Cite as: Dow & Duggan Prefabrication Ltd. v. Smithers, 1991 NSSC 8

1986 S.H. No. 74813

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

BETWEEN:

DOW & DUGGAN PREFABRICATION LIMITED,
a body corporate

APPELLANT/PLAINTIFF/
DEFENDANT BY
COUNTERCLAIM

- and -

JOSEPH LUKE SMITHERS

RESPONDENT/DEFENDANT/
PLAINTIFF BY
COUNTERCLAIM

HEARD: At Halifax, Nova Scotia, before the Honourable Mr. Justice David W. Gruchy, in Chambers, on January 15, 1991

DECISION: February 8, 1991

COUNSEL: Mr. Michael F. LeBlanc, Solicitor for the Appellant

Mr. Robert G. Belliveau, Q.C., Solicitor for the Respondent

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GRUCHY, J.

THE FACTS

The Appellant ("Dow & Duggan") and the Respondent ("Smithers") were the parties to an action in this Court, S.H. No. 57549. The subject matter was a dispute concerning the design and construction of a log house. Dow & Duggan was the prefabricator of the house and Smithers was the owner-constructor. The trial was held on November 29, 30, December 1, 2, 21, 22 and 23, 1988, before Mr. Justice Richard. A written decision was filed on February 10, 1989, wherein it was found that Dow & Duggan was liable to Smithers for 75% of the amount of damages assessed. The final order provided that Smithers should recover against Dow & Duggan 75% of $10,725.00 plus interest and further that he should recover "75% of his costs when taxed, less 25% of the costs of (Dow & Duggan) when taxed".

The matter of costs proceeded to taxation before the Taxing Master, Arthur Hare, Q.C. Various items were in contention before Mr. Hare, including particularly the matter of experts' fees. Mr. Hare filed a written decision on October 3, 1990, wherein he dealt specifically with the accounts of J.W. Cowie Engineering Limited, the engineer for Smithers, and D.B. Dorey Engineering Limited, the engineer for Dow & Duggan. Mr. Hare reduced the Dorey bill from $21,581.57 to $16,000.00 and allowed the Cowie bill as presented in the amount of $15,739.23.

Mr. Hare's disposition of costs is now under appeal, which appeal is the subject matter of this proceeding.

The appeal against the taxing master's decision is taken pursuant to Civil Procedure Rule 63.38; the subject matter of the appeal is limited by virtue of Rule 63.39; the Courts' powers are set forth in Rule 63.40. Those rules are as follows:

"**Time and contents of appeal**

63.38. (1) A person pecuniarily interested in the result of a taxation may, not later than ten days after he has received notice of a certification on taxation, appeal the taxation as herein provided.

(2) An appellant shall appeal to a judge in chambers by filing with the taxing officer and the prothonotary a notice of appeal and serving it upon every opposite party.

(3) A notice of appeal shall specify any item objected to, the grounds of the objection, and the date of the hearing of the appeal.

(4) A notice of appeal shall be,

(a) returnable within fifteen days from filing it with the prothonotary; and

(b) served on all parties directly affected by the appeal not less than three days before the

date set for the hearing of the appeal. [E.62/33/35]

(5) Notwithstanding anything contained in this Part, an appeal from a taxing officer's determination of a party's entitlement to disbursements in a proceeding in which the costs between the parties were determined by a court shall be to the same judge who determined the costs between the parties, unless the court otherwise orders.

Appeal confined to items specified

63.39. (1) Unless the court otherwise orders, an appeal from a taxation shall be confined to the items and grounds specified and shall be heard on the evidence before the taxing officer.

(2) The decision of the taxing officer shall be final and conclusive on all matters which have not been appealed from.

Powers of judge on appeal

63.40. On an appeal from a taxation, the court may

(a) exercise all the powers of a taxing officer;

(b) review any discretion exercised by the taxing officer as fully as if the taxation were made by the court in the first instance; and

(c) grant such order on the application, including the costs of appeal and taxation, as is just."

This matter should ordinarily have come before Mr. Justice Richard pursuant to Rule 63.38(5). It came before me in regular Chambers and was then scheduled for a special Chambers matter. No objection was made to my hearing the matter and both parties have proceeded before me. I will, therefore, order that this appeal will be heard and disposed of by myself.

The items under appeal, and to which I am restricted in my consideration, are the account of A.B. Dorey, the account

of J.W. Cowie, Kempton Appraisals Limited and Brian Burnell. The grounds to which I am similarly restricted are as set out in the notice of appeal as follows:

> "1. The Learned Taxing Master erred in law in holding that the costs for the expert witness for the Defendant/Plaintiff by Counterclaim, J.W. Cowie ("Cowie") should not be reduced.
>
> 2. The Learned Taxing Master erred in finding that the Learned Trial Judge did not find Cowies evidence to be in error and accordingly that a reduction in the Bill was justified.
>
> 3. The Learned Taxing Master erred in finding that costs are payable on Cowie's account despite that they remain unpaid.
>
> 4. The Learned Taxing Master erred in failing to adjust for that portion of Cowie's account which was fixed at Three Thousand Dollars ($3,000.00) by the Learned Trial Judge.
>
> 5. The Learned Taxing Master erred in allowing the costs for expert opinion evidence given by Kempton Appraisals Limited, where the evidence had no probative value in the proceeding.
>
> 6. The Learned Taxing Master erred in allowing the costs for Brian Burnell, provincial actuary, despite that Mr. Burnell did not file a report or give evidence at trial.
>
> 7. The Learned Taxing Master erred in holding that Dorey's Bill should be reduced. Although the Learned Trial Judge had accepted his opinion over that of the Respondent's expert engineer.
>
> 8. Such other errors and grounds as may appear."

Mr. Justice Richard dealt with the two engineering experts in an unequivocally critical manner. In order to appreciate fully Mr. Justice Richard's sense of frustration with the engineering evidence adduced before him, I set forth extensively those parts of his decision bearing on that subject.

observed condition of the Smithers residence, could come up with so widely divergent views, not only as to the cause of the problems but also as to the solution. It occurred to me during the trial that two such people who apparently respected one another and had a good rapport ought to have consulted with each other in an effort to at least rationalize, if not resolve their differences in the interests of their respective clients. Such a consultation was suggested by Dorey. R. Murrant, who had previously acted for Smithers in this matter said he was "adverse" to engineers (sitting) down and talking! That counsel was concerned about the two experts talking and advised against any such consultation. Because of this the two experts did not consult but merely maintained, if not hardened, their adversarial positions. In my view, this is carrying the adversarial system to the extreme, rendering the experts of little value to their respective clients or to the court."

But the difficulty was not restricted to the engineers themselves. At least one of the parties, Smithers, did not even follow his own engineer's advice. Mr. Justice Richard continued:

" The engineers were equally divergent in their opinions as to the appropriate resolution of the structural weaknesses at the Smithers residence. Cowie proposed a temporary wire cable and turnbuckle system on the second floor which would prevent any further spreading of the roof system and avoid total collapse from snow load. This temporary solution was not acted upon since the weather moderated and the threat of a snow load diminished. As a permanent solution Cowie designed a rather intricate network of steel "I" beams and steel support mechanisms to be superimposed upon the roof beams and outside walls. It appeared that Cowie was recommending a heavy steel frame, independent of the walls, which would support the roof by a number of steel pieces emanating out from an "I" beam attached to one of the interior roof beams. The permanent solution as suggested by Cowie was presented to Smithers. Smithers, without consultation, amended the Cowie proposal and had the steel erected in a somewhat different manner at a cost of some $8642.00. In revising the proposal, Smithers placed the supporting "I" beams on the interior of the building against the two end walls. In this way he hoped to preserve the exterior appearance of the house.

> In appearance, these structural modifications range from unsightly to almost grotesque, if the pictures are a true reflection of appearance. The unsightliness was accentuated by Mr. Smithers' painting the steel a dark brown or black, which, on a natural pine background served only to highlight the structure. Cowie's charges for professional services in this regard appears to be $8516.37 as reflected in invoices dated March 31, 1987 and January 26, 1988. Cowie said that the Smithers variation of his recommendations does not fully resolve the structural problems and further modifications and expenditures are necessary."

While dissatisfied with both engineering experts, Mr. Justice Richard ultimately favoured, in part, the advice and testimony of Dow & Duggan's expert, Dorey. He said:

> " In any event, I am of the view that fault in this matter as well as the practicality of the solutions fall somewhere between the two positions taken by the parties and their experts. Although I am constrained not to accept either view in its entirety, I find favour with the more practical and common sense approach taken by Dorey and I adopt that approach in favour of that taken by Cowie. At the risk of repeating myself, I do that simply because it makes better common sense."

The learned trial judge's conclusion with respect to liability is as follows:

> " I find that Dow and Duggan is responsible, either in breach of contract or negligence for 75% of the losses suffered by Smithers which directly relate to the structural deficiencies. Dow and Duggan is also ordered to pay 75% of the costs of Smithers, said cost to be taxed on a party and party basis."

But Mr. Justice Richard's dissatisfaction with the expert evidence did not end with his finding on liability. The

frustration he felt again manifested itself when dealing with damages. He continued his decision as follows:

"DAMAGES

There is no question that the house which Smithers erected has cost him considerably more than he initially bargained for. It has also depreciated in value due to the steel reinforcing and will not have the same potential for appreciation as would normally be the case. The Cowie engineering services, the steel fabrication and erection, additional labour costs and the diminished value due to the appearance of the house all contributed to this. This is not to say that all of these factors bear directly on any liability of Dow and Duggan for breach of contract or under the Consumer Protection Act or Sale of Goods Act.

I have already concluded that the Cowie recommendations for repair of the structure were excessive. I agree with Dorey that this elaborate scheme was largely redundant and that the problem was one of carpentry and could have been resolved in that manner. Smithers seems to take the view that any repairs necessitated by the structural defects, regardless of the cost or nature of these repairs, are properly the responsibility of Dow and Duggan. In Smithers' post-trial memorandum his counsel stated at page 20:

> 'It is submitted that Mr. Smithers can hardly be faulted for going along with the advice of his solicitor and the engineer retained to advise him on the subject. Mr. Murrant (Smithers' previous solicitor) made it quite plain that Mr. Smithers could not be faulted for any of the decisions which were taken and that his attitude was not of unwillingness or cooperation.'

The one element which seems to be missing in that statement is the concept of reasonableness. Cowie's proposal for reinforcing the house was patently unreasonable. It was costly and resulted in a home, the appearance of which was greatly diminished. This appearance had, and continues to have an adverse effect on the value of the home. This is evident from the report of the Appraiser, Kempton. Kempton said that the value of a properly designed home of this type in good condition would be $102,000. With the structural steel support system the value is $79,000 - a decrease of $23,000.

Kempton further estimated that the potential increase in value would be based upon a factor of 7.5% of the lower, rather than the higher value and in the first year along (alone) this could be an added loss of $1725.

It is unfortunate that Smithers has suffered, and will continue to suffer financial losses as a result of the structural and aesthetic characteristics of his dwelling. I am of the view that Dow and Duggan ought only be held liable for those cost(s) which flowed reasonably from its breach or negligence. I have already found that the Cowie treatment was unreasonable and therefore, logically, Dow and Duggan ought not be liable for any costs or losses flowing from that treatment. This will include the cost of the Cowie survey, the cost of the steel fabrication and installation and the loss of value as set by Kempton.

Although I am not entirely satisfied with Dorey's estimated cost for completing the required repairs I find it more realistic and practical than that of Cowie with which I have already dealt. Having no other figures before me I am therefore forced to accept the estimate of Dorey of $2725.00.

I fix damages suffered by Smithers at 2725.00 for repairs to the dwelling house; $5,000 as general damages for the inconvenience which these structural problems caused to Smithers; a somewhat arbitrary determination of cost of the services of an expert to advise Smithers fixed at $3,000. Since I have rejected much of Cowie's professional report and the opinions expressed I cannot allow those fees which relate to the rejected professional opinion."

Based upon Mr. Justice Richard's decision, the parties then proceeded to tax costs. Essentially the taxing master's written decision dealt only with the accounts of the two engineers. The Taxing Master's disposition of the accounts was as set out above. According to the taxing master's decision, Dorey's bill was challenged for various reasons, including that too much time was spent on preliminary matters and preparation and he had apparently stayed in court during the whole course

of the trial. Dow & Duggan's position, as reported by the Taxing Master, was that Dorey had found errors in Cowie's work, thereby necessitating lengthy recalculations. No reason for Dorey's continued presence in court throughout the trial was reported by the Taxing Master or advanced before me.

With regard to the quality of the engineer's evidence, Mr. Hare concluded:

> " Neither the evidence presented nor the Judge's decision make any reference to the incorrect state of Mr. Cowie's presentation. The Judge, in his Decision, wrote extensively about the evidence of the engineer. I think it is fair to say that neither engineer made the resolution of the matter easy. However, there is no reference to the quality of the evidence other than Dorey's evidence was accepted because it made more common sense than Cowie's."

I respectfully disagree with the Learned Taxing Master's conclusion. There is no express finding by Justice Richard as to the quality of the evidence of either of the engineers, but the criticism and disapproval of the evidence of both is very clear.

Mr. Hare then referred to the assertion that Cowie's bill should be reduced as Smithers' former counsel had allegedly refused to co-operate in pre-trial discussions which may have been of assistance to the parties and to the Court. He said that while the judge "was aware of the costs of having these witnesses" and made specific provisions concerning same "...he did not indicate that there should be a disallowance because of the failure referred to." The taxing master's decision also referred, in this context, to **ORKIN,** 1969 Edition, at page 19. I take this to be the 1968 Edition as I have been unable to locate a 1969 Edition. It appears that the reference is to those

sections of the text wherein the author sets forth those grounds for which a successful party may be deprived of costs. (The current version of **ORKIN** (2nd Ed.) deals with this subject at para. 205.2(2).) The taxing master did not address the matter of "misconduct of the parties" beyond making that reference and concluding that the trial judge "did not indicate that there should be a disallowance because of the failure referred to."

The taxing master's decision then concluded that the fees in question must be reasonable and he referred to certain principles which he found helpful. Those principles, the source of which is not identified, are as follows:

> "The Board finds that the general principles to be followed in determining such reasonable costs may be summarized as follows:
>
> 1. Full costs of and incidental to an application properly made pursuant to the Act by the owner should be paid by the expropriating authority. The costs should however reflect such reasonable, economical and straight-forward preparation and presentation as is necessary to properly present the owner's case to the Board.
>
> 2. The owner should not be allowed the cost of unnecessary work or other expenses or costs incurred through over-caution or over preparation.
>
> 3. The owner should not be allowed costs which are the result of misconduct, omission or neglect by the owner.
>
> 4. The tariff of costs prescribed for ordinary litigation may be accepted as a general guide; but where, in the opinion of the Board, the fees fixed by that tariff are either inadequate or inordinately high to compensate for the services necessarily and reasonably rendered the Board is not bound by such tariff and should not follow it."

(I note in passing that these principles are apparently those enunicated by an Expropriations Compensation Board and that accordingly, an approach must be taken by that body which is by the nature of the proceeding vastly different from ordinary litigation.) The second principle was invoked by the Taxing Master and he ruled implicitly that Mr. Dorey's account was in part for unnecessary work and reduced the account from $21,581.57 to $16,000.00, or to equal approximately the account of Cowie.

The other items at issue in this appeal were not mentioned by the Taxing Master. I will deal with each of them below.

COURT'S POSITION ON AN APPEAL FROM A TAXING MASTER

There is no question but that the Court has the jurisdiction to hear an appeal of this nature pursuant to Rule 63.40. But the jurisdiction of the Court is somewhat restricted. I refer to **Rent Review Commission v. Rawdon Realties Limited** et al (1983), 56 N.S.R. (2d) 309, wherein Mr. Justice Richard said:

> "[3] At first blush, it would appear that the hearing before the judge on appeal would be in the nature of a hearing **de novo.** This is so, subject to the following comments. I refer to the case of **Gillan v. Latimer** (1979), 35 N.S.R. (2d) 435; 62 A.P.R. 435, where Madam Justice Glube, as she then was, reviewed principles of taxation and applications involving appeals from taxations. I subscribe to the learned justice's comments on p. 438:
>
> > ... decision of a Taxing Master will not be overturned, except where the Taxing Master has proceeded on a wrong principle, or there has been a gross error.

[4] The trial judge in the **Gillan** case, supra, referred with approval to the following passage from **R. v. Curry** (1920), 47 O.L.R. 45:

> It is settled practice that the court will not interfere in matters left to the discretion of the Taxing Officer on any question of quantum ... To interfere here would be to substitute my discretion for that of an officer whose duty it is to pass on the quantum of counsel fees, and whose discretion is by the law made the touchstone. Had any error of principle been pointed out, I might have interfered.

[5] It would appear then to be well settled that a judge sitting on appeal of a taxing master's bill ought not to interfere except where there is a patent error in principle or other gross error."

With respect, I have to disagree with the Taxing Master when he said, regarding Mr. Justice Richard's decision herein, that "there is no reference to the quality of the evidence other than Dorey's evidence was accepted because it made more common sense than Cowie's." Having reviewed the decision extensively above, I conclude that this was a palpable error on the part of the Taxing Master.

I might have been more hesitant to interfere with the Taxing Master's decision than I am, had it not been for the decision of Kelly, J., of this Court in **Webster and Nauticus Marine Limited v. Blair et al**, 1987, S.H. No. 61691. That decision is dated October 17, 1990, two weeks after the decision herein on taxation. I hazard to speculate that had Mr. Hare had the benefit of Mr. Justice Kelly's decision, the outcome of the taxation may well have had different results. I refer specifically to the following passages in Mr. Justice Kelly's decision:

> " I have sometimes reflected that some expert testimony seems to arise more from the results desired by a party

or by his or her counsel, than from a purely objective opinion of a situation. Surely counsel and experts chosen by counsel must be aware that courts place less or little weight on opinion evidence which inappropriately favours the client, or is improperly based on subjective opinions of the client. The duty of the expert is to provide the court with an objective professional analysis and to assist the court in areas where the court requires professional or special assistance. The obligation of the expert is to advance, not necessarily a best case, but one that is substantially grounded on fact and valid professional assumptions.

I must determine here whether the charges for the services are "just and reasonable" and whether all of the charged time of the expert was necessarily incurred for the purpose of procuring evidence. A court frequently considers many elements in determining the adequacy or the appropriateness of an expert's billing. I do not propose to list all of those elements but some of them would be as follows: (1) the time and the responsibility involved in the expert function; (2) the amount involved in the litigation; (3) the complexity of the expert's function; (4) the extent of the information available to form the basis of the expert's opinion; (5) the relevance of the opinion to the issues in question; (6) the professional quality of the expert's opinion; (7) the training, degree of skill and competence of the expert; (8) hourly rates in the trade or profession. The ability of the party to pay and the results achieved are also sometimes appropriate considerations but may not always be heavily weighed by the court as they rely on factors outside of the control of the expert.

The trial in this matter was somewhat complicated and took place over nine days. The parties had originally projected a five day trial. To some extent, it was difficult to predict the time for the attendance of this particular expert at trial. His attendance at the trial as well was required longer than his actual time on the witness stand, as counsel by agreement and with the court's concurrence, allowed his evidence to be broken for the purpose of allowing other witnesses to present their evidence when they were available. However, I find that the expert witness was present during the evidence of a number of witnesses who had little or no

> relevance to his function. He was as well present and adjusted his findings based on evidence given by witnesses who were relevant to his function. If those witnesses had been properly interviewed at discovery or prior to trial, then that attendance would not have been necessary."

I have quoted extensively Mr. Justice Kelly's decision as it seems to me that the factual similarities of the case with which he was dealing to those of the instant case are helpful.

On the basis of the error which I perceive to be present in Mr. Hare's decision and strengthened by the clear statement by Mr. Justice Kelly of the factors to be considered in experts' billings, I do propose to review and modify the taxation decision.

I will examine each of the grounds of the appeal.

1. The Cowie Account

Smithers was clearly the more successful of the parties. He was awarded 75% of his damages and costs.

But, as noted above, costs must be reasonable. That is what the Rule requires and that is a prime requirement as set forth in Kelly, J. While Dow & Duggan is the plaintiff in this action, the matters at issue are really those of the counterclaim. That counterclaim, I am advised by counsel, was for an amount well in excess of $50,000. That claim set the tone and parameters of the action. The final award of damages, exclusive of engineering services and general damages, was $2,725.00. Much of the general damages, eventually assessed at $5,000 may have been avoided by a realistic approval by the parties. Much of the engineering costs may have been avoided

had Smithers, through his former counsel, have permitted the engineer to have attempted to resolve their differences. They were, after all, dealing with a finite and concrete subject. Instead, the matter was permitted to escalate to a seven day trial.

The Court, in this appeal, cannot and will not comment on the contractual arrangement between the parties and their experts. When the fees of the expert of one party unreasonably impact on the other party, the Court has the jurisdiction and the duty to intervene.

Keeping in mind that Richard, J., already allowed $3,000 to Smithers for an unreasonable design and which eventually resulted in a grotesque appearance of the building, and keeping particularly in mind the eventual result of the trial, I reduce the Cowie account, for the purposes of taxation, to $7,500.

2. This ground is included in Ground 1 and I merely refer to the above.

3. **Accounts not Paid**

The Cowie account had not been paid by Smithers at the time of taxation or at the time of taxation or at the time of the appeal before me. The appellant has taken the position that only accounts which have in fact been paid should be allowed on taxation. The appellant has cited **J.D. Irving Ltd. v. Desourdy Construction Ltee.** (1973), 5 N.S.R. (2d) 350, **Canso Chemicals Ltd. v. Canadian Westinghouse Co. Ltd.** (1974), 10 N.S.R. (2d) 649, and various texts in support of their proposition.

Rule 63.30 is as follows:

> "63.30 Disbursements, other than fees paid to officers of the court, shall not be allowed unless the liability therefor is established either by the solicitor conducting the matter, or by affidavit."

The affidavit filed in support of the taxation of costs was not produced before me, but it was discussed by counsel. It is my understanding that the liability of Smithers to Cowie for the account was established. The Cowie accounts addressed to Smithers' counsel were produced.

The liability for the Cowie disbursement has been established in accordance with Rule 63.30. I will not, for that reason only, disallow the Cowie account in whole or in part. I will, however, deal with the experts' accounts more fully below.

I make mention of the cases cited to me in support of the proposition that accounts had to be paid before they could be allowed on taxation. There is no question but that the practices prior to the present **Civil Procedure Rules** required payment of accounts prior to taxation. That practice, in my view, is no longer necessary as a result of the clear wording and intent of Rule 63.30.

4. Failure to Adjust Cowie's Account to Reflect the Amount Fixed by Mr. Justice Richard

The amount of $3,000 was allowed by Mr. Justice Richard to Smithers as an item of damage related to the Smithers' account for the design of a "fix" for the building. That was a figure reduced from $8,516.37. No such account or combination of accounts is before me. The Cowie accounts presented to me are:

July 7, 1988 - # 979C	$ 3,328.75
Nov. 22, 1988 - #979D	1,887.23
Sept. 6, 1989 - # 979E	7,387.50
TOTAL	$12,603.48

Since Mr. Hare had before him Cowie accounts totalling $15,739.23, I am, therefore, missing accounts in the amount of $3,135.75. I conclude, therefore, that the Cowie accounts in the amount of $8,516.37 which were reduced by Mr. Justice Richard do not form any part of my consideration. Nor could that amount have been reviewed by Mr. Hare.

In order to make this matter clear (or as clear as may be, with the material presented to me), it does not appear to me that any of the Cowie accounts as presented to me require adjustment. Mr. Justice Richard allowed $3,000 for the account of $8,516.37, as a head of damage. In addition to that, I am allowing $7,500 for the account of $15,739.23.

5. Kempton Appraisal Ltd.

This account appears to be reasonable and was reasonably incurred. The devaluation of the building was in issue and the obvious method of determining the quantity of that devaluation was to have a "before and after" appraisal. The trial judge remarked upon it and, to a degree, relied upon it. I allow the account.

6. Brian Burnell Account

This account, while it may have been reasonable, does not appear to have been necessary. It was apparently not produced for the trial and was not relied upon in my view. I disallow the Brian Burnell account.

7. Dorey's Account

Dow & Duggan retained Dorey in response to the Smithers' demand. In many respects Dorey's services and fees were dictated by the demands which proved to be so unreasonable. But it must have been apparent to a competent, professional engineer that the accounts, eventually totalling $21,581.57, were out of line with the realistic potential exposure. Indeed, I may speculate that competent professionals such as Cowie and Dorey may well have reported accordingly to their clients and received instructions to proceed as they did. Party and party costs, however, reflect reasonableness as between the parties and do not relate to the relationship between the parties and their consultants.

I also have to keep in mind that Mr. Dorey was also criticized, but to a lesser extent, as was Cowie, by Mr. Justice Richard.

I have reviewed the account and Mr. Hare's decision with respect to it and I confirm Mr. Hare's decision.

As the success in this matter is somewhat divided, I allow no costs herein to either party.

Halifax, Nova Scotia
February 8, 1991