proceeding in Nova Scotia if its bills were questioned. There is nothing to indicate that anyone’s mind was ever turned toward the specific question of whether the Nova Scotia courts might have jurisdiction to review GMG’s account.

[29] If the choice of forum is not in the written contract, as I find, was there nevertheless an oral contract to this effect?

[30] Courts are naturally skeptical of collateral oral agreements, if this was one, particularly where they are sophisticated parties who could easily have amended the agreement to incorporate additional understandings. I also note that the retainer agreement was signed by two people for Annapolis County, one of which was Mr. Ferguson and the other of which is someone not easily identified (by me) from the signature. The subject did not come up in the evidence or argument, so for present purposes there is no evidence that this second signatory was made aware of any collateral agreements. And there was no evidence that Mr. Ferguson had the

authority to bind Annapolis County to any oral contracts, on his say so alone. I believe that Annapolis County is entitled to argue that it has bound itself to the written contract, as drafted, and not to any private side-agreements between Rodney Gillis and John Ferguson.

[31] Even so, the evidence is lacking to the effect that there was any explicit oral agreement to oust the jurisdiction of Nova Scotia courts or of the Nova Scotia Barristers Society, with respect to GMG's activities in connection with Nova Scotia law.

[32] I do not have to answer the question of whether or not Annapolis County and GMG could have legally contracted out of Nova Scotia law and regulatory supervision. I simply find that they did not. But as Annapolis County points out in its brief, this is not a purely private contract with a choice of law clause. The Nova Scotia Barristers Society serves a public interest in regulating legal activity carried on within the province and it is doubtful that its public duty can be summarily ousted by a private contract for legal services, particularly where the contracting-out is not clearly stated.

Other relevant facts

[33] GMG's argument places a great deal of emphasis on the fact that Rodney Gillis did most of his work from his office in New Brunswick. And I am mindful that Mr. Ferguson says that he travelled to Saint John for some meetings.

[34] Rodney Gillis emphasizes in his brief that the contract for legal services was a contract "made in New Brunswick for work performed in New Brunswick and work billed in New Brunswick." None of this is disputed, as far as it goes.

[35] On the other hand, as revealed in some of his account entries and in other evidence, Rodney Gillis did appear in court (on the record for Annapolis County) at least twice, attended meetings in Nova Scotia on at least four occasions (June 12, 13, 2018 and December 9, 10, 2019), and drafted pleadings in several if not all of the pieces of litigation ongoing during his time performing legal services for Annapolis County.

[36] Nor can it be disputed that the client Annapolis County, who was the beneficiary of these services, is located in Nova Scotia, was in relationships with other entities in Nova Scotia, was operating entirely under Nova Scotia law and was engaged in disputes and legal relationships in courts, government departments

and other tribunals in Nova Scotia.

[37] Rodney Gillis emphasizes that he sent and received “more than a thousand” emails to and from John Ferguson and Bruce Gillis, often with lengthy attachments, presumably while working in his New Brunswick office. By the same token, those on the other ends of the communication were at all relevant times in Nova Scotia.

These activities amount to the practice of law in Nova Scotia

[38] In short, while he would prefer to characterize it otherwise, Rodney Gillis was engaged in the “practice of law” as that term is defined in the Nova Scotia *Legal Profession Act*:

Practice of law

16 (1) The practice of law is the application of legal principles and judgement with regard to the circumstances or objectives of a person that requires the knowledge and skill of a person trained in the law, and includes any of the following conduct on behalf of another:

- (a) giving advice or counsel to persons about the persons legal rights or responsibilities or to the legal rights or responsibilities of others;
- (b) selecting, drafting or completing legal documents or agreements that affect the legal rights or responsibilities of a person;
- (c) representing a person before an adjudicative body including, but not limited to, preparing or filing documents or conducting discovery;
- (d) negotiating legal rights or responsibilities on behalf of a person.

[39] That section goes on to specify who is entitled to practice law in Nova Scotia.

(2) No person shall carry on the practice of law in the Province for fee, gain, reward or other direct or indirect compensation, unless the person is

- (a) a member of the Society who holds a practising certificate;
- (b) entitled to practise law by the governing body for lawyers in a foreign jurisdiction approved by the Council and has met the requirements established by regulation to engage in the practice of law in the Province;
- (c) an articled clerk and is practising in accordance with the regulations;

- (d) a student of the Faculty of Law of Dalhousie University during the period the student is participating in a legal aid or clinical law program operated by and under the supervision of the Faculty or under the authority of an enactment; or
- (e) otherwise entitled pursuant to this Act or the regulations to carry on the practice of law in the Province.

[40] The litmus test for whether GMG was practicing law in Nova Scotia was not the location of Rodney Gillis and his computer; it was the nature of the work being performed. And s.16(1)(a) (once again) tells us what those things are:

- (a) giving advice or counsel to persons about the persons legal rights or responsibilities or to the legal rights or responsibilities of others;
- (b) selecting, drafting or completing legal documents or agreements that affect the legal rights or responsibilities of a person;
- (c) representing a person before an adjudicative body including, but not limited to, preparing or filing documents or conducting discovery;
- (d) negotiating legal rights or responsibilities on behalf of a person.

[41] This language fully captures the things Rodney Gillis did for Annapolis County. He was practicing law in Nova Scotia by advising a Nova Scotia client on matters governed entirely by Nova Scotia law, etc. There is not a whiff of a suggestion that Annapolis County was in need of advice as to New Brunswick law. What was apparently needed was the perspective of someone outside Annapolis County or possibly outside Nova Scotia altogether.

[42] Had Rodney Gillis not been a member in good standing of the New Brunswick bar, he would have had no right to provide legal services in Nova Scotia - whether present in Nova Scotia or working remotely - and as a New Brunswick lawyer he only had the right to do so courtesy of the reciprocal arrangements between the New Brunswick and Nova Scotia Law Societies.

[43] The Regulations under the *Legal Profession Act* contain the following:

6.2 Temporary Mobility by a Member of another Canadian Jurisdiction

Mobility without Permit

6.2.1 A visiting lawyer is permitted to provide legal services in the Province or with

respect to the law of the Province on a temporary basis, without a mobility permit or notice to the Society, for a total of not more than 100 calendar days in a calendar year, providing the visiting lawyer meets the criteria in subregulation 6.2.5; and has not established an economic nexus with the Province as described in subregulation 6.2.14.

6.2.2 A visiting lawyer:

is bound by the applicable provisions of the Act, these Regulations, the professional standards, and the Code of Professional Conduct;

[44] It is significant that the wording of 6.2.1 includes both “legal services in the Province or with respect to the law of the Province.” This distinction is important. Someone can provide legal services “with respect to the law of the Province” without setting foot in Nova Scotia. Such activity may only be carried out legally by a Nova Scotia lawyer or someone who has the right to practice in Nova Scotia by virtue of some other status.

[45] Times have changed in two important respects since (about) the dawn of the 21st Century. The Mobility agreements between provincial and territorial law societies made it routine that lawyers from other provinces would practice on occasion in Nova Scotia. And the internet age has made it possible to appear virtually (in Nova Scotia) from anywhere that has a broadband signal, or at least a telephone. Indeed, the zoom hearing before this adjudicator included people in New Brunswick (Rodney Gillis), Ontario (Mr. Ferguson) as well as Annapolis County (Carolyn Young) and Halifax (Mr. Gallagher and myself).

[46] It is predictable that more and more instances will arise of people working in Nova Scotia or providing advice with respect to the law of Nova Scotia, from remote locations. Rodney Gillis could have done much of what he did for Annapolis County from anywhere. Annapolis County, on the other hand, is pretty much rooted in place.

[47] I am accordingly satisfied that Rodney Gillis, as a “*visiting lawyer*,” became by virtue of Reg 6.2.2 bound to “*the applicable provisions of the [Legal Profession] Act*” and subjected himself to the jurisdiction of the Nova Scotia Barristers Society, as further set out in s.28 of the *Legal Profession Act*:

Jurisdiction of Society

28 (1) The Society has jurisdiction over

- (a) members of the Society in respect of their conduct, capacity and professional competence in the Province or in a foreign jurisdiction;

(b) persons who were members of the Society at the time when a matter regarding their conduct or professional competence occurred;

(c) lawyers from foreign jurisdictions in respect of their practice of law in the Province; (emphasis added)

[48] In conclusion, there is no question in my mind that GMG and Rodney Gillis in particular became subject to the provisions of the *Legal Profession Act* in these several ways. And further that this subjected them to the taxation process set out in the *Legal Profession Act*:

Taxation

67. Notwithstanding any other enactment, a lawyer's account may be taxed by

(a) an adjudicator; or

(b) a judge.

Initiation of taxation

68. A taxation may be initiated by

(a) any person claiming the whole or a portion of an account; or

(b) any person from whom an account or any portion of it is claimed.

[49] The *Small Claims Court Act* further provides that an adjudicator has the power to perform taxations:

Taxations

9A (1) An adjudicator has all the powers that were exercised by taxing masters appointed pursuant to the Taxing Masters Act immediately before the repeal of that Act, and may carry out any taxations of fees, costs, charges or disbursements that a taxing master had jurisdiction to perform pursuant to any enactment or rule.

(2) The monetary limits on the jurisdiction of the Court over claims made pursuant to Section 9 and on orders made pursuant to Section 29 do not apply to taxations

Is the jurisdiction of the Nova Scotia court exclusive?

[50] This brings us to the alternative argument advanced by GMG. They say that

in the event I find that I have jurisdiction to hear the taxation proceeding, I should decline to do so on the basis that New Brunswick is the more convenient forum.

[51] GMG has cited the Supreme Court of Canada case of *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 (CanLII), [2012] 1 SCR 572 and urges me to apply the analytical framework established by that case. It also cites 3289444 *Nova Scotia Limited v. R.W. Armstrong & Associates Inc.*, 2018 NSCA 26, which cites *Club Resorts* and applied that framework to a case arising from a construction project in the United Arab Emirates.

[52] Annapolis County submits that those cases are not really applicable as they concern private international law. Annapolis County submits that the issue of choice of forum would be governed by the *Court Jurisdiction and Proceedings Transfer Act*, subject to the overriding effect of s.13 of that Act which states:

Conflict with other Acts

13 Where there is a conflict or inconsistency between this Part and another Act of the Province or of Canada that expressly

- (a) confers jurisdiction or territorial competence on a court; or
- (b) denies jurisdiction or territorial competence to a court,

that other Act prevails.

[53] Annapolis County submits that the provisions of the *Legal Profession Act* explicitly apply to Rodney Gillis and prevail over the *Court Jurisdiction and Proceedings Transfer Act*. I agree.

[54] I have read and considered the *Club Resorts* and 3289444 *Nova Scotia* cases and also agree with Annapolis County that the context of private international law is very different from the situation here. This is not a common law action concerning a tort or breach of contract committed in multi-jurisdictional circumstances. This is a case where a lawyer in New Brunswick has brought himself under the regulatory authority of the Nova Scotia Barristers Society and the *Legal Profession Act* by virtue of his having engaged in legal practice both in and (more often) with respect to the law of Nova Scotia.

[55] Still, I acknowledge that Annapolis County could have pursued a taxation under New Brunswick law. It has expressed its choice to proceed in Nova Scotia,

but a question remains whether there is a basis for GMG to insist that the matter be declined in favour of New Brunswick.

[56] As such, a conflicts analysis seems appropriate. Whether under common law principles or the *Court Jurisdiction and Proceedings Transfer Act*, the starting point would be whether there is a presumptive “real and substantial connection” to Nova Scotia. If so, the question would then shift to whether this court should nevertheless decline jurisdiction:

12 (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

(2) A court, in deciding the question of whether it or a court outside the Province is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

- (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;
- (b) the law to be applied to issues in the proceeding;
- (c) the desirability of avoiding multiplicity of legal proceedings;
- (d) the desirability of avoiding conflicting decisions in different courts;
- (e) the enforcement of an eventual judgment; and
- (f) the fair and efficient working of the Canadian legal system as a whole.

[57] Both the CJPTA and *Club Resorts* recognize that the categories of presumptive real and substantial connection are not closed. The matter of the taxation of a lawyer’s account is not explicitly mentioned in the CJPTA but I am satisfied that all of the facts point to there being a real and substantial connection to Nova Scotia. This is nothing like those cases where a party is injured in a foreign jurisdiction and retreats to their home jurisdiction in the hope of litigating the matter in a more convenient and friendlier forum. This is a case of a lawyer relying on mobility rights granted by the Nova Scotia Barristers Society providing extensive legal services to a client in Nova Scotia. The real and substantial connection to Nova Scotia could not be much stronger.

[58] As such, the onus falls upon GMG to satisfy the court that the balance of

convenience favours New Brunswick. That burden is not an easy one to bear. This was discussed in *Club Resorts*:

[108] Regarding the burden imposed on a party asking for a stay on the basis of *forum non conveniens*, the courts have held that the party must show that the alternative forum is clearly more appropriate. The expression “clearly more appropriate” is well established. It was used in *Spiliada* and *Amchem*. On the other hand, it has not always been used consistently and does not appear in the CJPTA or any of the statutes based on the CJPTA, which simply require that the party moving for a stay establish that there is a “more appropriate forum” elsewhere. Nor is this expression found in art. 3135 of the Civil Code of Québec, which refers instead to the exceptional nature of the power conferred on a Quebec authority to decline jurisdiction: “. . . it may exceptionally and on an application by a party, decline jurisdiction . . .”.

[109] The use of the words “clearly” and “exceptionally” should be interpreted as an acknowledgment that the normal state of affairs is that jurisdiction should be exercised once it is properly assumed. The burden is on a party who seeks to depart from this normal state of affairs to show that, in light of the characteristics of the alternative forum, it would be fairer and more efficient to do so and that the plaintiff should be denied the benefits of his or her decision to select a forum that is appropriate under the conflicts rules. The court should not exercise its discretion in favour of a stay solely because it finds, once all relevant concerns and factors are weighed, that comparable forums exist in other provinces or states. It is not a matter of flipping a coin. A court hearing an application for a stay of proceedings must find that a forum exists that is in a better position to dispose fairly and efficiently of the litigation. But the court must be mindful that jurisdiction may sometimes be established on a rather low threshold under the conflicts rules. *Forum non conveniens* may play an important role in identifying a forum that is clearly more appropriate for disposing of the litigation and thus ensuring fairness to the parties and a more efficient process for resolving their dispute.

[59] GMG’s arguments mostly concern “*the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum.*”

[60] GMG says that its witnesses will be Rodney Gillis and John Ferguson, residents of New Brunswick and Ontario respectively. It says that all of its books and records are in New Brunswick. It says that this makes it inconvenient to conduct a taxation in Nova Scotia.

[61] It is not yet known what witnesses Annapolis County would call, but it might well include people resident in Nova Scotia. Its own records relevant to its relationship with GMG would also be in Nova Scotia.

[62] As a practical matter, books of documents may have to be prepared by GMG to justify the work that they did on behalf of Annapolis County, and by Annapolis County if it intends to rely on its own documents to make some of its points. Those books can easily be sent to Nova Scotia, or New Brunswick, as the case may be. And for the foreseeable future, court proceedings in the Nova Scotia Small Claims Court are all virtual. As such, Rodney Gillis and John Ferguson (and others) can all testify from wherever they reside. Even if Nova Scotia reverts to in-person hearings, I suspect that virtual hearings - or maybe hybrids - will continue to be available where appropriate.

[63] I see no particular disadvantage (from a convenience and expense perspective) to GMG by forcing them to proceed in Nova Scotia.

[64] On the other hand, I agree with GMG that there would be no particular cost to Annapolis County should the matter proceed in New Brunswick. That is simply a neutral factor.

Juridical advantage

[65] Juridical advantage (or disadvantage) is a factor that may be considered in the conflicts analysis. It is especially significant where the disadvantage concerns procedure rather than the substantive law, as the latter disadvantage may be overcome by the tribunal applying foreign law. (See *Club Resorts* at para 111.)

[66] Here, Annapolis County points to a possible juridical disadvantage were it to be forced to proceed in New Brunswick.

[67] In this taxation Annapolis County is seeking to question legal accounts that have been paid more than a year ago. In Nova Scotia there is no restriction on taxing bills that have been paid. On the other hand, in New Brunswick its *Law Society Act* provides:

85(9) Unless special circumstances justify a review, a reviewing officer shall not review a bill where

(d) a bill has been paid, the notice of review is not served on all parties to the review and the Executive Director within ninety days after the date of payment.

[68] On the facts, no notice of review was sent to the Executive Director of the New Brunswick Law Society within ninety days of any of the bills being paid. As

such, there is no way of knowing in advance whether a New Brunswick reviewing officer would find “special circumstances” and allow the taxation (review) to proceed. As such, Annapolis County would face some jeopardy of having its case for review rejected outright, were it forced into the New Brunswick procedure.

Conclusion on balance of convenience

[69] I do not see that deferring to New Brunswick jurisdiction would save anyone any inconvenience or expense. GMG has failed to point to any, let alone any substantial, inconvenience if it is forced to continue in Nova Scotia.

[70] On the other hand, Annapolis County has pointed to a potential loss of juridical advantage.

[71] It should also be reiterated that Annapolis County has chosen its forum and that choice should not be rejected lightly. To repeat what is stated in para 109 of *Club Resorts*:

The use of the words “clearly” and “exceptionally” should be interpreted as an acknowledgment that the normal state of affairs is that jurisdiction should be exercised once it is properly assumed. The burden is on a party who seeks to depart from this normal state of affairs to show that, in light of the characteristics of the alternative forum, it would be fairer and more efficient to do so and that the plaintiff should be denied the benefits of his or her decision to select a forum that is appropriate under the conflicts rules. (Emphasis added)

[72] Quite simply, I see no basis to deny Annapolis County its choice of forum, and the “normal state of affairs” is for this court to exercise the jurisdiction that it clearly has.

[73] As such, barring any other preliminary matters, the matter may proceed to a hearing on the merits.

Eric K. Slone, adjudicator