

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA  
Cite as: Gray v Meagher 2013 NSSM 44

**Claims:** SCCH No. 417884 and 418440  
**Registry:** Halifax

**Between:**

David Gray  
Claimant

– and –

Ron Meagher  
Defendant

**And Between:**

R. A. Meagher  
Applicant

– and –

David Gray  
Respondent

**Adjudicator:** Augustus Richardson, QC

**Heard:** October 15, 2013

**Appearances:** Jennifer Reid, for David Gray  
R. A. Meagher, for himself

**By the Court:**

[1] These two files both involve the same thing: the assessment and taxation of a legal account rendered by Mr Meagher to his former client David Gray. The account is dated July 8, 2013, and is for a total amount of \$8,359.25. Mr Gray resists paying this account on the grounds that it is unreasonable.

[2] I heard the evidence of Mr Meagher and Mr Gray. I also reviewed a copy of the client file, which comprised a stack of documents roughly 6 inches in depth. I also heard the submissions made by Mr Meagher, and by Ms Reid on behalf of Mr Gray. Ms Reid agreed on behalf of her client that while she challenged the reasonableness of the account and of some of the work done by Mr Meagher, there was no claim for damage by way of negligence. It was simply an objection to the reasonableness of the account for services rendered to Mr Gray.

### **The Account**

[3] The account, dated July 8, 2013, references a total amount for services rendered of \$17,359.25. The account acknowledges a credit for a \$9,000.00 retainer paid by Mr Gray, resulting in a balance of \$8,359.25.

[4] The client's position before me was that the \$9,000.00 already paid represented a reasonable amount for the services that were rendered; and that he should not be expected to pay any more. Hence the amount claimed by Mr Meagher—\$8,359.25—should be dismissed. However, as it turned out (and as discussed below), the client amended his position at the hearing to claim that \$2,000.00 of the monies that had been paid by him should be paid back by Mr Meagher.

### **Background to the Account**

[5] Mr Meagher testified that he was retained by Mr Gray in the early summer of 2012. The retainer was to come up with a separation agreement that would lead to a divorce between Mr Gray and his wife. He explained that the file “bumbled along” until November 30, 2012 when “the retainer became more formalized and we expected to charge ahead.” At that point he asked for and received \$9,000.00 from Mr Gray as a retainer.

[6] During the course of his testimony Mr Meagher realised that he had in fact received more than \$9,000.00 from Mr Gray. He acknowledged that during the summer of 2012 he had received “a small amount of money in fees” from Mr Gray. Those funds amounted to \$2,000.00. Mr Meagher also acknowledged that that amount did not appear on his account, and that his account should be amended to reflect a total payment by the client of \$11,000.00 rather than the \$9,000.00 shown. (This of course reduced Mr Meagher's claim from \$8,359.25 to \$6,359.25.)

[7] Mr Meagher testified that after November 30<sup>th</sup> he started serious negotiations with Mr Gray's wife's solicitor. Mr Gray's wife was, apparently, "not being reasonable" with respect to the split in matrimonial assets. These assets included the wife's pension; the matrimonial home; personal property; and a few assets such as GICs and some investment accounts. The two lawyers eventually ended up with a draft separation agreement that continued to be amended during the course of the negotiations.

[8] Mr Meagher testified that in April 2013 Mr Gray told him to accept a proposal that had been put forward by his wife's solicitor. The solicitor then drafted an agreement to reflect the proposal. Mr Gray refused to accept the draft, and ended up retaining another solicitor.

[9] In cross examination Mr Meagher acknowledged that there was no written retainer. He kept no time docket. He did not deliver any interim accounts or budgets to Mr Gray. He does not have an accounting program that generates accounts. Instead, he prepared the July 2013 account by going through his file and counting up the number of emails he had sent or received; the legal research he had done regarding the division of matrimonial assets; and the pages of correspondence and draft separation agreements in his file. His standard hourly rate at the time was \$300.00 per hour. He allowed 5 minutes for each email. Some of these emails would simply be to set up meetings, or to discuss the weather. He reviewed his phone records and added up the number of minutes spent shown for the phone number associated with Mr Gray. With respect to the draft documents he simply estimated what he thought would be a reasonable time to allow for reviewing or drafting the documents. He also acknowledged that at least 4.5 hours of the time he allowed for on the account had been incurred after he had been discharged by Mr Gray.

[10] Mr Meagher was also cross examined about the proposal he had urged upon Mr Gray in April 2013. The agreement provided for the division of the pension of Mr Gray's wife once she got it in a few years. However, there were at least two flaws in the agreement. If Mr Gray's wife died before she received her pension Mr Gray would get nothing. As well, Mr Gray, who worked as a real estate agent, was an epileptic. If he lost his driver's licence because of his epilepsy he could lose his source of income and hence have a potential claim for support from his spouse. However, the proposal as drafted would have released his wife from any such claim. Mr Meagher had not discussed either flaw with Mr Gray, in part because he was concerned that if they were raised Mr Gray's wife would refuse to sign any agreement.

[11] Mr Gray testified that he never signed a retainer agreement with Mr Meagher. He paid the \$9,000.00 retainer to Mr Meagher after the latter told him he needed it before he would go any further with the matter. With respect to the draft proposal that he refused to accept in April 2013,

he testified that Mr Meagher had told him that he was an experienced divorce lawyer and that he should accept the proposal as drafted. Mr Gray was concerned that he would under the proposal lose access to his wife's Blue Cross coverage, which paid for his epilepsy medication. Mr Meagher told him not to be concerned about it. Mr Gray testified that he eventually felt so confused, and so concerned about the way in which Mr Meagher was pressing him to accept the proposal, that he went to get a second opinion. Having received that opinion he concluded that he was "being led down the garden path" by Mr Meagher and decided to dismiss him as his solicitor. The July 2013 account arrived shortly thereafter.

### **Analysis and Decision**

[12] A lawyer is not entitled to charge **any** amount for his or her services; both at common law and pursuant to statute he or she is entitled only "to recover the lawyer's **reasonable and lawful** account:" s.66, *Legal Profession Act*, SNS 2004, c.28, as amended; see also *Lindsay v. Stewart MacKeen & Covert* (1988) 82 NSR (2d) 203 (CA) and *Mor-Town Developments Ltd v. MacDonald* 2012 NSCA 35. The onus of establishing what is reasonable **always** lies on the solicitor, regardless of who brings the question to court: *Mor-Town Developments, ibid.*

[13] What is "reasonable" in any given case will depend upon a large number of factors. Rule 77.13 of the *Civil Procedure Rules* provides some guidance, as follows:

(1) Counsel is entitled to reasonable compensation for services performed, and recovery of disbursements necessarily and reasonably made, for a client who is involved in a proceeding.

(2) The reasonableness of counsel's compensation must be assessed in light of all the relevant circumstances, and the following are examples of subjects and circumstances that may be relevant on the assessment:

(a) counsel's efforts to secure speed and avoid expense for the client;

(b) the nature, importance, and urgency of the case;

(c) the circumstances of the person who is to pay counsel, or of the fund out of which counsel is to be paid;

(d) the general conduct and expense of the proceeding;

(e) the skill, labour, and responsibility involved;

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

[14] Having reviewed the copy of the file submitted by Mr Meagher I can see that there is certainly a lot of paper in it. However, the volume of paper is misleading. Much of it involves financial, bank, and appraisal documents that contain much of the boiler plate such institutions like to put on their documents but which rarely if ever are reviewed by anyone, let alone a solicitor. The emails are often long chains of two or three line messages. There is little in the way of solid legal documentation. That this should be so is not surprising, since the financial affairs of Mr Gray and his wife were relatively simple. They would be common to many middle class families in which both spouses worked. There was no child support involved. Their assets were few, and involved items (such as a home and GICs) that are relatively easy to divide. And yet Mr Meagher's total account for what essentially involved a negotiated division of those assets over a period of little less than a year was \$17,359.25.

[15] This amount struck me as inordinately high for what Mr Meagher did, given the relatively simple nature of what was required of him. He held himself out as an expert in matrimonial law, and yet by his account spent almost three hours reviewing various legal and Bar Admission materials on the division of family assets. He kept no time records of what he did, when he did it, or how much time it took to do it. He provided his client with no budget and no interim accounts, making it impossible for his client to know or understand the consequences of adopting (if he did) any hard line positions during negotiations. He in the end failed to deliver what he had been retained to do—and, moreover, charged his client for time he spent after his retainer had ended.

[16] Given the above it is my opinion that Mr Meagher has failed to discharge the onus—which is on him—to establish the reasonableness of his account beyond the \$9,000.00 that his client paid to him in November 2012 (and which his client does not challenge). That being the case Mr Meagher's claim on his account must be dismissed. By the same token, the additional \$2,000.00 that was paid to him by his client must be returned to Mr Gray. I will accordingly make an order requiring Mr Meagher to pay to Mr Gray \$2,000.00 plus costs.

DATED at Halifax, Nova Scotia  
this 3<sup>rd</sup> day of December, 2013

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Augustus Richardson, QC  
Adjudicator