CLAIM NO. 114531

Date: 20020430

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA Cite as: McInnis v. Provo, 2002 NSSM 8

BETWEEN:

Name WELDON MCINNIS Claimant

Name TERRY J. PROVO Defendant

DECISION

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 22, 2007.

Appearances:

Allen Doughty, on behalf of the Claimant law firm Weldon McInnis; No one appearing on behalf of the Defendant client.

- [1] This taxation of a solicitor's account, and claim for judgment thereon, came on before me on March 19, 2002.
- [2] The claim concerns legal services provided by Stephen K. Mont, a solicitor at the Claimant firm. Mr. Mont did not appear at the application; instead, Mr. Doughty, a law clerk, appeared on the claim.
- [3] Entered into evidence was the "client ledger", which consisted of a PC-Law printout.
- [4] The total claim is for \$500.00, which represents the amount of a cheque that was apparently given to the firm by the client, but which was returned NSF.
- [5] It does not appear that any actual account was rendered to the client. Certainly no evidence of any such account was entered.
- The PC-Law printout constituted the client ledger only, and included a number of items which ordinarily would not be claimable in any event. For example, there were charges of \$2.00 each for parking; and a charge of \$30.00, which is a flat rate that the firm charges to cover the expense of the stationary used in the physical file as well as the cost of off site storage after the file has been closed. In my view such charges are in ordinary course overhead, which cannot be charged to a client absent an agreement to the contrary.

- [7] I also note that insofar as I am able to interpret the client ledger, the only actual time in respect of fees recorded by the client totalled \$297.50 (constituting three separate charges of \$87.50, \$35.00 and \$175.0 respectively).
- [8] There was another entry on the client ledger, called "fees to lawyer" of \$103.80, but Mr. Doughty was not able to interpret this clause for me, and I cannot determine whether or not that amount represents services rendered the client, or if so, for what.
- [9] In the absence of any further evidence or particulars as to the nature of the retainer between Mr. Mont and the client, but given that the fees do appear to have included an attendance at court, I am prepared to allow \$297.50, plus HST of \$44.63, as a "reasonable and lawful" claim on the part of the solicitor for his services to the client.
- [10] I am not prepared to say that in the circumstances of this case it was reasonable to charge a premium (i.e. \$500.00) for the services, in the absence of any evidence as to what exactly was done; or of what discussions if any there were between the client and the lawyer respecting any premium. Mr. Doughty's understanding was that the cheque had been given to the solicitor at some point, and that the cheque was supposed to represent full payment of the lawyer's account. However, in the absence of any evidence that the client knew what the actual account was; and in the absence of any evidence that there was an agreement at the beginning of the retainer to charge a flat fee of \$500.00; I am not prepared to assess the solicitor's claim at anything higher than the hourly rate for the services actually recorded in the client ledger (that is, the total of \$297.50).
- [11] Accordingly, I assess the solicitor's account at \$297.50, plus HST of \$44.63, and order that the client pay that amount to the Claimant firm.

Dated at Halifax, this April, 2002.	day of)))	ADJUDICATOR W. Augustus Richardson
Original Copy	Court File Claimant(s)		

Defendant(s)

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