

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Linegar v. Richey, 2004 NSSM 13

BETWEEN:

Name	Reginald A. Linegar and Reginald S.F. Linegar	Applicants
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Name	David W. Richey	Respondent
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Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 3, 2007. This decision replaces the previously distributed decision.

DECISION

Appearances:

Reginald A. Linegar, on behalf of the Applicants;
David W. Richey, on his own behalf.

- [1] This taxation of a lawyer's disbursement account came on before me on March 30, 2004.
- [2] At issue was the taxation of disbursements totalling \$862.12 plus HST.
- [3] The background to this taxation is as follows.
- [4] The lawyer's representation of the client arose out of a food poisoning that took place in Quebec in November 1998. Mr. Linegar retained Mr. Richey, who he had known for many years, on or about February 9, 1999, which is the date of a Contingency Fee Agreement between himself, his son and Mr. Richey.

- [5] It appears that the lawyer did not vigorously pursue the claim because there may have been some difference of opinion between him and the client as to the value of the claim. In any event, at some point the client took over direct negotiations with the potential defendant's insurance company.
- [6] Mr. Richey acknowledged that he was not aware at the time that there was a two year limitation period in Quebec, which would have expired in November 2000. He acknowledged that he did not tell the client about this limitation period (since, of course, he was not aware of it).
- [7] In January 2002 the client asked Mr. Richey to recommence negotiations on his behalf.
- [8] On June 20, 2002 Mr. Richey filed a Statement of Claim. In July 2002 a Defence was filed, and this Defence alleged that the limitation period in Quebec had been missed and that the action was accordingly barred.
- [9] Mr. Richey notified his insurer at some point and in December 2002 he was advised that he should get off the record.
- [10] Mr. Richey asked Mr. Linegar to sign a consent to remove Mr. Richey, but the client refused because of a concern that under the terms of the Contingency Agreement he would become liable to pay fees. Mr. Richey did not notify Mr. Linegar that this would not be the case.
- [11] Accordingly, in the absence of any consent from the clients Mr. Richey was forced to apply in May 2003 to the Court for an order to get off the record, which order was granted.
- [12] Since there is no claim under the Contingency Agreement for fees, the only issue was disbursements.
- [13] Mr. Linegar questioned the following disbursements:
- a. faxes in the amount of \$9;
 - b. photocopies in the total amount of \$598.80; and
 - c. the \$50 filing fee for the Prothonotary for the application on the solicitor's part to get off the record.

FAXES

- [14] The total charge here was \$9. Mr. Richey advised that he charged \$2.40 for the first page of a fax and \$.50 for each additional page.
- [15] In my view, these charges are unreasonably high for a facsimile. I am also concerned because some of these faxes may have been after November 2000.
- [16] Accordingly, I disallow the \$9 charge.

OFFICE PHOTOCOPIES

- [17] The total amount here is \$598.80.
- [18] Mr. Richey advised that he charged the photocopies at the rate of \$.40 a page and that this figure was based on the amount charged by the Barristers' Library at the Courthouse.
- [19] These photocopy charges would include the cost of reproducing lists of documents, some of which in my view could have been sent out to a commercial photocopy shop at a lower rate. In addition, a number of these photocopies (approximately worth \$278) were performed after 2002 and, accordingly, had more to do with the solicitor's application to get off the record than with his carriage of the file.
- [20] I am of the view that \$.40 a page is an unreasonably high charge for photocopies, at least when some of them could have been sent out to a commercial shop.
- [21] Accordingly, I deduct the \$278 in respect of photocopies after 2002 (since they appear to pertain to efforts to get off the record and the resulting need to copy the file) and reduce the remainder by 50%.

PROTHONOTARY'S FEE

- [22] The \$50 filed by Mr. Richey was made necessary because he had to get off the record because of the conflict created by the missed limitation period.
- [23] In the circumstances, it was not unreasonable for the client to be concerned about signing the request, especially in the absence of any explanation from the solicitor that he would not be charging for fees under the Contingency Agreement.

[24] In my view, the cost of getting off the record in the circumstances of this case is really part of normal overhead, or a charge flowing from the potential negligence on the part of the lawyer, or both and would not be a reasonable charge to the client.

[25] Accordingly, I disallow the \$50 filing fee.

CONCLUSION

[26] For reasons set above, I have removed from the disbursements charged \$9 in respect of facsimiles; \$438.40 in respect of photocopying; and \$50 in respect of the Prothonotary's fee.

[27] The total removed is thus \$497.40. Accordingly, the allowable disbursements should have been \$364.72 plus HST, not the \$862.12 plus HST charged by the lawyer.

[28] I accordingly certify the account at \$364.72 plus HST. If the client has paid more than that amount, I direct the lawyer to repay to the client anything over and above \$364.72 plus HST.

Dated at Halifax, Nova Scotia this)
14th day of April 2004.)
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ADJUDICATOR
W. Augustus Richardson

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