

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Cragg v. Majaess, 2004 NSSM 30

BETWEEN:

Name Robert G. Cragg APPLICANT

Name Rima Majaess RESPONDENT

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:

On August 17, 2004: Mr. Robert Cragg on behalf of the Applicant (Mr. Christopher Folk, articulated clerk, with him);
Ms. Rima Majaess on her own behalf.

On August 24, 2004: Ms. Elizabeth Wozniak (Mr. Christopher Folk with her) on behalf of the Applicant;
Ms. Rima Majaess, on her own behalf.

[1] This taxation of an account on a solicitor and client basis originally came on before me on August 17, 2004. At that time Mr. Cragg did not have an issued and entered order and, in the absence of such, I declined to hear the matter. On consent of the parties the matter was accordingly adjourned to August 24, 2004. At that time Mr. Cragg did not appear, advising through Ms. Wozniak that he had prior personal commitment. I note that Mr. Cragg had not advised that there would be any difficulty with the date on his earlier appearance. I make this observation only in light of my subsequent comments concerning the difficulty I had with the assessment of the account.

[2] The account in question is an account dated July 29, 2004 for a total of \$14,571.08, of which the bulk of the amount (\$12,592.50) is made up of fees.

- [3] The account was directed to Mr. Cragg's client, Mr. Joseph Majaess but pursuant to an Order of the Honourable Justice Lynch issued August 20, 2004, the account was to be paid by Ms. Rima Majaess on a solicitor and client basis.
- [4] As I understand it, this Order and this account arose in the following way.
- [5] Mr. Joseph Majaess and Ms. Rima Majaess have been involved in a long and acrimonious matrimonial dispute that has been before the Courts on numerous occasions. Mr. Cragg acted for Mr. Majaess. Ms. Majaess appears to have acted on her own behalf, at least for part of the time.
- [6] As part of these proceedings Ms. Majaess was ordered to make certain payments on a mortgage and to transfer certain shares to Mr. Majaess. These she did not do and eventually Mr. Cragg brought an application on behalf of his client, Joseph Majaess, for an order for contempt as against Ms. Majaess. That application was eventually heard on July 20, at the same time as an application by Ms. Majaess to vary one or some of the original orders in the matrimonial litigation. The application resulted in the above-noted Order of the Honourable Justice Lynch, the relevant provision of which for purposes of this taxation is paragraph 3, which provides as follows:
- "Rima Majaess shall pay to the Applicant costs of this Application [for an order for contempt] on a solicitor and client basis to be taxed by the Small Claims Court of Nova Scotia and shall then be payable forthwith."
- [7] Following that Order Mr. Cragg drew up and submitted for taxation the account dated July 29, 2004.

PRINCIPLES IN TAXATIONS OF SOLICITOR AND CLIENT ACCOUNTS

- [8] A party who is ordered to pay the solicitor and client costs of another party is entitled to stand in that party's shoes and to advance any objection to the account that could have been advanced by the other party.
- [9] In addition, a party who is ordered to pay the solicitor and client costs of another is not liable to pay costs that accumulated before the matter in which the order was made commenced; nor is he or she responsible to pay costs associated with services that were requested by the actual client which, in the circumstances, may have been unreasonable.
- [10] Time dockets are an important means of documenting what was done, how long it took and who performed the service. However, time spent on a file is not and never

has been the sole or even the determinative factor in an assessment. The basic question is always whether the account is “reasonable for the services performed,” taking into account the factors listed in Civil Procedure Rules 63.16(1) and 63.33(1). As was noted by Goodfellow, J in *HRM v. Joudrey*, 2001 N.S.S.C. 185, “taxations are a less than scientific exercise:” see para. 2.

- [11] This particular taxation was made difficult by a number of factors.
- [12] First, Mr. Cragg, the solicitor who had carriage of the file, did not attend. Ms. Wozniak and his articled clerk, Mr. Folk, both had some familiarity with the file but there were times when they were not able to provide direct evidence as to what had happened in respect of particular charges listed on the account.
- [13] Second, from the evidence of Ms. Wozniak, I learned that there was in fact no computerized record of the time charges on the file; nor were the time charges that were identified on the account an accurate record of what had actually transpired.
- [14] For example, the account contains the following entry for July 5, 2004 (an only entry): “preparation of brief in support of contempt application.” This is recorded as taking five hours of Mr. Cragg’s time, at an hourly rate of \$250, for a total of \$1,250.
- [15] However, entered as Exhibit C9 is a letter dated July 5, 2004 from Mr. Folk to the Court enclosing five copies of the application and two copies of the brief. The letter contains a note that the brief “may have been supplied to the Court earlier as part of the application for leave to apply for a contempt order.”
- [16] Ms. Wozniak explained the discrepancy between the actual document (that is, the letter dated July 5 from Mr. Folk), which clearly could not have taken five hours to prepare, and the account entry of five hours of Mr. Cragg’s time by saying that the account entry, in fact, represented an assessment of the collective time of herself, Mr. Folk and Mr. Cragg. As explained by Ms. Wozniak, all three of those individuals would have been involved in the preparation of important documents like application materials. Mr. Folk would prepare numerous drafts which would be reviewed by Mr. Cragg. This process would be repeated many times before the documents actually went out. Rather than record all of this time, by all of these individuals, Mr. Cragg appears to have simply made an estimate as to what the services for that day were worth and then, more or less arbitrarily, come up with a value which was then recorded at a certain number of his hours.
- [17] Another example of this same process may be found in the entry for February 23, 2004 in the account, which purports to report the time of a previous articled clerk of 2.5 hours to prepare a memorandum and one hour to prepare a memo to file.

However, when I asked for copies of these materials I was provided with Exhibit C17, which is a simple, three paragraph memo dated February 23, 2004 from the student to Mr. Cragg setting out, in the briefest of ways, the general process to be employed on a contempt application.

- [18] Another example may be found in the July 15, 2004 entry on the account, which purports to record .25 of Mr. Cragg's time to review a one page letter from a third party (see Exhibit C4). Similarly, June 30 purports to record .30 of Mr. Cragg's time to produce a one page letter to that same person (see Exhibit C5).
- [19] Based on this evidence, I have determined that I cannot place much, if any, reliance on the time purported to be reported in the account as being an accurate (or indeed any) indication of what was done by whom and for how long. I am accordingly forced to rely almost entirely on the principles set out in Civil Procedure Rule 63.16(1).
- [20] Two other facts were relevant in my assessment.
- [21] First, on the evidence of Mr. Folk, it appears that on the contempt application which took place on July 20, there was in fact another application, one brought by Ms. Majaess to vary the original Order or Orders. I was not able to determine, from the materials filed on behalf of the solicitor, how much time was taken up with the contempt application and how much was taken up with the variation application.
- [22] Finally, I was not able to determine, from the evidence submitted by the solicitor, when Mr. Cragg actually received instructions to commence the contempt application. Ms. Wozniak could not assist, but submitted that it "must have been" around March 30, which is when the account records a call from the client. This call came in after approximately nine hours of time attributed to Mr. Cragg had been accumulated on the account.
- [23] I now turn to the assessment, itself.
- [24] First, noting the principle that a party ordered to pay solicitor and client costs in a matter is not liable to pay those costs accumulated before the matter commenced, I have decided to disallow an amount equivalent to nine hours of Mr. Cragg's time, or \$2,250. That reduces the amount of fees claimed to \$10,342.50.
- [25] I must then ask myself, applying the principles of Civil Procedure Rules 63.16(1) and 63.33(1), whether a fee of over \$10,000 is reasonable in respect of the contempt application in this case. Having reviewed the materials file, I have concluded that it is not.

- [26] The basic contempt, as I understood it, was a failure on the part of Ms. Majaess to do certain things involving the payment of a mortgage and transfer of shares. The facts surrounding the contempt application were simple and straightforward and do not appear to have been much in dispute. The affidavit in support of the application comprised thirteen short paragraphs, covering not much more than two pages and consisted of a simple recitation of a few facts, together with the attachment of a few documents: see Exhibit C7.
- [27] The submissions filed on July 5 (see Exhibit C9) were well done, but they also evidence the straightforward nature of the application.
- [28] I do not know how long the actual application took. While it was recorded as three hours in the account, I have found that the account itself is not an accurate record. Mr. Folk advised that the appearance also involved dealing with Ms. Majaess' application to vary, which is a separate application and not part of the Order for solicitor and client costs in respect to the contempt.
- [29] In the end I am not satisfied that fees in excess of \$10,000 would be a reasonable amount for the services involved in the particular application in question. The matter was important (as is the enforcement of any mandatory Court order), but the steps necessary to effect that enforcement were simple and ought not to have required substantial amounts of time.
- [30] Taking all of these factors into account, I conclude that a reasonable amount for this matter would be \$5,000, which translates into twenty hours of Mr. Cragg's time at \$250 an hour.
- [31] Turning to the disbursements, I note that there is an administration fee of \$25, which is overhead and not normally chargeable to a client as such. Accordingly, I disallow that \$25.
- [32] Based on all of the above, I certify the amount of the account dated July 29, 2004 and attached to the Notice of Taxation as follows:

a.	Fees in respect of services	\$5,000.00;
b.	HST thereon	750.00;
c.	Disbursements (being filing fee)	53.00;
d.	HST on disbursements	7.95;
e.	Total	\$5,810.95.

[33] I will also order Ms. Majaess to pay the filing fees in respect of this taxation of \$75.

Dated at Halifax, Nova Scotia this
30th day of August 2004

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ADJUDICATOR

W. Augustus Richardson

Original Court File
Copy Claimant(s)
Copy Defendant(s)