CLAIM NO.187209 Date: 20030331

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 impecuniousity.
- [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.

- [19] I think on Ms. Turner's evidence it is clear that she realized that she had to go to a "private" lawyer rather than a "Legal Aid lawyer."
- [20] In addition, it is clear that Ms. Turner is and was reasonably sophisticated insofar as lawyers were concerned, and if she was insistent on obtaining a Legal Aid lawyer, she ought to have asked Mr. Campbell whether he was prepared to accept a Legal Aid certificate. I do not believe that Mr. Campbell was under any obligation to reveal or disclose to Ms. Turner that he was on the Legal Aid list as someone who would accept Legal Aid certificates.
- [21] As matters transpired, however, Mr. Campbell did eventually agree to accept a Legal Aid certificate.
- [22] The record reveals that Mr. Campbell acted for Ms. Turner, appearing in Court on a number of occasions. It appears that on November 14, 2001 Ms. Turner learned that Mr. Campbell was on the Legal Aid list, and asked him if he would accept a Legal Aid certificate. This was in the context of a concern that she was "running out of money" insofar as the \$5,000 retainer (which had been provided by Ms. Keizer to Mr. Campbell at the original meeting).
- [23] Mr. Campbell indicated that he was prepared to accept a certificate. Ms. Turner applied for one, and on November 19, 2001 Legal Aid issued a certificate, with a retainer date of November 14.
- [24] Reviewing the two accounts, it is clear that 4.6 hours of Mr. Campbell's time was incurred after November 14 and, accordingly, should have been billed at the rate of \$50 an hour, rather than his rate of \$165 an hour.
- [25] I accordingly reduce Mr. Campbell's time for those 4.6 hours by \$529, being the difference between 4.6 hours at \$165 an hour and 4.6 hours at \$50 an hour.
- [26] Turning to the balance of the accounts, I am satisfied that on a *quantum meruit* basis, the work was done and that an hourly rate of \$165 was not unreasonable in the circumstances. This was a matter that involved the custody of Ms. Turner's children; was clearly important to her; and clearly involved expedited work on the part of Mr. Campbell.
- [27] In these circumstances I am not prepared to reduce Mr. Campbell's account any more than the \$529 already noted.

Dated at Halifax, Nova Scotia)		
this	day of March 2003)		
	•	•)	ADJUDICATOR
)	,	W. Augustus Richardson

Original Court File Copy Claimant Copy Defendant