SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Stewart McKelvey v. Medjuck*, 2025 NSSM 61

Date: 20250707
Docket: 24-535248
Registry: Halifax

Between:

Stewart McKelvey

Applicant

v.

Harold Medjuck

Respondent

TAXATION DECISION

Adjudicator:	Dale Darling, K.C.
Heard:	May 27th, 2025, in Halifax, Nova Scotia
Decision:	July 7th, 2025
Counsel:	Calvin DeWolfe, for the Applicant The Respondent Mr. Medjuck was self represented

By the Court:

Introduction:

[1] The Applicant Stewart McKelvey has applied for taxation of fees, costs and disbursements related to their representation of the Respondent Mr. Harold Medjuck over the period from 2019 to 2024. The total billed with respect to their representation was $223,626.57, of which Mr. Medjuck has paid $53,749.26, leaving a balance said to be owing of $169,877.59.

[2] Mr. Medjuck says that he received no value for the work performed by Stewart McKelvey, as they should have known that the claim could not be successful due to being out of time under the *Limitation of Actions Act*, and other reasons expanded upon below.

[3] A hearing was held May 27, 2025, and to accommodate Mr. Medjuck's ill health, was held in the afternoon via telephone. Extensive affidavits were filed by the Applicant through John Shanks and Mike Ryan, and both testified. Mr. Medjuck also testified and provided documents. I have reviewed all of the documents received from both parties, and considered the evidence given by way of testimony.

The Role of the Small Claims Court in Taxations

[4] Section 9A(1) of the *Small Claims Court Act* states "an adjudicator has all the powers that were exercised by taxing masters, and section 9(A)(2) states "[t]he 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."

[5] In *Patterson Law v Sarson*, 2020 NSSM 16, Adjudicator Richardson provides a comprehensive summary of the powers and duties of a small claims court adjudicator in taxations, specifically in the context of quick judgments, but pointing out that it is not a "rubber stamp process", but rather:

> [39] The onus of proof of a particular fact lies—as it does in every action—on the party asserting that fact to be true. Hence a solicitor suing on his or her account has the onus of establishing that it is reasonable and lawful: *Mor-Town Developments Ltd v. MacDonald* 2012 NSCA 35 at para.49.

[6] An overview of the factors that the courts have found to be relevant in assessing fees and disbursements can be found in section 3.6.1 of the *Nova Scotia Barrister's Society Code of Professional Conduct*, which states:

> **Reasonable Fees and Disbursements:**
>
> **3.6-1** 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.
>
> **Commentary**
>
> 1. What is a fair and reasonable fee depends on such factors as:

a. the time and effort required and spent;

b. the difficulty of the matter and the importance of the matter to the client;

c. whether special skill or service has been required and provided;

d. the results obtained;

e. fees authorized by statute or regulation;

f. special circumstances, such as the postponement of payment, uncertainty of reward, or urgency;

g. the likelihood, if made known to the client, that acceptance of the retainer will result in the lawyer's inability to accept other employment;

h. any relevant agreement between the lawyer and the client;

i. the experience and ability of the lawyer;

j. any estimate or range of fees given by the lawyer; and

k. the client's prior consent to the fee.

History of the Litigation and the Retainer:

[7] Please note that after initial identification I will be referring to Mssrs. Harold Medjuck, Franklyn Medjuck and Ralph Medjuck by their first names, in order to avoid constant repetition.

[8] In 2016, Mr. Franklyn Medjuck, Mr. Harold Medjuck's brother, passed away, and it was at that point, Harold says, that he discovered the acts which he said constituted fraudulent concealment by his brothers, and which led to the legal actions filed.

[9] Harold, who had moved from Halifax to Toronto, Ontario in 1982, says that he originally contacted Aaron Blumenfeld at the law firm Borden Ladner Gervais in Toronto for legal advice.

[10] Mr. Blumenfeld conducted a preliminary review, and there is in evidence a letter that Mr. Blumenfeld wrote December 16, 2016, when he was acting for Harold, to counsel at McInnis Cooper who represented Ralph Medjuck, Harold's surviving brother, and who also represented the executor of Franklyn Medjuck's estate.

[11] In summary, the letter advised that a claim would soon be filed regarding the sale of a property in Halifax called 5151 Terminal Road. According to Justice Chipman's decision in *Medjuck v. Medjuck*, 2023 NSSC 206, para 31 (discussed below), that letter included a draft statement of claim, but that document was not in evidence before me.

[12] The Blumenfeld letter says that Harold reviewed financial records after Franklyn's death in 2016, as "he was surprised to see certain noticeable gaps in his files, especially the absence of any financial statements for OSPL (One Sackville Place Limited) after 1990. The documents he did have, some referenced above, reminded him of the Terminal Road Property. Harold was shocked when Mr.

Suissa [another Medjuck family member] advised him that in 1997, OSPL had transferred its ownership interest in the Property to 5151 Investments Limited…".

[13] The letter then has an underlined statement "This was the first time that Harold learned that his indirect interest in the Property had apparently been taken from him and given to Ralph's family members".

[14] Mr. Blumenfeld at some point suggested that Harold contact Mick Ryan at Stewart McKelvey in Halifax, as he was unable to undertake litigation in Nova Scotia.

[15] Harold was concerned that Stewart McKelvey might have represented Franklyn or his brother Ralph Medjuck, and so he retained Dale Dunlop and Walker Dunlop, who was copied on the Blumenfeld letter.

[16] A short time after this, the evidence confirms that Mr. Dunlop left the practice of law. In March of 2017, Walker Dunlop lawyer Ian Gray filed HFX No. 461806, with Harold Medjuck as the Plaintiff and the Defendants named as the Estate of Franklyn Medjuck, and the law Firm of Medjuck and Medjuck.

[17] In July of 2017, Walker Dunlop lawyer Ian Gray filed HFX No. 465448 with Harold Medjuck as the Plaintiff and the Defendants the Estate of Franklyn Medjuck and 51/56 Investments Limited.

[18] Summarizing considerably, Harold's claim in these two cases related to corporate dealings within the company One Sackville Place Limited ("OSPL"), a company jointly owned by Harold, Ralph and Franklyn.

[19] The claim was that the property at 5151 Terminal Road ("Terminal Road") in Halifax was conveyed by OSPL in February of 1996 without Harold's consent and without a necessary special resolution of shareholders of OSPL to authorize the sale.

[20] Terminal Road was then purchased then by what was then 5151 Investments Limited. That company was incorporated by Franklyn, and had Franklyn, Ralph and Manni Suissa as directors/shareholders. That company became 51/56 Investments Limited, one of the Defendants in HFX No. 465488.

[21] The claims made by Harold are twofold – firstly, he was unaware of and was not given an opportunity to participate in 5151 Investments Limited. In 2012, 5151 Investments Limited sold Terminal Road for an amount in excess of $20 million dollars. The profits were retained by that company and its shareholders, and Harold says he was entitled to approximately a third of the proceeds, around $7 million dollars.

[22] Secondly, Harold claimed that there were various loans issued from One Sackville Place Limited to corporate entities related to or owned by Ralph and Franklyn, which Harold knew nothing about. Harold contended that these loans, never repaid, became a benefit to his brothers and a breach of their fiduciary obligation to the company and Harold.

[23] The totality of the two claims was potentially in the range of $20 million dollars.

[24] The cause of action in both cases can be summarized as breach of fiduciary duty, breach of contract, negligence, unjust enrichment, and misdirection of corporate opportunities, along with other claims.

[25] Defences were filed to both of these actions, which vigorously denied the allegations. The allegations made involved alleged wrongdoing by Franklyn and Ralph, and the defence response was that "this action is merely an extension of the plaintiff's abuse of family connections to further his own selfish and unjustified demands."

[26] In addition, both defences pled a limitations defence. Security for costs was sought, as Harold was not resident in Nova Scotia.

[27] The underpinning of both claims with respect to the limitation issue, was Harold's position was that the fact that One Sackville Place Limited had sold 5151 Terminal Road to 5151 Investments Limited without his knowledge, and that it was not until after Franklyn's death in 2016 that his loss became known to him.

[28] At least as early as March of 2019, Harold wrote an email to Mr. Ryan in which he says, "I seem to recall that "fraudulent concealment" postpones Statute of Limitation", and on October 29, 2020 sent Mr. Shanks an excerpt from an Ontario case which set out the elements of that doctrine.

[29] On December 17, 2018, a consent consolidation order was argued before Justice Rosinski with Mr. Gray acting for Harold, and was then confirmed by Justice Chipman in his decision of June 27, 2023, as it had been granted but not filed by Mr. Gray (see: *Medjuck v Medj*uck, 2023 NSSC 206, para.4-7).

[30] In this time frame, Harold and Ralph both filed Affidavit(s) Disclosing Documents. Harold filed a Notice of Motion to amend his pleadings and appoint a referee. The Defendants made a motion for security for costs.

[31] Stewart McKelvey first became involved via Mr. Ryan in the matter in late 2018. Mr. Dunlop having left practice, Harold says he was looking for oversight

on the litigation, still being undertaken by Mr. Gray. A $5000 retainer was paid to Stewart McKelvey.

[32] Mr. Ryan says that his role became more active as Harold became more dissatisfied with Mr. Gray's representation, and there is an exchange between Harold and Mr. Ryan between September 27 and 29, 2020, which Mr. Ryan says set out the terms of their retainer.

[33] On September 27, 2020 Mr. Ryan wrote:

> *When we first met, you asked about whether we would take on this matter on a contingency basis, and I was very clear in responding that that could not happen and also pointed out we would charge by the hour. I indicated where possible I would try and utilize younger people to do some legwork to help cut down on costs.*
>
> *When you gave me your cheque and I made that comment it was based on that point in time when Ian Gray was doing all the work and my role was to stay in the background and offer assistance directly to you. Therefore, our participation was to be minimal and the amount of the retainer offered was reflective of that fact.*
>
> *Based on what you told me I had confidence in your case with the limited knowledge imparted to me at that time and with further production and disclosure I still have confidence, but that does not mean I can guarantee any ultimate result. Nor does it mean there is now a contingency arrangement in place.*
>
> *I brought in John Shanks because it was a way to moving the matter of moving the matter forward, which is what you wanted. I was tied up in other matters, and I didn't want you to have to wait until I could free myself up. He did exactly as I asked him to do, and surely you did not expect him to work for nothing.*
>
> *Our account was for work devoted to your matter for your benefit. Frankly, it was below the amount it should have been because I did not dock the time I worked on many evenings and weekends dealing with your emails and obtaining information from Ian.*
>
> *You are facing a long, complicated and expensive piece of litigation that is going to go on for years. The fees are going to be substantial and to a large degree beyond your control*

because the other side cannot be constrained from putting up roadblocks. You have already indicated to me Ralph has complained about his high legal costs and I am sure our account is far, far below what he has paid to date. Therefore, the subject of fees being big should have not should not have been a surprise to you.

We are prepared to continue to act on your behalf, but on the condition and understanding that we will be paid promptly for accounts rendered. If you cannot or because of the con circumstances will not be able to satisfy that condition, then it is best we know that now so a final decision can be made.

I trust this answers your inquiry.

Stay safe, secure and healthy,

Mick

[34] Harold replied on September 29, 2020:

M.

Thank you for your clarification.

My attention is particularly drawn to your comment "This litigation will go on for years", to which I reply:

> *1. "Will go on for years" is questionable considering Ralph's age.*
>
> *2. Furthermore, I doubt if Ralph wants his wife and family to inherit this case.*
>
> *3. I thought the function of case management is to prevent such endless cases. Please specify the various issues you will be addressing at the December motion.*
>
> *4. Am I correct the security for costs issue takes precedence?*
>
> *[there followed some instructions regarding obtaining documents from Mr. Gray]*
>
> *In the meantime, please proceed on the previous same fee basis with the continued use of John Shanks which my economy welcomes. I will be in a better position to re evaluate this entire matter after our motion on case management in December.*

[35] The motion for amendment of the pleadings, and the motion for appointment of a referee was heard December 17, 2018.

[36] The first invoice, 90736886 was issued April 30, 2019 for $2,537.92, and paid through the $5000.00 retainer received. It covered the period from December 1st, 2018 to March 12, 2019, and docketed 3.9 hours of work by Mr. Ryan ($567.95/hr), primarily regarding his oversight of Mr. Gray's work regarding the motion filed. An order appointing Eric Slone as referee to examine the computers of Franklyn Medjuck (who was a lawyer) was granted January 19, 2019.

[37] There is over an hour of work on the viability and advisability of Harold making a voluntary disclosure to the Canada Revenue Agency regarding the allegations of the civil claim. The advice was that such a claim would be beyond any time limit and would in any event possibly be viewed negatively by the Court as an attempt to force the Defendants to settle the case.

[38] The second invoice, 90796144 was issued February 10, 2020 for $6,461.34. It covered the period from May 17, 2019 to February 1, 2020. The bill continued to be for the oversight role of Mr. Ryan and docketed 10 hours ($571.40). It concluded with the Notice of New Counsel which Mr. Ryan filed at Harold's request February 1, 2020. That invoice was paid.

[39] The third invoice, 90830548 was issued August 13, 2020 for $27,017.74. It covered the period from February 3, 2020 to July 29, 2020. Conflict allegations

had been raised by the Defence regarding Stewart McKelvey being named as new counsel.

[40] Along with Mr. Ryan, Mr. Shanks now commenced billing on the file, beginning May 7, 2020 when he was working on a motion seeking case management. Interactions with Mr. Gray continued, including the drafting of an affidavit from Mr. Gray for the case management motion.

[41] During the time period of this invoice, from May 2020 forward, some work on the file was performed almost every day. In this time period as well, a Response to Demand for Production was filed on Harold's behalf in August of 2020. There are many interactions by phone and email with opposing counsel, mostly Mr. Gavin Giles at the law firm McInnis Cooper. In total, Mr. Ryan docketed 25.20 hours ($580.00/hr), and Mr. Shanks docketed 21.60 hours ($430.00/hr). That invoice was paid.

[42] The fourth invoice, 90911280 was issued September 21, 2021, for $1000 in court ordered costs, related to funds to be paid into Court further to an Order requiring Harold to provide security for costs. That invoice was paid.

[43] The fifth invoice, 90918882, was issued October 26, 2021, for $83,658.26. It covers the period from August 4, 2020 to September 30, 2021. Mr. DeWolfe

docketed 36.40 hours ($113.64/hr), Mr. Shanks 108.20 ($415.90/hr), and Mr. Ryan 48.40 (516.53/hr). Evidence submitted shows that $10,075.50 was written off the original bill for this period (around $3000.00 for each lawyer conducting the work). During this time period, two case management conferences were prepared for and held, as well as responding and attending a two-day motion for security for costs, with its related disclosure requirements. Information from Mr. Gray was being reviewed. The Honourable Justice James L. Chipman was appointed case management judge December 16, 2020. The Court ordered security for costs October 7, 2021 of $100,000.

[44] Mr. Ryan docketed 48.40 hours ($516.51/hr), Mr. Shanks 108.20 hours ($415.90/hr), and now Mr. Dewolfe 26.40 hours ($113.64/hr). There are for the first time some disbursements, $671.83 (mostly for photocopying), which reflect the number of hearings held in this time period. The amount of $16,732.26 of this invoice was paid, leaving a balance of $66,658.26.

[45] The fifth invoice, 91013361, was issued December 31, 2022, for $27,692.36. A third case management conference was held during this time. Applications for leave to appeal the security for costs order, and an application to vary the amount, were prepared, and then discontinued. Mr. DeWolfe docketed .9 hours ($230/hr),

Mr. Hiebert 2.1 ($195/hr), Mr. Shanks 36.2 ($459.99/hr), and Mr. Ryan 11.00 ($605.91/hr). This invoice was not paid.

[46] The sixth and final invoice, 91133831, was issued June 28, 2024, for $75,526.69. Mr. DeWolfe docketed 41.40 hours ($280.00/hr), Ms. McCarthy 1.1 ($175.00/hr), Mr. Shanks 86.00 ($490.00/hr), and Mr. Ryan 16.9 ($635/hour).

[47] The work was now to bring motions to amend the pleadings. Documentary disclosure continued. The Applicant says there were settlement discussions. Mr. Shanks in his affidavit says that timing of these motions was delayed, both by the challenges of scheduling with the Court, and of obtaining dates from the multiple parties in the action.

[48] The Defendants were seeking a motion for summary judgment, but it was determined that the motions for amendment of the claim and disclosure of documents, would take place before that occurred.

[49] To that end, Justice Chipmen issued his decision June 27, 2023, in *Medjuck v Medjuck,* 2023 NSSC 206. He allowed the amendment of Harold's statement of claim, which was being opposed by the Defendants, finding that Justice Rosinki had granted the request for amendment in 2018. He did not grant all of the

amendments sought but did grant the inclusion of allegations of wilful concealment that Harold relied upon.

[50] He denied the motion being made to add One Sackville Place as a Plaintiff, saying that there was insufficient evidence of possible value to the company being the result. He also denied the application to for leave to proceed with a derivative action, and a production motion being made. Costs were awarded against Harold on the grounds that the Defendant had been substantially successful.

[51] In the course of the hearing, Justice Chipman says that Harold was cross examined on his affidavit "thoroughly and effectively" by Mr. Gavin Giles (para 19).

[52] In considering the "good faith" requirement for bringing a company into litigation, which requires that the primary purpose must be to benefit the company, Justice Chipman said the following:

> [69] Here, as in Link, OSP is not currently an independent going concern. It has always been a closely held family company, and it has not been operating as a going concern since 1996, as detailed in the supporting affidavits and exposed in the cross-examination. OSP was completely dormant for almost two decades when Harold purported to resurrect the company by way of what I can only conclude (given the cross-examination evidence and documents within the Giles' affidavit) were misrepresentations by Harold to the Registrar of Joint Stock Companies.
>
> [70] Given all of the evidence, I have great difficulty with Harold's claim that he applies for derivative leave for the "primary purpose" of advancing the interests of OSP. The cross-examination exposed Harold for resurrecting OSP in an attempt to advance his

> longstanding grudge against his brothers. In my view, the evidence discloses that the primary purpose of the proposed derivative action is for Harold's sole benefit.
>
> [71] Here, as in Link, the dispute is properly characterized as a "personal dispute with the trappings of corporate structures." (Justice Rosinski at para. 60). From the evidence, I am left to find that Harold has attempted to use the derivative action as a means of continuing and expanding the scope of the current litigation. In my view, the only conceivable beneficiary of the proposed derivative action is Harold.

[53] After the decision of Justice Chipman, a costs motion was held October 27, 2023, (*Medjuck v Medjuck*, 2023 NSSC 345), and the Court awarded $28,000 to the Medjuck Defendants, not to be paid out of the $100,000 security for costs already paid into Court. In that award, Justice Chipman said:

> [22] Having regard to my Motion Decision, I am cognizant of the fact that the motions were unfounded, put forward by in many instances, deceptive evidence exposed through Mr. Giles, K.C.'s cross-examination of Harold. The stakes were high insomuch as success for Harold would have meant for a claim within the realm of $20 Million. I am also cognizant of the uncontradicted evidence of Mr. Giles, K.C. on these costs hearing and recognize that the Medjuck Defendants made a significant legal spend in their resistance to the motions. Harold's conduct and his failure to achieve almost all of what he sought on the motions causes me to readily conclude that this is a case where I am prepared to exercise my discretion and award more than bare Tariff C costs to the Medjuck Defendants.

[54] Both the Applicants, and Harold, agree that the position taken by Justice Chipman regarding Harold's credibility led to a reassessment, and conclusion that the litigation was not likely to succeed.

[55] There followed negotiations for dismissal of the action. A partial dismissal followed by consent November 30, 2023, and a full consent dismissal was issued February 20, 2024.

The Position of the Parties:

[56] The Applicants agree that the onus is upon them to show that the account was "lawful, and reasonable, in all of the circumstances" (*Mor-Town Developments v. MacDonald*, 2012 NSCA 35, para 49).

[57] They point to the decision of the Honourable Justice Grant in *MacLean v Van Duinan*, 1994 Canlii 4333 (NSSC), page 6, as authority for the proposition that "reasonableness" does not require perfection, and is based upon the perspective of the lawyer at the time of the billing:

> No lawyer undertakes perfection, no client is entitled to that expectation.
>
> The applicants were presented with a factual situation not of their making. Their role was to use their training, expertise, and skill to protect and promote their clients' best interests. In doing so they adhere to a standard of reasonableness. They were to do so at a reasonable charge.
>
> Three years later with the benefit of hindsight we are examining and diagnosing each step taken as the file progressed. That is not the proper standard because we are then looking at perfection. The test is whether the acts were reasonable in the circumstances at the time they were done.

[58] They also point to the decision of Justice Grant in *Xidos v Tim Hill & Associates*, 1990 Canlii 4092 (NSSC, largely for the proposition that research is a necessary part of legal representation. They argue that using senior counsel to conduct straightforward legal research is not in the best interests of a client.

[59] Finally, the Applicant points out that winning or losing does not determine whether an account is reasonable. In his affidavit, Mr. Shanks says that counsel achieved a dismissal in which the Defendants did not collect the $28,000 costs award issued by Justice Chipman and agreed to make no further claim against the $100,000 paid into Court as security for costs.

[60] He says if the matter had gone to summary judgment, the costs awarded could be far in excess of these amounts.

[61] As Mr. Shanks wrote to Mr. Medjuck November 6th, 2023,

> *In the event that the summary judgment by the Defendants was successful, it would conclude this proceeding and expose you to another significant award of costs relating to the full defence of this action. While we do not know the actual amount of costs expended by the Medjuck Defendants, given the amount which they billed for the production motion (over $100,000), we fully anticipate that the full amount of costs paid by the Medjuck Defendants could well exceed $300,000 or $400,000, and that a costs award claimed by the defendants in light of successful summary judgment motion would certainly exceed the $100,000 amount currently paid into court. We estimate that a claim for costs would certainly would likely exceed 200,000.*

[62] The Applicants say that Mr. Medjuck was aware from the outset of the retainer that the position of Mr. Ryan was that he should expect litigation that was "lengthy and complex", and that lawyers other than Mr. Ryan, in particular Mr. Shanks, would be used to reduce costs and due to Mr. Ryan's limited availability.

[63] Stewart McKelvey says that payment for legal services provided is not dependant upon success, and that the invoices present a just and reasonable reflection of legal services provided.

[64] For his part, Harold provided submissions in response to the affidavits filed by Stewart McKelvey on May 20, 2025, and further submissions on May 23, 25, and after the hearing on May 29th, 2025. Stewart McKelvey was afforded the opportunity to respond in rebuttal to submissions made.

[65] Harold's position was Justice Chipman's decision made clear that there was no value in the work performed by Stewart McKelvey, because the matter was statute barred by limitations, and that Stewart McKelvey should have known that was the case. He also says that they should have known that the claim was worth far less than the amount sought, something in the range of $200,000.

[66] He further says that he intended to retain Mr. Ryan as lead counsel, and "I was seeking the man not the firm".

[67] In support of his position that the claim had no chance of success, Harold pointed to the a September 29th, 2020 letter to him from Detective Constable Christian Pluta of the Halifax Regional Police Integrated Financial Crime Unit, as well as two opinions which he sought after the case was dismissed, a February 12,

2024 email from the Nova Scotia Legal Information Society, and a March 4th, 2024 letter from Mr. Brian Casey, a lawyer at Boyne Clarke.

[68] The Applicant objected to these documents being given any weight, as no one testified regarding these documents. Harold was self represented in this process, and these documents were used by him as part of his argument as to why the work performed had no value. I therefore reviewed all of these letters in concert with Harold's testimony regarding them and will deal with each in turn.

[69] Detective Constable Pluta wrote a letter September 29, 2020 to Harold, and a follow up email December 3, 2020. Harold forwarded these to Mr. Ryan. From all the evidence, these appear to have been a response to Harold's filing of a complaint aimed at having criminal charges issued against Ralph in relation to the allegation Harold had made in his civil suits. I find that neither the letter nor the email precludes the possibility that the matter could be pursued through the civil courts.

[70] The September 29, 2020 letter states "Clearly, the circumstances of the alleged offence are appropriate for a civil suit. A criminal investigation has a different objective than a civil suit and a much higher burden of proof".

[71] The December 3, 2020 email from Detective Constable Pluta advised that the investigation was being closed, and states "Despite my best efforts, the facts and the provable evidence must speak for themselves. I am unable to advance the investigation any further. I understand that you feel you were put at a tremendous financial loss due to the lack of information, actions and inactions of your brothers. The proper remedy for this incident would be through civil court."

[72] Harold in his submissions says "As a result of Justice Chipman's sudden unexpected doubts about the cases viability under the *Limitation of Actions Act*, I promptly sought further legal advice on this matter from the following two parties, the Legal Information Society and Boyne Clarke, solicitors. **Both parties agreed that by case was statute-barred in 2011, almost five years prior to its commencement** [original emphasis].

[73] Having reviewed these documents, I find that that is not what either of those sources say.

[74] In a February 12, 2024 email, the Legal Information Society states "We cannot express an opinion about whether your case has a limitation period problem", and in response to a question as to how limitation periods are calculated, used some hypotheticals to explain how the calculation is done.

[75] The March 4th, 2024 letter from Mr. Casey does not specifically state at the outset for what the purpose the advice is being given. It appears that the only research done by Mr. Casey at that point was a Property Online search of OSP Limited and 5151 Terminal Road.

[76] He says in his letter, "You will appreciate I have not had an opportunity to examine any other information", and "Because I am not opening a file or taking you on as a client, I can only report what I found during our consultation. If we were going to take on your legal matters, we would want to we would need to review all the relevant documents."

[77] His letter further states "It is possible that the improper action was committed in 2012 when the property was sold. You should have received your interest at that time after the mortgage was paid out. However, you may not have had as much as a one third interest because it may be when the amalgamation took place, you ended up with a much smaller total interest. If you discovered the improper action in 2016 when your brother Frank died, your ability to claim for it is now statute barred (two years)."

[78] Mr. DeWolfe in rebuttal argument says that it does not appear that Mr. Casey had all of the information regarding the litigation, including the fact that a

claim was initiated within two years of when Harold said it was discovered in 2016, well within any limitation period.

Mr. DeWolfe's argument is supported by Mr. Casey's letter. It was based upon extremely cursory information regarding this long and complex piece of litigation. It does not support Harold's position that the case was time limited from the outset.

Decision

[79] Harold's objection to the payment of this account amounts to the argument that his lawyers at Stewart McKelvey should have known that his account of events, that being that he only became aware of his loss in 2016, would not be accepted by the Court, and that Justice Chipman's decision merely illustrates what should have already been obvious to his lawyers.

[80] The Commentary under Section 5.1-1 of the Nova Scotia Barristers Society Code of Ethics requires that a lawyer "has a duty to the client to raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law".

[81] It does not follow that Stewart McKelvey was required to hypothesize that Harold's strongly held belief that this cause of action arose in 2016 due to the concealment of his brothers would be rendered untenable by exposure to cross examination. Harold was still raising the issue of fraud in emails with Mr. Shanks in early 2023. The theory of the case had to be based upon Harold convincing the Court that he was a credible witness, which he was unable to do.

[82] I note from the materials filed before me that discovery had not yet taken place. As indicated above, the claims were being vigorously defended, apparently at a cost greater than that being incurred by Harold. The 2023 motion was the first instance in which Harold's position had been exposed to such vigorous cross examination. No lawyer can anticipate fully how a witness will perform on the stand. This underlines the inherent risk of high stakes litigation. One cannot predict the future.

[83] On all the evidence, I do not accept that the services provided to Harold were without value. That does not end my analysis, however. Were the services invoice for "just and reasonable" in their totality?

[84] From the list of factors provided by the Nova Scotia Barristers Society Code of Ethics, there are several having a bearing on this taxation.

Time and Effort/Experience and Ability

[85] With respect to the time and effort required and spent, in some ways after four years, the litigation was still in its early to mid stages. As I have said before, the evidence provided shows a vigorous defence had been launched – security for costs had been sought by the Defence and had to be addressed before many other substantive steps could be taken.

[86] The litigation had commenced in the hands of another firm, and it was clearly taking some time to assess what had been done – and what had not been done. The situation was complicated by the conclusion that an application to amend the pleadings had been granted in 2018-2019 and never filed, and indeed no record of exactly what had been granted was available from Mr. Gray's materials. Stewart McKelvey inherited these challenged. They did not cause them.

[87] A review of the invoices provided shows the beginning stages of the Stewart McKelvey retainer were carried out entirely by Mr. Ryan. In 2020, and with the agreement of Harold, which can be seen below in my discussion of the retainer agreed upon, Mr. Shanks was brought in, and commenced reconstructing Mr. Gray's work, coordinating with Defence counsel on timing and order of motions,

and drafting of required court documents. I find that Harold knew and agreed that he had hired the firm, “not the man”.

[88] Almost the entirety of the litigation was conducted by Mr. Shanks and Mr. Ryan, who both corresponded very regularly with Harold, either by email or telephone. Mr. DeWolfe’s role was largely in conducting research, as he was quite junior at the time.

[89] In terms of time, a rough total of 439.2 hours was billed between 2018 and 2024. Mr. Ryan accounted for 26% of those hours, Mr. Shanks 57%, Mr. DeWolfe 15%, and two clerks or young associates the remaining approximately 2%.

[90] Although Mr. Shanks was not as senior as Mr. Ryan, he is a partner at Stewart McKelvey and an experienced litigation counsel. 83% of the work performed on the file was done by senior counsel, which is what Harold had wanted.

The retainer and any written agreement

[91] Within *MacLean v. Van Duinen*, 1994 Canlii 4333 (NSSC), there is at paragraph 63 a quote from a decision of Lord Denning in *Griffiths v. Evans*, [1953] 2 All E.R. 1364 (C.A.), at p. 1369:

> On this question of retainer, I would observe that where there is a difference between a solicitor and his client on it, the courts have said for the last hundred years or more that the word of the client is to be preferred to the word of the solicitor, or, at any rate, more weight is to be given to it: see **Crossley v. Crowther** (7), per Sir George J. Turner, V.C.; **Re Paine** (8), per Warrington, J. The reason is plain. It is because the client is ignorant and the solicitor is, or should be, learned. If the solicitor does not take the precaution of getting a written retainer, he has only himself to thank for being at variance with his client over it and must take the consequences."

[92] The retainer entered into by Mr. Ryan on behalf of Stewart McKelvey and Harold is more informal than the written retainer agreement forms often used, and which are to be preferred.

[93] However, I find that the written exchanges between Mr. Ryan and Harold on September 27 and September 29, 2020 contain the information essential to an understanding of how Mr. Ryan proposed representation would proceed.

[94] Mr. Ryan did not mince words. He stipulated that work performed would have to be paid for, there would be no contingency agreement. He specifically told Harold that Mr. Shanks would be brought on board due to availability and to save money. Invoice were to be paid promptly when issued.

[95] Harold replied, “please proceed on the previous same fee basis with the continued use of John Shanks which my economy welcomes”.

[96] The invoices provided, which are almost entirely for services with only nominal disbursements indicated, are detailed based on the standard dividing of an

hour into 6-minute sections. The work and lawyer assigned are indicated. Harold paid several of them. He had knowledge of what was being billed for, and at what rate throughout the retainer.

The Results obtained

[97] If embarking on litigation was a risk-free endeavour, there would be no need for litigation. It is also obvious to say that generally, the higher the stakes the higher the risk, and the higher the procedural steps of the process.

[98] In this case, the stakes were high in terms of the monies sought, heightened by what was perceived as a reputational attack upon Franklyn and Ralph, which the materials suggest the Defendants deeply resented. As Mr. Ryan predicted and shared with Harold at the outset, there was no way to control the steps the Defendant might chose to pursue.

[99] I find that my review of the invoice confirms that the work undertaken by Stewart McKelvey was required by the circumstances of this complex claim.

[100] Harold was not successful in his claim, but the evidence also confirms that Stewart McKelvey, once Justice Chipman's decision was rendered, did their best to

extricate Harold from the litigation without the costs associated with a summary judgment application.

[101] As a result, I find that the account rendered by Stewart McKelvey for work performed on behalf of Harold Medjuck was, given my review of all the evidence, just and reasonable.

[102] The terms of the retainer were agreed upon, and the amounts claimed are reasonable in reflecting the work performed in advancing the claims made.

[103] Therefore, the result of this taxation is that Harold Medjuck shall pay to the Applicant Stewart McKelvey the amount of $169,877.59, presenting the balance remaining on the entire account of $223,626.57, and the cost of filing the Notice of Taxation, $99.70.

[104] A Certificate of Taxation shall issue accordingly.

Dale Darling, KC, Small Claims Court Chief Adjudicator