

Date: 20001214

File No. S.HCR. 99-157572

IN THE SUPREME COURT OF NOVA SCOTIA  
[Cite as: R. v. Innocente, 2001 NSSC 1]

BETWEEN:

HER MAJESTY THE QUEEN

- and -

DANIEL JOSEPH INNOCENTE and GILES POIRIER

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DECISION ON TAXATION OF MR. INNOCENTE'S LEGAL EXPENSES

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HEARD: At Halifax, Nova Scotia, before the Honourable Justice Allan P. Boudreau, on September 26 and 27, 2000.

DECISION: December 14, 2000

COUNSEL: Claude Belanger, Q.C. and Paula Taylor, for the Crown  
Kevin A. Burke, Q.C. and François Bordeleau for Giles Poirier  
Warren Zimmer, Esq., for Daniel Innocente

Boudreau, J.

## INTRODUCTION

[1] Mr. Daniel Innocente was charged jointly with Mr. Giles Poirier with conspiracy to traffic in cannabis resin and cocaine during the period March 25, 1996, to May 17, 1996. The first trial of this matter ended in a mistrial in March of 1999 because the jury could not reach a verdict. Mr. Innocente did not have legal counsel at the first trial. All of Mr. Innocente's assets had been seized by the police, alleging they were proceeds of crime.

[2] Mr. Innocente made an application requesting legal counsel for the retrial which was scheduled to commence in early 2000. A maximum of \$75,000.00 from the equity in Mr. Innocente's home property was eventually ordered released in order to pay for his reasonable legal expenses. Mr. Warren Zimmer agreed to represent Mr. Innocente.

[3] The first substantive pre-trial motion was an allegation of misconduct and abuse of process by the Crown prosecutors and the police. This motion resulted in this Court ordering a stay of proceedings on April 7, 2000.

[4] In the present application the court was requested to tax the legal fees of Warren Zimmer, counsel for Mr. Innocente, with regard to the reasonableness of the fees and the conformity with my ruling.

## FACTS

[5] Mr. Innocente's application pursuant to subsection (4) of section 462.34 of the **Criminal Code** for the return of a portion of the equity in his home to pay for his reasonable legal expenses had resulted in this Court authorizing the release of a maximum of \$75,000.00 for his defence. At a subsequent hearing pursuant to subsections (5) and (5.1) of the **Criminal Code**, counsel fees of \$150.00 per hour for preparation and \$1,600.00 per day in court were authorized. The trial was anticipated to last ten to twelve weeks, including a few weeks of pre-trial motions, sitting four days per week. The pre-trial motions lasted approximately six weeks.

[6] The first substantial pre-trial motion was the allegation of misconduct on the part of the Crown and the police. This motion was heard from February 3 to March 15, 2000, and it resulted in the granting of a stay of proceedings. The application consumed some twenty-five days of sitting time and Mr. Zimmer was present for a total of eleven of those days. As a result, Mr. Zimmer has charged court time of \$20,240.00 (including HST) and this is in accordance with my earlier ruling.

[7] Mr. Zimmer has also charged a total of 110.4 hours of preparation and computer research time for a total of \$16,560.00 and disbursements of \$137.62 for a total of \$19,202.26 (including HST). Therefore, the total fees and disbursements billed for the stay of proceedings motion is \$39,442.26. In addition to his itemized account, Mr. Zimmer has provided a copy of his daily diary which he states pertains to his work on the stay of proceedings motion. I have reviewed the accounts with regard to the stay application item by item and, in general, they do not cause me any concern.

Needless to say, there was a massive amount of materials to go through and review for this application.

[8] I have also considered the fact that Mr. Kevin Burke was the counsel primarily carrying the prosecution of the stay application. Mr. Burke has claimed, on behalf of Mr. Poirier in a separate application, counsel fees of some \$64,000.00 representing 16 court days of the first trial, 3 court days on the disclosure motion and 25 court days on the stay of proceedings application. Mr. Zimmer has claimed approximately one-third of that amount for approximately one-third of court time spent by Mr. Burke. That appears on its face to be reasonable. The preparation time also appears to be reasonable in view of the extensive materials to be reviewed by Mr. Zimmer in preparation for the stay application,<sup>3</sup> considering Mr. Zimmer was not counsel in the first trial.

[9] Therefore, I find that total fees and disbursements of \$39,442.26 for the stay application preparation and attendance in court is reasonable.

[10] Mr. Zimmer also submitted for taxation an account for other pre-trial preparation, including a possible or potential motion regarding the special plea of “autrefois convict”. It is with this account that I have some concern. As pointed out by the Crown, if I accepted this account in total it would amount to approximately \$70,000.00 of the \$75,000.00 maximum released for legal expenses for the entire trial expected to last up to twelve weeks.

[11] I find that I cannot accept this total sum pursuant to the guidance provided by subsection (5.2) of section 462.34 of the **Code**. I accept that some additional preparatory work would have

been required in addition to the stay application. But for the purposes of taxing these accounts, in light of the fact that the stay application was advanced to end the proceeding and that some preparation time would have been available before the trial could have commenced, I find I am obliged to limit and reduce the hours claimed for other preparation to forty hours. This would then reduce counsel fees to \$6,000.00 plus \$3,200.00 for court days for total fees of \$9,200.00 plus HST for a total of \$10,580.00. It is also appropriate to pay Mr. Pizzo's account of \$2,875.00 plus disbursements of \$314.37 and HST of \$47.16 on those disbursements for total other preparation expenses of \$13,816.53.

[12] I therefore tax Mr. Zimmer's account for legal fees and expenses and HST as follows:

- Court fees for stay application	\$ 20,240.00
- Preparation for stay application	19,202.26
- Other preparation expenses	<u>13,816.53</u>
<u>TOTAL</u>	<u>\$53,258.79</u>

This is the total amount which may be claimed by Mr. Zimmer pursuant to my previous rulings regarding the equity in Mr. Innocente's home property and his reasonable legal expenses. I should point out that my ruling in this taxation is solely for the purposes of taxation pursuant to section 462.34 of the **Criminal Code** and it is not intended to have any other effect.

[13] If Mr. Zimmer prepares an order accordingly, I will grant the same.

Boudreau, J.

