

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Turner v. Campbell, 2003 NSSM 4

BETWEEN:

Name Caroline R. Turner Claimant

Name Colin Campbell Defendant

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 7, 2007.

DECISION

Appearances:

Caroline R. Turner, client, on her own behalf;
Colin Campbell, lawyer, on his own behalf

- [1] This matter came on before me on February 25, 2003.
- [2] Ms. Turner filed a Notice of Taxation on October 4, 2002 in respect of two accounts rendered by the lawyer: one dated November 7, 2001; and the other dated December 12, 2001.
- [3] Mr. Campbell did not object to the lateness in the time of the filing of the Notice of Taxation, which Ms. Turner explained on the grounds of impecuniosity.
- [4] I heard the evidence of Ms. Turner, and of her sister Sheila Keizer.
- [5] The initial meeting (and retainer) between Ms. Turner and Mr. Campbell took place on October 2, 2001.
- [6] At this time Ms. Turner had had a Legal Aid lawyer, but had discharged the same. As well, her children had been taken into custody, and she was desperate to get them back. She had also obtained a large box of paper documents from her former Legal Aid solicitor which she, I believe, brought with her to the meeting with Mr. Campbell.

- [7] At this point Ms. Turner was desperate to regain access (and, indeed, custody) of her children, who had been taken into care. She determined at this point that she had to find a private lawyer, and she enlisted the aid of her sister, who was prepared to loan her \$5,000 in order to obtain a “private lawyer.”
- [8] They met with Mr. Campbell.
- [9] This is where the first issue arises: was there any discussion as to Mr. Campbell's hourly rate.
- [10] Mr. Campbell does not recall any particular discussion concerning rates, but he says his practice is to tell all his clients his hourly rate.
- [11] Ms. Keizer says that, to her recollection, there was no discussion of hourly rate, but Mr. Campbell said they “would talk about it [i.e. his account] once the matter was finished.”
- [12] There was no written retainer letter.
- [13] On balance, I am forced to conclude that either the hourly rate was not discussed; or if it was mentioned, it was mentioned in the overall context of a possible reduction of the account once “it was all over.” In my experience, it is often common for lawyers, faced with a client in an extreme situation, and not knowing how much matters may cost, and being uncertain as to the amount of a final account, to defer detailed discussions of an account until the end, with the intention that any final account be tempered by the usual factors that go into drafting an account.
- [14] Mr. Campbell's hourly rate was at the time \$165. Having found that the actual rate was not discussed, it is my view that I have to proceed on an *quantum meruit* basis.
- [15] That brings me to the second issue in this taxation.
- [16] Ms. Turner says that she learned some time later that Mr. Campbell was a lawyer who was on the Legal Aid list as being someone who was prepared to take a Legal Aid certificate. This is important, because Legal Aid certificate lawyers are limited, as I understand it, to an hourly rate of \$50.
- [17] Ms. Turner says that Mr. Campbell was under a legal duty to disclose the fact that he was on a Legal Aid list. She says that if she had known that, she would have insisted on him taking a Legal Aid certificate. She says that Mr. Campbell ought to have known that she was interested in having a Legal Aid lawyer, because she had been with a Legal Aid lawyer.
- [18] I do not agree.

